

W.P.No.2273/2016

31/03/2016

Parties through their Counsel.

The petitioner before this Court is aggrieved by the order dated 14/03/2016 passed by the Indore Municipal Corporation. The facts of the case reveal that the Indore Municipal Corporation in order to widen the road has issued notice to the petitioner and thereafter, a detailed order has been passed for the purpose of widening of the road.

2. The respondents have filed a reply also and they have stated that the petitioner has raised construction without any permission granted by the Corporation and such an illegal construction has to be removed and the road has to be widened, keeping in view the Sections 307 and 305 of the Madhya Pradesh Municipal Corporation Act 1956.

3. Learned Counsel for the respondent has placed heavy reliance upon the judgment delivered by this Court in the case of **Ravi Ramchandra Waghmare vs. Indore Municipal Corporation** and they have been decided on 28/09/2010 in W.P.No.6324/2009 and the same reads as under:-

In the present case a project known as Bus Rapid Transit Scheme (BRTS) has been introduced by Indore Municipal Corporation in order to widen the road ie., A.B. Road. The total cost of the project is 800 crores and 90% of the work is already over. The road in front of the petitioner's house has become a bottleneck and the Corporation has not been able to construct the road in front of the house of the petitioner though a notice was issued way back in the year 2007. It is pertinent to note that large number of writ petitions were filed before this court and this court has taken a uniform view in all other cases that the corporation can very well utilise set back area keeping in view the provisions of Sec. 305 of the Municipal Corporation Act, 1956. In the present case the petitioner has not been filed any sanctioned map before this court in order to establish that the corporation is encroaching upon the land other than the set back area. No sanctioned

map along with the writ petition nor any sanctioned map along with the rejoinder has been filed. This court has carefully gone through the reply filed by the corporation and the reply reveals that the corporation is only widening the road by taking into account the regular line of public street and is using the set back area and therefore as the corporation is utilising the set back area, the question of granting a compensation and the question of applicability of Sec. 78 and 79 does not arise in the peculiar facts and circumstances of the case.

Sec. 78 and 79 of the Municipal Corporation Act 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 purpose 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 subsection (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 subsections (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 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 -

(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 that 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 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 done 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 notice dated 26/5/07 is made out in the peculiar facts and circumstances of the case and therefore, the writ petition fails and is hereby dismissed.

4. In view of the aforesaid judgment, which has been confirmed by the Division Bench of this Court, the question of interference by this Court does not arise. The Corporation shall be free to widen the road and shall also keep in mind the judgment delivered in the aforesaid case.

5. Learned Counsel for the respondent Shri Rishi Tiwari has fairly stated before this Court that in case while widening the road, a situation arises that the owner of the land is not able to use the FAR granted by the Corporation, he will be compensated suitably by providing an alternative site / compensation in accordance with law and therefore, in all such cases, where the entire land of the land owner is being utilized for the construction of the road / widening of the road or way and he is not able to utilize the additional FAR, the Corporation shall do the needful as aforesaid in accordance with law.

The petitioner shall also be free to claim compensation in accordance with law.

Accordingly, the writ petition stands disposed of.

Certified copy as per rules.

(S.C. Sharma)
Judge