

**Devendra Kumar Paliwal Vs. State of Madhya Pradesh and ors.**

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**Court :** Madhya Pradesh

**Decided On :** Feb-25-2008

**Reported in :** 2008(2)MPHT268

**Judge :** Viney Mittal, J.

**Appellant :** Devendra Kumar Paliwal

**Respondent :** State of Madhya Pradesh and ors.

**Disposition :** Writ petition dismissed

**Judgement :**

ORDER

**Viney Mittal, J.**

1. An auction of a property belonging to the Municipal Council, Agar, respondent No. 3, was held on March 22, 1998. In the aforesaid auction, respondent No. 5 Mahesh Kumar Paliwal, participated as a bidder. The bid offered by respondent No. 5 for an amount of Rs. 2,22,222/-, being the highest bid, was accepted. However, no amount, whatsoever, was ever deposited by respondent No. 5 in pursuance to the acceptance of his bid by the Municipal Council. Even the notices served by the Municipal Council (Annexures R-3/1 to R-3/4) on respondent No. 5 remained un-responded.

2. However, on June 1, 1999, after expiry of a period of more than one year, respondent No. 5 filed an application before the Municipal Council, with a plea that in the auction proceedings, he had merely participated as a representative of the petitioner Devendra Kumar Paliwal and had no personal interest, either in the bid or in the proceedings, and therefore, he be permitted to make a deposit of the amount at that stage on behalf of the petitioner. The aforesaid application filed by respondent No. 5 was even allowed by the Municipal Council by passing a resolution dated July 7, 1999. He was permitted to make a deposit of the bid amount. In pursuance to the said resolution dated July 7, 1999, it was the petitioner Devendra Kumar Paliwal, who actually deposited the amount on August 7, 1997 (sic: August 7, 1999). Thereafter even a written agreement was executed between the petitioner Devendra Kumar Paliwal and Municipal Council, Agar with regard to the sale of the property. The petitioner was even granted a permission to construct a building by the Municipal Council on October 29, 1999 (Annexure P-8).

3. However, it appears that in purported exercise of his powers under Section 323 of Madhya Pradesh Municipalities Act, 1961 (hereinafter referred to as 'Act') the Collector, Shajapur passed an order dated October 9, 2000 whereby taking a note of the fact that the procedure under Section 109 (3) of the Act had not been followed before disposing of the property of the Municipal Council, the auction proceedings with regard to the property in question were cancelled. The Municipal Council was directed to issue a formal communication in this regard. Consequently, a communication dated November 3, 2000, Annexure P- 10, was issued by the Chief Municipal Officer of the Municipal Council, intimating the petitioner the factum of cancellation of the auction and also bringing to his notice the order of the Collector.

4. The petitioner, thereafter, filed a review petition/application under Section 323 of the Act, before the Collector for reviewing the cancellation order. The application filed by the petitioner has been dismissed by the Collector, Shajapur, vide an order dated October 16, 2001. The aforesaid order passed by the Collector has been appended as Annexure P-17 with the present petition.

5. In the meantime, a resolution had been passed by the President-in-Council on August 3, 2001, in purported exercise of powers under Section 65 of the Act, whereby the resolution confirming the auction of the property in question in favour of respondent No. 5 (and deposit of the money by the petitioner) was cancelled. The said resolution passed by the President-in-Council was required to be ratified by the Municipal Council, but before its ratification the said resolution was challenged by the petitioner by filing an application before the Collector Shajapur.

6. It appears from the record that while rejecting the application filed by the petitioner on August 16, 2001 vide order Annexure P-17, even the aforesaid challenge made by the petitioner has been rejected by the Collector.

7. It is in these circumstances that the petitioner is before this Court through the present petition.

8. Concededly, an order had been passed by the Collector on October 9, 2000, in purported exercise of his powers under Section 323 of the Act, whereby the auction proceedings with regard to the property in question had been ordered to be cancelled. However, admittedly, the order of the Collector had never been forwarded to the State Government, as is mandatorily required under Section 323 (2) of the Act. It is the State Government alone, who is the Final Authority to pass appropriate orders in the matter. Since the order passed by the Collector had never been forwarded to the State Government, therefore, obviously, the power under Section 323 (2) of the Act had never been exercised by the State Government.

9. At this stage, it may be noticed that under the provisions of Section 323 (1) of the Act, the Collector of a District, besides the other officers mentioned in the said provision, has only been vested with the power to suspend the execution of any order or resolution of a Council or its committee, of any act, which is about to be done or is being done or on behalf of the Council, and is not in conformity with the law or is otherwise detrimental to the interests of the Council or is likely to cause injury or annoyance to the public etc. It is thus, clear that jurisdiction vested in the Collector, and the other officers mentioned in the Section, is only to suspend an action/order which is yet to be completed/executed/implemented. There is no

power at all with the District Collector to suspend/nullify an act/resolution which stands already executed/implemented. Thus, apparently, the order dated October 9, 2000 passed by the Collector in cancelling the sale in favour of the petitioner was clearly in excess of his jurisdiction vested in him under Section 323 (1) of the Act, since the transaction of sale had already been completed. Even if, it be taken that the Municipal Council had violated the mandatory provisions of Section 109 (2) of the Act in disposing of its property, still the District Collector under Section 323 (1) had no power to nullify the said action of the Municipal Council. Essentially, the said power vested in the State Government, in its all pervasive supervisory control of the Municipal Council.

10. It appears from a perusal of Annexure P-17 passed by the Collector, that he had refused to review the earlier order dated October 9, 2000 on the ground that there was no power to review, vested in him. It would be wholly unnecessary to go into the question as to whether there was any power vested in the Collector or not to review his earlier order in as much as, I am satisfied that even the original order had been passed by the Collector, without any authority and jurisdiction. However, this defect in the order passed by the Collector cannot be permitted to perpetuate any illegality, if it has been committed by the Municipal Council. The matter has to be essentially examined by the State Government.

11. Consequently, without commenting any further on the merits of the respective claim made by the parties, I deem it appropriate to quash the orders dated October 9, 2000 and dated October 16, 2001 passed by the Collector. I do not find it appropriate to offer any comments on the validity/propriety of the resolution dated August 3, 2001 passed by the President-in-Council, inasmuch as, I feel that the matter should be examined by the State Government in its entirety.

12. Consequently, while quashing the aforesaid orders, as detailed above, the present petition is disposed of with a direction to the Principal Secretary, Urban Administration and Development Department, to examine the entire record of the case, whereby the property in question has been sold in favour of the petitioner, and after affording an opportunity of hearing to the petitioner as well as a representative of the Municipal Council, pass appropriate orders thereupon, in

accordance with law, within a period of six months from the date of appearance of the parties.

13. Parties through their learned Counsel have been directed to appear before respondent No. 1 on March 28, 2008 at 11 a.m.

It would be open to the parties to raise all pleas which are available to them before respondent No. 1.

14. Before parting with this order, it is further directed that neither the petitioner nor respondent No. 3 would be entitled to alienate the property in any manner, till the proceedings before respondent No. 1 are finalized, nor would be entitled to raise any construction thereupon.

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