

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: Hon. Mr. S. c. Sharma, J

WRIT PETITION NO. 4377/09

Mohd. Safi

Vs.

Indore Municipal Corporation & Or4s.,

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[J U D G M E N T]

(21/9/2010)

The petitioner before this court has filed this present petition being aggrieved by the action of the respondent Municipal Corporation Indore in issuing notice dated 17/3/08 and notice dated 4/7/09 directing the petitioner to remove the illegal construction / encroachment. The contention of the petitioner is that he is owner of the plot in question and under the garb of widening of the road, the respondent corporation without taking recourse to S. 78 and 79 of the Municipal Corporation Act 1956 is widening the road. The petitioners grievance is that in case any part of his land is required for widening of the road, the respondent corporation is bound to pay compensation keeping in view the provisions of S. 78 and 79 of the Act of 1956. The

contention of the petitioner is that a writ petition was also earlier filed by his brother Mohd. Rasid in respect of another house situated on the same road and this court has passed an order in the matter directing the Commissioner to pass a speaking order and the commissioner without passing any order is going ahead in the matter. A reply has been filed by the respondent corporation and the stand of the corporation is that they are widening the road in question and therefore any structure / encroachment coming in way of widening of the road or coming into way in regular line of public street has to be dealt with keeping in view the provisions as contained under S. 305 of the Act of 1956 and they have also passed a speaking order on 16/7/08 as directed by this court. The contention of the respondent corporation is that they have considered the case of the petitioner also and a speaking order has been passed on 16/7/08. The respondent corporation has also stated that as per Master Plan of 75 and 2021, the width of road is 120 feet. However, they are widening the road only upto 80 feet and the area which is falling under the set back area is being utilised for the

purpose of widening of the road. Respondent corporation has prayed for dismissal of the writ petition.

Heard learned counsel for the parties at length and perused the record.

The petitioner before this court has enclosed a registered sale deed dated 5/5/1952 in support of his title over the land in question. However, has not enclosed any sanctioned plan along with the writ petition. The contention of the petitioner is that the structure existing over the land in question was constructed by the predecessor in title with due sanction from the corporation and therefore no part of the structure can be demolished as is being done by the respondent corporation by issuing notice dated 17/3/08 and 4/7/09. The respondent corporation has filed a reply and the reply reveals that they are widening the road and they are not widening the road upto 120 metres as per the sanctioned master plan and they are only utilising the area which is part of the set back area and the road is being widen only upto 80 feet and this court has also gone through the order dated 16/7/08 passed by the Commissioner and the order reflects

that the respondents are widening the road only upto 80 feet and are clearing the area which is coming in way of regular line of public street. The petitioner has not challenged the order dated 16/7/08 at any point of time. The fencing of the petitioner is ceratainly coming in way of widening of the road and road in front of the petitioner has become a bottleneck. Learned Sr. counsel appearing for the corporation has also argued before this court that they are not able to widen the road in front of the house of the petitioner because of the interim order passed by this court. It is pertinent to note that the corporation has also categorically stated before this court that they are not demolishing any part of the building belonging to the petitioner.

Heard learned counsel for the parties at length and perused the record.

Sec. 78 and 79 of the Act of 1956 reads as under :

78. Acquisition of immovable property or easement by agreement.- (1) Whenever it is provided by this Act that the Commissioner may acquire or whenever it is necessary or expedient for any purppose of this Act that the

Commissioner shall acquire , any immovable property, such property may be acquired by the Commissioner on behalf of the Corporation by agreement on such terms and at such rates or prices, or at rates or prices not exceeding such maxima , as shall be approved by the Mayor – in – Council either generally for any class of cases or specially in particular case.

(2) Whenever under any provision of this Act the Commissioner is authorised to agree to pay the whole or any portion of the expenses of acquiring any immovable property, he shall do so on such terms and at such rates or prices or at rates or prices not exceeding such maxima as shall have been approved by the Mayor in Council:

Provided that no agreement for the acquisition of any immovable property under sub-section (1) or (2) at a price exceeding one thousand rupees shall be valid until such agreement has been approved by the Corporation.

(3) The Commissioner may on behalf of the Corporation acquire by agreement any easement affecting any immovable property vested in the Corporation and the provisions of sub-sections (1) and (2) shall apply to such acquisition.

79. Procedure when immovable property or easement cannot be acquired by agreement. (1) Whenever the Commissioner is unable under section 67 to acquire by agreement any immovable property or any easement affecting any immovable property or whenever any immovable property or any easement affecting any immovable property is vested in the Corporation is

required for the purposes of this Act, the Government may in its discretion upon the application of the Commissioner made with the approval of the Mayor in council order proceedings to be taken for acquiring the same on behalf of the Corporation as if such property or easement were land needed for a public purpose within the meaning of the Land Acquisition Act, 1894.

(2) The amount of the compensation awarded and all other charges incurred in the acquisition of any such property or easement shall subject to all other provisions of this Act be forthwith paid by the Commissioner and thereupon the said property or easement shall vest in the Corporation.

(3) When any land is required for a new street or for the widening or improving of an existing street the Commissioner may proceed to acquire in addition to the land to be occupied by the street the land necessary for the sites of the building to be erected on both sides of the streets and such land shall be deemed to be required for the purposes of this Act.

The aforesaid statutory provisions provides for acquisition of immovable property or easement by agreement and also for a procedure when immovable property cannot be acquired by agreement. The aforesaid provisions provides for grant of compensation in case a property is acquired by the corporation. Section 305 of the Municipal Corporation Act, 1956 reads as

under :

305. Power to regulate line of buildings. (1) If any part of a building projects beyond the regular line of a public street either as existing or as determined for the future or beyond the front of immediately adjoining buildings the corporation may -

(a) if the projecting part is a verandah, step or some other structure external to the main building, then at any time or

(b) if the projecting part is not such external structure as aforesaid then whenever the greater portion of such building or whenever any material portion of such projecting part has been taken down or burned down or has fallen down

require by notice either that the part or some portion of the part projecting beyond the regular line or beyond the front of the immediate adjoining building shall be removed or that such building when being rebuilt shall be set back to or towards the said line or front and the portion of land added to the street by such setting back or removal shall henceforth be deemed to be part of the public street and shall vest in the corporation;

Provided that the corporation shall make reasonable compensation to the owner for any damage or loss he may sustain in consequence of his building or any part thereof of being set back.

(2) The Corporation may on such terms as it thinks fit allow any building to be set forward for the improvement of the line of the street.

The aforesaid statutory provisions provides for regulating the line of buildings and also provides for grant of reasonable compensation to the owner of the building for any damage or loss which he may sustain in case the building or part of the building is removed, or any part of the building is being removed which has been constructed over the set back area. The corporation has categorically stated in the return that the corporation is not at all going to demolish the building of the petitioner and the land of set back area and the marginal open space is being utilised for widening of the road as the land automatically vests in the corporation in the light of the provision of Sec. 305 of the Act. Thus the present case is not a case of demolition of the building as stated in the return and the area which is shown as set back area and the area which is shown as Marginal Open Space is being utilised for widening up of the road. This court in the case of Suresh Singh Kushwaha Vs. Municipal Corporation, Gwalior **2006 (3) MPLJ 412**, in paragraph 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 has held as under :

7. To appreciate the arguments it is necessary to first refer to sections 304, 305 and 306 of the M. P. Municipal Corporation Act, 1956 (hereinafter

referred to as the “Act”). Section 304 of the Act relates to erection and use of temporary building to be approved by Commissioner. This section lays down that no building shall be erected for a temporary purpose without the sanction of the Commissioner. Sub-section (2) of this section provides that if any building accordance with any bye-laws made under this Act, or is erected without the sanction of the Commissioner, the building may be demolished by the Commissioner at the expsness of theowner thereof. Thus this section has no application in the present case as it is not reflected from the Notice Annexure P/1 that the buildings of the petitioners are erected for temporary purpose or used for the purpose for which sanction was not granted. On the other hand, from the notice and the sale deeds on record it appears that permanent structure is situated on the spot. Petitioners have also filed receipts of property tax to show that the building is situated for the last so many years. Annexure P/3 in WP No. 2721/06 is a copy of the map prepared for the purpose of road widening scheme. This also shows that the structures raised by the petitioners are not temporary structures but they are their permanent buildings situated at Hanuman chouraha.

8. Section 305 of the Act provides for regulating line of buildings the said section reads as under :

*305. Power to regulate line of buildings.
(1) If any part of a building projects beyond the regular line of a public street either as existing or as determined for the future or beyond the front of immediately*

adjoining buildings the corporation may

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(a) if the projecting part is a verandah, step or some other structure external to the main building, then at any time or

(b) if the projecting part is not such external structure as aforesaid then whenever the greater portion of such building or whenever any material portion of such projecting part has been taken down or burned down or has fallen down

require by notice either that the part or some portion of the part projecting beyond the regular line or beyond the front of the immediate adjoining building shall be removed or that such building when being rebuilt shall be set back to or towards the said line or front and the portion of land added to the street by such setting back or removal shall henceforth be deemed to be part of the public street and shall vest in the corporation;

Provided that the corporation shall make reasonable compensation to the owner for any damage or loss he may sustain in consequence of his building or any part thereof of being set back.

(2) The Corporation may on such terms as it thinks fit allow any building to be set forward for the improvement of the line of the street.

As per the said section, if any part of the building projects beyond the regular line of a public street, either as existing or as determined for the future then the said portion can be demolished after service of notice. This section provides that either part of the building or

some portion of the part projecting beyond the regular line or beyond the front of the immediate adjoining building shall be set back to or towards the said line or front; and the portion of the land added to the street by such setting back or removal shall henceforth be deemed to be part of the public street and shall vest in the Corporation provided that the Corporation shall make reasonable compensation to the owner for any damage or loss he may sustain in consequence of his building or any part thereof being set back.

9. The aforesaid provision was constructed by the Apex Court in the case of Indore Municipality Vs. K. N. Palsikar , AIR 1969 SC 579 wherein it has been laid down that once the conditions required by the said section are satisfied, vesting is automatic. From perusal of the judgment of the Apex Court in the aforesaid case, it appears that in that case 1455 sq.ft. Of land was required for road widening scheme and the Municipality has proposed to allow him compensation @ Rs.2.50 per sq. ft. This was challenged by the landowner. The Apex Court considered the provisions of section 305 of the Act in para 14 of its judgment and held that section 305 itself provides for automatic vesting of the land.

10. This court has considered the said provisions in the case of Tarabai Vs. Indore Municipal Corporation, Indore, 1977 (I) MPWN 321 AND held as under :
“Section 305 of the Madhya Pradesh Municipal Corporation Act, 1956 makes clear that the setting back by legal

fiction shall have the effect of vesting that land in the Corporation. The language does not at all suggest or make out that the vesting would in any manner be dependent on the corporation's making reasonable compensation to the owner for any damage or loss he may sustain in consequence of the set back. On behalf of the appellant, section 387 of the Corporation Act was also relied on, in support of his contention. In the opinion of this court, this section is hardly of any assistance to support that. All that section 387 of the Corporation Act provides is about arbitration in cases of compensation etc. thus, even assuming section 387 of the Corporation Act would be applicable in the instant case then also this court is clearly of the opinion that as far as the set back land becoming part of the public street and vesting of the land in the Corporation are concerned they would not be at all dependant on the payment of compensation.

11. From perusal of aforesaid case, it appears that no proceedings either under section 4 or 6 of the Land Acquisition Act were taken for acquisition of the land and the court while construing the provisions of section 305 of the Act has held that once line is determined then there is automatic vesting of the land and compensation for the same can be determined under section 306 of the Act.

12. In reply to this argument, counsel for the petitioners relied on the provisions of sections 78, 79 and 79-A of the Act. Section 78 provides for acquisition of

immovable property by agreement while section 79 provides the procedure when the immovable property can be acquired when agreement is not possible. Section 79 reads as under :

79. Procedure when immovable property or easement cannot be acquired by agreement. (1) Whenever the Commissioner is unable under section 67 to acquire by agreement any immovable property or any easement affecting any immovable property or whenever any immovable property or any easement affecting any immovable property vested in the Corporation is required for the purposes of this Act, the Government may in its discretion upon the application of the Commissioner made with the approval of the Mayor in council order proceedings to be taken for acquiring the same on behalf of the Corporation as if such property or easement were land needed for a public purpose within the meaning of the Land Acquisition Act, 1894.

(2) The amount of the compensation awarded and all other charges incurred in the acquisition of any such property or easement shall subject to all other provisions of this Act be forthwith paid by the Commissioner and thereupon the said property or easement shall vest in the Corporation.

(3) When any land is required for a new street or for the widening or improving of an existing street the Commissioner may proceed to acquire in addition to the land to be occupied by the street the land necessary for the sites of the building to be erected on both sides of the streets and such land shall be deemed to be required for the purposes

of this Act.

13. Counsel for the petitioners also relied upon the word “vest” used in the Land Acquisition Act and submitted that until and unless the land is acquired as per the provision of the Land Acquisition Act, 1894, the land does not vest in the Municipal Corporation.

14. This argument does not have any force in the light of the judgment in the case of K N Palsikar (s7pra) in which the Apex Court held that when the conditions required by section 305 of the Act are complied with, then the property automatically vests in the Corporation. For satisfying the condition of section 305 of the Act, it is necessary that a building or part of the building is projected beyond the regular line of public street either as existing or as determined for the future. In the present case, the Municipal Corporation has prepared a plan determining the regular line of public street as is shown in the map Annexure P/3. Once this line is determined, any portion of the building which is projected beyond this line automatically vests in the Corporation in view of section 305 of the Act and, therefore, the Corporation has right to demolish the portion of the said building and no proceedings under the Land Acquisition Act are required. In the present case, compensation is offered by the Municipal Corporation by notice Annexure P/1 itself. If the petitioners find that the said compensation is not sufficient or inadequate, they have separate remedy for enhancement or

compensation under section 387 of the Act.

15. Sub-section (3) of the section 79 provides that when any land is required for a new street, or for the widening or improving of an existing street, the Commissioner may proceed to acquire in addition to the land to be occupied by the street and such land shall be deemed to be required for the purposes of this Act.

16. in view of the above, once the Commissioner has determined the regular line of a public street, then the buildings projecting beyond the regular line vests in the Corporation.

17 . Section 79-A of the Act provides for decision of the Collector after enquiry in case right to property is disputed on behalf of the Corporation or by any person against the Corporation. This provision has no application in the present case.

In the present case the regular line of public street has been determined by the corporation and it is not the building which is being demolished by the corporation. The corporation is constructing a road over the regular line of public street by using the set back area and, therefore, the question of applicability of Ss. 78 and 79 in the peculiar facts and circumstances of the case does not arise. The petitioner at the

best shall be entitled for compensation in accordance with the provisions of Sec. 305 of the Act. The respondent Municipal Corporation has also relied upon the judgment delivered in the case of Sanjay Pahwa Vs. Commissioner, Indore Municipal Corporation, Indore (WP NO. 6084/07 decided on 30th October, 2007). This court in the aforesaid case in the matter of widening of A. B. Road in paragraph 2 has held as under :

2. *On the other hand learned counsel for the petitioner placed reliance on two decisions of this court rendered in W.P. 3151/07 and W.P. 3152/07 decided on 27.6.07. Perusal of the orders passed in said W.Ps. Reveals that notices were issued to the petitioner therein for removal of the front portion of the constructed shops for the purposes of widening of road, which is not case here. Similarly, reliance placed on the interim order dated 4.6.07 passed in W.P.2951/07 whereby respondents were directed to maintain the status quo is of no avail in absence of any final order. Learned counsel also invited attention of the Court to the order dated 20.9.04 passed in W.P.1519/02. In the opinion of this court said decision is also of no help to the petitioner because in that case matter pertained to acquisition of immovable property under Section 79 of the Act which is not the case here. Thus, it is clear from the foregoing tha there is no merit and substance in the writ petition. However, notwithstanding aforesaid discussion, if the petitioner still has any grievance then he is free to make*

a representation to the Commissioner, Municipal Corporation, Indore within three days from today, and it shall be decided in accordance with law by the Commissioner, Municipal Corporation, Indore by passing a reasoned order. If the petitioner is deprived of any portion of this property then the question of payment of reasonable compensation would arise and that aspect of the matter shall also be looked into by the Commissioner Municipal Corporation, Indore.

In the aforesaid case also the learned Single Judge in similar circumstances has held that the petitioner therein is entitled for compensation if any under the provisions of Sec. 305 of the Act of 1956. This Court in the case of Administration Municipal Corporation, Indore and others Vs. Suresh Chandra (S.A.No. 254/1990 decided on 4/4/06) has held that Municipal Corporation has a right to remove the construction from the area which is marked as the set back area without paying compensation.

In the present case the Municipal Corporation while passing the order dt. 16/7/08 has observed that the corporation is utilising the set back area for widening of the road and therefore, keeping in view the judgment delivered in the aforesaid cases the action of the respondent

corporation u/S. 305 cannot be faulted in the manner and method as has been argued by the petitioner. The apex court in the case of Shanti Sports Club and another Vs. Union of India and others (2009) 15 SCC 705 in paragraph 74 has held as under :

74. In the last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorised constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls, etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorised constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan, etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and / or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realise that

the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan, etc., such constructions put unbearable burden on the public facilities / amenities like water, electricity, sewerage, etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the Government has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorised constructions. This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc.

The apex court in the aforesaid case has observed that
unplanned construction contrary to sanction plan results in

unbearable burden on the public facilities / amenities like water, electricity, sewerage, etc. apart from creating chaos on the roads. It has also been observed that the pollution created by such unauthorised construction results in traffic congestion affecting the health of the road users and the pedestrians and people belonging to weaker sections of the society who cannot afford the luxury of air-conditioned cars are the worst victims of such pollution..

Keeping in view the totality of the circumstances of the case as the respondent corporation is simply widening the road which is falling within the regular line of public street as determined by the corporation and as is utilising the area falling under the set back area, no question of interference with the order dated 16/7/08 is made out in the peculiar facts and circumstances of the case and therefore, the writ petition fails and is hereby dismissed.

(S. C. Sharma)
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