

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

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

WRIT PETITION NO. 9257 / 09

M/s. Mehta Motors
Vs.

The State of M.P. & 4 ors.,

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[J U D G M E N T]
(5/10/2010)

The petitioner before this Court has filed this present petition being aggrieved by the action of respondent Municipal Corporation, Indore in demolishing the boundary wall of the petitioner. The contention of the petitioner is that the boundary wall of the petitioner is being demolished under the garb to widen the BRTS Road. A reply has been filed in the matter on behalf of respondent corporation and the contention of the respondent is that they are widening the road by taking into account regular line of public street and the area which is falling under the set back area is only being used for the purpose of widening of the road. Learned counsel for the respondent corporation has also brought to the notice of this court that the controversy involved in the present case stands concluded by the judgment delivered in the case of Ravikumar s/o Shantilal Jain

and one another Vs. Indore Municipal Corporation, Indore and 2
ors., passed in W.A.No. 388/2010 wherein in paragraph 9, 10,
11, 12 and 13 it is held as under :

9. It is not in dispute that the appellants were served with the notice dated 04.03.2008 by which it was informed by the Municipal Corporation to the appellants that the road in question is to be widened to the extent of 80 feet. In the circumstances, the learned Single Judge has committed no error in holding that the regular line of public street has been determined by the Corporation since undoubtedly the Corporation is constructing a road over the regular line of public street, in the circumstances the learned Single Judge has rightly held that the question of applicability of Sections 78 and 79 does not arise.

10. In the case of **Tara Bai Vs. Indore, Municipal Corporation, Indore 1977 (1) MPWN 321** it has been held by this Court that :-

“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.”

11. In the case of **Indore Municipality Vs. K.N.Palsikar AIR 1969 SC 579** the Supreme Court while construing Section 305 of the Act has held that once the condition required by the said

Section are satisfied vesting is automatic. In the case of **Suresh Singh Kushwaha Vs. Municipal Corporation Gwalior and another 2006 (3) MPLJ 412** it has been held by this Court that once the Municipal Corporation has prepared a plan determining the regular line of public street 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 said building and no proceedings under the Land Acquisition Act are required.

12. We find that in the present case the Municipal Corporation has already offered F.A.R., if the petitioners are not satisfied with the said offer, it is free for them to seek remedy for compensation has provided under Section 387 of the Act. The vesting being automatic the further action on the basis of vesting would not be dependent upon payment of reasonable compensation to the owner on account of set back.

13. We find no ground to interfere into the impugned order passed by the learned Single Judge. The learned Single Judge has also taken care of the compensation part by observing that the respondents Corporation while constructing the road also pass necessary orders in the matter of grant of compensation as provided under Section 305 of the Act and shall also be free to pass any other appropriate orders keeping in view the provisions of the Act. We find no infirmity or illegality in the view taken by the learned Single Judge.

In view of the aforesaid judgment delivered by the Division Bench of this Court in the case of Ravikumar s/o Shantilal Jain and one another Vs. Indore Municipal Corporation, Indore and 2 ors., passed in W.A.No. 388/2010, no case for interference is made out in the matter. The Division Bench of this court has also held that the Municipal Corporation shall be offering additional FAR and therefore in the present case also if an application is submitted by the petitioner for grant of additional FAR, the same shall be dealt with in accordance with law. Keeping in view the judgment delivered by the Division Bench of this Court, no case for interference is made out in the matter. The writ petition is accordingly dismissed. No order as to costs.

(S. C. Sharma)
J U D G E