

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE
(SINGLE BENCH : HON. Mr. JUSTICE VIVEK RUSIA)

Second Appeal No.55 of 2017

Shantilal Namdev ... Appellant
Vs. Defendant

**Ujjain Nagar Palik Nigam, Ujjain
& another.** ... Respondent.
Plaintiff

JUDGMENT
(Dictated in open Court on 31st October, 2018)

The present appeal is filed by the defendant against the judgment and decree dated 7.3.2015 passed by 5th Civil Judge, Class-I, Ujjain in Civil Suit No.59A/2013 affirmed by District Judge, Ujjain in Civil Appeal No.13A/2015 vide judgment dated 16.9.2016.

2. Facts of the case, in short, are as under :

Respondents (hereinafter referred as “the plaintiffs”) filed the suit for eviction of appellant (hereinafter referred as “the defendant”) from Shop No.16 and for recovery of arrears of rent. The present defendant is in possession of the said shop situated at Town Hall, Gopal Mandir Road, Ujjain as tenant. The tenancy is for commercial purposes. The plaintiff No.1 is Ujjain Municipal Corporation established under the provisions of M.P. Municipal Corporation Act, 1956. The Commissioner is competent authority to file the suit on behalf of Ujjain Municipal Corporation.

The defendant was given the shop in question on lease initially for a period of 5 years from 11.7.1995 to 10.7.2000. Thereafter, it was further extended for a period of 5 years with increase of rent by 25%. The plaintiffs sent a proposal to the State Government for construction of new Shopping Complex comprising of more than 300 shops in Town Hall area, Gopal Mandir Road, Ujjain in place of existing shops. Vide Ex. D/1, the State Government had sanctioned the proposal of the Ujjain Municipal Corporation with certain terms and conditions.

In order to construct the new Shopping Complex, notices were issued to the defendant and other 33 tenants for eviction. By notice dated 1.4.2005, the tenancy of the defendant has been terminated and direction was issued to handover the vacation to the Municipal Corporation. Out of 33 tenants, 12 tenants had agreed to handover the vacant possession of the shops to the plaintiffs with the condition that they shall be allotted the shops in the new Shopping Complex as per direction given by the State Government vide Ex. D/1. Present appellant/defendant along with 18 others declined to vacate the shop and objected to the construction of new Shopping Complex. They filed the civil suit for permanent injunction alleging that the Municipal Corporation, Ujjain is trying to forcibly dispossess them from the shops. In their suit, a relief of temporary injunction was granted to the effect that they shall not be dispossessed without following due process of law.

3. Thereafter, the plaintiff Municipal Corporation filed the suit for eviction and recovery of arrears of rent. The appellant being the defendant contested the suit by filing written statement.

Learned trial Court framed as many as 12 issues for adjudication. Vide judgment and decree dated 7.3.2015, learned trial Court decreed the suit in favour of the plaintiffs directing the defendant to handover the vacant possession of the shop in question forthwith and pay the rent @ Rs.250/- per month from the period of three years prior to filing of the suit till eviction.

4. Being aggrieved by the aforesaid judgment and decree, defendant filed first appeal before the District Judge, Ujjain. Vide judgment and decree dated 16.9.2016, learned District Judge, Ujjain has dismissed the appeal, hence this second appeal before this Court.

5. The appellant has filed the present appeal mainly on the ground that while passing the judgment and decree, learned Courts below has ignored the directions issued by the State Government vide Ex. D/1.

6. I have heard Shri V.K. Jain, learned Senior Advocate with Shri Rajendra Samdani, Advocate appearing for the appellants and Shri B.L. Jain, Advocate appearing for the respondents, at length and perused the record.

7. At the very outset, Shri B.L. Jain, learned counsel appearing for the plaintiffs, Municipal Corporation, submitted that the Municipal Corporation is bound by the directions issued by the State Government vide Ex. D/1, in which, the existing tenants have been given the preferential right of allotment. The Municipal Corporation has also been authorised to assess the amount payable by the shopkeepers like defendant. Relevant

Clause of Ex. D/1 is reproduced below :

“ उपरोक्त सभी बिन्दुओं के आधार पर यह पाया जाता है कि:— नगर निगम उज्जैन द्वारा निर्धारित नियमों और प्रक्रियाओं का समुचित रूप से पालन नहीं किया गया है। अतः इस परियोजना हेतु प्राप्त निविदा के आधार पर स्वीकृति दिया जाना संभव नहीं है।

नगरनिगम उज्जैन नये सिरे से प्रकरण में निविदायें आदि बुलाकर 15 दिन के अंदर कार्यवाही करे।

नगर निगम संबंधित भूमि के प्रयोजन हेतु प्रचलित एफ.ए.आर. 2.5 रखे, तथा नई परियोजना में वर्तमान दुकानदारों को प्राथमिकता के आधार पर दुकानें उपलब्ध कराने का प्रावधान भी रखे तथा दुकानदारों से ली जाने वाली राशि का निर्धारण बाबत परिषद समुचित निर्णय ले।

निर्णय की प्रति आर्थिक अपराध शाखा को भी प्रेषित की जाये, ताकि प्रकरण का अन्तिम निराकरण हो सके।

निविदाकार द्वारा जमा राशि को नियमानुसार वापस किया जाये।”

8. From the aforesaid Ex. D/1 it is clear that if the defendant handover the peaceful vacant possession of the shop in question then plaintiffs shall allot the shops in the new Shopping Complex as per the conditions in the aforesaid Ex. D/1.

9. At this stage, Shri V.K. Jain, learned senior counsel appearing for the appellant, submits that the earlier tender issued by the Municipal Corporation has been cancelled and now, the Municipal Corporation is required to float the new tender and after finalisation of the tender process and upon issuance of notice by the plaintiffs, all the shop-owners shall vacate the shop within 30 days thereafter.

10. For the aforesaid proposal, Shri B.L. Jain, learned counsel appearing for the plaintiffs has no objection. Even otherwise, the Municipal Corporation has agreed to allot the shops to those shopkeepers/tenants who had already agreed to

handover the vacant possession of their shops. It has also come on record that the Municipal Corporation had called the defendant and other shopkeepers for negotiations, but they did not appear but objected for construction of new Shopping Complex. During pendency of the suit, the defendant agreed for the settlement and filed application u/s. 89 of C.P.C., but the trial Court did not consider the same.

11. In view of the above, the present appeal is admitted and decided finally on the following substantial question of law :

“Whether the judgment, decree and finding are perverse and contrary to law and passed ignoring the effect of Ex. D/1 which is direction given by State Government to respondent, Municipal Corporation ?”

12. In view of the above discussion, the aforesaid substantial question of law is answered and appeal is decided finally as under :

The impugned judgment and decree is modified to the extent that the defendant shall handover the vacant possession of the shop in question to the Ujjain Municipal Corporation peacefully within a period of 30 days from the date of issuance of notice for eviction after finalisation of tender process for construction of Shopping Complex. Till then, the defendant shall continue into the possession of the shop and regularly pay the rent as well as arrears of rent, if already not paid, to the Municipal Corporation. The defendant is also directed to give an affidavit/undertaking to the effect that he shall handover the peaceful vacant possession of the shop and no one shall protest on his behalf. Thereafter, the respondent – Municipal Corporation

shall allot the shop in question to the defendant in terms of Ex. D/1.

13. Consequently, the judgment and decree dated 7.3.2015 passed by 5th Civil Judge, Class-I, Ujjain in Civil Suit No.59A/2013 is hereby modified to the extent that the defendant shall handover the vacant possession of the shop in question to the Ujjain Municipal Corporation peacefully within a period of 30 days from the date of issuance of notice for eviction after finalisation of tender process for construction of Shopping Complex. Till then, the defendant shall continue into the possession of the shop and shall regularly pay the rent as well as arrears of rent, if already not paid, to the Municipal Corporation. The defendant is also directed to give an affidavit/undertaking to the effect that he shall handover the peaceful vacant possession of the shop and no one shall protest on his behalf. After construction of new Shopping Complex, the respondent – Municipal Corporation shall allot one shop therein to the defendant in terms of Ex. D/1.

14. With the aforesaid, this appeal stand allowed in part to the extent indicated above. A decree be drawn up accordingly.

No order as to costs.

**(VIVEK RUSIA)
JUDGE**

Alok/-

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