
(1984) 09 MP CK 0022

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 605 of 1983

Smt. Sardar Bi

APPELLANT

Vs

Municipal Corporation, Indore and Another

RESPONDENT

Date of Decision : 18-09-1984

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 293, 293(1), 293(3), 403, 403(2)

Citation : AIR 1985 MP 143 : (1985) JLJ 14

Hon'ble Judges : G.L. Oza, C.J;V.D. Gyani, J

Bench : Division Bench

Advocate : Saraf, for the Appellant; Dhanji and Ukas, for the Respondent

Final Decision : Allowed

Judgement

V.D. Gyani, J.—The petitioner by this petition under Article 226 of the Constitution of India seeks to challenge the order dt. 6-6-1983, passed by the Mayor of the Municipal Corporation, Indore, staying the construction of a building situated on the Moti Tabela Main, Road No. 4 Street No. 2, Indore.

2. The facts giving rise to this petition are that the petitioner is owner of the open plot, bearing survey No. 15305, situated between the houses Nos. 2 and 4 of Moti Tabela, Street No. 2 Main, Road No. 4, Indore. This piece of land admeasures East-West 51"5" towards South and 53" towards North, its width is 17"6" towards North-South, and towards East-West it is 19"2". There is no dispute about the ownership of this land, which has been settled by the decree in a Civil Suit filed as Annexure-B to the petition. The Civil Suit was instituted by the petitioner as respondents 1 and 2 put a wattle-hut on a portion of the suit land, which was objected to by the petitioner and as the same was not removed the petitioner had to file Civil Suit No. 282A of 1977, in the court of the Second Civil Judge, Clase I, Indore, for declaration and possession of the land, the said suit was decession of the land, the said

3. The petitioner having obtained the necessary permission from the Joint Director of Town and Country Piece (sic) of land owned by her, started constructing shops after the sanction was accorded even by respondents 1 and 2.

3A. It is averred that during the course of construction a bust (sic) emerged on the scene to restrain the petitioner from constructing the shops for which, as stated earlier, the petitioner had obtained the necessary permission and sanction from the concerning authorities. Some residents of the locality approached the then Mayor of the Municipal Corporation, Indore, and succeeded in obtaining a stay order on 6-6-1983, by perfering an appeal before the Appeal Committee of the Corporation. In the meanwhile the petitioner also rushed to this court, seeking a writ against the respondents. By order dt. 19-10-1983, respondent 6 was also added as a party to the present petition, as it was in his favour that the stay order was granted by the respondent 3 the Mayor of the Municipal Corporation, Indore.

4. Having passed the aforesaid stay order the petitioner made a grievance before this Court that the Appeal Committee of the Corporation is unduly prolonging the matter and it was in this context that the court directed the Appeal Committee of the Corporation to dispose of the matter on or before 28-2-1984 and the petitioner was also directed to appear before the Appeal Committee, who would also be given an opportunity of hearing before the Appeal Committee. The petitioner thereafter preferred two interim applications, necessary in view of the subsequent change of events. By I. A. No. 967/84, the petitioner prayed for certain amendments and by I. A. No. 968/84 an ad interim writ was sought by her. The respondents 1 and 2 gave an undertaking on 2-3- 1984 before this court that till further orders the order of the Appeal Committee referred to in I. A. No. 967/84, shall not be implemented and that status quo as it existed on that date shall be continued to be maintained. This court by order dt. 14-9-1984 allowed I. A. No. 968/84, for incorporating certain amendments in the petition. Along with this application the petitioner has also put on record the judgment dt. 27-2-1984 of the Appeal Committee of the Municipal Corporation, Indore and filed as Annexure-U to the petition, which is also challenged by her. By this judgment the Appeal Committee had directed the Commissioner of the Municipal Corporation, Indore (respondent 2) to revoke u/s 299 of the M. P. Municipal Corporation Act, 1956 (hereinafter referred to as the Act) the sanction for construction of the building granted to the petitioner.

5. The short point, which falls for consideration in this petition is whether a permission granted u/s 293(1) of the Act, can be revoked or interfered with by the Appeal Committee of the Corporation, acting u/s 403 of the Act. Sections 293(1) and 403 of the Act are being reproduced as under:

"Section 293.-- Prohibition of erection or re-erection of buildings without permission.-- (1) No person shall

(i) erect or re-erect any building; or

(ii) commence to erect or re-erect any building: or

(iii) make any material external alteration to any building : or

(iv) construct or re-construct any projecting portion of a building which the Commissioner is empowered by Section 305 to require to be set back or is empowered to give permission to construct or re-construct, --

(a) unless the Commissioner has either by an order in writing granted permission or has failed to intimate within the prescribed period his refusal or permission for the erection or re-erection of the building or for the construction or re-construction of the projecting part of the building; or

(b) after the expiry of one year from the date of the said permission or such longer period as the Commissioner may allow or from the end of the prescribed period, as the case may be;

Provided that nothing in this section shall apply to any work, addition or alteration which the corporation may by bye-law declare to be exempt;"

"Section 403.-- Appeal against the order of the Commissioner and subordinate officers.--(1) Any person aggrieved by an order passed by an officer subordinate to the Commissioner, under this Act or under any rule or bye-law made thereunder may appeal to the Commissioner within thirty days of the date on which the order is conveyed to him.

(2) Any person aggrieved by.-- (a) Any notice or order issued or other action taken by the Commissioner under Sections 174, 193, 195, 196, 197, 198, 199, 202, 204, 205, 207, 210, 237, 241, 246, 249, 295, 296, 299, 301, 302, 310, 311, 312, 313, 315, 322, 323, or 393 of this Act or any rule or bye-law made thereunder :

(b) any order of the Commissioner regarding granting or refusing a licence or permission; or

(c) any other order of the Commissioner that may be made appealable by bye-laws u/s 427,

may appeal to the Corporation within 30 days from the date of such order.

(3) Such appeal shall be heard and disposed of by a committee to be called the "Appeal Committee" appointed by the Corporation.

(4) The Appeal Committee shall consist of the Mayor and four other Councillors to be appointed under bye-laws made in this behalf by the Corporation. The Mayor shall act as Chairman of the Committee.

(3) The Appeal Committee may for sufficient cause extend the period prescribed for appeal.

(6) The Appeal Committee may remand any case for further enquiry or decision

or may pass any other order as may be deemed just and proper and no appeal or revision shall lie against this decision of the Committee.

(7) The Appeal Committee may review its own order:

Provided that no order under Sub-section (6) or (7) shall be passed to the prejudice of any person until he has been given a reasonable opportunity of being heard.

(8) The Appeal Committee may allow any officer deputed by the Commissioner for the purpose to appear before it in any appeal and to watch or represent the interests of the Corporation.

(9) The Corporation may frame bye-laws for the conduct of business before the Appeal Committee.

6. Shri Saraf, learned counsel for the petitioner submits that on a plain reading of these two Sections it would be clear that the powers conferred on the Appeal Committee are confined to the provisions of the Act, mentioned in Sub-section (2) thereof. His further contention is, whether respondent 6 can be said to be a person aggrieved within the meaning of these sections.

7. Shri Dhanji, learned counsel for respondents 1 to 3, submits that on a proper construction of Section 403 of the Act, it is open to the Appeal Committee to entertain an appeal by a person like respondent 6 and pass orders, Annexures-P and U. Shri Dhanji urges that giving wide amplitude Section 403(2)(b) if so interpreted would confer powers on the Appeal Committee to pass the orders such as Annexures-P and U. This submission proceeds on an apparent fallacy of reasoning. If the construction of Section 403(2)(b), as suggested by the learned counsel is to be accepted, it would result in two different forums for appeals, which could certainly not be the intent of law. Section 293(3) of the Act clearly provides for an appeal to the District Court in the event of any person being aggrieved by the order of the Commissioner regarding permission to construct or re-construct. On a true construction of both these provisions of the Act, Sections 403 and 293, if read together, the very fact that Section 293 of the Act has not been mentioned in Section 403(2)(a) of the Act is contra-indicative of the fact that the Legislature intended such appeals to be preferred before the Appeal Committee. The non-mention clearly brings out the intent of the Legislature and it is further borne out from the fact that u/s 293 itself the forum of appeal has been provided, i.e. the District Court. In this connection Shri Saraf has invited our attention to the decision in *Commr. Municipal Corporation. Bhopal v. Ahilyabai* (1976 M. P. W. 308. In this view of the matter the Committee could not have legally entertained the appeal preferred by respondent No. 6 and passed the impugned orders under challenge, Annexures-P and U. They are, therefore, liable to be quashed.

8. In view of our finding above, the second submission made by the learned counsel for the petitioner, whether respondent 6 can be said to be a person

aggrieved within the meaning of Section 403 or Section 293 of the Act, does not arise. The respondent 6 can pursue his remedy in the Civil Court for his rights, if at all any.

9. In the result, this petition succeeds and is allowed The impugned orders Annexures-P and U, are quashed. The respondent shall bear the costs of this petition. Counsel's fee Rs. 150/-if certified. The outstanding amount of the security deposit after verification, if any shall be refunded to the petitioner.