

(2004) 04 MP CK 0038

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1691 of 2002

Subhash Singhania and Another

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 19-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 19, 23, 23A

Citation : (2005) 1 MPHT 192 : (2004) 4 MPLJ 13

Hon'ble Judges : S.K. Seth, J;Deepak Verma, J

Bench : Division Bench

Advocate : Ajay Bagadiya, for the Appellant; D.D. Vyas, A.A.G. for the Respondent Nos. 1 and 2, Anand Agrawal, for the Respondent No. 4, B.L. Pavecha and S. Pathak, for the Respondent No. 5 and M.L. Agarwal and Mukesh Tare, for the Respondent No. 6, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Seth, J.

The petitioners have invoked the extra-ordinary writ jurisdiction under Article 226 of the Constitution of India to claim the following reliefs:-

"(a) Issue appropriate writ, order or direction quashing the revised lay outs of Scheme No. 54 and order dated 5-8-2002 (P-8) passed by respondent No. 2.

(b) Issue appropriate writ, order or direction mandating the respondents not to make any change in the land use without compliance to mandatory provisions of Section 23 of Act, 1973 and procedure prescribed under the law.

(c) Issue any other and further orders as. may be deemed fit in the facts and circumstances of the case.

(d) Allow petition with costs."

Aforesaid reliefs have been claimed on allegations that petitioners are residents

of Indore and are social workers. According to petitioners, a Development Plan (hereinafter referred to as "master plan of 1991") was sanctioned for the Indore City u/s 19 of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (hereinafter referred to as "1973 Adhiniyam" for short) vide Notification dated 1-3-1975. Said Notification was published in Official Gazette and the development plan came into operation and force on 21 -3-1975. The moment the master plan came into force, all development activities including use of land is regulated and governed by the Master Plan and it is binding on all development authorities constituted under 1973 Adhiniyam including local authorities functioning within the planning area. As per master plan large portion of land situated on the right side of A.B. Road (when one travels from Indore to Dewas) in the vicinity of Malhar Garden to Mehta Motors inclusive of Bhagirath Body Builders was reserved for City Park and open space. According to petitioners respondent No. 1 in complete violation of provisions of 1973 Adhiniyam by an administrative fiat dated 2-8-1979 (P-2) changed (he land use of City Park prescribed in near Bhagirath Body Builders into commercial use and the city park was shifted to the other side of the A.B. Road near Megdoot Upvan where now it has been developed. Earlier this area was earmarked for commercial purposes. Taking advantage of marginal change of land use respondent No. 3 Indore Development Authority passed resolution for allotment of one plot under Scheme No. 54 PU 4 in favour of Indian Oil Corporation, respondent No. 5 and forwarded revised lay out for sanction to the Joint Director Town and Country Planning, Indore. After prolonged correspondence on the subject, ultimately vide impugned order dated 5-8-2002, Joint Director Town & Country Planning, Indore sanctioned the revised lay out for construction of Petrol Pump on the plot No. 307 admeasuring 30.48 m x 30.48 m near Bhagirath Body Builders under Scheme No. 54 PU 4. According to learned Counsel for petitioners, land use freezes once it is prescribed under the Master Plan. In support of this contention learned Counsel has taken through various provisions of 1973 Adhiniyam. Thus according to petitioner, allotment of plot under Scheme No. 54 PU 4 for commercial purposes is impermissible under the law and can not be allowed to stand. During the pendency of writ petition respondent No. 5 allotted the plot in question in favour of respondent No. 6, therefore, he was also impleaded as one of respondents.

Respondents filed their separate replies to oppose the writ petition. Respondents, in their replies justified the action and submitted that so called "change of prescribed land use" as contended by the petitioners is nothing but "shifting of prescribed land use" from one place to another which is in accordance with the master plan. It was also denied that no changes can be made in the master plan. Respondent No. 5 and the newly added respondent No. 6 have also pleaded that present writ petition in the garb of PIL, is nothing but shadow litigation by the rival dealers who have their retail out let on the other side of A.B. Road. It was also stated in the replies of respondent Nos. 5 and 6 that similar writ petitions were filed on earlier occasions which were dismissed by this Court therefore, present writ petition is nothing but gross abuse of process of law. Thus according

to all respondents writ petition has no merit and substance and as such it deserves to be dismissed with heavy compensatory costs.

Petitioners filed rejoinder in order to meet and controvert the pleadings raised in the replies filed by the respondents.

After having heard the learned Counsel for the parties at length and going through the material available on record, in the considered opinion of this Court, the writ petition is devoid of merit and has no substance.

Now coming to the first objection that no changes could be made in the master plan, it would be relevant to notice various changes brought about in the 1973 Adhiniyam from time to time by the State Legislature. By Act No. 23 of 1988, Section 23 was substituted w.e.f. 11-8-1988 and Director Town and Country Planning empowered to undertake a review or evaluation of the master plan or zoning plan by following the prescribed procedure. However, provisions of Sections 18 and 19 were made applicable to proposed review or modification. Section 23 was once again substituted by Act No. 8 of 1996 w.e.f. 17-4-1996. By the said amendment, with certain procedural changes, power of the Director Town and Country Planning was kept intact. There was however, no power reserved in favour of the State Government for modification of the master plan or zoning plan. This power was conferred on the State Government for the first time by inserting Section 23-A in the Statute Book by the Act No. 22 of 1992 w.e.f. 31-10-1992. These legal changes make it very clear that at least w.e.f. 11-8-1988, the Director Town & Country Planning had the power to undertake evaluation or review of the master plan or zoning plan. As noticed above w.e.f. 31-10-1992, power was also conferred on the State Government to modify master plan or a zoning plan either on its own motion or on the request of Development Authority and such modifications have been kept out of purview of Sections 18 and 19. Further such modifications have been made integral part of the revised master plan. Before making any modification, State Government is required to publish the draft of modified plan as is envisaged u/s 23-A (2) of the 1973 Adhiniyam. It is also clear that the power conferred on the State Government u/s 23-A is in no manner what so ever controlled by Section 23 of the Adhiniyam. Both sections are independent. In the present case, in view of specific conferment of power u/s 23-A, State Government notified the draft of the modifications proposed to be made in the master plan 1991 vide Notice dated 9-3-2001 which was also duly published in two local news papers having wide circulation in Indore city as would be evident from Annexure R-3-5 to Annexure R-3-7 filed along with reply of respondent No. 3. It is not the case of petitioners that before making modifications procedure prescribed u/s 23-A was not followed. At this stage it is also pertinent to mention that none of the petitioners had filed any objection pursuant to Annexure R-3-5 to Annexure R-3-7. Thus, petitioners allowed the modifications to take place in the master plan 1991 without filing or raising any objections pursuant to Annexures R- 3-5 to R-3-7. Once the modifications are made in the master plan, no fault can be

found with order dated 5-8-2002 Annexure P-8. In view of the foregoing discussion, in the considered opinion of this Court, there is force in the submissions of learned Counsel appearing for respondents that there was no "change of prescribed land use" but only a "shifting of prescribed land use" from one place to another which was fully in accordance with law. Learned Counsel appearing from respondents are right in contending that land use under the Master Plan assigned is "Recreation" and recreation included within its ambit establishment of Petrol Pump under Schedule appended to the Master Plan which filed as Annexure R-A filed along with reply of respondent Nos. 1 and 2.

Apart from the discussion in the preceding paragraph, there are other grounds also to decline the present writ petition filed by petitioners. It is not for the first time that the allotment of Plot No. 307 in PU 4 of the Scheme No. 54 is under challenge in this writ petition on the so called ground of "change of use of land". First challenge was laid in W.P. No. 1224 of 1993 by M/s. Raghunath Prasad & Company, a BPL dealer running a petrol pump on the A.B. Road opposite to the site allotted to the respondent No. 5. That writ petition was dismissed as not pressed vide order dated 22-6-1995. Thereafter, petitioners along with Col. Lalit Anand filed W.P. No. 1541 of 1994 which too was dismissed on merit vide order dated 30-6-1995 passed by the Division Bench. The present writ petition is the third round of litigation questioning allotment of plot to respondent No. 5 in order to relocate the petrol pump which was operation at 10 M.G. Road, Indore, under the dealership agreement between respondent Nos. 5 and 6. It is not disputed by learned Counsel appearing for petitioners that no SLP was preferred against the order dated 30-6-1995 passed in W.P. No. 1541 of 1994. In the said writ petition challenge was on the same grounds that are raised in the present writ petition. In the said writ petition allotment of plot in favour of Indian Oil Corporation was challenged by the present petitioners along with Col. Lalit Anand on the ground that it involved "change of use of land". Said writ petition was dismissed after due hearing. In the considered opinion of this Court, findings recorded by the Division Bench while deciding the W.P. No. 1541 of 1994 have attained finality and now the petitioners can not be permitted to over reach those findings in the present writ petition. In view of the foregoing discussion, in the considered opinion of this Court there is force in the submission of learned Counsel appearing for respondent Nos. 5 and 6 that petitioners appear to have been set up to carry on this shadow litigation by the rival petrol pump owner who is operating the retail outlet on A.B. Road, opposite to site in question allotted to respondent No. 5. Recently, it has become a fashionable trend to gain publicity by filing PIL on any issue under the sky at the drop of the hat. A PIL is valuable tool which was evolved by the Supreme Court with a view to do justice to that section of society which for want of financial resources or other limitations, could not invoke the jurisdiction of Supreme Court or High Courts individually for enforcement of fundamental rights. It is not meant for socialites so as to convert the PIL into "Private Interest Litigation" or "Political Interests Litigation" or "Publicity Interests Litigation" or "Paise Income Litigation" and the attractive

brand of PIL can not be permitted to be used for personal gain, political motivation, or oblique purposes as has been held by the Supreme Court in the matter of Ashok Kumar Pandey v. State of West Bengal AIR 2003 SCW 6105. In another recent, judgment reported in AIR 2003 SCW 6039 Supreme Court, in order to regulate unmitigated flow of PIL, after scanning previous judgments, summarized the principles evolved for dealing with PIL, and before venturing to file a PIL, one must see whether he fulfills the requirement or not, otherwise filing of PIL in Quixotic fashion, instead of doing any good may cause more harm.

In view of the foregoing discussion we find no merit and substance in the writ petition, accordingly we dismiss the writ petition with costs of Rs. 10,000/-. The costs shall be paid by the petitioners to the funds of State Legal Aid Society within 30 days, failing which it shall be recovered from petitioners in accordance with law.