HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: **HON'BLE MR. S. C. SHARMA, J**

WRIT PETITION NO. 3044 / 2011

ANJUSHRI CONSTRUCTIONS PVT. LTD.,
& ANOTHER

Vs.

STATE OF MP &
TWO OTHERS

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O R D E R

(30/9/2011)

The petitioner before this Court has filed this present writ petition being aggrieved by the order dt. 28/12/10 passed by the State of MP in exercise of suo motu revisional jurisdiction under Section 32 read with Section 73 of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 and by the aforesaid order, respondent No.2 Ujjain Municipal Corporation has been directed to reconsider the sanctioned lay out plan of the petitioners. Grievance of the petitioners is that the development permission was granted to the petitioners on 30/7/09 keeping in view the provisions of M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 read with M.P. Bhumi Vikas Rules, 1984 and the same is valid upto

28/7/12. The contention of the petitioner is that by virtue of the order dt. 30/7/09 they were required to reserve 15% of the plot for weaker sections of the society or to pay shelter fee. The petitioners' grievance is that by virtue of an amendment dt. 19/4/10 in the Municipalities Act as well as in the Municipal Corporation Act, the respondents are not accepting the shelter fee. Learned counsel for the petitioner, at the outset, has drawn attention of this Court towards an order passed in the case of Rahul Vs. State of MP (WP No. 1191 / 2011) and her contention is that the controversy involved in the present case is squarely covered by the judgment delivered in the aforesaid case.

Learned Government Advocate arguing on behalf of respondent State has fairly stated before this Court that they have already withdrawn the impugned order dt. 28/10/10 by passing another order which is enclosed as (Annexure R/1) dt. 18/7/11 and his contention is that the petitioners are required to pay shelter fee on account of an amendment which took place on 19/4/10.

Heard learned counsel for the parties at length and

perused the record.

In the present case, the controversy in question has already been resolved vide order passed in the case of Rahul Vs. State of MP (WP No. 191 / 2011). Para 10 to 16 of the aforesaid case reads as under :

> 10 The State Government has framed Rules in exercise of powers conferred by Section 292-A, 292-B, 292-C and 292-E read with Section 433 of the Madhya Pradesh Municipal Corporation Act 1956 (No.23 of 1956) and Section 3390A, 339-B, 339-C and 339-E read with Section 355 and 356 of the Madhya Pradesh Municipalities Act, 1961 (No.37 of 1961), the State Government hereby make follwing amendments in the Madhya Pradesh Nagar Palika (Registration of Colonizer, Terms and Conditions) Rules, 1988. Rules 10 of the aforesaid Rules reads as under :-
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> **"10. In Residential colonies, availability of Plots/Houses for the weaker section of the society. - (1) In every residential colony in the urban area, out of the area of the developed plots by the Colonizer, fully developed plots equal to fifteen percent of the size of 32 to 40 square meter area, shall have to be reserved for persons belonging to economically weaker sections."**
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> 11. The aforesaid statutory provisions of law makes it very clear that an option was granted to a colonizer either to pay shelter fee or to reserve the plots for weaker section of the society and the petitioners have opted for payment of shelter fee. The petitioners lay out was sanctioned by the competent authority under the Rules on 16.4.10 meaning thereby a right accrued in favour of the petitioners on 16.4.10 the State

Government has later on amended Section 339 (b) of the Municipalities Act and Section 1(a) has been inserted after subsection 1 and the same reads as under :-

"1(a) In addition to reserving the developed plots or residential houses under sub-section (1), the colonizer shall also reserve at least ten percent fully developed plots of the prescribed size or in alternate offer constructed residential houses in his residential colony for the persons belonging to lower income group."

12. The aforesaid amendment came into force w.e.f. 19.4.10 and by the aforesaid amendment colonizers are now required to reserve at least 10% fully developed plots of the prescribed size or in the alternative offer constructed residential houses in their residential colony for the persons belonging to lower income group. It is not in dispute that the petitioners lay out was sanctioned on 16.4.10 and a right accrued in favour of the petitioners on 16.4.10 as the same was sanctioned by the competent authority and, therefore, by a subsequent amendment a rightly already accrued in favour of the petitioners cannot be wiped out by virtue of a subsequent amendment, which took place on **19h April, 2010** especially in view of the fact that the amendment is not with retrospective effect. Hon'ble Justice G.P. Singh in his principle of statutory interpretation under Chapter-VI "Operation of Statute" while considering with the statutes dealing with substantive rights has observed as under :-

"The rule against retrospective construction is not applicable to a statute merely "because a part of the requisites for its action is drawn from a time antecedent to its passing".**R. v. St. Mary White Chapels(Inhabitants), (1848) 12 QB 120, p. 127)** If that were not so, every statute will be presumed to apply only to persons born and things come into existence after its

operation and the rule may well result in virtual nullification of most of the statutes. An amending Act, is therefore, not retrospective merely because it applies also to those to whom, pre-amended Act was applicable if the amended Act has operation from the date of its amendment and not from an anterior date.**(Bishun Narain Misra v. State of U.P.., AIR 1965 SC 1567).** But this does not mean that a statute which takes away or impairs any vested right acquired under existing laws or which creates a new obligation or imposes a new burden in respect of past transactions will not be treated as retrospective.**(K.S. Paripoornan v. State of Kerela, Jt 1994 (6) SC 182, pp. 213, 214: AIR 1995 SC 1012, pp. 1034, 1035).** Thus to apply an amending Act, which creates a new obligation to pay additional compensation,**(Ibid. See further, Land Acquisition Officer-cum-DSWO A.P. v. B.V. Reddy, AIR 2002 SC 1045**) or which reduces the rate of compensation, **(Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar, JT 1999 (8) SC 45, p.56 :AIR 1999 SC 3609, p. 3614 : (1999) 8 SCC 16),** to pending proceedings for determination of compensation for acquisitions already made, will be to construe it retrospective which cannot be done unless such a construction follows from express words or necessary implication. Similarly, a new law enhancing compensation payable in respect of an accident arising out of use of motor vehicle will not be applicable to accidents taking place before its enforcement and pending proceedings for assessment of compensation will not be affected by such a law unless by express words or necessary implication the new law is retrospective.**(Padma Srinivasan v. Premier Insurance Co. Ltd., AIR 1982 SC 836).** It makes no difference in application of these principles that the amendment is by substitution or otherwise.

(Ibid. For effect of 'substitution', see text and notes 87 to 89, pp. 676-677, post.)
The cases where the principle, that a statute is not retrospective simply because it takes into account past events, has been applied are discussed hereinafter under titles 2(g) and 2(h).

Another principle flowing from presumption against retrospectivity is that "one does not expect rights conferred by the statute to be destroyed by events which took place before it was passed.**(Birmingham City Council v. Walker, (2007) 3 All ER 445, p. 449(para 11) (HL)."**

In certain cases, a distinction is drawn between an existing right and a vested right and it is said that the rule against retrospective construction is applied only to save vested rights and not existing rights**(West v. Gwynne, (1911) 2 Ch 1, p. 11, 12; Trimbak Damodhar Raipurkar v. Assaram Hiraman Patil, AIR 1996 SC 1758, p. 1761).** This distinction, however, has not been maintained in other cases**(Duke of Devonshire v. Barrow Haematite Steel Co. Ltd., (1877) 2 QBD 286, p. 289; Indramani (Dr.) v. W.R. Natu, AIR 1963 SC 274, p. 286).** The word 'retrospective' has thus been used in different senses causing a certain amount of confusion**(Gardner & Co.v. Cone, (1928) All ER Rep 458, p.461)**. The real issue in each case is as to the scope of particular enactment having regard to its language and the object discernible from the statute read as a whole."

13. In the present case a substantive right was created in favour of the petitioners on 16.4.10 and the petitioners have submitted an application alongwith demand draft before the authorities in respect of shelter fee. The same has been turned down by passing the impugned order on account of an amendment which took place on 19th April 2010. This Court is of the considered

opinion that a right accrued in favour of the petitioners cannot be taken away by a subsequent amendment dated 19th April, 2010 especially when no time limit was framed by the Director, Town and Country Planning Department to deposit the shelter fee and the permission was granted by Town and Country Planning Department for a period of 3 years.

14. In W.P. No.14153/10 the petitioner's lay out was sanctioned on 15.1.10 keeping in view the provisions as contained under Section 2(b) of Madhya Pradesh Municipal Corporation Act, 1956 and the State Government has amended Madhya Pradesh Municipalities Act 1956 also by issuing a consolidated notification dated 19th April, 2010 meaning thereby in the aforesaid case amendment was issued subsequently after a right accrued in favour of the petitioner and, therefore, keeping in view the discussion made in the earlier paragraphs the present writ petition is also allowed. The respondents are directed to accept the shelter fee offered by the petitioner by virtue order passed by Town and Country Planning Department.

15. In W.P. Nos.3153, 2980 and 3130 of 2011 the petitioners' lay out was sanctioned keeping in view the provisions as contained under Section 2(b) of Madhya Pradesh Municipal Corporation Act, 1956 and the State Government has amended Madhya Pradesh Municipalities Act 1956 also by issuing a consolidated notification dated 19th April, 2010 meaning thereby in the aforesaid cases notification in respect of amendment was issued subsequently after a right accrued in favour of the petitioners and, therefore, in view the discussion made in the earlier paragraphs the aforesaid writ petitions are also allowed. The respondents are directed to accept the shelter fee offered by the petitioners by virtue order passed by Town and Country Planning Department.

> 16. Resultantly, this Court is of the considered opinion that the impugned order passed by the respondents is bad in law and is liable to be quashed and it is quashed. The respondents are directed to accept the shelter fee offered by the petitioners in view of the order dated 16.4.10. The writ petition stands allowed.

Keeping in view the aforesaid judgment delivered by this Court as the petitioners were granted permission prior to 19/4/10 the question of forcing them to reserve 15% of the plots for weaker sections of the society, does not arise and the petitioners are at liberty to deposit the shelter fee, if they have not deposited the same. The exercise of depositing the shelter fee be concluded within 30 days from the date of receipt of certified copy of this order. With the aforesaid, this petition stands allowed. No order as to costs.

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

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