

Nagda Municipality Vs ITC Limited

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: May 20, 2011

Acts Referred: Madhya Pradesh Municipalities Act, 1961 " Section 187A, 3, 3(2)
Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhinyam, 2005 " Section 2(1)

Citation: (2011) 3 MPHT 306

Hon'ble Judges: S.S. Kemkar, J; Abhay M. Naik, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

Shantanu Kemkar, J.

This Intra Court appeal u/s 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal)

Adhinyam, 2005 has been directed against the order dated 31-7-2009 passed by Single Bench of this Court in W.P. No. 3921 of 2007.

2. That the Respondent-Company, ITC Limited, had filed a writ petition challenging the Resolution No. 369, dated 23-5-2007 passed by the

Appellant-Municipality and also the demand raised through letter dated 24-5-2007.

3. Briefly stated, the Respondent had purchased land ad-measuring 4.164 Hectares vide registered sale deed dated 5-7-2005 so as to establish a

Farmers Facility Center and Godown at Village Padliya Kala, Tehsil Nagda, District Ujjain. After getting the land mutated in its name an order of

diversion was passed by the Competent Authority giving permission to the Respondent Company to use the land for commercial use. Thereafter,

the requisite plan for construction on the said land was submitted to the Town and Country Planning Department of the State Government. The

said plan was approved by the Town and Country Planning Department. Thereafter the Respondent submitted an application seeking permission

from the Appellant-Municipality for construction of building vide application dated 24-12-2005. However, before the permission could be

granted, the Respondent treating to have been granted permission under deeming provision, raised construction on the said land. In the

circumstances on account of raising of the said construction treating it to be without requisite permission, a demand was raised by the Appellant

against the Respondents vide demand notice dated 1-2-2006. The said demand was challenged by the Respondent Company by filing a Writ

Petition No. 1699 of 2006. The said writ petition was disposed of vide order dated 26-9-2006 with liberty to the Respondent herein (writ

Petitioners of W.P. No. 1699 of 2006) to submit a detailed representation before the Appellant. The President-in-Council of the Appellant

Municipality was directed to consider the same and was further directed to raise the demand in terms of Section 187A of the Municipalities Act

and in accordance with the Guidelines issued by the Collector for the year 2006-07. In the Writ Appeal No. 457 of 2006 filed by the Appellant,

the Division Bench of this Court vide order dated 27-2-2007 maintained the order passed by the learned Single Judge.

4. On the basis of the directions issued by the Writ Court, the Respondent-Company filed representation on 19-3-2007 indicating that out of the

total land purchased by the Respondent Company, the total area of construction of the Farmers Facility Center and Godown is only 6557.46

square meters. Accordingly, the Respondent Company made a prayer that compounding charges may be determined keeping in view the rates of

sale of land, as determined by the Collector of Stamps on the total area of construction. The said representation submitted by the Respondent

Company was decided on 24-5-2007. The Appellant raised compounding charges at Rs. 40,69,073/-. The raising of the said demand was

protested by the Respondent Company by filing yet another representation dated 12-6-2007. Since no decision was taken on the said

representation, the Respondent Company filed W.P. No. 3921 of 2007. The learned Single Judge, vide impugned order dated 31-7-2009

allowed the said writ petition by quashing the resolution dated 23-5-2007 and the letter dated 24-5-2007 by which compounding charges of Rs.

40,69,073 has been demanded. The learned Single Judge further directed that the compounding fee shall be leviable for only the actual area of

unauthorised construction raised by the Petitioner-Company. The learned Single Judge directed the Appellant Municipality to pass a fresh

assessment order after associating a representative of the Petitioner-Company in the matter. Feeling aggrieved by the order passed by the learned

Single Judge, this writ appeal has been filed.

5. Shri C.L. Yadav, learned Senior Counsel for the Appellants argued that the learned Single Judge has passed the order in contravention of

Section 187A of the Madhya Pradesh Municipality Act, 1961 (for short "the Act"). According to him, the Writ Court has committed error in

holding that the area of unauthorised construction means actual area of unauthorised construction. He argued that the area of the entire land

purchased by the Respondent Company and enclosed within the boundary wall has to be taken into consideration for the purposes of calculation

of fees for compounding instead of the area of unauthorised construction.

6. Shri S.C. Bagadiya, learned Senior Counsel for the Respondent Company on the other hand argued that in view of the second proviso

contained in Section 187A of the Act the compounding fees is chargeable only in respect of the area of unauthorised construction of the building on

the land in question. He argued that there is no unauthorised construction on the entire land but the unauthorised construction is only on a part of

the land. In support, he placed on record a Map showing that portion on which construction has been made and also the portion on which no

construction has been raised.

7. In order to appreciate the controversy involved in this writ petition, it would be appropriate to extract few provisions of the Act.

Section 3 provides for definitions:

Sub-clause (2) of Section 3 define building, which reads as under:

building"" includes a hut, shed or other enclosure whether used as a human dwelling or otherwise, and shall include wells, walls, verandas, fixed

platforms, plinths, doorsteps and the like but shall not include a tent or a temporary shed erected on ceremonial or festival occasions.

Section 187A reads thus:

187A. Compounding of offences of construction of buildings without permission.-- Notwithstanding anything contained in this Act or any other

Act, for the time being in force or any rules or bye-laws made there under, the offence of constructing buildings without permission or contrary to

the permission granted, may be compounded, if-

(a) such contravention does not effect the regular building line; and

(b) the area of unauthorized construction made in the marginal open spaces or in excess of the prescribed Floor Area Ratio does not exceed ten

per cent of the prescribed floor area ratio;

(c) area notified by the State Government as a hill station or a place of tourist importance or sensitive/fragile from the point of ecology;

(d) area specified for parking of vehicles;

(e) area coming within the Road or area affecting alignment of Public Roads;

(f) area specified for tanks (Talab);

(g) area of construction affecting regular building life:

Provided that in compounding the cases, fees shall be charged, as under in respect of the area of unauthorized construction on the basis of the rate

of sale of land determined by the Collector of Stamps for the area concerned;

(a) If the construction relates to a plot of one hundred square meter, ten per cent of the rate of sale, in respect of residential building and fifteen per

cent of the rate of sale, in respect of non-residential building;

(b) If the construction relates to a plot of one hundred square meter, but does not exceed two hundred square meter, twenty per cent of rate of

sale, in respect of residential building and thirty per cent of the rate of sale, in respect of non-residential building;

(c) If the construction relates to a plot of two hundred square meter, but does not exceed three hundred fifty square meter, thirty per cent of the

rate of sale, in respect of residential building and forty five per cent of the rate of sale, in respect of nonresidential building;

(d) If the construction relates to a plot of three hundred square meter, forty per cent of the rate of sale, in respect of residential building and sixty

per cent of the rate of sale, in respect of non-residential building:

Provided further that the compounding shall be made in case of residential construction by the Chief Municipal Officer and in case of non-

residential construction with the permission of President- in-Council:

Provided also that nothing contained in this section shall apply to any person who does not have any right over the building for the land on which

the construction has been made.

8. A bare reading of Section 187A of the Act makes it clear that the same deals with compounding of offences of construction of building without

permission. It provides that the offence of constructing buildings without permission or contrary to the permission granted, may be compounded, in

case it is covered under Clauses (a) to (g). First Proviso to Section 187A deals with fees to be charged in compounding the cases. It provides that

in respect of area of unauthorised construction the rates shall be on the basis of sale of land determined by Collector of Stamps for the area

concerned. It clearly indicates that for the purposes of compounding the offence of constructing building without permission the fees for

compounding shall be charged in respect of the area of unauthorised construction. The rates are to be on the basis of sale of land determined by

Collector of Stamps for the area concerned. In the circumstances the contention of the learned Senior Counsel for the Appellant cannot be

accepted that the total area of the land within the boundary wall even if no construction of building is raised on it has to be included for the

purposes of calculating the area of unauthorised construction. In our considered view, of compounding fees has to be determined on the basis of

area of unauthorised construction of building and not on the total area of the land.

9. In view of the aforesaid position, for the purposes of calculation of area of unauthorised construction, we direct the Respondent Company to

submit a Map showing the actual area of unauthorised construction of building which includes all such construction which will be covered under the

definition of building provided in Section 3 (2) of the Act which undisputedly also includes the area of the land on which the boundary wall has

been constructed. On submission of such Map alongwith a detailed representation the Competent Authority of the Appellant shall examine the area

of unauthorised construction of building taking into consideration the definition of the term building as aforesaid and shall determine the

compounding fees but shall not treat the "total area of the land" as unauthorised construction unless it is occupied by any kind of construction within

the meaning of its definition.

10. Let the Map and representation, as aforesaid, be submitted by the Respondent Company before the Competent Authority of the Appellant

within two weeks. The Competent Authority shall then consider the same and pass appropriate orders within two months from the date of receipt

of the representation after giving opportunity of hearing to the Respondent Company.

11. With the aforesaid directions the writ appeal stands disposed of. No orders as to the costs.