

Sanjay Tamrakar and ors. Vs. State of M.P. and ors.

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Court : Madhya Pradesh

Decided On : Jun-21-2011

Judge : Rajendra Menon. J.

Acts : M.P. Municipalities Act, 1961; M.P. Nagar Palika Vidhi (Sanshodhan) Adhiniyam, 2005

Appeal No. : Writ Petition No : 4535 of 1996

Appellant : Sanjay Tamrakar and ors.

Respondent : State of M.P. and ors.

Advocate for Pet/Ap. : Shri. Zargar

Judgement :

1. Challenging the order.dated 26.4.1995 - Annexure P/14, passed by the District Collector, Raisen by which an administrative order of Municipal Council, Raisen dated 19.10.1994 -Annexure P/7 and a Resolution bearing No.65 passed by Municipal Council, Raisen vide Annexure P/8 on 28.11.1994 has been suspended, this writ petition has been filed. The order passed by the Collector - Annexure P/14 is affirmed by the State Government vide Annexure P/15, on 21.11.1995 and, therefore, the order passed by the State Government is also assailed.

2. By the aforesaid impugned orders of the Collector and the State Government certain compromise entered into between the Municipal Council and the land

owner in the matter of transfer of the land has been stayed as a consequence the subsequent purchase made by the petitioners and the construction on the plot land is adversely affected. The petition is pending since 1996 and while admitting the petition, the impugned action was stayed.

3. Facts in nutshell, which are necessary for decision of the writ petition, indicate that a Plot bearing Khasra No.492/1/1 measuring 0.44 Acres was purchased by the petitioners for a consideration of `74,000/. by registered sale.deed - Annexure P/1 dated 16.12.1994 from Shri Narayan Singh and Shri Jawahar Singh, who were Legal Heirs of one Rewaram. Certain facts prior to the purchase, which are relevant, indicate that one Shri Khushal Bhai had purchased the aforesaid plot on 25.3.1968 in an auction held by Municipal Council, Raisen. Copy of the proceedings - Annexure P/2 dated 25.3.1968. Shri Khushal Bhai transferred the said plot to Shri Rewaram vide registered sale.deed dated 24.6.1975 . Annexure P/3. After the aforesaid transfer was affected, the administrator of the Municipal Council passed an order on 23.6.1976, forfeiting the aforesaid plot on the ground of violation of certain conditions of the auction. However, after elections were held to the Municipal Council, a new Council was constituted, which found the forfeiture ordered on 23.6.1976 to be illegal and the plot was restored after payment of ` 500/. as compromise fee, vide order.dated 16.5.1979 - Annexure P/4. It seems that the letter pertaining to restoration of the plot was not received by Rewaram and, therefore, he could not deposit the compromise fee of ` 500/.. However, on coming to know about the aforesaid fact, Rewaram sought restoration of the plot, served notice and also after payment of the dues, sought for making construction on the plot. When nothing was done and after Rewaram expired on 1.9.1989, Shri Narayan Singh and Shri Jawahar Singh inherited the said property being Legal Representatives of Rewaram. As the plot was not being restored to the Legal Representatives of Rewaram, Shri Narayan Singh and Shri Jawahar Singh on 12.11.1992 filed Civil Suit No.5.A/93 in the Court of Civil Judge Class II, Raisen for declaration of title and injunction restraining the Municipal Council from making any construction on the plot. In the suit, temporary injunction was granted on 30.9.1993, vide Annexure P/6 and during pendency of the proceedings 2before the Civil Judge Class II, Raisen it seems that the Municipal Council through its administrator and plaintiffs - Shri Narayan Singh and Shri Jawahar Singh entered

into a compromise. The compromise was entered into between the parties in accordance to the note.sheet - Annexure P/7 dated 19.10.1994, wherein it was agreed that on payment of litigation cost of ` 5,000/., ` 4,000/. towards construction material and the compromise fee of ` 500/., the Municipal Council agreed not to take any further action in the matter. The compromise was accepted and vide Resolution - Annexure P/8 bearing No.65 dated 28.11.1994, the compromise was given affect to and the plot was restored to Shri Narayan Singh and Shri Jawahar Singh after having paid a sum of `9,500/. in accordance to the compromise agreement. The Municipal Council issued a demand notice on 5.12.1994 asking Shri Narayan Singh and Shri Jawahar Singh to pay the amount of ` 9,500/. vide Annexure P/9. When the aforesaid amount was deposited, the compromise was given affect to and the suit in question was dismissed as having withdrawn in the light of the compromise entered into between the parties.

4. After compromise was affected and the plot was restored in the name of Shri Narayan Singh and Shri Jawahar Singh, Legal Representatives of deceased Rewaram, Narayan Singh and Jawahar Singh sold the plot for certain consideration by registered sale deed dated 16.12.1994 - Annexure P/11 to the petitioners. Thereafter, petitioners sought sanction for construction, which commenced on the plot in accordance to the permission granted to them on 22.12.1994. It is also seen from the records that the petitioners deposited the mutation fee and other amounts required and after receipt of 'no objection certificate' from the Nazul Department, petitioners took possession of the plot and started construction activity. However, after the aforesaid proceedings were held the impugned action was taken by the Collector, Raisen and the Collector having suspended the order of the administrator - Annexure P/7 dated 19.10.1994 and the consequential Resolution of the Municipal Council dated 20.11.1994 - Annexure P/8 under section 323, 3petitioners feel aggrieved and have filed this writ petition. Apart from challenging the order passed by the Collector, Raisen, the order - Annexure P/15 passed by the State Government approving the action of the Collector, is also challenged.

5. Shri Zargar, learned counsel for the petitioners, argued that the petitioners had purchased the suit property from Shri Narayan Singh and Shri Jawahar Singh by

virtue of a registered sale deed executed on 16.12.1994 - Annexure P/11 and the property was transferred in the name of Shri Narayan Singh and Shri Jawahar Singh by virtue of the compromise entered into between the parties in the suit in question bearing No.5.A/1993. After the compromise was entered into, Shri Narayan Singh and Shri Jawahar Singh were given possession of the suit property on their depositing the agreed amount of ₹ 9,500/., thereby a right accrued to them to sell the suit property and when they sold it to the petitioners, further right accrued to the petitioners to reap the benefits of the same. It is argued that the impugned action has been taken by the Collector and the State Government without notice to the petitioners, without hearing them and in gross violation of the principles of natural justice. That apart, it is pointed out that once the matter was compromised between the Municipal Council, Shri Narayan Singh and Shri Jawahar Singh, then before undoing the aforesaid compromise the Collector should have noticed all concerned and should have given an opportunity of submission to the parties concerned before taking the impugned action. That apart, it is pointed out by Shri Zargar that by virtue of the amendment brought into force into the M.P. Municipalities Act, 1961 by the M.P. Nagar Palika Vidhi (Sanshodhan) Adhiniyam, 2005 after insertion of section 187.A, compounding of the illegal construction is now permissible and now after a period of more than 20 years, it is argued that interference in the matter be made, as the legal right of the petitioners are being taken away in an illegal manner.

6. Even though the matter is pending since 1996, State Government has not filed any reply to justify its action. That being so, this Court has no other option but to proceed with hearing of the matter as the case is pending for more than 20 years.

7. Though Shri Rajesh Tiwari, learned counsel for the State, tried to submit that the Collector has interfered with the illegal action of the Municipal Council, the fact remains that the administrator of the Municipal Council and the Municipal Council entered into a compromise in the pending civil suit and on the basis of the compromise once the suit property was transferred to Shri Narayan Singh and Shri Jawahar Singh after they had deposited the compromise amount of ₹ 9,500/., and when the sale was executed between petitioners and Narayan Singh and Jawahar Singh on 16.12.1994, certain rights accrued to the petitioners to enjoy the property

purchased by them. The said right cannot be taken away from the petitioners without notice to them, without hearing them and without following the principles of natural justice. In the present case, the rights which accrued to the petitioners by virtue of the sale affected on 16.12.1994 - vide Annexure P/11, has been taken away by the Collector and the State Government in a manner which cannot be approved by this Court, for the simple reason that it has been done behind the back of the petitioners, without notice to them and without grant of any opportunity of hearing to them and in gross violation of the principles of natural justice. The sale gave certain right to the petitioners to enjoy the property and after the 'no objection certificate' and 'no objection' were given by the Nazul Department and permission for construction was also given to the petitioners, all this could not be undone in the manner done, without hearing the petitioners. The action impugned in this petition causes serious prejudice to the petitioner and was detrimental to their interest and, therefore, before the action could be taken the petitioners were entitled to opportunity of hearing and indicate to the authorities concerned the circumstances in which they purchased the property.

8. That apart, the so called illegality pointed out by the Collector cannot be accepted for the simple reason that the Municipal Council through its administrator and the Council itself compromised the 5matter in a pending civil suit and on the basis of the compromise when a right had accrued to the petitioners by virtue of the sale deed executed on 16.12.1994, no action adverse to the petitioners could be taken without hearing them. Accordingly, on this ground alone the entire action of the respondents is liable to be quashed. That apart, the State Government has not given any justification for the impugned action before this Court, no reply to the allegations made in the petition is filed and inspite of more than 20 years, no return justifying the impugned action is filed.

9. That apart, the Resolution in question which was suspended by the Collector was already executed and sanction for construction was given and when the construction had commenced, it was not proper to suspend the Resolution which was already given affect to and was implemented by the parties concerned. On this count also suspension of the Resolution, which was already acted upon, was not proper. Considering the totality of the circumstances and the reasons as

indicated hereinabove, there is no reason for rejecting the prayer made by the petitioners.

10. Accordingly, this petition is allowed. The impugned orders - Annexure P/14 dated 26.4.1995 passed by Collector, Raisen and approval of the same by the State Government on 21.11.1995 vide Annexure P/15 are quashed.

11. Petition stands allowed and disposed of without any order so as to costs.

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