
(2007) 08 MP CK 0062
In the Madhya Pradesh High Court

Shriram Builders	Vs	APPELLANT
State of Madhya Pradesh and Others		RESPONDENT

Date of Decision : 14-08-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : AIR 2009 MP 98

Hon'ble Judges : Ajit Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajit Singh, J.—By this petition the petitioner has prayed for quashing of orders dated 5.10.2006, Annexures P11, 11A and 11B passed by respondent no. 1, State Government whereby it has, in exercise of its suo motu powers of revision, set aside the orders dated 7.7.2006 Annexures P5, P6 and P7, passed by respondent no.3, Joint Director, Town and Country Planning, Indore. Petitioner has also prayed for quashing of gazette notification dated 4.8.2006 Annexure P14, published by respondent no. 4, Indore Development Authority and another gazette notification dated 18.8.2006 Annexure P21, published by respondent no. 1, State Government u/s 4 of the Land Acquisition Act.

2. The facts giving rise to this petition are as under:

Petitioner is a partnership firm and is involved in construction business. Respondent no. 4 Indore Development Authority (in short "the Authority") has been constituted u/s 38 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (in short "the Adhiniyam") and is amenable to the writ jurisdiction of this Court. Petitioner is owner and in possession of lands bearing survey nos.73/4/2,74,75/3, area 1.237 hectare; survey nos. 83/2, 84/2, area 1.237 hectare and survey no.66/2, area 0.720 hectare, situated at village Khajrana, District Indore.

3. On 14.5.1993, the Authority passed a resolution u/s 50(1) of the Adhiniyam

declaring its intention to prepare a town development scheme, which was numbered as scheme No.132. The scheme included the above mentioned lands of petitioner. On 28.5.1993, the Authority issued a communiqué for the publication of its declaration of intention of the scheme as required u/s 50(2) of the Adhiniyam. The Authority, therefore, sent letters dated 29.5.1993 and 1.6.1993 to daily newspapers (Dainik Bhaskar and Nai Duniya) and the Controller, Government Regional Press, for such publication in the newspapers and gazette. Declaration of the intention of scheme was published in the gazette on 18.6.1993. Thereafter survey of the lands comprised in the scheme was made and a town development scheme in a draft form was prepared. The draft form of the scheme so prepared was published in the gazette on 26.5.1995 as required u/s 50(3) of the Adhiniyam. Objections and suggestions were invited from public at large with respect to the draft development scheme.

4. It is to be noted that much after the publication of the draft scheme on 26.5.1995 the Madhya Pradesh Nagar Tatha Gram Nivesh (Sansodhan) Adhiniyam, 2004 was enacted which amended section 50 of the Adhiniyam by adding proviso to Sub-section (4) w.e.f. 29.12.2004, which reads as under:

Provided that the final publication of such draft scheme shall be notified not later than one year from the date of publication of the draft scheme failing which the draft scheme shall be deemed to have lapsed

5. According to the Authority, after considering various objections and suggestions and also hearing the objectors, it passed an order-dated 15.2.2005 u/s 50(4) of the Adhiniyam and decided to seek clarification and guidelines by writing a letter dated 22.9.2005 to the Department of Madhya Pradesh Housing and Environment.

6. In June 2006, petitioner's applications u/s 29 of the Adhiniyam for the development of its lands, were placed before respondent no. 3. On 2.6.2006 the Authority submitted a reply and stated that the lands were already included in the scheme and as such no permission for development to petitioner can be granted. Respondent no. 3 by order dated 22.6.2006 held that the scheme in question of the Authority had already lapsed on 29.12.2005 in view of the proviso quoted above added to Sub-section (4) of section 50 of the Adhiniyam and thereafter by three separate orders dated 7.7.2006 Annexures P5, P6 and P7, approved the layout of the proposed development sought by the petitioner.

7. The Authority passed a resolution on 29.7.2006 for the final publication of the scheme on receiving a reply-dated 6.7.2006 from the department that no clarification is needed. Accordingly, the Authority passed a final order on 1.8.2006 regarding the approval of draft scheme, which was published in the gazette-dated 4.8.2006 Annexure P14 as required u/s 50(7) of the Adhiniyam. Later, on the request of Authority, the State Government issued a notification dated 8.8.2006 which was published in the gazette dated 18.8.2006 Annexure P21, u/s 4 of the Land Acquisition Act for acquisition of land.

8. Being aggrieved with the orders dated 7.7.2006, Annexures P5, P6 and P7, the Authority filed three separate revisions on 5.8.2006 before the State Government, which by order dated 21.1.2006, stayed their operation and issued notices to petitioner. The petitioner challenged the stay order dated 21.1.2006 in Writ Petition No. 13611/2006 filed on 19.9.2006. On 25.9.2006 this Court issued notices on the writ petition to the State Government and the Authority. The State Government proceeded ex-parte against the petitioner and by exercising suo motu powers of revision conferred u/s 32 of the Adhiniyam vide three separate impugned orders dated 5.10.2006 Annexures P11, 11A and 11B set aside the orders dated 7.7.2006, Annexures P5, P6 and P7 passed by respondent no. 3. The State Government held that proviso to subsection (4) of section 50 had no retrospective application and respondent no.3 was wrong in holding that the scheme had lapsed. The State Government also referred to some irregularities in the approval of development plan sought by the petitioner.

9. In view of the final order dated 5.10.2006 Annexure P11 passed by the State Government, this Court by order dated 1.12.2006 dismissed the Writ Petition No.13611/2006 of petitioner as having been rendered infructuous.

10. The learned Counsel for petitioner has challenged the validity of orders dated 5.10.2006 Annexures P11, 11A and 11B by arguing that the State Government had no jurisdiction to entertain the revisions filed by the Authority in the absence of any prior appeal against the orders dated 7.7.2006 passed by respondent no. 3. According to the learned senior counsel, the revisions u/s 32 of the Adhiniyam could have been entertained only against an order passed in appeal u/s 31. The learned Counsel has also argued that scheme no.132 of the Authority stood lapsed on the addition of proviso to Sub-section (4) of section 50 w.e.f 29.12.2004 and the State Government committed an illegality in holding that the proviso was not applicable retrospectively. The learned Counsel next submitted that the impugned orders are liable to be set aside as the same have been passed without giving a reasonable opportunity to the petitioner in contravention of section 32 of the Adhiniyam. He lastly argued that no irregularities were committed in the approval of development plan sought by the petitioner. In reply the learned respective counsel for respondents have defended the validity of the scheme and order passed by the State Government in exercise of its sou motu powers of revision.

11. To answer the first submission of petitioner, it is necessary to examine the provisions of sections 29, 30 (1), 31 and 32 of the Adhiniyam which read as under:

29. Application for permission for development by others:-(1) Any person, not being the Union Government, State Government, a Local Authority or a special authority constituted under this Act intending to carry out any development on any land, shall make an application in writing to the Director for permission, in such form and containing such particulars and accompanied by such documents as may be prescribed.

(2) Such application shall also be accompanied by such fee as may be prescribed. "30. Grant or refusal of permission. (1) On receipt of an application u/s 29 the Director may, subject to the provisions of this Act, by order in writing

(a) grant the permission unconditionally;

(b) grant the permission, subject to such conditions as may, deemed necessary under the circumstances;

(c) refuse the permission.

31. Appeal.-(1) Any applicant aggrieved by an order granting permission on condition or refusing permission u/s 30 may, within thirty days of the date of communication of the order to him, prefer an appeal to such authority, in such manner and accompanied by such fees as may be prescribed.

(2) The appellate authority may, after giving a reasonable opportunity to the appellant and the Director to be heard, by order, dismiss the appeal or allow the appeal by granting permission unconditionally or subject to the conditions as modified.

(3) Subject to the provisions of section 32 the order of the appellate authority shall be final.

32. Revision.-The State Government may, at any time, but not later than twelve months of the passing of the order, on its own motion or on an application filed by the person aggrieved by any order of the appellate authority u/s 31 within thirty days of the date of communication of such order to him, call for and examine the record of any case disposed of by Director u/s 30 or appellate authority u/s 31 for the purpose of satisfying itself as to the correctness of the order and as to the regularity of any proceeding of the Director or the Appellate Authority and may, when calling such record direct that the execution of the order be suspended. The State Government may, after examining the record, pass such order as it thinks fit and its order shall be final and no further application for revision or review thereof shall lie: Provided that no order shall be passed unless the person affected thereby and the Director have been given a reasonable opportunity of being heard.

12. A bare reading of the above quoted provisions reveals that u/s 29 any private person intending to carry out development on any land can make an application in writing to the Director for permission and on receipt of such application, the Director may u/s 30 grant the permission either unconditionally; or on such conditions which he may deem necessary or he may even refuse the permission. Section 31 provides for a remedy of appeal only to that applicant whose application for permission has been rejected or allowed on such conditions with which he is aggrieved. Section 32, which deals with revision, clearly provides that the State Government may, on its own motion, but within a stipulated period of 12 months from the date of the passing of order by the Director u/s 30, call for and examine the record for the purpose of satisfying itself as to the

correctness of the order and also to the regularity of any proceeding of the Director and when calling such records the State Government can stay the execution of the order. u/s 32 the State Government, after examining the record, is also fully empowered to pass such order as it may deem fit. Section 32 even provides a remedy of revision to a person aggrieved by an order of the appellate authority passed u/s 31 by filing an application within 30 days of the date of communication of such order to him.

13. Thus, against the orders dated 7.7.2006, Annexures P5, P6 and P7, by which respondent no. 3 approved the layout of the proposed development sought by the petitioner, the Authority had no right of appeal u/s 31. It, therefore, moved the State Government against those orders to examine their correctness as well as the regularity of proceedings resulting into passing of the orders. There is no legal bar on the State Government from exercising its suo motu powers of revision on revision application being filed by any person. The State Government, being clearly vested with the suo motu powers of revision, was thus fully competent to entertain and decide the revisions in question finally. I accordingly reject the contention of petitioner that the State Government had no jurisdiction to exercise suo motu powers of revision in the absence of any prior appeal against the orders dated 7.7.2006 passed by respondent no. 3.

14. As regards the submission of petitioner that scheme no.132 of the authority stood lapsed on the addition of proviso to subsection (4) of section 50 with effect from 29.12.2004, I deem it proper to reproduce the relevant portion of section 50. It reads as under:

50. Preparation of town development schemes.-(1) The Town and Country Development Authority may, at any time, declare its intention to prepare a town development scheme.

(2) Not later than thirty days from the date of such declaration of intention to make a scheme, the Town and Country Development Authority shall publish the declaration in the gazette and in such other manner as may be prescribed.

(3) Not later than two years from the date of publication of the declaration under Sub-section (2) the Town and Country Development Authority shall prepare a town development scheme in draft form and publish it in such form and manner as may be prescribed together with a notice inviting objections and suggestions from any person with respect to the said draft development scheme before such date as may be specified therein, such date being not earlier than thirty days from the date of publication of such notice.

(4) The Town and Country Development Authority shall consider all the objections and suggestions as may be received within the period specified in the notice under Sub-section (3) and shall, after giving a reasonable opportunity to such persons affected thereby as are desirous of being heard, or after considering the report of the committee constituted under Sub-section (5) approve the draft scheme as published or make such modifications therein as it

may deem fit.

Provided that the final publication of such draft scheme shall be notified not later than one year from the date of publication of the draft scheme failing which the draft scheme shall be deemed to have lapsed.

(Proviso added on 29.12.2004 by the Madhya Pradesh Nagar Tatha Gram Nivesh (Sansodhan) Adhiniyam, 2004)

15. It is to be noted that prior to the addition of proviso to subsection (4) of section 50, no time limit was prescribed to consider the objections and suggestions received in respect of the town development scheme in draft form and for its final publication. In the result, hardships were being caused to the persons whose lands came under the purview of the scheme and the development of the area under scheme also came to stand still in view of section 53 of the Adhiniyam. The proviso was, therefore, added to obviate these difficulties by requiring the authority for making the final publication of the scheme within a period of one year from the date of publication of the draft scheme or else the draft scheme shall be deemed to have lapsed.

16. The scheme in draft form was published on 26-5-1995. The proviso came into force with effect from 29-12-2004. The proviso, being procedural in nature, has retrospective operation and to say that it had no retrospective application is not correct. The proviso was clearly applicable to such draft schemes published earlier to the date of its coming into force i.e. 29-12-2004 where its compliance was possible. It could never be the intention of the legislature to give unlimited time to publish the scheme finally after 29-12-2004 in case of the draft schemes published before 29-12-2004 and restrict the one year period to the draft schemes published after 29-12-2004. The proviso, however, did not apply to the scheme in question because it was published in draft form on 26-5-1995 and the compliance of proviso in terms was impossible. But the authority, after the proviso came into force, should have acted promptly to see that the scheme was published as early as possible and, in any case, within one year from the date of the introduction of proviso. The authority took 17 months after the introduction of proviso to publish the scheme finally. The intention of the legislature cannot be that even after the introduction of the proviso a draft scheme published earlier can be kept pending at the sweet will of the authority. The intention is clear that all pending draft schemes must be finalized at least within one year after the introduction of the proviso otherwise they will lapse. As the authority failed to finalize and publish the scheme within one year of the introduction of the proviso, it must be deemed to have lapsed.

17. My above construction of the proviso stands fully supported by the decision of the Supreme Court in Union of India Vs. Harnam Singh, . In that case a government servant, who was appointed on 22-2-1956, applied for the correction of his date of birth in the service book few months prior to 31-5-1992 which was the notified date of his superannuation. In the year 1979 by

amendment in the Fundamental Rules limitation of five years from the date of the entry into service was introduced for the correction of date of birth in the service book. The question for consideration before the Supreme Court was whether amendment was applicable only to those government servants who had joined the service after 1979. The Supreme Court was of the view that it was not the intention of the rule making authority to give unlimited time to seek correction of date of birth after 1979 to those government servants who had joined the service prior to 1979 and limited the time period to five years for those who joined the service after 1979. Applying the principle of harmonious construction of the provision, the Supreme Court held that those government servants who were already in service before 1979 for a period of more than five years and who intended to have their date of birth corrected after 1979 could seek the correction of date of birth within a reasonable time after 1979 but in any event not later than five years after the coming into force of amendment in 1979.

18. Apart from any time limit fixed by the Act, in our country, which is governed by the rule of law, every authority is required to act fairly and reasonably. Even when no period of limitation is provided, the authority is expected to perform its statutory functions within a reasonable time and not to sit over the matter for ages without deciding it. The authority in this case, after the publication of the scheme in draft form, took more than nine years to make its final publication. Even after the introduction of the proviso, the Authority took more than 11/2 years for finalizing the scheme. Under no stretch of imagination, the action of authority can be held as reasonable. In the circumstances, apart from the consideration based on the new proviso it has to be held that the authority acted unreasonably and arbitrarily in finalizing the scheme which deserves to be quashed.

19. The next submission of petitioner is that the impugned orders dated 5.10.2006, Annexures P11, 11A and 11B are liable to be quashed as the same have been passed without giving a reasonable opportunity to it. Proviso to section 32 of the Adhinyam quoted above in paragraph 11 of the order clearly prohibits the State Government from passing any order without giving a reasonable opportunity of hearing to the person affected. In the case at hand, the petitioner has categorically averred that notices of revisions in which the impugned orders dated 5.10.2006 have been passed were never served on it. Petitioner has referred to the extract of dak (peon) book, Annexure P17, issued under the provisions of the Right to Information Act, 2005 from the office of respondent no. 3 wherein an entry dated 25.9.2006 has been made stating that since no one was available on the given address of petitioner on four occasions, the notices were returned. It is not stated in the return of the respondents as to how the petitioner was served with the notices. No material has also been produced by the State Government and the Authority to establish that the notices of revisions were, in fact, served on the petitioner or were affixed on the petitioner's address which should at least have been done if the petitioner was

not available. The State Government instead of itself taking steps to serve the notices of revisions on the petitioner banked upon respondent no.3 for their service but the notices were returned with the endorsement that no one was available on the given address. This factual situation has fairly not been disputed by the respondents. Under these circumstances, it can safely be inferred that the petitioner was not served with the notices of revisions by the State Government and the State Government committed an illegality in proceeding ex-parte against the petitioner and passing the impugned orders dated 5.10.2006. As the impugned orders dated 5.10.2006 have been passed against the petitioner without giving it a reasonable opportunity of hearing in utter disregard of the proviso to section 32 of the Adhiniyam, the same are liable to be quashed on this ground also.

20. The State Government, in holding that irregularities were committed by respondent no. 3 in the approval of development plan sought by the petitioner, has referred to the following irregularities: (i) the enquiry relating to and approval of the development plan of the petitioner was done on one and the same date in utter haste without fully examining the matter which caused suspicion (ii) as per the noting of spot inspection, existence of ten metre road is shown on the spot whereas no such road exists and that the facts as to the coordination with the contiguous area is also baseless because site layout of the contiguous area had not yet been approved (iii) respondent no. 3 did not act bonafidely in approving the development plan in favour of petitioner as he was also working as a special member of the Board of the Authority (iv) respondent no. 3 did not send the copies of the letter of approval of development plan to the Municipal Corporation, Collector, Sub-Divisional Officer (Revenue) and Department of Registration, etc. in compliance with Rule 13 of the Madhya Pradesh Town and Country Planning Rules, 1975, and (v) in the Development Plan 1991 use of land bearing Khasra no. 66/2, area 0.720 hectare, is shown for commercial purpose whereas in the order dated 7-7-2006 Annexure P7 of the approval of development plan its use has been shown for administrative purpose.

21. I am in complete disagreement with the view of the State Government that the enquiry relating to and approval of the development plan of the petitioner was done on one and the same date in utter haste without fully examining the matter. It is to be noted that petitioner's applications for approval of development plan were placed before respondent no.3 in the month of June 2006, of which notices were issued to the Authority. The Authority in its reply stated that since the lands were already included in the Scheme No. 132, no permission for development to petitioner can be granted. Respondent no.3 by order dated 22.6.2006 rejected the said objection by holding that the scheme had already lapsed on 29.12.2005 in view of the proviso added to Sub-section (4) of section 50 of the Adhiniyam. Respondent no.3 thus, in fact, approved the development plan of petitioner only after hearing and rejecting the objection of Authority. On this backdrop, under no stretch of imagination it can be said that the approval of development plan, was done in utter haste and without

examining the matter. As regards the irregularity that 10 meter road does not exist on the spot, the petitioner never claimed before respondent no. 3 that such a road exists. Moreover, in the orders of approval of development plan it is clearly mentioned that 12 meter road is proposed as shown in the annexed sanctioned map and the petitioner will have to construct such a road. The State Government is also wrong in observing that respondent no.3 did not act bonafidely in approving the development plan in favour of petitioner merely on the ground that he was also working as a special member of the Board of Authority. The State Government has not questioned the authority and jurisdiction of respondent no. 3 to approve the development plan of petitioner. Respondent no. 3 admittedly took the decision in favour of petitioner only when he found that the scheme of the Authority had lapsed. As regards the non compliance of Rule 13 of the Madhya Pradesh Town and Country planning Rules, 1975, letters of approval of development plan Annexures P5, P6 and P7 clearly reveal that the copies of same have been sent by respondent no. 3 to the Municipal Corporation, Collector, Sub-Divisional Officer and Department of Registration. Rule 13, thus stands substantially complied with which is only directory as no consequence of its non compliance has been provided. Further, no complaint from any of these Authorities has been placed on record by the State Government in its return to establish that they were not sent the copies of the letters of approval of development plan. Lastly, no statutory bar has been pointed out by the State Government preventing respondent no. 3 from approving the development plan in respect of Khasra No. 66/2, area 0.720 hectare by order dated 7.7.2006 Annexure P7, for administrative purpose. Respondent no. 3, in my considered opinion, did not commit any irregularity while approving the development plan sought by the petitioner.

22. The view taken by the State Government proceeds upon a misconstruction of the proviso to Sub-section (4) of section 50 of the Adhiniyam and is erroneous on the face of the record in so far as it relates to services of notices of the revisions on petitioner and the irregularities said to be committed by respondent no. 3. The impugned orders dated 5.10.2006, Annexures P11, 11A and 11B, therefore, cannot be sustained.

23. For these reasons, the impugned orders dated 5.10.2006, Annexures P11, 11A and 11B passed by the State Government are quashed. In the result, gazette notification dated 4.8.2006 Annexure P14, published by the Authority and gazette notification dated 18.8.2006 Annexure P21, passed by the State Government are also quashed.

24. The petition is allowed with costs of Rs.1000/-.