

**(2008) 01 MP CK 0036**

**Madhya Pradesh High Court (Gwalior Bench)**

**Case No:** None

Gajendra Singh and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

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**Date of Decision:** Jan. 18, 2008

**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227

**Citation:** (2008) 2 MPHT 197 : (2008) 2 MPLJ 89

**Hon'ble Judges:** A.P. Shrivastava, J; A.K. Gohil, J

**Bench:** Division Bench

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### **Judgement**

@JUDGMENTTAG-ORDER

A.K. Gohil, J.

This order shall govern the disposal of W.P. No. 310/99 (PIL), and other connected petitions.

This probono publico petition under Article 226/227 of the Constitution of India was filed against the encroachment upon the public way belonging to the M.P. Housing Board in the Nazar Bagh market situated at Maharaj Bada on the allegations that the Municipal Corporation is raising wooden stall/pakka structure and going to auction those stalls but subsequently under orders of the Court and by miscellaneous applications the petition was only confined to encroachment in Gandhi Market Gwalior and ultimately it was submitted to the Court that the shopkeepers of the Gandhi Market have encroached upon the verandah, which was constructed in front of the shop for the use of public and the prayer was made that the aforesaid verandah which has been encroached upon by the shopkeepers be got vacated or encroachment made by the shopkeepers be removed.

In the meantime shopkeepers of Gandhi market filed the separate petitions viz. W.P. No. 2331/2000, W.P. No. 1873/03, W.P. No. 1878/03, W.P. No. 2101/03, and their

claim was that they have not made any encroachment on the verandah and the verandah was covered under the knowledge of the Corporation and has placed reliance on the resolution No. 40, dated 25-4-94 by which area of the shop was treated as 90 sq.ft. including verandah. Vide order dated 19-1-2005 all the shopkeepers have agreed by way of undertaking to deposit Rs. 1,00,000/- with Municipal Corporation in four equal instalment towards the more amount of licence fee as per the order sheet dated 19-1-2005. In all 250 shops are situated in the Gandhi Market and all the shopkeepers have only deposited first instalment of Rs. 25,000/- and total of Rs. 62,27,000/- with the Municipal Corporation Gwalior, but it is clear from the record that all the shopkeepers have not complied their undertaking and have not deposited Rs. 1,00,000/- each, as agreed by them, with the Municipal Corporation and for that the matter remain pending.

During the course of hearing, various interim orders were passed by this Court for submitting the financial status report of the shopkeepers, but neither the Corporation nor the State Government has submitted it. On 13-10-2006, Collector Gwalior submitted that the market value of the land in Gandhi Market area is Rs. 50,000/- per sq. mtr. and Rs. One lac per sq. mtr. in the Nazar Bagh market and in that contest Gandhi Market building has become quite old and there is no parking place in the market or at the adjoining place of Maharaj Bada and also considering this aspect of the matter that there is huge encroachment, verandahs have been covered and there is no vacant area for further construction of the shops by the Municipal Corporation Gwalior. A proposal was submitted by the parties that in place of old building, a new market building be constructed.

Vide order dated 20-4-2007 with the consent of the parties this Court constituted a six members committee to undertake the project of construction of new Gandhi Market Building in place of old building with the underground parking area as well as the parking area on the each floor of the building and the committee was directed to get the map prepared from the Architect with the help of Director, Town & Country Planning and to supervise the project and to ensure the construction of the new Gandhi Market building, to invite tenders, to fix agency and to decide various steps to be taken for early construction of the new Gandhi Market Building. Thereafter matter was taken up on day to day basis. In the meantime, Government referred the matter to the School of Planning and Architect New Delhi for taking opinion regarding construction of underground parking area and ultimately the Town and Country Planning Department has granted the permission for reconstruction of new Gandhi Market Building with underground parking area on 5-12-2007.

So far as the removal of encroachment from the verandah of shops is concerned, no doubt that all the shopkeepers have extended their shops and have also included verandah in the area of the shop but in this petition or in connected petitions, it will not be proper for this Court to order removal of that extended portion of verandah

for various reasons; firstly this petition was not filed for mainly removal of encroachment from shops of Gandhi Market or for removal of encroachment of verandah; secondly all the shopkeepers were not made party in the petition as personal hearing is necessary before giving any such direction against them, thirdly before passing such an order, it requires consideration that when the area of shop was extended and verandah was included therein, whether any permission was granted by the Municipal Corporation or not and when the aforesaid verandahs were covered, why the Corporation has not taken any action against the shopkeepers for covering the aforesaid verandah and including it into the shop. All these question of facts require enquiry and adjudication. More so Corporation has not passed any order to remove the same and any removal order issued by the Corporation is also not under challenge in this petition. Basically, this was a Public Interest Petition filed for removal of encroachment as well as to restrain the Municipal Corporation for raising any wooden shops/stalls on the land of M.P. Housing Board. In reply and in the petition filed by shopkeepers they have challenged the allegation of encroachment and in nut shell they have disputed the fact of encroachment and their submission is that vide resolution No. 40, dated 24-5-1994 passed by the Corporation, it is evident that area of shop is 90 sq.ft. including verandah. If the shopkeepers or even the licence holders in the shop have raised any construction after obtaining permission from the Municipal Corporation or within the knowledge of the Corporation, then certainly such disputed question required to be adjudicated after hearing the parties and providing them opportunity of hearing. In fact initially in such matters the Corporation should have taken action against the shopkeepers for raising such construction and for removal of encroachment, if any, which has not been done. Therefore, in such disputed condition whether it is a case of encroachment or whether Corporation expressly or impliedly granted permission to cover the verandah without any adjudication, no such direction regarding demolition of extended portion of shops can be given in this petition.

1 There is no dispute that Gandhi Market building become quite old and market is fully congested, there is no space for parking. Under these facts and also under changed circumstances that all the parties including the shopkeepers have agreed for construction of new Gandhi Market building in place of old Gandhi Market building. This Court has already in the interest of all the parties and the citizens of the Gwalior City, directed through interim orders for construction of new market building and has also constituted a committee to see that new Gandhi Market Building is constructed and after construction the existing shopkeepers also settled therein. Therefore it would be in the interest of justice to finally dispose of this petition.

As we have directed through interim orders and the Town and Country Planning vide order dated 5-12-2007 has granted permission for construction of new shopping Complex of seven stories with three underground stories of parking area,

in the interest of all, this petition and connected petitions are disposed of finally with the following directions:

- (1) That now the respondent No. 2 Municipal Corporation shall construct new Gandhi Market Building as per the permission granted by the Town and Country Planning Department, Gwalior as well as by the State Government.
- (2) That the aforesaid construction shall be supervised by the committee constituted by this Court vide interim order dated 20-4-2007. Committee and Corporation will ensure the construction of the new building for the commercial market and will see that the tenders are invited timely and agency is fixed for the purpose of construction. Whenever agency shall be fixed by the Corporation for the purpose of construction, then after entering into agreement with the agency but before issuing the work order, the Committee will give notice to the shopkeepers for vacating the shops and within a period of two months, shopkeepers shall vacate the shops. The shopkeepers will not raise any objection on any alternative side granted by the Municipal for running the business and will not delay in vacating the shops. After taking over the possession, the agency will start the work and see that the construction upto ground floor level is completed within a period of one year and thereafter shops are allotted to the old shopkeepers positively within a period of 18 months on the outer limit.
- (3) That the ground floor shops shall be allotted to the shopkeepers, those who will deposit the balance amount of three instalments and shall also enter into an agreement with the Corporation.
- (4) That the Corporation shall be free to allot the shops of first, second and third floor on fair and auction basis under the supervision of the Committee. Other terms and conditions of the allotment shall be settled by the Corporation and the committee. So far as the participation of the representatives of the shopkeepers in the Committee, that shall be limited only for the ground floor shop.
- (5) Municipal Corporation shall be free to fix the fresh rent/licence fee of the new shops which shall be allotted to the existing shopkeepers. The Commissioner, Municipal Corporation and Committee shall submit quarterly progress report in the Court.