

(1982) 02 MP CK 0017

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 457 of 1981

Smt. Chameli Devi Agarwal and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 16-02-1982

Acts Referred:

Madhya Pradesh General Clauses Act, 1957 — Section 3

Madhya Pradesh Land Revenue Code, 1959 — Section 172

Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 1(2), 1(3), 25(2), 7(3)

Citation : AIR 1982 MP 125

Hon'ble Judges : K.N. Shukla, J;G.G. Sohani, J

Bench : Division Bench

Advocate : S.D. Sanghi, Chaphekar, Kokie and Bagdi, for the Appellant; S.R. Joshi, Government Advocate and G.S. Solanki, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Shukla, J.—This is a petition under Article 226 of the Constn.

2. Petitioners purchased agricultural lands bearing survey Nos. 98/1/2 98/1/3 and 98/1/4 area 3.10 acres situate at village Lasudia Mori, Tehsil and District Indore. Petitioners applied under the Madhya Pra-desh Land Revenue Code for permission to divert these lands for non-agricultural purposes. Permission was granted by the Sub-Divisional Officer Indore-Sanwer on 15-4-1981 (Annex. A). Petitioners intended to construct a shopping complex on these lands and submitted the plan for the proposed construction for approval to the Gram Panchayat of village Lasudia Mori. The Gram Panchayat approved the plan and on the basis of the approved plan cement and other building material was allotted to the petitioners by the Civil Supplies Department of the State Government, petitioners started construction of a marketing complex and spent a considerable amount on it. When they were half-way-through, petitioners approached the Madhya Pradesh Electricity Board for electricity connection for the proposed

marketing complex. The Board advised the petitioners to obtain a No Objection Certificate from the Town and Country Planning Department. Petitioner applied to the Joint Director, Town and Country Planning Department on 12-8-1981. The Joint Director refused permission on the ground that according to the Master Plan the lands could be used only for agricultural purposes. This letter dated 28-8-1981 is Annexure-C. The petitioners preferred an appeal u/s 31 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (the Adhiniyam hereafter) which according to the petitioners is pending before the Commissioner, Indore. On 1-9-1981 a notice purporting to be u/s 37 (1) of the Adhiniyam issued by the Joint Director, Town and Country Planning, Indore was served on the petitioners to remove the construction within a period of one month from the date of the notice. The notice is Annexure-E. Petitioners then applied to the Director, Town and Country Planning for permission to retain the construction on the lands in question in accordance with the provisions contained in Sub-section (3) of Section 37 of the Adhiniyam. Petitioners apprehended that the Town & Country Planning Department might take action for demolition of the construction and, therefore, they filed a suit for injunction before the Civil Judge Class II, Indore on 8-10-1981 and an ex parte ad interim injunction was issued on the same day restraining the Director and Joint Director, Town and Country Planning Department from demolishing the construction until further orders. Copy of the Court's order is Annexure-F. On 10th Oct. 1981 in the early hours of the morning at about 4.30 a.m. the Joint Director, Town & Country Planning went to the spot along with Additional Collector, Indore, Sub-Divisional Officer Indore City Superintendent of Police Indore, a posse of constables and a big gang of labourers equipped with Bulldozers, Dynamites and Cranes etc. The demolition work was started under the supervision of the officers mentioned above. A substantial portion of the construction was demolished before the petitioners came to know about it and they rushed to the spot and on the basis of the injunction issued by the Civil Court got the demolition work stopped.

3. On 12-10-1981 Sub-Divisional Officer, Indore-Sanwer served a notice purporting to be u/s 172 (5) of the M. P. Land Revenue Code on the petitioners asking them to remove the construction and to restore the land to its original state within two days. This notice is Annexure-G.

4- Petitioners challenge the validity of the notices dated 1-9-1981 (Annexure-E) issued by the Joint Director, Town & Country Planning, Indore and dated 12-10-1981 (Annexure-G) issued by the Sub-Divisional Officer, Indore u/s 172(5) of the Land Revenue Code and the action taken in pursuance thereof. The grounds on which the notices and the action or proposed action by the Joint Director, Town and Country Planning, Indore and Sub-Divisional Officer, Indore are challenged are as follows. According to the petitioners the Madhya Pradesh Nagar Talha Gram Nivesh Adhiniyam, 1973 was not extended to village Lasudia Mori where the petitioners had constructed the shopping complex in question. Respondents 3 and 4, therefore, had no right to take any action in respect of the said construction. Similarly the S. D. O. Indore had no jurisdiction to issue the

impugned notice Annexure-G because the conditions imposed while granting permission for diversion of land wt're illegal and were not in accordance with the provisions of Section 172 of the Land Revenue Code and, therefore, the petitioners could not be compelled to comply with them. Further, since the Adhiniyam had not been extended to village Lasudia Mori, the condition imposed by the S. D. O. while granting permission was impossible of performance and for that reason also no action could be taken for non-compliance with the said condition. Lastly, it was averred that the petitioners had filed an application before the Director, Town & Country Planning, Bhopal (respondent No. 4) u/s 37 (3) of the Adhiniyam challenging the notice u/s 37 (1) of the Adhiniyam and in accordance with the provisions of S- 37 (3) of the Adhiniyam the notice stood automatically withdrawn till the decision of the Director on the application. Thus the action for demolition of construction was illegal. On these grounds petitioners sought that the notices Annexure-E and Annexure-G supra be quashed and respondents 1 to 4 be restrained from demolishing the construction in question.

5. Separate returns were filed by re-spondents 1-2 and respondents 3-4. Respondents 1 and 2 admitted that the petitioners had purchased the lands and obtained an order for diversion of the said lands at village Lasudia Mori for non-agricultural purposes. The proposed action by respondent No. 2 was sought to be justified on the ground that the Adhi-niyam was in force in village Lasudia Mori and, therefore, it was incumbent on the petitioners to comply with the provisions of Section 25 of the Adhinivam read with Section 172 of the M. P. Land Revenue Code. The approval of the Director, Town and Country Planning was, therefore, mandatory and petitioners' action in constructing the marketing complex was contrary to the provisions of the Adhiniyam and also contrary to the conditions imposed by the S. D. O. while passing the order permitting diversion of the lands for non-agricultural purposes. Thus the main ground on which respondents 1 and 2 resisted petitioners' claim was that the act of the petitioners in constructing the said complex without the permission of the Director, Town & Country Planning was a breach of law as well as the breach of the condition imposed u/s 172 of the Land Revenue Code. The notice issued by the S. D. O. was, therefore, within the authority of law.

6. Respondents 3 and 4 took up an identical stand as regards the application Of the Adhiniyam to village Lasudia Mori and the validity of the notice Annexure-E issued by the Joint Director, Town and Country Planning. The main plank of resistance to the petition is that the Adhiniyam extended to village Lasudia Mori and all its provisions were applicable to that area. Construction by the petitioners in contravention of the provisions of the Adhiniyam and without the approval of respondents 3 and 4 was illegal and the same was liable to be removed under the provisions of the Adhiniyam. As regards the ground taken by the petitioners about the operation of Section 37. (3) of the Adhiniyam, respondents 3 and 4 categorically stated that "no petition for retention u/s 37 (3) of the Adhiniyam has been presented before respondent No. 4." (see ground No. III. This denial raised a further controversy and petitioners filed rejoinder giving all the

particulars about the said application filed before the Director (respondent No. 4) at Bhopal with a copy for information to respondent No. 3 Joint Director, Indore. Documents and affidavits were also filed in that behalf. In their reply to this rejoinder these respondents had to back out from the original stand taken in the return and they sought to take shelter under a technical plea that no application u/s 37 (3) was presented "in the prescribed manner before the authority which has been conferred with the powers to entertain and dispose of the application u/s 37 (3)." It was further pleaded that presentation of application at Bhopal was improper. Impliedly these respondents had to admit in view of the documents and affidavits filed in the rejoinder that an application to the Director had actually been filed u/s 37 (3) of the Adhiniyam.

7. From the pleadings it is apparent that respondents did not dispute the fact that petitioners had purchased the lands in question in village Lasudia Mori and had started construction of a marketing complex at substantial expense. It was also not disputed that the Officers of the Town and Country Planning Department accompanied with the officers of the Revenue Department and an impressive police force went to the spot and partly demolished the construction with the help of bulldozers etc. and this act was done in the early hours of the morning around between 4 to 5 a.m.

8. The main question which falls for consideration is whether the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 was in force in the area of village Lasudia Mori where the said building had been constructed by the petitioner. If the Adhiniyam was not in force, then the notice Annexure-E and Annexure-G will be without the authority of law and liable to be quashed. Counsel for the parties agree that this is the fundamental issue to be decided in this case.

9. The said Adhiniyam (Act No. 23 of 1973) was published in the Madhya Pradesh Gazette (Extraordinary) dated 26th April, 1973, Section 1 relates to short title, extent, commencement and application of the Adhiniyam. Section 1 (2) & (3) are relevant for our purpose and they are reproduced hereunder:--

"(2) It extends to the whole of Madhya Pradesh.

(3) It shall come into force on such date as the State Government may, by notification, appoint and different dates may be appointed for different areas and for different provisions of this Act,"

10. A notification in exercise of the powers conferred by Sub-section (3) of Section 1 of the Adhiniyam was issued on 1-6-1973 (Notification No. 1219-XXXIII dated 1-6-1973). Under this notification it was provided as under:--

"... the State Government hereby appoints the date of publication of this notification in the "Government Gazette" as the date on which all the provisions of the said Adhiniyam shall come into force in the areas specified in the Schedule below:--

Schedule "A". Areas comprised within the limits of the following Municipal

Corporations, namely :

8. Indore.

It was an admitted fact that village Lasudia Mori did not fall within the limits of the Indore Municipal Corporation. Learned counsel for the petitioners rested their case on Section 1 (3) of the Adhiniyam read to the light of the notification dated 1-6- 1973 published in the Madhya Pradesh Gazette dated 22-6-1973 referred to above. The contention of the learned counsel for the petitioners was that since the Act itself was never extended to the area outside Municipal Corporation Indore, other provisions of the Act could not be applied to any area outside the limits of the Municipal Corporation.

11. In reply learned Government Advocate appearing for the respondents contended that Section 2 (o) of the Adhiniyam defined a Planning Area under the Act and Section 13 empowers the State Government by notification to constitute Planning Areas for the purposes of this Act. He invited our attention to the Schedule appended to the notification dated 13-2- 1974 issued u/s 13 of the Adhiniyam wherein village Lasudia Mori has been included within the limits of the Indore Planning Area. It was not disputed by petitioners" learned counsel that village Lasudia Mori fell within the Indore Planning Area as notified by the State Government in notification dated 13-2-1874.

12. The effect of Section 1 (2) was that the Adhiniyam was extended to whole of Madhya Pradesh. But the effect of Sub-section (3) was that the operation of the Act to the different areas on different dates and for different provisions had to be made by notifications to be issued by the State Government. Until a notification in that behalf was issued bringing the Adhiniyam into force for a particular area, the same could not become opera-tire in that area. In The State of Bombay Vs. Salat Pragji Karamsi, while dealing with the provisions of Adaptation of Laws Order and extension of Bombay Act to Kutch, an argument was raised that by the mere application of the Bombay Act to Kutch it became operative and came into force in the whole of the Kutch. The Court repelled the argument and held that a notification as envisaged u/s 1 of the Adaptation of Laws Order was necessary before it could be brought into force in any part of Kutch. The following extract may be usefully noted (at p. 521) :--

"It was applied to Kutch, but its provisions were not in operation before the notification; and in our opinion, the judgment of Baxi, J. C. in Agaria Osman Alarakhya v. Kutch State AIR 1951 Guj 9 which has been followed in the case now before us, to the extent that it dealt with the necessity of the notification u/s 1 of the Bombay Act, was correctly decided; and therefore, the first contention raised by counsel for the appellant is unsustainable and we hold that without a notification, the Bombay Act could not be held to have been validly applied to the State of Kutch."

13. In State of Orissa Vs. Chandrasekhar Singh Bhoi, etc., the following observations are relevant (Paras 5, 6) :--

"A law cannot be said to be in force unless it is brought into operation by legislative enactment, or by the exercise of authority by a delegate empowered to bring it into operation. The theory of a statute being "in operation in a constitutional sense" though it is not ill fact in operation has no validity." Again :

"In the present case the law relating to the ceiling limit viz., Ch. IV of the principal Act was never made operative by a notification, and was repealed by Act 15 of the 1965. The ceiling limit u/s 47 of the principal Act was on that account inapplicable to the landholders who challenge the validity of Section 45 of the amending Act."

14. It will also be useful to reproduce the comments in Maxwell on the Interpretation of Statutes, 12th Edition on the question. Dealing with the matter under the heading "Commencement" the author makes the following comments :--

"Where an Act is not to come into effect immediately after it is passed and it confers power to make appointments, issue instruments, give notices, prescribe forms or do any other thing for the purposes of the Act, that power may, in the absence of a contrary intention, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction, that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation."

15. Thus when we interpret Sub-section (3) of Section 1 of the Adhiniyam in the light of the observations made above, we come to the conclusion that the Adhiniyam came into force in the area comprised within the limits of the Indore Municipal Corporation only by virtue of notification No. 1219-XXXIII dated 1-6-1973. As admittedly village Lasudia Mori fell outside the limits of the Indore Municipal Corporation, the Adhiniyam did not come into force at all so far as the area of village Lasudia Mori was concerned.

16. Learned Government Advocate, however, contended that the State Government had issued a notification u/s 13 of the Adhiniyam defining the limits of the "Planning Area" whereby village Lasudia Mori was included within the limits of the Indore Planning Area. He further urged that under Sections 24 and 25 of the Adhiniyam the overall control of development and use of the land in the Planning Area vested in the Director and use and development of land had to conform to the provisions of the development plan. He referred to Sub-section (2) of S- 25 of the Adhiniyam and stated that the provisions of Section 172 of the Land Revenue Code were subject to the provisions of this Adhiniyam.

17. The argument at the first flush appears to be attractive. But the flaw in this argument is that declaration of a Planning Area and notification about land use etc. can be implemented only within the four corners of the Adhiniyam. If when the statute itself is not in force in any area, any further notification even if made

in respect of the areas where the statute is not operative will not make the Adhiniyam enforceable in that area. There appears to be some lacuna in issuing an appropriate notification under Sub-section (3) of Section 1 of the Adhiniyam but we are of the view that all the provisions of the Adhiniyam will be subjected to this principal section about its operation and enforcement in any particular area. If the Adhiniyam is not in force in any area, notwithstanding any notification under other sections of the Adhiniyam, provisions of the Adhiniyam will not be operative in the area outside the one notified under Sub-section (3) of Section 1. In this view of the matter we are of the opinion that respondents 3 and 4 had no jurisdiction to issue any notice or take any action under the Adhiniyam for removal of the building or the structure constructed by the petitioners. Notice dated 1-9-1981 (Annexure-E) is, therefore, without the authority of law and liable to be quashed.

18. Learned Government Advocate then took shelter under the provisions of Section 172 of the M. P. Land Revenue Code to justify the action taken or proposed to be taken for removal of the construction made by the petitioners. Petitioners' application for diversion was allowed by the S. D. O. by order dated 15-4-1981 (Annexure-A). Two conditions were attached to this order First was that the proposed construction will be made subject to the approved plans and conditions imposed by the Joint Director, Town & Country Planning, Indore. Second condition was that a No Objection Certificate should be obtained about the urban ceiling. We are not here concerned with the second condition because any breach of this condition was not pressed into service to support the notice issued by the S. D. O. on 12-10-1981 (Annexure-G). Moreover it was not shown that such a No Objection Certificate was the requirement of any law or rule framed under any Act.

19. Learned Government Advocate, however, urged that in view of Section 25 (2) of the Adhiniyam a condition of this nature had to be imposed and even if not expressly imposed it was a statutory condition and inherent in every order passed u/s 172 of the Land Revenue Code. This argument has to be rejected because as already observed the Madhya Pradesh Nagar Tatha Gram Ni-vesh Adhiniyam, 1973 was not in operation in village Lasudia Mori and, therefore, no condition under Sub-section (2) of Section 25 of the Adhiniyam read with Section 172 (3) of the Land Revenue Code could be legally imposed. So far as village Lasudia Mori was concerned the Director of the Town & Country Planning had no power to grant or refuse land use under the Adhiniyam and, therefore, the question of obtaining his sanction or the sanction of the Joint Director could not arise. The condition was obviously impossible of performance and could be ignored. When an invalid condition is not so inextricably mixed up that it cannot be separated from the valid order, then such a condition can be severed from the rest of the order. (Shewpujanrai Indrasanrai Ltd. Vs. The Collector of Customs and Others, ; Y. Mahaboob Sheriff and sons, Y. Mahaboob Sheriff and Others and S. Shamsoddin and Others Vs. Mysore State Transport Authority, Bangalore and Others, and State of Mysore and Others Vs. K. Chandrasekhara Adiga and

Another, .

20. If Section 172 of the M. P. Land Revenue Code is not treated as subject to Section 25 (2) of the Adhiniyam, as held by us, then the conditions imposed by the S. D. O. could not be imposed within the framework of Sub-section (3) of Section 172 of the Land Revenue Code. Sub-section (3) of Section 172 of the Land Revenue Code is as follows :--

"Conditions may be imposed on diversion for the following objects and no others, namely in order to secure the public health, safety and convenience, and in the case of land which is to be used as building sites, in order to secure in addition that the dimensions, arrangement and accessibility of the sites are adequate for the health and convenience of occupiers or are suitable to the locality."

The conditions in the order permitting diversion do not fall within the different heads mentioned in Sub-section (3) of Section 172 and, therefore, they were invalid and without jurisdiction. Construction of the building without complying with those conditions, therefore, did not warrant any action under Sub-section (5) of Section 172 of the M. P. Land Revenue Code. Thus the notice issued by the S. D.O. (Annexure-G) is invalid, without jurisdiction and without the authority of law and the same is liable to be quashed.

21. Before closing we must refer to one more point made by the learned counsel for the petitioners. It was urged that the petitioners had made an appropriate application to the Director u/s 37 (3) of the Adhiniyam for permission for retention of their building on the land and till that application was disposed of the notice automatically stood withdrawn. No action, therefore, could be taken by the respondents particularly respondents 1, 3 and 4 for demolition of the building constructed by the petitioners. We have already observed that in their first return respondents 3 and 4 had flatly denied that any such application was made u/s 37 (3) of the Adhiniyam. Faced with the further clinching proof made in the rejoinder by the petitioners, respondents 3 and 4 tried to hedge the issue by pleading that the application was not in the prescribed manner before the authority i.e. the Regional Joint Director, Town Planning, Indore. It was fully established that an application u/s 37 (3) was made to the Director and a copy thereof was also delivered to the Joint Director Town & Country Planning Department, Indore. An acknowledgment (Annexure-H) from the office of the Joint Director has been filed by the petitioners. Thus in view of the, clear and mandatory provisions of Section 37 (3) of the Adhiniyam, the notice under which the action for demolition was taken at about 4.30 a.m. stood automatically withdrawn till the decision of the said application and for this reason also the notice and the subsequent action in pursuance thereof was invalid and without the authority of law. No action under the said notice could be taken.

22. We find that the Officer-in-charge of the case on behalf of respondents 3 and 4 had filed an affidavit to the effect that paragraphs 1 to 8 and grounds 1 to 9 were true to his personal knowledge. Ground No. II of the first return was to the

effect that no petition for retention u/s 37 (3) of the Adhiniyam, 1973 had been presented before respondent No. 4 i.e. the Director, Town and Country Planning, Bhopal. Subsequently after the petitioners filed a rejoinder and furnished proof of such a petition having been made to respondent No. 4, the Authorised Officer pleaded that the said application was not presented in the prescribed manner before the Regional Joint Director, Indore and the presentation of application at Bhopal was improper. It is clear that the statement on affidavit made along with the first return was not true to the knowledge of the said officer. To maintain the sanctity of an affidavit in writ petitions, we consider it expedient in the interest of justice that an enquiry should be made against the said officer for taking action for filing a false affidavit.

23. Separate proceedings may be initiated for the purpose.

24. In the result the petition is allowed, the notices Annexures F and G dated 1-9-1981 and 12-10-1981 respectively are quashed and the respondents are restrained from taking any action in pursuance of the said notices in respect of the construction made by the petitioners on Survey Nos. 98/1/2, 98/1/3 and 98/1/4 of village Lasudia Mori, Tehsil and District Indore. Costs of this petition will be borne by the respondents. Advocate's fee Rs. 250/-. The outstanding amount of security deposit be refunded to the petitioners.