
(2017) 03 MP CK 0019
In the Madhya Pradesh High Court
Case No : W.A. No. 562 of 2016

Umesh

APPELLANT

Vs

Urban Department Administration

RESPONDENT

Date of Decision : 02-03-2017

Acts Referred:

Citation : (2017) 1 MPWN 365

Hon'ble Judges : P.K. Jaiswal and Virender Singh, JJ.

Bench : Division Bench

Advocate : Umesh Kumravat, present in person, for the Appellant; Shri Yogesh Mittal, Learned Government Advocate, for the Respondent No. 1/State; Shri Rishi Tiwari, Learned Counsel, for the Respondent Nos. 2 and 3/Indore Municipal Corporation

Final Decision : Disposed Off

Judgement

1. This intra-court appeal has been filed by the appellant (writ petitioner) against the order dated 19.12.2016 passed in W. P. No.1229/2015 by which his writ petition against demolition of penthouse, which has been constructed contrary to the sanctioned lay-out has been dismissed.

2. Brief facts of the case are that the respondent No.2 gave permission only for Parking + 6th Floor + Terrace Floor. No permission was granted for construction of 7th floor. The construction of 7th floor made by the builder is illegal. On terrace, neither flat can be constructed nor it can be used for residential use. Penthouse is only used for services of the society. The registry of 7th floor which has been done by the builder is illegal. Not a single document has been filed by the appellant to show that Municipal Corporation ever granted permission to construct a residential flat on penthouse. The builder has done illegal construction and, thereafter, vide registered sale deed, present appellant purchased the same.

3. As per Madhya Pradesh Bhumi Vikas Rules, 2012 (in short "the Rules of

2012"), terrace floor will be used only for service purpose and not for commercial purpose.

4. A show cause notice has been issued by the appellant as to why they have made residential construction on penthouse.

5. After reply, Building Officer vide order dated 12.02.2015 (Annexure-R/2) issued proceedings for removal of illegal construction. Relevant part of the order reads as under :-

mijksDr fo"k;kUrxZr dze esa bl dk;kZy; dks f"kdk;r izkIr gqbZ gS] fd vkids }kjk uxj fuxe ls nk[kyk dzekad 19194 fnukad 16-02-2009 ls ch + ih +6 vkoklh; ryksa dh Lohd`fr izkIr dh xbZ FkhA ijUrq vkids }kjk iz"uk/khu Hkou esa voS/k :i ls uxj fuxe dh Lohd`fr izkIr fd, cxSj Vsfjl Q~yksj ij isaV gkml dk fuekZ.k dj voS/k :i ls Hkwfe fodkl fu;e esa of.kZr mi;ksx ds foijhr vkoklh; mi;ksx fd;k tk jgk gSA vkids }kjk Lohd`fr ds foijhr fd;k x;k voS/k fuekZ.k ,oa voS/k :i ls isaV gkml vkoklh; mi;ksx fd;k tkuk Hkwfe fodkl fu;e ,oa e0iz0 uxj ikfyd fuxe vf/kfu;e] 1956 ds izko/kkuksa ds foijhr gksdj vijk/k dh Js.kh esa vkrk gSA

6. This action has been challenged by filing W. P. No.1229/2015.

7. As per reply of the Municipal Corporation, Indore, the floor in question has been illegally constructed by the builder, which is contrary to the sanctioned layout and no compounding can take place.

8. The stand of the appellant before the Writ Court was that he has purchased the property vide registered sale deed dated 10.02.2013 and is owner of the property in question but no material was placed to show that at any point of time, permission was granted by the Municipal Corporation, Indore for construction of penthouse on one floor/7th floor.

9. After considering the law laid down in the case of Priyanka Estates International Pvt. Ltd. v. State of Assam reported in 2010 (2) SCC 27 dismissed the writ petition and observed that the appellant shall be free to exhaust the remedy available under the law against the builder, who has constructed and sold the flats contrary to the sanctioned map.

10. It is this order, which has been impugned in this writ appeal. On 17.01.2017, at the request of learned counsel for the appellant, we granted one more opportunity to the appellant to appear before the Building Officer of Indore Municipal Corporation and, thereafter, order will be passed.

11. As per affidavit dated 22.02.2017 filed by the Building Officer Zone-19 (earlier Zone-10), Indore Municipal Corporation, an opportunity of hearing was granted to the appellant. A representation was submitted by the appellant, which has been decided on 09.02.2017 vide Annexure-R/2. Relevant part of the order reads as under :-

izdj.k esa e0iz0 Hkwfe fodkl fu;e 2012] uxjikfydk fuxe vf/kfu;e] 1956 ds izko/kkuksa ds lkFk&lkFk uxjikfydk fuxe bUnkSj }kjk tkjh dh xbZ Hkou vuqKk dzekad

1994 fnukad 16-02-2009 ;kfpdkdrkZ }kjk izLrqr vH;kosnu dk lexrzk ls ifjlhyu fd;k x;kA ;kfpdkdrkZ vius vH;kosnu ls ;g fl) djus esa iw.kZ :i ls vlQy jgs] fd muds }kjk fd;k x;k] isaV gkml dk fuekZ.k fof/kd izko/kkuksa ds vUrxZr gSaA ;kfpdkdrkZ }kjk vlacaf/kr rF;ksa dk mYys[k fd;k x;k gS] ;fn uxjh; {ks= esa vU; Hkouksa esa bl rjg dk voS/k fuekZ.k gS] rks Hkh ;kfpdkdrkZ dks viuk voS/k fuekZ.k bl vk/kkj ij dk;e j[kus dk dksbZ fof/k gd izkIr ugha gksrk gSA ;kfpdkdrkZ dk fuekZ.k ,oa mi;ksx nksuksa gh Lohd`fr ds foijhr gksus ls ;kfpdkdrkZ ds mYysf[kr dFkukssa dks ekU;r iznku ugha dh tk ldrh gSA isaV gkml dk fuekZ.k Lohd`fr ls vf/kd {ks= ij fufeZr gksus ds lkFk gh lfoZlsl ds :i esa mi;ksx esa ughaa gks jgk gSA

;kfpdkdrkZ dk vH;kosnu lek/kku dkjd u gksus ls ,oa fof/k izko/kkuksa ds foijhr gksus ls vekU; fd;k tkrk gSA lkFk gh ;kfpdkdrkZ dks funsZf"kr fd;k tkrk gS fd ;kfpdkdrkZ Lo;a 7 fnol dh vof/k esa Lohd`r ekufp= ds foijhr fd, x, voS/k fuekZ.k dks gVkdj Lohd`fruklj mi;ksx cgkydj v/kksGLrk{kjh dks voxr djkosA le;kof/k i"pkr~ uxj fuxe voS/k fuekZ.k gVkus gsrq Lora= jgsxkA

12. Learned Authority considering the fact that penthouse was constructed by the builder contrary to the sanctioned lay-out, the Rules of 2012, M. P. Municipal Corporation Act, 1956 (in short "the Act of 1956") as well as building permission granted on 16.02.2009, the construction of penthouse was illegal and rejected the representation.

13. The Division Bench of this Court on identical circumstances dismissed the writ appeal vide order dated 12.09.2016 passed in W. A. No.310/2016 (Smt. Probhjot Kaur Chhabra & another v. Indore Municipal Corporation & another) of "Shisha Lounge", which has been running at top floor of C-21 Mall contrary to Rules of 2012 as no permission was granted for the above construction. Relevant part of the order reads as under :-

18. In the case in hand, the construction of "Shisha Lounge" on the roof is contrary to the provisions of M.P. Bhoomi Vikas Rules, 1948 and in violation of Rule 63 of the Rules of 1984 and, therefore, the law laid down by the Apex court in the case of Kewal Kishan Gupta v. J & K Special Tribunal & Ors. (supra) will not apply in the present facts and circumstances and the same is distinguishable.

19. The cases of professional builders like the appellant stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future.

20. In the facts and circumstances of the present case, we are of the view that the learned writ court rightly upheld the direction contained in the notice dated 21.1.2015 for stopping the unauthorized user of the terrace is found to be just and proper and in accordance with law and directed that the appellants cannot be permitted with the unauthorized user of the premises any further.

21. For these reasons, no case to interfere with the order passed by the learned writ court, which is just and proper as prayed is made out. Writ appeal filed by the appellants has no merit and is, accordingly, dismissed.

14. In the present case also, construction made by the builder is illegal and contrary to the Rules of 2012 and the Act of 1956. We are of the view that the learned Writ Court has not committed any legal error to interfere with the order passed on 19.12.2016. The writ appeal filed by the appellant has no merit and is accordingly, dismissed. No costs.

15. All Interlocutory Applications stand disposed of. Interim stay granted earlier shall stand vacated.