

(2018) 01 MP CK 0119
In the Madhya Pradesh High Court
Case No : 3797 of 2017

Urmila Shivhare

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 23-01-2018

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Madhya Pradesh Municipal Corporation Act, 1956, Section 307(3), Sec

Citation : (2018) 01 MP CK 0119

Hon'ble Judges : Subodh Abhyankar

Bench : Single Bench

Advocate : Shashank Shekhar, G.P. Singh, Mrigendra Singh, Saurabh Sunder

Final Decision : Allowed

Judgement

1. This petition is filed under Article 226 of the Constitution of India seeking following reliefs :

(i) That, this Hon''ble Court may kindly be pleased to hold that the case of the petitioner falls within section 295(3) of the Act of 1956 i.e. the

deeming clause.

(ii) That, this Hon''ble Court may kindly be pleased to direct the respondents to consider the map of the petitioner sanctioned as per deeming

clause of Section 295(3) and they may be refrained from extending oral threats of demolition of the house.

(iii) Any other relief/reliefs order/orders, direction/directions which this Hon''ble Court may deems fit and proper may kindly be granted to the

petitioner including the cost of petition.

2. The petitioner's contention is that she owns the property ad-measuring 5068 sq ft at khasra No.16 of Mouza Katanga, Jabalpur which was

bequeathed to her through a Will executed by her mother-in-law and the same has been mutated in her name by an order passed by the Tehsildar.

3. The petitioner's contention is that her mother-in-law had purchased the aforesaid property through registered sale deed dated 19.4.1989 and in

the year 1994 sought sanction of the proposed map for construction which was duly granted by the respondent authorities and accordingly the

construction was completed.

4. It is further submitted that on 12.12.2013 on account of certain repair/renovation work the petitioner again applied for sanction of a new map.

The aforesaid application was not entertained by the respondents and no order was passed. A representation was also preferred by the petitioner

on 3.1.2014 but again there was no response from the respondents. Another representation was preferred on 7.3.2015 and subsequently on

9.11.2015 again the petitioner sought sanction of another map.

5. It is the petitioner's further case that as no communication was made by the respondents in this behalf, hence the petitioner proceeded with the

construction work according to the submitted plan but soon thereafter on 7.4.2016, 25.7.2016, 1.9.2016 and finally on 24.12.2016 the Building

Officer forwarded the last notice to the petitioner under Section 307(3) of the M.P. Municipal Corporation Act, 1956 (hereinafter referred to as

"the Act of 1956") whereby it was informed to the petitioner that without any proper sanction she has commenced the construction work, hence

the same is liable to be removed and vide Annexure P/9 dated 5.9.2016 the petitioner replied to the aforesaid notice and informed the respondents

that as all her efforts to get the map sanctioned failed, hence the construction was carried out and the petitioner also prayed that if there is any

construction which is not as per norms than also she is ready to compound the alleged illegal construction carried out by her. On 4.3.2017 the

petitioner again submitted an application for compounding of the alleged illegal construction work as her earlier efforts to get the map sanctioned

failed, however, on 24.12.2016 a notice was sent to the petitioner for removal of the construction work and her house was also visited by the

concerned officer on 4.3.2017. Thus, in sum and substance, the petitioner's

contention is that the map under Section 295(3) of the Act of 1956

shall be deemed to be sanctioned by the deeming clause and further, that she is entitled to compound the alleged illegal construction, if any. It is

also prayed that the respondents be restrained from pulling down the construction which was allegedly legally initiated by the petitioner. Counsel

for the petitioner has relied upon the decision of the Chhattisgarh High Court in the case of Raj Kumar College Society and another vs. State of

M.P. (Now Chhattisgarh) and others, 2002 (2) MPHT 12 (CG).

6. On the other hand, learned senior counsel appearing for the respondent - Municipal Corporation has vehemently opposed the prayer of the

respondents and it is submitted that despite repeated notices the petitioner has not stopped the construction work and has continued the same

despite knowing that the construction which is being raised is illegal. The counsel has also relied upon the last show cause notice dated 24.12.2016

issued to the petitioner and has also relied upon the earlier notice to the petitioner and it is submitted that the petitioner is running commercial

activities in the building without any sanction despite the fact that the building was for the residential purposes only. It is further submitted that the

petitioner's contention that the map shall be deemed to be sanctioned under the provisions of Section 295(3) of the Act of 1956 cannot be

accepted as the map submitted by the petitioner was already rejected by the authority of the answering respondents on 14.6.2016 and the same

was also communicated to the petitioner.

7. A rejoinder to the aforesaid reply has also been filed by the petitioner wherein it is stated that no order of refusal of her application for sanction

of map was ever received by her. It is also stated by way of an affidavit that no commercial activity is going on in her building.

8. To the aforesaid rejoinder, the respondents have also filed an additional reply in which it is stated that the petitioner submitted her plan for

approval on 18.12.2013 and owing to certain lacunae found therein, the same was rejected on 23.12.2013. A copy of the dispatch register is also

filed in support of this contention.

9. Heard learned counsel for the parties and perused the record.

10. The petitioner's contention is that she has submitted her map for sanction on 18.12.2013 which, in the absence of any specific refusal within

30 days, should be deemed to be accepted under s.295(3) of the Act of 1956. At this juncture, it would be apt to refer to s.295(3) which reads as

under:

295. Commissioner to refuse erection or re-erection of buildings:

(1) ...

(2)....

(3) Notwithstanding anything contained in sub-section (2) but subject to the provisions of sub-section 10 of section-291 if the Commissioner within

thirty days of the receipt from any person of a valid notice of such person's intention to erect or re-erect a building, or within sixty days of such

receipt if the notice relates to a building on the same or part of the same site on which sanction for the erection of a building has been refused within

the previous twelve months, neglects or omits to pass orders sanctioning or refusing to sanction such erection or re-erection, such erection or re-

erection, shall, unless the land on which it is proposed to erect or re-erect such building belongs to or vests in the Corporation, be deemed to have

been sanctioned, except in so far as it may contravene any rule or byelaw or any townplanning schemes sanctioned under this Act or any other

enactment for the time being in force :

Provided that if an order granting or refusing such sanction is suspended under section 421 the period specified by this subsection shall commence

to run afresh from the date of communication of final orders under the said sanction by the Government.

(emphasis supplied)

11. Thus, the aforesaid section makes it clear that if no orders sanctioning or refusing to sanction such erection or reerection are passed then such

erection or re-erection, shall be deemed to have been sanctioned. In the present case, the application for sanction of map was submitted on

12.12.2013, the thirty days from which would expire on 11.01.2014. The respondent, in their additional reply has submitted that it was refused

immediately on 23.12.2013, however, no such claim regarding refusal of the map has been made by the respondents in their initial reply which is

rather surprising. Even in the additional reply no such order rejecting the map has been filed by the respondents which gives rise to the veracity of

the statement made by the respondents. Apart from that the respondents have also submitted in their reply that the map presented by the petitioner

was canceled on 14.06.2016 which belies the subsequent claim of the respondents that it was rejected on 23.12.2013 only. This leads to the only

inescapable conclusion that the map submitted by the petitioner on 12.12.2013 shall be deemed to be sanctioned in the absence of any refusal of

the same by the respondents.

12. So far as applicability of s.307 of the Act of 1956 to the present case is concerned, this court is of the considered opinion that the said issue

has already been answered by the Chhattisgarh High Court in the case of Raj Kumar College Society (supra) that s.295 of the Act is not

controlled by s.307 so far it relates to deemed sanction. Thus, the notices issued to the petitioner u/s.307 of the Act cannot be issued to demolish

the building of the petitioner on the ground that no previous sanction was obtained, however, no such restriction is there if it is for the removal or

alteration of work not in conformity with the byelaws or any scheme or any other requirement.

13. Coming to the question of compounding of the illegal construction of the petitioner, this Court is of the considered opinion, that it can be done

within the fore-corners of s.308-A of the Act. Hence, if such an application is made by the petitioner to the respondents within a period of two

weeks from today, the same shall be considered by the respondents within a further period of six weeks therefrom.

14. With, the aforesaid observations, the petition stands allowed to the aforesaid extent.

15. Parties to bear their own costs.