

(2005) 10 MP CK 0026
In the Madhya Pradesh High Court
Case No : Civil Revision No. 66 of 2004

Suresh Agrawal

APPELLANT

Vs

Municipal Corporation and Another

RESPONDENT

Date of Decision : 06-10-2005

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 307, 307(5), 323, 5(7)

Citation : (2006) ILR (MP) 291 : (2006) 2 MPHT 185 : (2006) 2 MPJR 6

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Advocate : Praveen Newaskar, for the Appellant; None, for the Respondent

Judgement

Abhay M. Naik, J.

Heard learned Counsel for the petitioner. Order dictated in open Court.

Case of the petitioner is that respondent No. 2 purchased the property vide registered sale deed dated 10-1-2000 from its previous owner. He made construction of a Chabutra on the colony road on the area where the property is situated. It is further stated that construction is without permission from the Municipal Corporation, Gwalior and the same is liable to be removed u/s 307(5) of M.P. Municipal Corporation Act, 1956. Municipal Corporation did not submit its reply. However, respondent No. 2 refuted the allegations made in the application. It was contended by respondent No. 2 that he has not made any illegal construction. He also pleaded that there was no colony road as alleged by the petitioner. Learned Trial Court after recording evidence dismissed the application with a finding that it is clear from the evidence that construction of Chabutra has not been made on the property of the petitioner. It has been further observed that the disputed construction is alleged to have been made on a public way and Section 307(5) of the aforesaid Act has no applicability.

The order is absolutely illegal being highly misconceived. Section 307(5) of the aforesaid Act is reproduced below:-

Nothing in this section shall affect the right of the Corporation or any other person to apply to the District Court for an injunction for the removal or alteration of any building on the ground that it contravenes any provisions of this Act or the bye-laws made thereunder, but if the building is one in respect of which plans have been deposited and the plans have been passed by the Commissioner, or notice that they have been rejected has not been given within the prescribed period after the deposit thereof, and if the work has been executed in accordance with the plans, the District Court on granting an injunction shall have power to order the Corporation to pay to the owner of the work such compensation as the District Court thinks just, but before making any such order the District Court cause the Commissioner if not a party to be joined as a party to the proceeding.

A bare perusal of this provision shows that it has an application to every construction which is made without due sanction from the concerned Municipal Corporation. Word "building" is defined in Section 5(7) of the said Act which is as under :-

"building" includes a house, outhouse, shed, hut and other enclosure or structure whether of masonry, bricks, wood, mud, metal or any other material whatever, whether used as a human dwelling or otherwise, and also includes verandahs, fixed platforms, plinths, doorsteps, walls including compound walls, and fencing and the like but does not include a tent.

Thus, alleged construction of Chabutra amounts to construction of a building under the definition as contained in the Act. The location of the building so long as it is situated within the limits of Municipal Corporation does not divest the Court from exercising its powers u/s 307(5) of the said Act. The learned Trial Judge relying upon the decision of this Court in the case of Janki Pandey and Another Vs. State of Madhya Pradesh and Others, , has held that Section 307(5) of the Municipal Corporation Act does not apply to unauthorised construction made on public land.

I studied the said decision which is totally distinguishable on facts. In case of Janki Pandey (supra), the petitions were filed against the drive to remove encroachment from the city specially in the area of contiguous to the National Highway No. 7. The decision was rendered in a bunch of Writ Petitions. This Court has held :-

The petitioners are seeking a mandamus against the respondents to restrain them from demolishing the building or any part of the building as also compensation for the damage already caused by the respondents. In a writ petition, where the facts are disputed with regard to the structures/building being on private land or on the land belonging to the respondents, the respondents can not be restrained from proceeding in accordance with law, as without evidence it can not be decided that in fact the construction is on private land. Even in case of construction on private land which is not as per the

sanction as required or is without sanction, the respondents are empowered to take action in accordance with Section 307 of the Act and, therefore, the respondents can not be restrained from proceeding in accordance with law if in fact the condition for taking action exists. However, as held in the Ahmedabad Municipal Corporation's case, the respondents can not be permitted to proceed to demolish old structures without a notice personally served on the owner/occupant and giving reasonable opportunity to show cause against the proposed action. Accordingly, the respondents are directed to first issue notice to the petitioners giving them reasonable time and opportunity to show cause against the proposed action, in case the respondents proposed to demolish the structures in accordance with Section 323 of the Act. This by no means should be construed as a general direction even in cases of structures of recent origin but in all cases, where the Corporation itself is guilty of omission to take action immediately, the respondents are required to follow the procedure as laid down in the case of Ahmedabad Municipal Corporation, (supra).

Thus, the applicant was within his right to move an application u/s 307(5) of the Municipal Corporation Act. The powers of Section 307(5) of the said Act are liable to be exercised whenever the construction is unauthorised. Irrespective of whether it is on the public land or private land, this Court in the case of Janki Pandey (supra) has held that the old structures standing for quite long time can not be removed without a notice personally served on the owner/occupant and giving reasonable opportunity to show cause against the proposed action. In the case in hand, it is not the case of the non-applicant that the alleged construction was of old origin. Thus, the decision in the case of Janki Pandey does not appear to mean that the unauthorised construction of recent origin made on public land can not be demolished u/s 307(5) of the Municipal Corporation Act and the powers vested in the District Court by virtue of the aforesaid provision can not be invoked by a person who is vigilant for not allowing unauthorised construction within the limits of Municipal Corporation.

The learned Trial Court has thus, wrongly observed that the said provision has no applicability because the construction is alleged to have been made on the land of colony road.

In case of Janki Pandey (supra) this Court was dealing with the powers of the Commissioner of the Municipal Corporation to remove encroachment by virtue of Section 323 of the Municipal Corporation Act. Section 307(5) of the aforesaid Act empowers a District Court for the removal or alteration of any building on the ground that it contravenes any provisions of the said Act or the bye-laws made thereunder. Scope of both the provisions is altogether different and is not overlapping. The learned Trial Judge has acted illegally in passing the impugned order without considering the scope of Section 307(5) of the Municipal Corporation Act.

For the aforesaid reasons, the impugned order is, thus, not liable to be sustained. The same is hereby set aside. Matter is remanded back to the Trial

Court to pass orders afresh after giving the parties opportunity of hearing. No order as to costs.

Revisionist is directed to appear before the Trial Court on 7-11-2005. Record be sent back immediately.