
(2007) 08 MP CK 0093
In the Madhya Pradesh High Court
Case No : W.A. No. 675 of 2006

Smt. Chanda Bai and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 09-08-2007

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 3
Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2

Citation : (2008) 1 MPJR 137

Hon'ble Judges : S.R. Waghmare, J; Dipak Misra, J

Bench : Division Bench

Advocate : K.B. Bhatnagar, for the Appellant; K.K. Trivedi alongwith Mr. Devendra Gangrade, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

In this intra-court appeal preferred u/s 2 of Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 (for brevity "the Act"), the substantiality and legal acceptability of order dated 18.7.2006 passed by the learned Single Judge in Writ Petition No. 697/2002 is called in question.

Sans unnecessary details, the facts which are requisite to be adumbrated are that the Appellants-Petitioners (hereinafter referred to as "the Appellants") were given the shops by the 3rd Respondent, Municipal Council, Mandla in various years commencing 1976 to 1983. As the shops were of various categories and sizes, the different rent was fixed between Rs. 100/- to Rs. 165/-. The rates were enhanced by 15% in the year 1987. The Municipal Council, Mandla, as is evincible, passed a resolution whereby it proposed to enhance the rent after expiration of 1st ten years by 15% and the subsequent ten years by another 15%. The Collector directed the Municipal Council, Mandla to enhance it by 50% as the rent was low. The Municipal Council, Mandla passed a resolution on

19.6.2001 accepting the increase which was proposed by the Collector.

The aforesaid enhancement of rent was assailed by the Appellants before the learned Single Judge in a writ petition. It was contended by them that the Collector had no jurisdiction to pass any kind of order as per M.P. Municipalities (Transfer of Immovable Property) Rules, 1963 (for short the 1963 Rules") and, therefore, the resolution passed by the Municipal Council that has emerged because of the order of the Collector, is bereft of authority and jurisdiction. It was also asserted that the initial proposal of the Municipal Council to enhance the rent by 15% was legal, valid, just and proper. Quite apart from the above, it was contended by the Appellants that the enhancement by 50% was excessive arbitrary, irrational and unreasonable.

The State Government as well as the Municipal Council, Mandla resisted the stand of the Appellants contending, inter alia, that under Rule 5 (3) (a), the Collector has the authority and competence to fix a reasonable annual rent which shall be payable during the whole term of the lease and, therefore, the order passed by the Collector has to be treated as flawless and sound. The learned Single Judge referred to Rule 5 (3) in entirety and came to hold that the proponent put forth by the Appellants that the Collector was not competent authority to fix the rent is unsustainable.

We have heard Mr. K.B. Bhatnagar learned Counsel for the Appellants and Mr. K.K. Trivedi, learned senior counsel along with Mr. Devendra Gangrade, learned Counsel for the Respondent No. 3.

Submission of Mr. K.B. Bhatnagar, learned Counsel for the Appellants is that if the language employed under Rule 5 is considered in proper perspective, it would be clear as day that the Collector could not have exercised jurisdiction in respect of the property that does not exceed Rs. 10,000/-. It is his further submission that the Collector could not have intervened in the matter inasmuch as the Appellants had been allotted the shops and not land. It is canvassed by him that the Collector has directed for fixation of monthly rent though the Rule provides for fixation of annual rent.

Mr. K.K. Trivedi learned senior counsel along with Mr. Devendra Gangrade, learned Counsel appearing for the Respondent No. 3, per contra, submitted that the Collector has the authority inasmuch as the term land has not been defined under the Rules and what is not defined under the Rules the definition in the Act has to be implanted in the Rules as per 3 (2) (c) of the dictionary clause of the Rules. Learned senior counsel further submitted that the definition of land occurs under Sub-Section 16 of Section 3 of the M.P. Municipalities Act, 1961. It would include the houses attached to the earth and the shops cannot be excluded from the same and hence, the Collector has rightly exercised his jurisdiction.

It is further submitted by Mr. K.K. Trivedi, learned senior counsel that the Rules enable the Collector to fix a reasonable annual rent and if a monthly rent has been fixed, on that ground, the fixation of rent cannot be nullified, for the

reasonability of the annual rent regard being had to the computation qua year can be taken into consideration. Learned senior counsel has commended us to the Rule 7 of the 1963 Rules especially Sub-rule 4 to increment the submission that at the time of renewal, the amount can be enhanced not exceeding 50% of the rent payable during the period immediately preceding such revision.

Submission of Mr. K.B. Bhatnagar, learned Counsel for the Appellants is that the transfer of land by auction will only come within the ambit and sweep of Rule 5 of the 1963 Rules.

On a scrutiny of the anatomy of the 1963 Rules in entirety, we are of the considered opinion that the submission of Mr. Bhatnagar is without any substance inasmuch as Sub-rule 1 deals with transfer of land or building to the highest bidder. Sub-rule 3 deals with transfer of land if any such transfer of land is affected by lease. It is not disputed before us that the shops were auctioned and given in favour of the Appellants. What is contended, once it is a shop, it cannot be equated with the land. Rule 2 (c) reads as under

(c) The term of the Notified Area Committees shall, notwithstanding the expiry of their terms, be deemed to extend to, and expire with, the date immediately preceding the date on which they are reconstituted under Clause (d) of Sub-section (1) of Section 341.

Sub-Section 16 of Section 3 stipulates as follows-

(16) "Land" includes benefits arising out of land, houses and things attached to the earth, or permanently fastened to anything attached to the earth and also land which is being built upon or covered with water.

Regard being had to the facet of definition, we have no iota of doubt that a land would include a house as per the including definition. Learned Counsel has invited our attention to Sub-Section 2 of Section 3 which defines building. The said definition reads as under:

2. "Building" includes a hut, shed or other enclosure whether used as a human dwelling or otherwise, and shall include wells, walls, verandahs, fixed platforms, plinths, doorsteps and the like but shall not include a tent or a temporary shed erected on ceremonial or festival occasions.

The definition of building is an artificial definition inasmuch as it includes walls, verandahs, fixed platform, plinths, doorsteps and excludes tent or temporary shed. Two definitions, namely, building and land have to be read in proper perspective inasmuch as the legislature has incorporated in the definition of land a house or thing attached to the earth. Therefore, it is futile to contend that the land would only mean "land" and no structure standing on it.

The next question that emerges for consideration whether the Collector could have fixed the rent monthly. Once, the Rule enables the Collector to fix the annual rent, we perceive no error if a rent is fixed per month. What was required

is that it must be reasonable Rule 7 (4) which has been reproduced above empowers the Collector while renewing the lease to enhance not exceeding 50% of the rent payable during the period immediately preceding the revision. The same has been enhanced by 50% and not more. The revision is enhanced by 50% per year. It is an effect and impact of the order which matters and not the nomenclature. Thus, the fixation is within the parameter of the Rules and that apart the rent was revised in 1987 and thereafter, in 2001. On a perusal of the record, it is evident that the rent has been enhanced from Rs. 100/- to Rs. 150/- likewise in respect of other amount. Hence, we do not perceive any arbitrariness with the same.

Judging from all the spectrums, we do not perceive any merit in this writ appeal and accordingly the same stands dismissed. There shall be no order as to costs.