(2006) 06 MP CK 0015

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2599 of 2006

Suresh Singh Kushwaha APPELLANT

Vs

Municipal Corporation and Another RESPONDENT

Date of Decision : 01-06-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 300A
Land Acquisition Act, 1894 — Section 4, 6
Madhya Pradesh Municipal Corporation Act, 1956 — Section 304, 305, 306, 387, 67

Citation : (2006) 3 MPLJ 412

Hon'ble Judges : Subhash Samvatsar, J

Bench : Single Bench

Advocate : M.P.S. Raghuvanshi, for the Appellant; Sushil Chaturvedi, for the Respondent No. 1 and Ami Prabal, Dy. A.G. for the Respondent No. 2-State, for the Respondent

Final Decision : Dismissed

Judgement

Subhash Samvatsar, J.

This order shall govern the disposal of all these writ petitions as in all these petitions common question of law and fact is involved.

Petitioners in all these three petitions, have filed these petitions under Article 226/227 of the Constitution of India challenging the notice Annexure P-1, dated 15-5-2006 issued by the Commissioner, Municipal Corporation, Gwalior whereby the Commissioner has informed that houses owned by the petitioners are situated at Hanuman Chouraha and the road at Hanuman Chouraha is very narrow and is creating problems in the traffic hence it is necessary to widen the road and for that purpose such portion of the houses of the petitioners is required. Commissioner has also assessed the compensation for the lands to be acquired by the Municipal Corporation and informed the petitioners to remove their possession from the said portion so that the road can be widened.

It is an admitted position of fact that the land which is required by the Corporation for widening the road is owned by private parties, i.e., present petitioners.

Contention raised by the learned Counsel for the petitioners is that the petitioners are the owners of the properties and they cannot be deprived of the same without following due procedure laid down by law. For this purpose, learned Counsel for the petitioners relied on Article 300A of the Constitution of India, which provides that no person shall be deprived of his property without authority of law. Petitioners have also made an averment that the respondents have not acquired the property of the petitioners and so long as the property does not vest in the Municipal Corporation as per the provisions of law, the Corporation has no right to get the portion of their buildings vacated or demolish the same.

On the basis of this averment, this Court vide order dated 29-5-2006 in Writ Petition No. 2721/06 had directed the Counsel for the State as well as Municipal Corporation to produce the notification acquiring the said land.

In response to this, Shrimati Ami Prabal, Deputy Advocate General on behalf of the respondents State and Shri Sushil Chaturvedi, Counsel on behalf of the respondent Municipal Corporation appeared and submitted that the Corporation has issued the said notice in exercise of the powers under Sections 304, 305 and 306 of the M.P. Municipal Corporation Act, 1956. According to them, the Municipal Corporation is empowered to acquire the land without following the provisions of Land Acquisition Act, 1894 and, once the land is acquired, the petitioners cannot say that they are deprived of their properties contrary to the provisions of Article 300A of the Constitution of India.

To appreciate the arguments, it is necessary to first refer to Sections 304, 305 and 306 of the M.P. Municipal Corporation Act, 1956 (hereinafter, referred to as the "Act"). Section 304 of the Act relates to erection and use of temporary building to be approved by Commissioner. This section lays down that no building shall be erected for a temporary purpose without the sanction of the Commissioner. Sub-section (2) of this section provides that if any building erected for a temporary purpose is not used strictly for such purpose and in accordance with any bye-laws made under this Act, or is erected without the sanction of the Commissioner, the building may be demolished by the Commissioner at the expenses of the owner thereof. Thus, this section has no application in the present case, as it is not reflected from the Notice Annexure P-I that the buildings of the petitioners are erected for temporary purpose or used for the purpose for which sanction was not granted. On the other hand, from the notice and the sale deeds on record, it appears that permanent structure is situated on the spot. Petitioners have also filed receipts of property tax to show that the building is situated for the last so many years. Annexure P-3 in W.P. No. 2721/06 is a copy of the map prepared for the purposes of road widening scheme. This also shows that the structures raised by the petitioners are not temporary structures but they are their permanent buildings situated at Hanuman Chouraha.

Section 305 of the Act provides for regulating line of buildings. The said section reads as under :

305. Power to regulate line of buildings.-- (1) If any part of a building projects beyond the regular line of a public street, either as existing or as determined for the future or beyond the front of immediately adjoining buildings the Corporation may--

(a) if the projecting part is a verandah, step or some other structure external to the main building, then at any time, or

(b) if the projecting part is not such external structure as aforesaid, then whenever the greater portion of such building or whenever any material portion of such projecting part has been taken down or burned down or has fallen down,

require by notice either that the part or some portion of the part projecting beyond the regular line or beyond the front of the immediate adjoining building, shall be removed, or that such building when being rebuilt shall be set back to or towards the said line or front; and the portion of land added to the street by such setting back or removal shall henceforth be deemed to be part of the public street and shall vest in the Corporation:

Provided that the Corporation shall make reasonable compensation to the owner for any damage or loss he may sustain in consequence of his building or any part thereof being set back.

(2) The Corporation may, on such terms as it thinks fit, allow any building to be set forward for the improvement of the line of the street.

As per the said section, if any part of the building projects beyond the regular line of a public street, either as existing or as determined for the future then the said portion can be demolished after service of notice. This section provides that either part of the building or some portion of the part projecting beyond the regular line or beyond the front of the immediate adjoining building shall be set back to or towards the said line or front; and the portion of the land added to the street by such setting back or removal shall henceforth be deemed to be part of the public street and shall vest in the Corporation, provided that the Corporation shall make reasonable compensation to the owner for any damage or loss he may sustain in consequence of his building or any part thereof being set back.

The aforesaid provision was construed by the Apex Court in the case of Municipal Corporation, Indore Vs. Shri K.N. Palshikar, Indore, wherein it has been laid down that once the conditions required by the said section are satisfied, vesting is automatic. From perusal of the judgment of the Apex Court in the aforesaid case, it appears that in that case 1455 sq. ft. of land was required for road widening scheme and the Municipality has proposed to allow him compensation @ Rs. 2.50

per sq. ft. This was challenged by the land owner. The Apex Court considered the provisions of Section 305 of the Act in Para 14 of its judgment and held that Section 305 itself provides for automatic vesting of the land.

This Court has considered the said provisions in the case of Tarabai v. Indore Municipal Corporation, Indore 1977 (1) MPWN 321, and held as under:

Section 305 of the Madhya Pradesh Municipal Corporation Act, 1956 makes clear that the setting back by legal fiction shall have the effect of vesting that land in the Corporation. The language does not at all suggest or make out that the vesting would in any manner be dependent on the Corporation''s making reasonable compensation to the owner for any damage or loss he may sustain in consequence of the set back. On behalf of the appellant, Section 387 of the Corporation Act was also relied on, in support of this contention. In the opinion of this Court, this section is hardly of any assistance to support that. All that Section 387 of the Corporation Act provides is about arbitration in cases of compensation etc. Thus, even assuming Section 387 of the Corporation Act would be applicable in the instant case then also this Court is clearly of the opinion that as far as the set back land becoming a part of the public street and vesting of that land in the Corporation are concerned, they would not be at all dependant on the payment of compensation.

From perusal of aforesaid case, it appears that no proceedings either u/s 4 or 6 of the Land Acquisition Act were taken for acquisition of the land and the Court while construing the provisions of Section 305 of the Act has held that once line is determined then there is automatic vesting of the land and compensation for the same can be determined u/s 306 of the Act.

In reply to this argument, Counsel for the petitioners relied on the provisions of Sections 78, 79 and 79-A of the Act. Section 78 provides for acquisition of immovable property by agreement while Section 79 provides the procedure when the immovable property can be acquired when agreement is not possible. Section 79 reads as under :

79: Procedure when immovable property or easement cannot be acquired by agreement.-- (1) Whenever the Commissioner is unable u/s 67 to acquire by agreement any immovable property or any easement affecting any immovable property or whenever any immovable property or any easement affecting any immovable property vested in the Corporation is required for the purposes of this Act, the Government may in its discretion upon the application of the Commissioner made with the approval of the Mayor-in-Council order proceedings to be taken for acquiring the same on behalf of the Corporation as if such property or easement were land needed for a public purpose within the meaning of the Land Acquisition Act, 1894.

(2) The amount of the compensation awarded and all other charges incurred in the acquisition of any such property or easement shall, subject to all other provisions of this Act, be forthwith paid by the Commissioner and thereupon the

said property or easement shall vest in the Corporation.

(3) When any land is required for a new street or for the widening or improving of an existing street, the Commissioner may proceed to acquire, in addition to the land to be occupied by the street, the land necessary for the sits of the building to be erected on both sides of the streets, and such land shall be deemed to be required for the purposes of this Act.

Counsel for the petitioners also relied upon the word "vest" used in the Land Acquisition Act and submitted that until and unless the land is acquired as per the provisions of the Land Acquisition Act, 1894, the land does not vest in the Municipal Corporation.

This argument does not have any force in the light of the judgment in the case of K.N. Palsikar (supra) in which the Apex Court held that when the conditions required by Section 305 of the Act are complied with, then the property automatically vests in the Corporation. For satisfying the condition of Section 305 of the Act, it is necessary that a building or a part of the building is projected beyond the regular line of public street either as existing or as determined for the future. In the present case, the Municipal Corporation has prepared a plan determining the regular line of public street as is shown in the map Annexure P-3. Once this line is determined, any portion of the building which is projected beyond this line automatically vests in the Corporation in view of Section 305 of the Act and, therefore, the Corporation has right to demolish the portion of the said building and no proceedings under the Land Acquisition Act are required. In the present case, compensation is offered by the Municipal Corporation by notice Annexure P-1 itself. If the petitioners find that the said compensation is not sufficient or inadequate, then they have separate remedy for enhancement of comepnsation u/s 387 of the Act.

Sub-section (3) of Section 79 provides that when any land is required for a new street, or for the widening or improving of an existing street, the Commissioner may proceed to acquire, in addition to the land to be occupied by the street and such land shall be deemed to be required for the purposes of this Act.

In view of the above, once the Commissioner has determined the regular line of a public street, then the buildings projecting beyond the regular line vests in the Corporation.

Section 79-A of the Act provides for decision of the Collector after enquiry in case right to property is disputed on behalf of the Corporation or by any person against the Corporation. This provision has no application in the present case.

In view of the above discussions, I do not find any merit in the petitions. All the three petitions, therefore, stand dismissed with no order as to costs.

