(2006) 07 MP CK 0102

In the Madhya Pradesh High Court

Case No : Writ Petition No. 9249 of 2005

Shashi Kuchhwaha APPELLANT

Vs

Municipal Corporation, Satna RESPONDENT

Date of Decision : 13-07-2006

Acts Referred:
Madhya Pradesh Municipal Corporation Act, 1956 — Section 403(2)(b), 421

Citation : (2006) 4 MPLJ 225

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : R.P. Agrawal, with H.B. Gautam, for the Appellant; Mohd. Nasir, N.S. Kale, with R. Kumar for Intervenor (Ram Prasad Kushwaha), S.C. Sharma, with Harshit Patel for Intervenor/Mayor (Smt. Vimla Pandey), for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

This petition has been preferred by the petitioner aggrieved by an order (P-4) dated 24-8-2005 cancelling the allotment of the shop which was made in favour of the petitioner.

It is averred in the petition that petitioner is carrying on wholesale and retail business of vegetable in the name and style of "Shiv Sabji Bhandar". Petitioner is proprietor of the same. Petitioner applied for allotment of shop in Vishwas Rao Sabji Mandi. The Mayor-in-Council considered application of the petitioner and passed a resolution dated 18-6-2005 to allot a shop on monthly rent of Rs. 500/- . Pursuant to resolution, an order (P-1) was issued on 23-7-2005. It was subject to the condition that allotment/permission would be liable to cancel in the event of departmental dispute, on the basis of allotment/permission no right in respect of the shop would accrue, lastly allotment/permission was liable to be cancelled at any time. Petitioner was placed in possession and paid rent as per receipt (P-2) for month of August, 2005. She started the business as apparent from photographs (P-3). A complaint of Fruit and Vegetable Merchants Association was received by Mayor-in-council which passed a resolution No. 56/1 dated 11-8-2005. Before passing the resolution copy of complaint was not given nor any opportunity of hearing was afforded to petitioner. Resolution 56/1 dated 11-8-2005 was thus violative of principles of natural justice, arbitrary and mala fide. Pursuant to the resolution an order (P-4) was issued on 24-8-2004 cancelling the allotment. The Shop was sealed early morning on 26-8-2005. Petitioner made report against high handed action to the Commissioner, Municipal Corporation, Satna and to the SHO, City Kotwali, Satna. Complaint/ report (P-5, P-6) were filed. Goods worth Rs. 25,000/- were kept in the shop. In case goods were not taken out, petitioner would suffer loss of Rs. 25,000/- , hence petition has been filed.

In the return filed by the Corporation it is contended that an appeal lies against the order u/s 403(2)(b) of the Municipal Corporation Act, 1956, hence this writ petition is not maintainable. As against resolution, representation lies before the State Government u/s 421 of the Municipal Corporation Act, 1956. Permission was granted earlier on temporary basis till further order. It could be cancelled at any time, the same did not create any right upon the petitioner. General Council of the Corporation was competent to grant such permission to allot the shop in view of clause (b) of sub-section (2) of section 80 of the Act. The Mayor-in-Council was not competent. Without inviting tender as per Rule 3 of M.P. Municipalities (Achat Sampatti Ka Antaran) Niyam, 1994 (hereinafter referred to as Rules of 1994), the shop in question was permitted to be used by the petitioner, the same could not have been transferred or allotted/permission granted for its use without inviting tenders. It could have been auctioned on the maximum bid. In view of the complaints, the Mayor-in-Council reconsidered the matter and revoked the permission which was granted earlier, subject to sub-rule (3) of Rule 12 of Madhya Pradesh Nagar Palika (Mayor-in-Council) Ke Kam Kaj Ke Sanchalan Niyam, 1998. A representation by Vindhya Fal-Sabzi Vikreta Sangh was submitted to the Corporation alleging that the shop in question is worth Rs. 5 to 6 lacs and has been allotted without holding the public auction. It was in fact an office room (Pump House) of sanitary department of the Municipal Corporation, Satna, was very old and remained generally closed. Sanction from competent authority for commercial purpose was to be obtained. Rent was also required to be determined. Matter was not placed before the General Body. Shri N.P. Nemdeo, the then Commissioner has now been transferred to Municipal Corporation Ratlam, who gave the concurrence for commercial use whereas the matter was required to be considered by the Corporation. The permission was not in accordance with law, hence resolution (R-1) was rightly passed on 11-8-2005. Permission has been rightly withdrawn in terms of the conditions no right was-created or accrued to the petitioner.

Several intervention applications have been filed opposing the action of the Municipal Corporation.

Shri R.P. Agrawal, Sr. counsel appearing for the petitioner has submitted that action which has been taken is mala fide. One of the intervenors Ram Pratap wanted to obtain the same for himself. He was in collusion with the Mayor, that it was a precise reason for cancellation of allotment of the shop made in favour of the petitioner. He has further submitted that once allotment was made, show cause notice ought to have been issued before passing resolution and issuing an order, hence order (P-4) is violative of principles of natural justice. It was purely a temporary permission granted, hence Rule 3 of the Rules of 1994 is not attracted. The Mayor-in-Council has the financial power up to 10 lacs hence the Mayor-in-Council was competent.

Shri Mohd. Nasir, Learned Counsel for the respondent has placed reliance on Rule 3 of the Rules of 1994 and section 80(2) to submit that permission of State Government was necessary. Apart from that the Mayor-in-Council was not competent. It was only by way of auction it was possible to grant lease. It is further submitted that show cause notice have been issued to the employees of Corporation who were involved in allotment of the shop to the petitioner. It was purely a temporary allotment without any right, which could have been cancelled at any time as per the conditions of allotment mentioned in the order (P-1). In view of the patent illegality, it was not necessary to observe principles of natural justice as it would have been an empty formality in view of the fact that action was without jurisdiction and illegal.

Shri N.S. Kale, Sr. Counsel and Shri S.C. Sharma, Sr. counsel appearing for the intervenors have submitted that in view of Rule 3 of the Rules 1994 the gross illegality was committed, which was apparent, no case for interference made out in favour of the petitioner.

With respect to the allotment of shop, section 80(2) of the Municipal Corporation Act is relevant, same is quoted below:

80. Provisions governing the disposal of municipal property or property vesting in or under the management of Corporation

(1)..........................

(2) Subject to the provisions of sub-section (1)

(a) the Commissioner may, in his discretion, grant a lease of any immovable property belonging to the Corporation, including any right of fishing or of gathering and taking fruit, flowers and the like of which the premium or rent, or both, as the case may be, does not exceed five hundred rupees for any period not exceeding twelve months at a time : Provided that every such lease granted by the Commissioner, other than the lease of the class in respect of which Mayor-in-Council has by resolution exempted the Commissioner from compliance with the requirements of this proviso, shall be reported by him to the Mayor-in-Council within 15 days after the same has been granted;

(b) with the sanction of the Mayor-in-Council, the commissioner may by sale or otherwise grant a lease of immovable property including any such right as aforesaid, for any period not exceeding three years at a time of which the premium or rent or both, as the case may be, for any one year does not exceed three thousand rupees;

(c) with the sanction of the Corporation the Commissioner may lease, sell or otherwise convey any immovable property belonging to the Corporation.

As per section 80(2)(b) the standing committee is empowered to grant a lease of immovable property including any such right as aforesaid, for any period not exceeding three years at a time of which the premium or rent or both, as the case may be for any one year does not exceed three thousand rupees. The rent was fixed at Rs. 500/- per month i.e. Rs. 6000/- per annum, thus Mayor-in-Council or Commissioner were not competent to take decision in the matter. The Corporation was competent to take the decision as provided in section 80(2)(c) the power of Corporation further subject to Rules of 1994. Rule 3 is quoted below:

3. No immovable property which yields or is capable of yielding an income shall be transferred by sale, or otherwise conveyed except to the highest bidder at a public auction or by inviting offer in a sealed cover : Provided that if the Corporation is of the opinion that it is not desirable to hold a public auction or to invite offers in sealed covers the Corporation may, with the previous sanction of the State Government, effect such transfer without public auction or inviting offers in sealed covers:

Provided further that the Corporation may with the previous sanction of the State Government and for the reasons to be recorded in writing, transfer any immovable property to a bidder other than the highest bidder ;

Provided also that for any such transfer by lease a reasonable premium shall be payable at the time of granting the lease and annual rent shall also be payable in addition during the total period of the lease.

Intendment of Rule 3 of the Rules of 1994 is clear, it lays down that there has to be public auction or by inviting of offer in a sealed cover. The shop was allotted by a resolution without inviting any competitive offer. It was clearly a case of favoritism. It passes comprehension how all of a sudden decision was taken to covert an office room (Pump House) of sanitary department of the Municipal Corporation into the shop without putting the matter before Corporation, the Mayor-in-Council on one fine day without following any procedure prescribed under the Rules of 1994 decided to allot the shop to the petitioner. Mayor-in-Council was not competent authority to make allotment as rent was Rs. 6,000/- per annum @ 500/- per month. Provisions of the Act and Rules were flagrantly violated. The action not only violated section 80 of Municipal Corporation Act but Rule 3 of the Rules of 1994 also, no straight jacket formula can be applied for applicability of principles of natural justice. The action is illegal and void, thus I find in the instant case no useful purpose is going to be served by directing the

Corporation to give opportunity of hearing and thereafter to take a decision. Such an illegality cannot be allowed to be perpetrated for a moment. Giving an opportunity would be an empty formality and would perpetuate illegal action for some more time. Thus I am not inclined to agree with the submission raised by Shri R.P. Agrawal. Sr. Counsel that opportunity of hearing should have been afforded.

Petitioner''s counsel has relied upon the Madhya Pradesh Municipalities (The Conduct of Business of the Mayor-in-Council/President-in-Council and the Powers and Functions of the Authorities) Rules, 1998, no doubt it has the financial power to deal with the matter of above Rs. One Lakh up to Rs. Ten Lakhs. Merely conferral of financial powers in the matter exceeding Rs. One Lakh but not exceeding Rs. Ten Lakhs cannot empower the Mayor-in-Council to give go-by the rules of 1994 and provisions of section 80 of the Act. Thus resolution was rightly recalled by Mayor-in-council, it was patently illegal. Apart from that it was condition mentioned in the order of allotment that any time it could be cancelled. It was also mentioned that in case of departmental objection, permission could be cancelled at any time. In view of nature of allotment itself it is clear that while making allotment it was understood very well that what they were up to.

No doubt that some more persons were also interested in the shop. They also filed an application but it is made clear that it is not open to the Corporation to deal with the public largesse in arbitrary fashion. It has to proceed in case any allotment is to be made as per section 80 read with Rules of 1994. I am not entering into the factual matrix which is disputed at Bar with respect to intendment of Mayor to give it to someone else as the facts have been denied. It is made clear that Corporation shall completely abide by provisions of section 80 of Municipal Corporation Act and Rule 3 of the Rules of 1994 in case shop is to be allotted. The possession shall be handed over to the Corporation by the petitioner within a period of 15 days from today.

Resultantly, I find no merit in this petition, same is hereby dismissed. Parties to bear their own costs as incurred.

C.C. as per rules.

