
(2018) 05 MP CK 0193

Madhya Pradesh High Court (Indore Bench)

Case No: Writ Petitions Nos. 23497 Of 2017, 8776, 2246, 1972, 1973, 3031, 4524 Of 2018

Kurban Hussain And
Ors.

APPELLANT

Vs

Indore Municipal
Corporation And Anr.

RESPONDENT

Date of Decision: May 7, 2018

Acts Referred:

- Constitution Of India, 1950 - Article 14, 21, 243W, 300(A)
- Madhya Pradesh Municipal Corporation Act, 1956 - Section 66(1)(y), 291, 291(1)(e), 292, 305, 307
- Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 - Section 13, 14, 15, 16, 17, 17(A), 17(c), 18, 19, 19(5), 85, 87(1)(c)
- Madhya Pradesh Bhumi Vikas Niyam, 2012 - Rule 4, 7, 7(2), 7(3)(a), 13
- Madhya Pradesh Bhumi Vikas Niyam, 1984 - Rule 5

Citation: (2018) 4 MPLJ 86 : (2018) 2 JLJ 241

Hon'ble Judges: P.K. Jaiswal, J; S.K. Awasthi, J

Bench: Division Bench

Advocate: A.M. Mathur, A. Dhanodkar, P. Kaurav, R. Tiwari, Rohit Mangal, M. Munshi, V. Dalal, Manoj Munshi, S. Pathak, Rishi Tiwari

Final Decision: Dismissed

Judgement

”

1. Since a common question of law is involved in these petitions to decide therefore, they are heard together and are being disposed of by this common”,,

order. For the sake of convenience, the facts are borrowed from W.P.No.8776/2018.”,,

2. This is the fourth round of litigation.,,

3. The issue involved in these batch of writ petitions No.23497/2017, 1972/2018, 1973/2018, 4524/2018 and 3031/2018, is almost settled by the Hon'ble",,,

Supreme Court in the case of Ravindra Ramchandra Waghmare V/s. Indore Municipal Corporation reported as (2017) 1 SCC 66 7. After the,,

judgment in the case of Ravindra Ramchandra Waghmare V/s. Indore Municipal Corporation (supra), the Indore Municipal Corporation had",,,

undertaken a plan for widening of one of the major city road to connect two major bus terminals and a Railway station known as 'Sarvate Bus Stand',,,

to Gangwal Bus Stand Road', which passes through the area of the petitioners. After order dated 21.12.2017, passed by the Division Bench, a Writ",,,

Petition No.23497 of 2017 and other connected writ petitions were filed on the ground that the petitioners are the resident of Kadav Ghat, Main Road",,,

Street No.2 and the aforesaid road on which the petitioners are residing connects with the road known as 'Machi Bazar' and width of the Machi Bazar,,

in the Master Plan is 18 mtrs. and on the basis of the order passed by the Division Bench of this court in W.P.No.2164 of 2017 (Mohd. Harun & Ors.,,

V/s. State of M.P. & Ors.) decided on 21.12.2017, they are free to demolish the building as per Master Plan, 2021. It was also submitted that in the",,,

earlier round of litigation in W.P.No.2164 of 2017 the Kadaav Ghat, Street No.02 was not in issue and the prayer made therein was not to implement",,,

Master Plan, 2021.",,,

4. According to the petitioners in W.P.No.23497 of 2017,, the Municipal Corporation in the garb of the order passed on 21.12.2017, are bent upon to",,,

demolish their houses situated in Street No.02, which is 18 meters wide, the learned writ court directed the petitioners in W.P.No.23497 of 2017 to",,,

furnish an advance copy to the learned standing counsel of the Municipal Corporation, Indore and till the next date of hearing, no coercive action shall",,,

be taken against them. On the next date, when the matter was listed, it was pointed out by the Indore Municipal Corporation that petitioners No.2, 3",,,

and 6 were writ petitioners in those two writ petition (W.P.Nos.2164 of 2017 & 3985 of 2017). As per the Master Plan, 2021, itself the Municipal",,,

Authorities are carrying out the work of road widening from 'Sarvate Bus Stand to Gangwal Bus Stand' and the Division Bench has taken note of the,,

alignment of the road and the Municipal Corporation prayed for vacating the adinterim relief granted on 26.12.2017. As the matter was listed before,,

the learned Single Judge and, therefore, it was directed to the Office to examine the case and list before the appropriate Bench. On 4.1.2018, the",,,

matter was listed before the Division Bench and it was pointed out that against the order dated 21.12.2017, passed in W.P.No.2164 of 2017 and",,,

W.P.No.3985 of 2017, Special Leave Petition have been filed and a prayer was made to defer the hearing till the matter is decided by Hon'ble the",,,

Supreme Court. Considering the aforesaid, hearing in W.P.No.23497 of 2017 and other connected matters were adjourned sine-die for hearing to",,,

await the decision of the Hon'ble Supreme Court and liberty was granted to the parties to seek hearing of the petition after decision of the proceedings,,

by the Hon'ble Supreme Court. On 12.4.2018, the Hon'ble Supreme Court has dismissed the SLP (C) No (s).70/2018. Order dated 12.4.2018 reads as",,,

under :-,,

“We have heard learned counsel for the parties and perused the record,,

We do not find any ground to interfere with the impugned order.,,

The special leave petitions are accordingly dismissed.,,

Application(s) for intervention are also dismissed. Pending applications, if any, shall also stand disposed of.",,,

On the request of the learned counsel for the parties, the matter was taken upon 19.4.2018. On 19.4.2018, it was pointed out by the learned counsel",,,

for the Municipal Corporation, Indore that some of the petitioners were party to the proceedings in the earlier round of litigation, which was decided on",,,

21.12.2017 and as the SLP was dismissed, they prayed for dismissal of the writ petition. Considering the arguments of thelearned Senior counsel for",,,

the parties, we on 19.04.2018, vacated the stay order passed in W.P.No.23497 of 2017, W.P.No.1972 of 2018, W.P.No.1973 of 2018, W.P.No.3031",,,

of 2018 and W.P.No.4452 of 2018 and fixed the matter for final disposal on 20.4.2018. Order dated 19.4.2018 reads as under :,

“Heard.,

On 26.12.2017, it was pointed out that the petitioners are resident of Kadaav Ghat, Main Road, Street No.2 and the aforesaid road, on which the,

petitioners are residing, connects with the road known as “Machchi Bazar” and the width of the Machchi Bazar Road in the Master Plan is stated,,

to be 18 Meters. It was also pointed out that on the basis of the order passed in Writ Petition No.2164/2017 wherein Kadaav Ghat, Main Road, Street,,

No.2 was not in issue, but the respondents are bent upon to demolish their houses, in accordance with Kadaav Ghat, Main Road, which is of 24 meters,,

width. The learned Writ Court passed an interim order directing that no coercive action shall be taken against the petitioners.,

On 10.01.2018, it was pointed out by the learned Senior Counsel for the petitioners that against order dated 21.12.2017 passed in Writ Petition,,

No.2164/2017 and Writ Petition No.3985/2017, Special Leave Petition was filed and the matter was listed for hearing, and therefore, hearing in this,,

batch of writ petitions was deferred till final disposal of the SLP pending before the Hon'ble Apex Court. On 21.03.2018, liberty was granted to the,,

parties to seek hearing of the petition, after decision of the proceedings by the Hon'ble Supreme Court.",

On the last date of hearing, it has been pointed out by the learned Senior Counsel for the parties, that the Special Leave Petition filed against order,,

dated 21.12.2017 in Writ Petition No.2164/2017 and Writ Petition No.3985/2017 has been dismissed, and at the request of learned Senior Counsel for,,

the parties, the matter has been fixed for today i.e. 19.04.2018.",

Shri A.M. Mathur, learned Senior Counsel for the petitioners has submitted that on 16.04.2018 in Writ Petition No.8776/2018, a Division Bench of this,,

Court, after appreciating the provisions of Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (herein after referred to as the Adhiniyam,,

1973), Madhya Pradesh Municipal Corporation Act, 1956 and Madhya Pradesh Bhumi Vikas Rules, 2012 granted interim relief that no demolition of",,,

the buildings / structures in question shall be made till the next date of hearing; and that the aforesaid matter (Writ Petition No.8776/2018) has been,,

fixed for 24.04.2018; and the issue involved in this batch of writ petitions is identical and similar to the aforesaid case, therefore, this batch of writ",,,

petitions be also listed on 24.04.2018.,,

Per contra, Shri Purushaindra Kaurav, learned Senior Counsel appearing on behalf of the Municipal Corporation Indore has drawn our attention to",,,

reply and additional reply filed by the respondent / Indore Municipal Corporation and submitted that earlier relatives of petitioner No.2 Akhtar H.,,,

Kanchwala s/o Ibrahim, petitioner No.3 Sartaz Bee w/o Abdul Gayyur and petitioner No.6 Rehana Bee w/o Abdul Gaffur (in Writ Petition",,,

No.23497/2017) and several other persons approached this Court vide Writ Petition No.3985/2017 with respect to the same properties, as in the",,,

present writ petitions. This material fact has been suppressed by them and in view of law laid down by the Apex Court in the matter of SJS Business,,

Enterprises Private Limited v. State of Bihar reported in (2004) 7 SCC 166, the present batch of writ petitions is liable to be dismissed.",,,

He further submitted that Writ Petition No.3985/2017 was filed by 274 petitioners praying for a relief inter alia to restrain the respondent "the",,,

Municipal Corporation from demolishing the houses of the petitioners thereof (paragraph No.7 (iii) of Writ Petition No.3985/2017). It was also averred,,

that "the petitioners are residing at the address mentioned above in the cause title "the". He has further drawn our attention to Annexure R/7,,

(Writ Petition No.23497/2017) detail map filed along with reply dated 28.12.2017 by Shri P.S. Kushwah, Building Officer, Zone No.2 and Officer-in-",,,

Charge of the Case, Indore Municipal Corporation and submitted that House No.33, Nayapeetha of petitioner No.2 and House No.50 of petitioners",,,

No.3 and 6 were subject matter of previously dismissed Writ Petition No.3985/2017. The present writ petition is barred by the principles of res,,

judicata and is liable to be dismissed.,,

He further pointed out that petitioner No.2 Akhtar H. Kanchwala's son Mustafa Kanchwala had earlier filed Writ Petition No.3985/2017 with respect,,

to the same property and he was petitioner No.61 in the aforesaid writ petition. Similarly another son of petitioner No.2 namely Murtaja was petitioner,,

No.65 in the aforesaid writ petition with respect to the same property. Similarly, petitioners No.3 and 6 namely Sartaz Bee and Rehana Bee have",,,

suppressed the fact that the subject property i.e. House No.50, Nayapitha was the subject matter of previously dismissed Writ Petition No.3985/2017.".,,

A number of detail instances has been given regarding suppression of fact of filing of earlier writ petition (s).,,

On merit, he submitted that the respondent "Indore Municipal Corporation is carrying out road widening work from Sarvate Bus Stand to Gangwal",,

Bus Stand. The alignment of stretch of the aforesaid road includes Sarvate Bus Stand "Hathipala, June Indore, Rawla "Guatampura ",,,

Chandrabhaga "Pandhrinath "Machchi Bazar Chouraha "Kadaav Ghat "Naya Pitha "Kagdipura, Silawatpura "Biyabani Square ",,,

Gangwal Bus Stand. A Division Bench of this Court has taken note of the aforesaid alignment in paragraph 6 of order dated 21.12.2017 passed in,,

Writ Petition No.2164/2017 and Writ Petition No.3985/2017.,,

The petitioners' constructions are situated on the stretch of road which is proposed to be 24 meter wide in Indore Development Plan, 2021. The",,

petitioners are unnecessarily trying to create confusion. The subject constructions are situated on the stretch of the road between Machchi Bazar,,

Square to Kagdipura junction, which is proposed to be 24 meter wide. Merely giving different names like Kadaav Ghat Road No.2, 3 or 10 does not",,

make any difference. The Town & Country Planning Department vide letter dated 26.12.2017 (Annexure R/10) has clarified that the width of the,,

road from Machchi Bazar Square to Kagdipura Road via Kadaav Ghat and Nayapeetha is 24 meters. He lastly submitted that from 31.12.2017 till,,

02.01.2018, a total of 106 families have been allotted flats in three townships. The petitioner No.1 Kurban Hussain s/o Haafez Mohammad and his two",,,

sons have also got three flats allotted in the Omex City.,,

In view of dismissal order dated 21.12.2017 passed in Writ Petition No.2164/2017 and Writ Petition No.3985/2017, and dismissal of Special Leave",,,

Petition No.70/2018 on 25.01.2018, it is prayed that the present batch of writ petitions be dismissed.",,,

To counter the aforesaid, Shri A.M. Mathur, learned Senior Counsel for the petitioners has submitted that the area in question is covered by order",,,

dated 16.04.2018 passed in Writ Petition No.8776/2018. He further submitted that the houses in question are Central Area (Madhya Kshetra), and",,,

therefore, interim relief granted by this Court on 16.04.2018 in Writ Petition No.8776/2018 may be continued in this batch of writ petitions.",,,

On due consideration of the aforesaid, arguments advanced by the learned Senior Counsel for the parties, so also the averments made in the reply and",,,

additional, we direct the Office to list this batch of writ petitions along with Writ Petition No.8776/2018 for analogous hearing on 24.04.2018.",,,

As per the contentions of the learned Senior Counsel for the parties, order dated 16.04.2018 passed in Writ Petition No.8776/2018 also covers the",,,

relief claimed in this batch of writ petitions, and therefore, after dismissal of SLP by the Hon'ble Supreme Court, no case is made out to continue the",,,

interim order passed on 26.12.2017. The interim order passed earlier stands vacated. List on 24.04.2018.Ã¢â€â€,,

5. The submission of the learned Senior counsel for the petitioners in W.P.No.8776 of 2018 that Section 305 of the M.P. Municipal Corporation Act",,,

1956 (hereinafter referred as 'the Act of 1956') cannot over-ride the Master Plan, 2021 of Indore City, prepared under Section 17 of the M.P. Nagar",,,

Tatha Gram Nivesh Adhiniyam, 1973 (hereinafter referred as 'the Adhiniyam of 1973') and brought into operation under Section 19(5) of the said",,,

Adhiniyam. He has drawn our attention to Rules 4, 7(2) and 13 of the M.P. Bhumi Vikas Niyam, 2012 (hereinafter referred as 'Rules of 2012') and",,,

submitted that Rule 4 and 13 prohibit the existing permission, sanction and approval of the building and structure in the Central Area (Madhya",,,

Kshetra). He also submitted that the regulation 6.3 Clause (18), Chapter VI of Master Plan of Indore City, 2021 , the proposed widening road in",,,

respect of building and structure of (Madhya Kshetra) Indore City, which are existing prior coming into force of Rules of 2012, will not be applicable.",,,

Their contention is that on the basis of proposed widening of roads, no demolition of buildings and structure, which are existing prior to 1.6.2012 can be",,,

done under the Rules of 2012 and prayed for grant of ad-interim relief, restraining the respondents from demolishing the existing construction on",,,

account of widening road as proposed in the Master Plan of Indore City, 2021.",,,

6. Considering the aforesaid, an interim relief that no demolition of the buildings / structure in question shall be made till the date of hearing was",,,

granted and thereafter, the matter was posted for 19.4.2018.",,,

7. On behalf of the Municipal Corporation, Indore, it was pointed out that this argument was advanced in Special Leave Petition (C) No(s.) 70/2018",,,

and the Hon'ble Supreme Court, after appreciating the aforesaid arguments, dismissed the Special Leave Petition and, therefore prayed for vacating",,,

the stay order. Considering the fact that a detailed reply has been filed, we heard the learned Senior counsel for the parties at length on 24.4.2018 and",,,

25.4.2018.,,,

8. As per reply of Indore Municipal Corporation in W.P.No.8776 of 2018, petitioner No.1 is not the owner of the house and no notice has been served",,,

upon him. Even there is no construction within the road width of 24 mtrs abutting house No.5-6 Mahal Kacheri as the said house is outside the regular,,,

public street line not required to be removed and so far the petitioner No.2 is concerned his house which was falling beyond the public street has,,,

already been removed under Section 305 of the Act of 1956 and validity has been upheld by the Apex Court in SLP No.70 of 2018 (Farida & Ors.,,,

V/s. State of M.P. & Ors.). Under sub-clause (18) of Clause 6.3 of the Indore Development Plan, 2021, to contend that there is prohibition to apply",,,

the proposed width of the road in Central Area on existing building / infrastructure unless application is made for permission for construction of new,,

building after demolition of existing building, then the building permission shall be granted consider the proposed width of the road.",,

9. During the pendency of the Writ Petition No.23497 of 2017 and after dismissal of Special Leave Petition (C) No(s).70/2018 on 12.4.2018, Writ",,,

Petition No.8776 of 2018 has been filed by one Abhay Shukla and Abdul Samad and prayed for the following relief :-,,

“It is therefore, most humbly prayed by the petitioners that by a suitable writ, order or direction this Hon'ble Court may be pleased to :-",,,

(i) A declaration that the roads and buildings existing on the date the Master Plan came into force on 1.1.2008 are exempt from the,,

15. It has also been provided in the Master Plan, 1975-91 that under Clause 13.42 the implementing agency will however ensure dislocation o

population is the minimum and that in case of any dislocation occurs, suitable alternatives are found for those are shifted as far as possible. The

Master Plan in Clause 13.43 provided the minimum and desirable road width as under :-",,,

Road Description,Proposed Road Width,

,Minimum,Desirable

Ring -1,80' (24 $\tilde{\text{A}}$, $\hat{\text{A}}^{\frac{1}{2}}$ m),120' (37 m)

Ring -2,80' (24 $\tilde{\text{A}}$, $\hat{\text{A}}^{\frac{1}{2}}$ m),120' (37 m)

Approach Road,60' (18 $\tilde{\text{A}}$, $\hat{\text{A}}^{\frac{1}{2}}$ m),80' (24 $\tilde{\text{A}}$, $\hat{\text{A}}^{\frac{1}{2}}$ m)

Rule 5 of M.P. Bhumi Vikas Niyam, 1984",,,

Rule 5 of M.P. Bhumi Vikas Rules, 1984

$\tilde{\text{A}}$, (English Version)",

. . 1984",

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Rule 4 of M.P. Bhumi Vikas Niyam, 2012",,

Rule 4 of M.P. Bhumi Vikas Rules, 2012

Ã, (English Version)",

. . 2012",

5. Existing Building:- Nothing in these rules shall require the demolition, alteration, or abandonment of a building existing on the date on which the relevant provisions of these rules come into force nor prevent continuance of the use or occupancy of an existing building unless in the opinion of the authority, such building or portion thereof constitute a hazard to the safety of the adjacent property or to the safety of the occupants of the building itself.",

4. -

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road 80' (24 Ã,Â½ m) was in existence much prior to coming into operation of Indore Development Plan, 2021.",,

36. The width of the roads Machhi Bazar, Chandra Bhaga, Raoji Bazar, Kodaav Ghat as 80' (24 Ã,Â½ m) are not the proposed width, but were in",,

existence much prior to coming into force the Indore Development Plan 2021 w.e.f. 1.1.2008. As per Master Plan 1975-91, which came into operation",,

w.e.f. 21.3.1975 the width of these roads were minimum 80' (24 Ã,Â½ m) and desirable width 120' (37 m) and thereafter all building permission have,,

been granted on the basis of minimum width of road as provided in Master Plan, 1975 Ã¢â¬â 1991. Therefore, sub-clause 18 of Clause 6.3. has no",,

applicability in respect of the roads in question because of existence of width of these roads more than 80' (24 Å,Â½ m) since 1975.,,

37. The Master Plan or Indore Development Plan, 2021 sanctioned under Section 19(5) is an executive exercise whereas Section 305 being",,

substantive law is creature of legislation. It is well settled principle of law that any law promulgated by the legislature cannot be diluted or withdrawn,,

or modified by any executive act. The Supreme Court in case of Ravi Ramchandra Wagmare (supra) has upheld the validity of Section 305 of the,,

Act of 1956. Therefore, the Development Plan cannot over ride the provisions of Section 305 which have been promulgated by the legislature.",,

Therefore, under any circumstances, the substantive law shall prevail over subordinate rules and regulations including Master Plan.",,

38. The respondents are not demolishing any building or construction whether it is constructed with or without permission or whether such construction,,

is in violation of applicable rules and regulations. In fact, the respondents are only removing that much of part of building or projection which is falling",,

beyond public street and the land to such extent has been vested in the Corporation by virtue of Section 305 of the Act of 1956.,,

39. Section 66(1)(y) of the Act, 1956 mandates the Corporation to abide by the provisions of any other law. Therefore, both the Adhiniyam, 1973 and",,

the Act of 1956 mandates the Corporation to follow and bind by the Town Development Plans prepared under the Adhiniyam, 1973.",,

40. The Hon'ble Supreme Court in the case of Friends Colony Development Committee V/s. State of Orissa reported as (2004 AIR SCW 5923 a)nd,,

also in case of Esha Ekta Apartments Ltd & Ors.V/s. Municipal Corporation of Mumbai & Anr. reported as 2012 (4) SCC 68 9has held that,,

Municipal Corporation is empowered to any illegal construction or the construction without proper building permission.,,

41. The Development Plan Å¢â,¬" 2021 in any manner violates the Article 14 Å¢â,¬" Right to Equality of the petitioners or Article 21 Å¢â,¬" Protection of life,,

and personal liberty or even Article 300A "Persons not to be deprived of property save by authority of law.",,

42. There is automatic vesting of any land or building falling within set back area as provides under Section 305 of the Act of 1956 and settled by,,

Hon'ble Supreme Court in case of Ravindra Ramchandra Waghmare (supra). Therefore, there is no substance in the contention of the petitioners",,,

about non observance of the requirement of Land Acquisition Act, 1894.",,,

43. In the case of Rajendra Shankar Shukla V/s. State of Chhatisgarh reported as (2015) 10 SCC 40,0 the Raipur Development Planned Authority",,,

viz., Kamal Vihar Township Development Scheme (KVTDS) and subsequently included five villages in the said scheme. The lands belonging to the",,,

private owners were to be taken over by consent or acquisition. The allegation was that the RDA had assumed the role of Town Planning Authority,,,

by proposing and framing KVTDS with land use which was different from the one prescribed in the Raipur Master Plan (Revised) 2021. However, in",,,

the present case, the respondent No.4 "Indore Municipal Corporation has not done any such thing. The Hon'ble Supreme Court in para 22 of the",,,

judgment observed that the Master Plan was in clear violation of Section 14 and 17 of the Adhiniyam, 1973, on the ground that Raipur Development",,,

Authority admittedly prepared the Master Plan (Revised) 2021, which was in clear contravention of Section 14 of the 1973 Adhiniyam. In the case in",,,

hand, the Indore Municipal Corporation has not prepared the Master Plan. The Master Plan has been prepared by the Director as provided under",,,

Section 14 of the 1973 Adhiniyam. The Hon'ble Supreme Court in para 26 held that a nominated body like RDA cannot assume the role of an elected,,,

body and cannot usurp the power of the local authority. In para 34 it was held that the Development Plan was altered to suit the requisites of Kamal,,,

Vihar Township Development Scheme (KVTDS). In the present case, there is no such scenario nor such condition is existing.",,,

44. For the above mentioned reasons and the law laid down by the Apex Court in the case of Ravindra Ramchandra Waghmare (supra), so also the",,,

fact that the SLP (C) No(s). 70/2018, filed by the petitioners therein has already been dismissed, the Writ Petition No(s).23497/2017, 8776/2018,",,

2246/2018, 1972/2018, 1973/2018, 3031/2018 and 4524/2018, filed by the petitioners are, devoid of any substance and merit and are, liable to be",,,

dismissed and are, hereby dismissed. No costs.",,

45. A copy of this order be retained in other connected matters.,,