

(2020) 09 MP CK 0174
In the Madhya Pradesh High Court
Case No : Writ Petition No. 9490 Of 2020

Vivaswan Hotels India Pvt. Ltd. Gwalior	APPELLANT
Vs	
State Of M.P. & Anr	RESPONDENT

Date of Decision : 18-09-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Madhya Pradesh Municipal Corporation Act, 1956 — Section 293, 293(3), 294, 307(2)
Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 24

Citation : (2020) 09 MP CK 0174

Hon'ble Judges : Sheel Nagu, J;Rajeev Kumar Shrivastava, J

Bench : Division Bench

Advocate : Gopal Shankar Narayan, V.K. Bhardwaj, S.K. Jain, M.P.S.
Raghuvanshi, Prashant Sharma

Final Decision : Dismissed

Judgement

1. The present petition u/Art.226 of the Constitution of India is filed assailing the notice dated 30.06.2020 issued by Commissioner, Municipal Corporation, Gwalior (M.P.), Annexure P-1, invoking powers u/Sec.307(2) of the M.P. Municipal Corporation Act, 1956 ["1956 Act" for brevity] informing the petitioner that the basement of the building in question is being used for commercial purposes which is contrary to the building permission granted by the respondent/ Corporation. The petitioner has been asked to remove the unauthorized use or else face the consequences prescribed in Section 307 of 1956 Act.

2. Learned Senior Counsel for the petitioner Shri Gopal Shankar Narayan and Shri V.K. Bhardwaj along with Shri S.K. Jain, learned counsel are heard on the question of admission.

3. Learned Senior Counsel for the petitioner dealing with the factual matrix involved submits that the petitioner is a private limited company which constructed a hotel in the town of Gwalior after seeking due permission of the Competent Authorities under different laws. The construction was raised strictly

in terms of the sanctioned map whereafter hotel business was started in the said building sometime in the year 2001. A dispute arose in 2005 about certain construction made in addition to the sanctioned plan. The petitioner was ready and willing to pay the compounding fee and get the irregularity compounded in terms of Section 308-A of 1956 Act. To resolve this dispute, WP.585.2005 was filed before this Court which was finally disposed of on 04.05.2011 by the Division Bench of this Court in the following terms:

"8. Looking to the provisions of Section 308-B of the Municipal Corporation Act, 1956 and the statement made by the learned Counsel for the Municipal Corporation and the judgments of the Hon'ble Supreme Court, the petition of the petitioner is disposed of with a direction to the Municipal Corporation, respondent No.1 to pass appropriate order in the matter of compounding in accordance with the sanctioned map of the Town and Country Planning Department, Annexures P/23, P-23-A and P-24. The Municipal Corporation is at liberty to proceed in accordance with law. No order as to costs."

3.1 As a sequel to the aforesaid litigation, the petitioner deposited compounding fee of Rs.65,37,330/- on 30.06.2014 pursuant to which it is submitted that the Corporation issued a compromise map on 11.08.2014 vide Annexure P-8. It is urged that thereafter the petitioner was rest assured that since the curtains have been drawn in view of compounding, no further dispute would arise with the respondent-Corporation. However, it is submitted that this hope and expectation were short-lived. Like the bolt from the blue, Annexure P-1, the impugned notice has been issued informing the petitioner of unlawful use of basement for commercial purposes with a direction to remove the same or else coercive steps would be taken to remove the unauthorized usage.

3.2 In view of the aforesaid background, the learned Senior Counsel for the petitioner has raised various issues which are summarized below:

"1. Relying upon "Amrit Foods Vs. Commissioner of Central Excise, U.P. [(2005) 13 SCC 419]", para 5, it is submitted that since the impugned show-cause notice does not explicitly and with specificity disclose the deficiency, the same is unlawful as it cannot be responded to.

2. The Municipal Corporation, Gwalior, u/Sec.293, 294 and 307(2) of 1956 Act is not vested with any authority to interfere in the use of a particular existing building since these provisions exclusively relate to the field of erection and re-erection of building and not usage. Thus, the Municipal Corporation, has acted beyond its jurisdiction rendering the impugned show-cause notice bereft of authority of law.

3. That in view of compounding having been sanctioned by the Corporation of the excess construction made in 2014, the Corporation has no cause and authority to issue the impugned notice."

4. After having heard learned counsel for rival parties and perusing the relevant

statutes referred to, this Court is of the considered view that no case for interference is made out for admitting the present petition for the reasons infra.

4.1 A bare perusal of the original sanctioned map, on the basis of which the hotel building was constructed, reveals that the original sanction granted sometime in 1997 vide Annexure P-4 was in respect of construction of basement, ground floor, first floor, second floor and third floor. The construction made by the petitioner in excess of this building permission which became the subject matter of WP.585.2005 was in respect of 04th and 05th floor which is evident from the revised map (vide Annexure P-8) issued after compounding was sanctioned. The said revised compromise map, Annexure P-8, clearly mentions about the basement, ground floor, mezzanine floor, first floor, second floor, third floor, fourth floor and fifth floor. Thus, the subject matter of compounding was in respect of the excess construction in shape of the fourth and fifth floor, which obviously was not part of original sanctioned map, Annexure P-4.

4.2 The aforesaid marked distinction between the original sanctioned map of 1997 Annexure P-4 and the compromise map of 2014, Annexure P-8, reveals that the subject matter of earlier litigation in shape of WP.585.2005 before this Court was restricted to the compounding of fourth and fifth floor and not to any other construction or usage.

4.3 In view of the above, the contention of petitioner that due to compounding in 2014 the Corporation does not have authority to issue the impugned notice has no substance and is rejected at the outset.

4.4 Coming to the other contention that Municipal Corporation has no authority to interfere in the usage of a building which has been constructed in terms of the building permission granted in 2014, it was argued that the subject matter of usage of a particular building in existence lies exclusively within the domain of the Town & Country Planning Department constituted under M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973. It was also urged by the petitioner that the jurisdiction of the Corporation u/Sec.293, 294 and 307(2) of 1956 Act is limited to the sphere of erection and re-erection of a building and not its usage. In this continuation, it was vehemently argued that since the impugned notice points out the deficiency pertaining to unlawful usage of basement, the Municipal Corporation has no authority in law to interfere in the usage of a particular building which has already been constructed after obtaining due building permission.

4.5 On a comparative analysis of two enactments i.e. M.P. Municipal Corporation Act, 1956 and M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 ("1973 Act" for brevity), it prima facie appears that the functions and powers of the authorities in the 1956 Act and 1973 Act are distinct. The 1973 Act deals primarily with the subject of framing of town planning schemes and supervising and controlling the development and use of land while the 1956 Act deals, inter alia, with development and use of buildings. Pertinently, the 1973 Act does not deal with

usage of buildings but only to usage of land. The subject matter of usage of buildings lies within the exclusive domain of the 1956 Act and the authorities constituted therein.

4.6 A clear indication of the subject of "use of building" falling within the jurisdiction of Municipal Corporation is in Sec.293-A of 1956 Act which confers power upon the municipal authorities to invoke M.P. Bhumi Vikas Rules (which inter alia relate to use of building) which are Rules framed u/S.24 of the 1973 Act.

4.7 Accordingly, second ground raised by the petitioner of Municipal Corporation having no authority to take penal action against wrong usage of an existing building under 1956 Act is also found to be untenable.

5. The third ground automatically falls to the ground in view of the above discussion.

6. From the above, this Court is left with no option but to hold that the respondent/Corporation, Gwalior, is vested with the authority in law under 1956 Act to take action against wrong usage of a building and therefore, the impugned notice issued on 30.06.2020 by the Commissioner, Municipal Corporation, Gwalior (M.P.) is legal and valid.

7. Before concluding, it may be pointed out that even if the petitioner is unable to satisfy the Municipal Corporation, Gwalior, in regard to the alleged wrong usage of the basement in question and the Commissioner passes an adverse order, the remedy of appeal u/Sec.293(3) is available to the petitioner.

8. This Court, however, has no manner of doubt that the Municipal Corporation, Gwalior, shall afford reasonable opportunity to the petitioner to defend itself while responding to the impugned show-cause notice.

9. With the abovesaid observation, this petition stands dismissed in limine at the admission stage.

No cost.