

(2017) 12 MP CK 0018
In the Madhya Pradesh High Court
Case No : 1083 of 2015

Venkateshwar Dwivedi

APPELLANT

Vs

Smt. Ruchi Dwivedi

RESPONDENT

Date of Decision : 15-12-2017

Acts Referred:

[Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973](#), [Section 16](#), [Section 29](#), [Section 16\(2\)](#)

Citation : (2017) 12 MP CK 0018

Hon'ble Judges : Vandana Kasrekar

Bench : Single Bench

Advocate : Anshuman Singh, Manish Soni

Final Decision : Allowed

Judgement

1. The petitioner has filed the present petition challenging the orders dated 06.05.2014, 16.09.2014 and 13.01.2015 passed by the respondents No.2 and 1.
2. The petitioner has entered into development agreement with one Asha Bai in respect of the land bearing Khasra No.337/1, 337/2 and 337/3 having an area of 6.69 hectares situated at village Ghunsor, Tahsil and District- Jabalpur. The said land was earmarked for agricultural purposes in the development plan.

The petitioner therefore, submitted an application under Section 16 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (hereinafter in short referred to as "the Adhiniyam, 1973") for changing the land use of the said land from agricultural to residential. The said application has been filed under Section 16 of the Adhiniyam, 1973 and not under Section 29 of the Adhiniyam, 1973. The petitioner has deposited requisite fees of Rs.35,000/- along with challan and all relevant documents as per Clause 7.17 of Bhedaghat Development (Draft) Plan, 2021. The said application was rejected vide order dated 06.05.2014 on the ground that the land for which application is moved is earmarked for agricultural use in Bhedaghat Development (Draft) Plan, 2021. The petitioner has stated that while passing this order, no opportunity of hearing was given to the petitioner and the orders were passed without assigning any reasons. It has further been stated that there is no impediment under the Act to deny such permission. Section 16(2) of the Adhiniyam, 1973 specifically provides that the change in use is permissible by the order of Director. Against the said order, the petitioner has preferred an appeal before the respondent No.1. The respondent No.1 vide order dated 16.09.2014 has rejected the said appeal. The appeal was dismissed on the ground that with regard to the land in question, the provisions of Bhumi Vikas Rules, 2012 (hereinafter

in short referred to as "the Rules, 2012") were applicable and therefore, no permission for change of use could have been given. Against the said order the petitioner has preferred a review petition before the respondent No.1. The same was also dismissed vide order dated 13.01.2015 on the ground that there is no provision of review under the Adhiniyam, 1973. Being aggrieved by the aforesaid order, the petitioner has filed the present petition.

3. Learned counsel for the petitioner submits that the impugned orders passed by the respondents are illegal and arbitrary. It is further submitted that the petitioner has moved an application under Section 16 of the Adhiniyam for converting the use of land from agricultural to residential and therefore, there was no impediment in granting the same. However, in single line order, the said application has been rejected by the respondents. It is further submitted that the respondents have treated the said application under Section 29 of the Adhiniyam, 1973 instead of Section 16 of the Adhiniyam, 1973. It is also submitted that the Rules, 2012 are not applicable to the area falling within Bhedaghat Development (Draft) Plan, 2021. The Bhedaghat Development (Draft) Plan was finalised in the year, 2016, while the application was submitted by the petitioner in the year, 2014 i.e. prior to finalisation of Bhedaghat Development (Draft) Plan. The State Government

has issued a Gazette Notification dated 26.12.2012, which has been published in the Madhya Pradesh Gazette dated 04.01.2013, according to which the provisions of the Rules, 2012 have been made applicable to as many as 145 towns including Jabalpur Division. There are as many as 15 cities of Jabalpur Division but the Bhedaghat has not been included in the said list. Thus, by virtue of the said notification, the provisions of the Rules, 2012 are not applicable to the land in question. It is also submitted that he has obtained a note-sheet under the Right to Information Act from the Office of Joint Director, Town and Country Planning and in the note-sheet, it has also been mentioned that in Bhedaghat Planning Area the provisions of the Rules, 2012 are not applicable.

4. The respondents have filed reply and in the reply, the respondents have taken a preliminary objection that the petitioner has no locus even to apply for land use change on the basis of so called un-registered agreement to sale the property in question. The petitioner cannot claim any equity or any relief on the basis of an unregistered instrument in terms of section 33 of the Indian Stamps Act. That apart, the so called sell agreement executed between the parties, nowhere reveals any description of the consideration of sell and therefore, even such a document may not be construed to be a "conveyance". It is further submitted that one Smt. Ashabai Patel has parallelly

moved an application seeking sanction under the Adhiniyam in respect of the said land, which was rejected by the Joint Director, Town and Country Planning, Jabalpur on 09.02.2015. Against the said order, Smt. Ashabai has preferred an appeal before the Divisional Commissioner. The Divisional Commissioner vide order dated 02.06.2015 has allowed the application and remitted back the matter for fresh consideration. However, the State Government by exercising suo-motu power under revision has stayed the order of Divisional Commissioner. Smt. Ashabai filed Writ Petition No.16324/2014 against the order passed by the State Government wherein this Court vide order dated 08.12.2015 has stayed the order, however a liberty was granted to the State Government to proceed in the matter in accordance with law. Pursuant to the liberty granted by this Court, the Joint Director, Town and Country Planning, Jabalpur took the matter afresh for consideration. The Joint Director vide order dated 31.05.2016 has rejected the said application. The State Government has thereafter passed the order dated 21.03.2017 setting aside the order passed by Divisional Commissioner and therefore, Smt. Ashabai has withdrew the petition with liberty to challenge the order dated 21.03.2017 passed by the State Government. Thus, in the light of the aforesaid, learned counsel for the respondents submits that the issue pertaining to the change in use of land or

development permission with regard to property in question has already been adjudicated upon for the respective authorities and the rejection of the same has attained finality.

5. The respondents have further submitted that so far as Bhedaghat Development (Draft) Plan, 2021 is concerned, it is stated that the said was notified under Section 18 of the Adhiniyam, 1973 and now final development plan has been notified on 03.09.2016 in terms of provisions under Section 16 of the Adhiniyam, 1973. The land in question falls within the area specified under agricultural use and therefore, after publication of the final draft plan such land use cannot be converted to the residential. Even statute does not provide any authority to the State Government to consider any such change in the land use at the instance of an individual person. It is also submitted that the Rules, 1984 stood completely repealed by enforcement of the Rules, 2012, which do not permit entertaining any application seeking change in land use specified under the final development plan already notified under Section 19 of the Adhiniyam, 1973 at the instance of an individual person.

6. The petitioner has filed the rejoinder and in the rejoinder, the petitioner has stated that so far as preliminary objection with regard to filing of the present writ petition on the ground of locus of the petitioner is concerned, the petitioner has

stated that no such objection has been raised by the authorities and no such reasons have been assigned for rejection of the application filed by the petitioner either by the Joint Director in the order dated 06.05.2014 or by the Divisional Commissioner in the order dated 16.09.2014. It is submitted that while subjecting the orders passed by administrative authorities to judicial scrutiny, the reasons assigned in the orders or contained in the file of the authorities are to be decided and reasons for the rejection of claim of the petitioner cannot be supplemented by taking additional ground in the affidavit filed to the counter affidavit. So far as filing of earlier writ petition by one Ashabai Patel is concerned, the petitioner has stated that since Smt. Ashabai Patel has independently made an application under Section 16 of the Adhinyam, 1973 for development of the land while the petitioner has separately entered into an agreement as colonizer of development of the land and after agreement of that land since moved an application under Section 16 of the Adhinyam, 1973 seeking permission for development. Smt. Ashabai Patel has filed separate petition before this Court, which is pending.

7. Heard learned counsel for the parties and perused the record. The petitioner has entered into an agreement of the property of Khasra No.337/1, 337/2 and 337/3 situated at Village-Ghunsour, Tahsil and District-Jabalpur. Thereafter, the

petitioner has submitted an application under Section 16 of the Adhiniyam for change of land use of the said land from agricultural to residential. The said application was rejected by respondent No.2 vide order dated 06.05.2014 on the ground that as per Clause 17.1 of the Bhedaghat Development Plan, 2021, the change of land use is not permissible. Being aggrieved by that order, the petitioner has preferred an appeal before the respondent No.1. The respondent No.1 vide order dated 16.09.2014 has dismissed the said appeal. The petitioner thereafter filed an application for reviewing/recalling of the order dated 16.09.2014. The said application was also rejected vide order dated 13.01.2015. Being aggrieved by that order, the petitioner has filed the present petition.

8. Section 16 of the Adhiniyam, 1973 provides for freezing of land use. As per Section 16(1)(a) no person shall institute or change the use of any land or carry out any development of land for purpose other than that indicated in the existing land use map without the permission in writing of the Director. Thus, as per this section, the use of the land can be changed after submitting an application before the Director. Section 16(2) of the Adhiniyam, 1973 provides that the permission under sub-section (1) may be granted in such cases and subject to such conditions as may be prescribed. Section 19 provides for sanction of development plans. Where the State Government

approves the development plan with modifications, the State Government shall, by a notice published in the Gazette, invite objections and suggestions in respect of such modifications within a period of not less than thirty days from the date of publication of the notice in the Gazette and after hearing the objections, the development plan shall come into operation from the date of publication of the said notice in the Gazette. Chapter-VI of the Adhiniyam, 1973 provides for control of development and use of land and Section 29 thereof provides for application for permission for development by the person other than local authority or any other authority constituted under the Adhiniyam, 1973. Section 16 of the Adhiniyam, 1973 provides for change in use of the land by the Director whereas Section 29 of the Adhiniyam, 1973 provides for permission for development of land falling within planning area.

9. In exercise of powers conferred by Section 85(1) read with Section 24 (3) of the Adhiniyam, 1973, the State Government has framed the Rules known as Madhya Pradesh Bhumi Vikas Rules, 2012. By enforcement of the said Rules, the earlier Rules, 1984 have been repealed. The Bhedaghat Development Plan has been declared as notified area as per Section 13 of the Adhiniyam, 1973 under the final Gazette on 12.12.1973 and amended from time to time. Accordingly, Bhedaghat Development (Draft) Plan, 2021 was published

under Clause 7.2.1 of the Bhumi Vikas Rules, 1984 and the same were not applicable to the Bhedaghat Development (Draft) Plan. Thereafter, Chapter-VII of the Bhedaghat Development (Draft) Plan was amended vide Gazette notification dated 29.05.2013. In the said amendment, it has been stated that the provisions of Bhumi Vikas Rules, 2012 are not applicable to Bhedaghat Development (Draft) Plan. While rejecting the application, the respondents have not taken into consideration the said notification. The petitioner has also filed a copy of note-sheet in which it is specifically mentioned that in the Bhedaghat Development (Draft) Plan, Bhumi Vikas Rules, 2012 are not applicable. Rule 14 of the Rules, 2012 provides for application for development or building permission. Rule 5 provides that the development permission under Section 16 of the Adhinyam, 1973 shall not be granted, if the land is situated in such area where sufficient means of access have not yet been developed or proposed or the activity proposed in the application is not proposed in the published draft development plan. In the present case, in the proposed development plan, the land is earmarked for agricultural use and therefore, in the light of the Rule 14/5 of the Rules, 2012, the respondents have rejected the application submitted by the petitioner. However, the State Government has issued a notification dated 14.01.2013, in which it has been stated that the Bhumi Vikas Rules, 2012

are applicable to 145 cities, in which the Jabalpur Division has also been included and it does not include the name of Bhedaghat, which shows that the Rules, 2012 are not applicable to the Bhedaghat Development Plan and therefore, the respondents have erred in rejecting the application submitted by the petitioner in light of Bhumi Vikas Rules, 2012.

10. So far as the preliminary objections raised by the respondents regarding the locus of the petitioner to file the present petition as well as the petition filed by Smt. Ashabai Patel is concerned, the respondents have not rejected the application of the petitioner on the same grounds. The validity of the order has to be tested on the basis of the reasons in the orders.

11. The Apex Court in the case of Union of India and another Vs. GTC Industries Ltd., Bombay, (2003) 5 SCC 106 in paragraph-13 has held that a quasi-judicial order has to be judged on the basis of reasoning contained therein and not on the basis of pleas put forward by the person seeking to sustain the order in its counter-affidavit or oral arguments before the Court. Similarly in the case of Nandkishore Ganesh Joshi Vs.

Commissioner, Municipal Corporation of Kalyan & Dombivali and Others , (2004) 11 SCC 417 in paragraph-21 has held that a statutory authority, as is well known, when it acts in terms of a statute, is bound by its action. It cannot

supplement or supplant the reason later on by way of affidavit. Thus, in the light of aforesaid decisions passed by the Apex Court, the respondents cannot raise the grounds which they have not taken in their orders while rejecting the application submitted by petitioner. So far as application submitted by Smt. Ashabai Patel is concerned, the same has been filed by her in her personal capacity for development of the land as a land owner and the petitioner has submitted an application being a registered colonizer and therefore, the application submitted by the petitioner is maintainable. However, the application submitted by the petitioner has also not been rejected on this ground.

12. In the light of aforesaid reasons, the writ petition is allowed. The impugned orders dated 06.05.2014, 16.09.2014 and 13.01.2015 are hereby set aside and the respondents are directed to allow the application submitted by the petitioner on 17.02.2015 with no order as to costs.