

(2016) 06 CHH CK 0005

In the Chhattisgarh High Court

Case No : Civil Revision No. 132 of 2015.

The Nagar Palika Nigam, Bilaspur, through - its Commissioner, Nagar Palika Nigam, Bilaspur, Tahsil, Civil and Revenue District - Bilaspur Chhattisgarh - Petitioner/Non-applicant @HASH Ram Sahay Verma, aged about 48 years, son of Late Balaram Verma, R/o Vi

Date of Decision : 24-06-2016

Acts Referred:

Citation : (2016) AIRCC 2715

Hon'ble Judges : Sanjay K. Agrawal, J.

Bench : Single Bench

Advocate : Shri M.K. Bhaduri, Advocate, for the Petitioner; Shri H.B. Agrawal, Senior Advocate with Shri K.S. Pawar, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J. - Invoking revisional jurisdiction of this Court under Section 392 of the Chhattisgarh Municipal Corporation Act, 1956 (hereinafter called as "the Act of 1956"), the petitioner herein has preferred this revision petition against the impugned order dated 02.02.2015 passed by the District Judge, Bilaspur in MJC No.148/2012, whereby learned District Judge has allowed the application preferred by the respondent under Section 307(5) of the Act of 1956 and directed the petitioner to remove the construction and deliver the vacant possession of the suit land within two months from the date of passing of the order to the respondent herein.

2. Ram Sahay Verma, respondent herein has filed an application under Section 307(5) of the Act of 1956 stating inter-alia that he is the title holder of Nazul Plot No.4/2 and 5 situated at Jarhabhata, Bilaspur, in which his title has been affirmed by the trial Court, appellate Court and by this Court and he obtained possession of the said land on 12.03.1992. It was also pleaded that the petitioner herein, without obtaining permission from the respondent, has made construction on it. Therefore, such construction be removed in exercise of power conferred under Section 307(5) of the Act of 1956.

3. The above application was filed duly supported by an affidavit of the respondent. The application was registered by learned District Judge as MJC No.148/12 and notice was issued to the petitioner herein. Thereafter, reply was filed and ultimately the said application was allowed without holding any enquiry.

4. Learned District Judge vide order dated 02.02.2015, allowed the application filed by the respondent and directed the petitioner to remove the construction within two months from the date of the passing of the order.

5. Feeling aggrieved by the impugned order, the Municipal Corporation has filed this instant revision under Section 392 of the Act of 1956 read with Section 115 of the Code of Civil Procedure (hereinafter called as "CPC")

6. Shri MK Bhaduri, learned counsel for the petitioner would submit that application filed under the Act of 1956 for removal of construction made by the Municipal Corporation was not maintainable as learned District Judge ought not to have registered the said case as a separate MJC. On the basis of Section 307(5) of the Act of 1956, separate Civil Suit ought to have been filed for removal of said construction. He would further submit that learned District Judge has not made any enquiry on the application filed by the respondent herein and only on the basis of concession given on behalf of counsel for the petitioner, Municipal Corporation has directed to remove the construction, which is absolutely unsustainable in law. He would also submit that the District Judge ought to have made enquiry in the said application before granting any relief and as such, construction has been made long back and the same is in accordance with law. Therefore, the order impugned deserves to be set aside.

7. On the other hand, Shri HB Agrawal, learned Senior Advocate countering the submission made by counsel for the petitioner would submit that the petitioner has already admitted that construction made is contrary to the law and unauthorised. The petitioner has also filed reply to the application filed by the respondent. The petitioner has admitted that no permission was granted by Municipal Corporation before making such construction. He would further submit that the title of the respondent has already been declared by the Civil Court in case No.17A/91 and also by this Court in Second Appeal No.119/92. Therefore, learned District Court is absolutely justified in allowing the application filed under Section 307(5) of the Act of 1956. In support of his argument, he has placed reliance in the matter of Jeevan Diesels and Electricals Limited v. Jasbir Singh Chadha (HUF) and another, (2010) 6 SCC 601.

8. I have heard learned counsel for the parties and considered the rival submissions made therein and also gone through the record with utmost circumspection.

9. After hearing learned counsel appearing for the parties, following two questions emerge for determination in this revision:-

(i) Whether independent application filed by the respondent invoking Section 307

(5) of the Act of 1956 was maintainable?

(ii) Whether the District Judge is justified in allowing the application without holding any enquiry as envisaged under Section 393 of the Act of 1956?

Answer to question No.1

10. Mr. M.K. Bhaduri, learned counsel appearing for the petitioner/Municipal Corporation would submit that Section 307(5) of the Act of 1956 only saves right of the Corporation or any other person to approach the District Court by filing a civil suit claiming injunction and separate miscellaneous judicial case in the shape of independent application cannot be maintained on the basis of Section 307(5) of the Act of 1956 without there being any suit before the Court, therefore, the application as framed and filed was not maintainable in law.

11. In order to judge the question raised at the Bar, it would be appropriate to notice Section 307(5) of the Act of 1956, which states as under:-

"307(5) Nothing in this section shall affect the right of the Corporation or any other person to apply to the District Court for an injunction or the removal or alteration of any building on the ground that it contravenes any provisions of this Act or the byelaws 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."

12. A careful perusal of sub-section (5) of Section 307 of the Act of 1956 would show that by virtue of such provision, the Corporation or any other person can apply to the District Court for an injunction or removal or alteration of any building on the ground that it contravenes any provisions of this Act or the byelaws made thereunder and for trying of that application, procedure has been prescribed under Section 393 of the Act of 1956. Section 394 deals with fees in proceedings before Civil Courts. Section 395 prescribes the period of limitation.

13. Way back, in the year 1993, the High Court of Madhya Pradesh in the matter of Malkhandas Chagandas v. Om Prakash Lalaram Ameria and others, 1993 M.P.L.J. 98 held that by virtue of Section 307(5) of the Act of 1956, separate Misc. Judicial Case cannot be founded on the basis of section 307(5) without there being a suit before the Court as normally way of seeking an injunction is put to claim a decree for injunction and Section 307(5) of the Act of 1956 only saves the right of the Corporation or any other person to approach the District Court by filing any civil suit claiming injunction thereunder. Later on, coordinate Bench of that Court in the matter of K.M. Shah alias Kantubhai Shah v. Smt. Kamla Bai & Anr, 1992 MPJR S.N. 10 took a contrary view and ultimately the

correctness of Malkhandas Chagandas (supra) was referred to the larger Bench for consideration. The Division Bench of the High Court of Madhya Pradesh in the matter of Hari Singh v. Sushila Devi and another, 1996 JLJ 624 while resolving the conflict view relying upon Sections 392 to 395 of the Act of 1956 has held that the District Court could be moved under Section 307(5) of the Act of 1956 by filing an application as provided under the Act either by Municipal Corporation or any other person aggrieved. Paragraph 17, 18 and 19 of the report states as under:-

"17. All these provisions clearly indicate that they are self-contained provisions of the Act. In this view of the matter, we find that the application as contemplated u/S. 307(5) did not call for institution of a regular civil suit as a condition precedent to move to District Court for obtaining injunction. The District Court could be moved merely filing an application as provided under the Act either by the Municipal Corporation or any person aggrieved.

18. Therefore, we are of the opinion that the law, laid down in the case of K.M. Shah (supra) is in consonance with the provisions of the Act, which takes the correct view.

19. As a result of the above discussion, we respectfully are unable to subscribe the view expressed in the case of Malkhan Das (supra), hence, it is overruled."

14. In view of clear pronouncement of law laid down by a Division Bench of High Court of Madhya Pradesh, which is binding to this 3 Court also, it is held that independent application filed under Section 307 (5) of the Act of 1956 was maintainable before the District Court and therefore, application filed by the respondent herein and tried as Misc. Judicial Case by learned District Judge cannot be held to be not maintainable in law and it is held maintainable.

15. The determination of the first question would lead me to advert to second question as to whether the District Judge is justified in allowing application without making an enquiry as required under Section 393 of the Act of 1956.

16. Before proceeding further, it would be appropriate to notice relevant provisions which deals on trial of application filed under Section 307(5) of the Act of 1956. Section 392 of the Act of 1956 provides for decision of the District Court stating inter-alia that the District Court shall exercise all the powers and jurisdiction expressly conferred on or vested in it by the provisions of this Act, and unless it is otherwise expressly provided by this Act, its decision shall be subject to revision by the High Court. Section 393 provides for procedure in inquiries before Civil Courts and states as under:-

"393. Procedure in inquiries before Civil Courts. - (1) For the purpose of any appeal, inquiry or proceeding under this Act, the High Court and the District Court may exercise all the powers conferred on them by the Code of Civil Procedure, 1908, and the Madhya Pradesh Civil Courts Act, 1958 (19 of 1958) and shall observe the procedure prescribed in the said enactments, so as it is not

inconsistent with the provisions of this Act.

(2) The costs of every appeal, inquiry, or proceeding under this Act shall be payable by such parties and in such proportions as the Court may direct and the amount thereof shall, if necessary, be recoverable as if it were due under a decree of the Court."

17. Likewise, Section 394 of the Act of 1956 states as under:-

"394. Fees in proceedings before Civil Courts. - (1) The Government may by notification in the Gazette prescribe what fee, if any, shall be paid-

(a) on any application, appeal or reference made under this Act to the District Court: and

(b) for the issue in connection with any enquiry or proceeding of the Court under this Act, of any summons or other process:

Provided that the fee (if any) prescribed under clause (a) shall not, in cases in which the value of the claim or subject-matter is capable of being estimated in money exceed the fees leviable, for the time being, in cases in which the value of the claim or subject-matter is of like amount.

(2) The Government may, from time to time, by a like notification determine by what person any fee prescribed under clause (a) of sub-section (1) shall be payable.

(3) No application, appeal or reference shall be received by the District Court until the fee, if any, prescribed under clause (a) of sub-section (1) has been paid."

18. Limitation has been prescribed under Section 395 of the Act of 1956.

19. Thus, from the aforesaid discussion, it is apparent that the procedure prescribed in the CPC is applicable for trying an application filed under Section 307(5) of the Act of 1956, thereby procedure prescribed in the CPC for recording evidence has expressly been made applicable. Fees and limitation have also been prescribed for filing of that application.

20. Now, the question would be as to whether learned District Judge has applied that such provision of the CPC relating to trial of Civil Court for trying the application is required to be examined.

21. The said application was filed on 31.10.2012 before learned District Judge, Bilaspur. Notices were issued and reply was filed by the petitioner/Municipal Corporation. On 17.9.2013 application under Order 7, Rule 11 of the CPC was rejected and case was fixed for filing the reply of the main application on 13.11.2013 and thereafter, application under Order 11, Rule 12 of the CPC read with Section 151 of the CPC was filed by the petitioner/Municipal Corporation for compelling the respondent to file title documents along with affidavit, which was replied by the respondent herein and ultimately, that application was disposed of

and case was fixed for filing reply of the main application for 23.4.2014. On 5.5.2014 it has been recorded that reply of the main application has already been filed and ultimately, argument was heard on 20.1.2015, on that day, submission of Mr. Manoj Agrawal, counsel for Municipal Corporation was recorded that he has no objection for removal of construction and thereafter on 2.2.2015, application under Section 307(5) of the Act of 1956 was allowed directing removal of construction.

22. By the impugned order, learned District Judge has held that since counsel for the petitioner/Municipal Corporation has admitted that no permission under Section 307 of the Act of 1956 has been granted and construction has been made with fund created by member of legislative assembly and in reply to the application under Order 11, Rule 12 of the CPC the Corporation has also admitted that he has not taken permission from the Corporation, directed for removal of construction.

23. The aforesaid narration of the fact would show that the application under Section 307(5) of the Act of 1956 was never put to trial, neither the respondent has adduced any evidence before the District Judge in support of his application nor the present petitioner was allowed any time to adduce any evidence, which is plainly contrary to Section 393 of the Act of 1956 as the District Court is empowered to exercise all the powers conferred him by the CPC and the Madhya Pradesh Civil Courts Act, 1958 and entitled to observe the procedure prescribed in the CPC and in the Madhya Pradesh Civil Courts Act, 1958, that has resulted into serious prejudice to the petitioner/Municipal Corporation.

24. Learned District Judge ought not to have allowed the application without making any enquiry as envisaged under Section 393 of the Act of 1956 in absence of any evidence in the record to hold that construction was not made in accordance with the Act of 1956. Not only this, the District Judge has heavily relied upon the submission of learned counsel for Municipal Corporation that he has no objection in removing the construction as no permission was obtained from the Corporation to make the construction.

25. Further question would be whether learned District Judge is justified in relying the concession/admission made on behalf of Municipal Corporation ?

26. In the matter of Periyar and Pareekanni Rubbers Ltd. v. State of Kerala (1991) 4 SCC 195. Their Lordships of the Supreme Court have held that concession made by the Government pleader in trial Court cannot bind the Government as it is obviously, always, unsafe to rely on the wrong or erroneous or wanton concession made by the counsel appearing for the State unless it is in writing on instructions from the responsible person. Para 19 of the report states as under:-

"19.....Any concession made by the Government pleader in trial Court cannot bind the Government as it is obviously, always, unsafe to rely on the wrong or erroneous or wanton concession made by the counsel appearing for the

State unless it is in writing on instructions from the responsible person. Otherwise, it would place undue and needless heavy burden on the public exchequer. But the same yardstick cannot be applied when the Advocate General has made a statement across the bar since the Advocate General makes the statement with all responsibility.....".

27. The above stated proposition has been followed with approval by the Supreme Court in the matter of Joginder Singh Wasu v. State of Punjab, (1994) 1 SCC 184.

28. Very recently, in the matter of Himalayan Co-operative Group Housing Society v. Balwan Singh and others AIR 2015 SC 2867 the Supreme Court has held that a client is not bound by a statement or admission which he or his lawyer was not authorised to make and followed the law laid down in Periyar and Pareekanni Rubbers Ltd. (supra) and held as under:-

"23. Apart from the above, in our view lawyers are perceived to be their client-s agents. The law of agency may not strictly apply to the client" "lawyer-a relationship as lawyers or agents, lawyers have certain authority and certain duties. Because lawyers are also fiduciaries, their duties will sometimes more demanding than those imposed on other agents. The authority-agency status affords the lawyers to act for the client on the subject-matter of the retainer. One of the most basic principles of the lawyer-client relationship is that lawyers owe fiduciary duties to their clients. As part of those duties, lawyers assume all the traditional duties that agents owe their principles and, thus, have to respect the client-s autonomy to make decisions at a minimum, as to the objectives of the representation. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client-s instructions rather than substitute their judgment for that of the client. The law is now well settled that a lawyer must be specifically authorised to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise/settlement. To put it alternatively that a lawyer by virtue of retention, has the authority to choose the means for achieving the client-s legal goal, while the client has the right to decide on what the goal will be. If the decisions in question falls within those that clearly belong to the client, the lawyer-s conduct in failing to consult the client or in making the decision for the client, is more likely to constitute ineffective assistance of counsel.

33. Generally, admissions of fact made by a counsel is binding upon their principles as long as they are unequivocal; where, however, doubt exists as to a purported admission, the Court should be wary to accept such admissions until and unless the counsel or the advocate is authorised by his principal to make such admissions. Furthermore, a client is not bound by a statement or admission which he or his lawyer was not authorised to make. Lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless

such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed. We hasten to add neither the client nor the Court is bound by the lawyer-s statements or admissions as to matters of law or legal conclusions. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client - s instructions rather than substitute their judgment for that of the client. While in others, the decision is reserved for the client. It is often said a right to make decisions that can affect his rights. We do not intent to prolong his discussion. We may conclude by noticing a famous statement of Lord Brougham:

"an advocate, in the discharge of his duty knows but one person in the world and that person is his client"

29. A careful perusal of the record would show that there is no instruction in writing by the responsible officer of Municipal Corporation to make such statement to the said counsel and in absence of such instruction in writing and it is the case of Municipal Corporation that Mr.Agrawal was never authorised and instructed to make such a statement before the District Judge.

30. Thus, it is apparent that procedure prescribed for trying the application under Section 307(5) of the Act of 1956 was not followed by learned District Judge in trying the application and merely on the basis of concession said to have been extended by learned counsel for Municipal Corporation, the application was allowed though there was no instruction in writing on behalf of the Municipal Corporation to make such concession, therefore, learned District Judge ought not to have allowed the application without following the procedure prescribed in the CPC for trial of the suit as the procedure in the CPC has expressly applicable by virtue of Section 393 of the Act of 1956. Grant of application merely on the basis of concession which is given without being in writing and instructions from the responsible officer is not binding on the Municipal Corporation without any evidence on record is unsustainable and bad in law.

31. As a fall out and consequence of the aforesaid discussion, the civil revision is allowed and the impugned order dated 2.2.2015 passed by the District Judge, Bilaspur in M.J.C.No.148/12 is hereby set aside. MJC is restored to the file of the District Judge, Bilaspur for hearing and disposal in accordance with law after following the due procedure as envisaged under Section 393 of the Act of 1956 after giving opportunity to the parties to file written statement and thereafter to record the evidence in accordance with law. No order as to cost(s).