

(2018) 08 MP CK 0212

Madhya Pradesh High Court (Indore Bench)

Case No: Writ Petition No.16571 Of 2018

M/S Anand Jewels Indore (P) Ltd.

APPELLANT

Vs

Indore Municipal Corporation &
Another

RESPONDENT

Date of Decision: Aug. 27, 2018

Acts Referred:

- Madhya Pradesh Bhumi Vikas Rules, 2012 - Rule 4, 7(3)(a), 10, 11, 12
- Madhya Pradesh Municipal Corporation Act, 1956 - Section 305, 307, 308, 308A, 308B
- Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 - Section 85

Hon'ble Judges: S.C. Sharma, J

Bench: Single Bench

Advocate: A.K. Sethi, Rishabh Sethi, Rishi Tiwari

Final Decision: Dismissed

Judgement

„

The petitioner before this Court has filed this present petition being aggrieved by the order dated 20.07.2018 passed by the Building Officer, Zone",,

No.11 (Rajmata Sindhiya Zone), Indore Municipal Corporation, Indore for quashment of the order, by which, the Building Officer has pointed out",,

unauthorized construction in respect of the building owned by the petitioner/company.,,

A further prayer has been made for issuance of appropriate direction to the Commissioner, Indore Municipal Corporation to consider and decide the",,

application preferred by the petitioner/company in respect of compounding. The petitioner has stated that the petitioner/company is a company,,

registered under the Companies Act and the building in question was constructed as per the building permission granted on 03.10.1998 in favour of the,,
predecessor-in-title.,,

The petitioner/company has further stated that later on he has purchased the building through a registered sale deed dated 27.09.2012 and now it is the,,
petitioner/company, who is the owner of the property situated at Municipal No.575, Plot No.12, Block No.34, M.G. Road, Indore. The said property is",,
having a six storeys building basement + ground floor + five storeys.,,

The petitioner has further stated that petitioner intended to open a jewellery show-room and as the petitioner/company intended to carry out repairs",,
submitted an application on 20.08.2014 (Annexure-P/4) to respondent No.2 and again filed an application on 10.09.2014 (Annexure-P/5) intimating,,
that the petitioner was carrying out repair and renovation work and no new construction is being carried out.,,

It has further been stated that no reply was given to the petitioner and the petitioner was served with a notice dated 12.09.2014 informing the,,
petitioner that the petitioner is constructing a wall in place of glass elevation. The petitioner did submit a reply with quite promptitude on 13.09.2014,,
stating that no building permission is required for repairing and for renovation work in view of Rule 12 of Madhya Pradesh Bhumi Vikas Rules, 2012",,
and thereafter, the respondent No.2 without passing any order again issued a notice on 10.12.2015 and the petitioner was directed to remove the",,
alleged unauthorized construction within a period of three days.,,

Thereafter, the petitioner has preferred a writ petition i.e. W.P. No.8575/2015 and the same was disposed of by an order dated 12.12.2015 directing",,
the respondents to accord an opportunity of hearing to the petitioner, to file a reply to notice dated 10.12.2015 and the Additional Commissioner was",,
directed to grant him an opportunity of hearing and to pass a speaking order.,,

The petitioner has further stated that the order dated 12.12.2015 became final between the parties and it was not challenged before the Division,,
Bench. The petitioner pursuant to the order dated 12.12.2015, submitted a reply to the notice dated 21/22.12.2015.",,

The petitioner pursuant to the order dated 12.12.2015, submitted a reply to the notice dated 21/22.12.2015.",,

The petitioner has further stated that the Directors of the company also appeared before the Additional Commissioner and a letter was also submitted,,
The petitioner has further stated that the Directors of the company also appeared before the Additional Commissioner and a letter was also submitted,,

by him on 23.12.2015. The petitioner has further stated that nothing was done for almost two years and all of a sudden a letter was issued on,,

21.06.2017 based upon some complaint made by someone and a letter was issued on 21.09.2017 directing the petitioner to submit a compliance and,,

petitioner did submit a reply to the aforesaid notice.,,

The petitioner has further stated that the letter dated 21.09.2017 was not decided and the petitioner submitted another application on 21.11.2017 and,,

application was rejected by order dated 25.04.2018, and thereafter, the Building Officer/respondent No.2 has issued a letter dated 14.05.2018 directing",,

the petitioner to remove the construction, which is in-excess to the approved building plan. Thereafter, the petitioner has preferred a writ petitioner",,

before this Court i.e. W.P. No.11711/2018 and it was disposed of vide order dated 18.05.2018 directing the petitioner to remain present before,,

respondent No.1 and this Court has also directed for holding a joint inspection in respect of the property in question and the competent authority was,,

also directed to pass an order after holding the joint inspection.,,

The petitioner has further stated that joint inspection was carried out on 31.05.2018 and without supplying a copy of joint inspection report, the",,

respondents have issued a letter on 04.06.2018 directing the petitioner to remove the excess construction, which is more than the F.A.R. The",,

petitioner thereafter immediately replied the aforesaid letter dated 11.06.2018, and thereafter, vide letter dated 02.07.2018, the petitioner was informed",,

that no further time will be granted to the petitioner and the petitioner shall remain present on 09.07.2018. The petitioner immediately submitted a letter,,

dated 02.07.2018 to respondent No.1 with a request to furnish joint inspection report and the petitioner's contention is that the respondents have given,,

a reply that joint inspection report cannot be furnished to the petitioner, and thereafter, the petitioner again submitted a reply on 09.07.2018 and finally",,

a letter has been issued on 21.07.2018 informing the petitioner that the unauthorized construction will be removed.,,

The petitioner's contention is that keeping in view the Rule 10, 11 and 12 of the Madhya Pradesh Bhumi Vikas Rules, 2012, the construction in-excess",,

to the sanctioned plan cannot be looked into, as no such notice has been served to the petitioner regarding unauthorized construction during the period",,

the construction activity was carried out in the said building. A ground has been raised by the petitioner that the construction, if any, in-excess to the",,

sanction plan was done by the predecessor-in-title and the petitioner's construction is protected in light of Rule 12 of the Madhya Pradesh Bhumi,,

Vikas Rules, 2012, and therefore, as the petitioner has never violated the aforesaid rules nor any statutory provisions of Madhya Pradesh Municipal",,

Corporation Act, 1956 the question of demolishing the structure doesn't arise.",,

The petitioner has also stated that the respondent have misinterpreted the provisions as contained under Section 308-A and 308-B of the Madhya,,

Pradesh Municipal Corporation Act, 1956, as none of the construction of building in question is affecting the building line. The petitioner has also raised",,

a ground that the order has been passed by the Building Officer, whereas it is the Commissioner, who is competent to pass appropriate order in",,

respect of compounding, and therefore, the entire action is bad in law.",,

Reliance has been placed upon a judgment delivered in the case of Saiyyad Mujaffar Ali & Others v/s Municipal Corporation of Delhi 1999,,

supplementary 4 SCC 426 and the contention is that mere departure from the sanctioned layout does not ipso facto entail demolition.,,,

Reliance has also been placed upon a judgment delivered in the case of Kewal Krishna Gupta v/s J.K. Special Tribunal AIR 2005 SC 2578.,,

The petitioner has also placed reliance upon a judgment delivered in the case of Chawala Estate Developers Private Limited v/s State of M.P. &,,

Others in W.P. No.7374/2009.,,

RelianceÂ hasÂ alsoÂ beenÂ placedÂ uponÂ aÂ judgment delivered in the case of Municipal Corporation of Ludhiyana v/s Ranjeet Singh &,,

Another (2008) 3 SCC 506 and it has been argued that compounding can be done in respect of construction, which is in-excess, if any.",,

It has also been stated that the order passed by the Building Officer is without jurisdiction, as it is the Commissioner, who is competent to decide the",,

application in respect of compounding. It has also been stated that no order has been passed by the Additional Commissioner at any point of time and,,

SN,Date,Event

1,18/05/18,"W.P. No.11711/2018 (Anexure R/1) disposed of the

with following directions:

(i) The representative of the petitioner shall remain present in the office of Commissioner, IMC on 28.05.2018 at about 10:30 am.

(ii) The representative and the authorized officer of the Corporation shall visit the site and conduct the joint inspection.

(iii) The petitioner shall be afforded adequate opportunity in the process of hearing.

(iv) The competent authority shall pass a self contained speaking order with due advertance to the material placed on record within a period of two weeks from the date of joint inspection.

2,31/05/18,"Joint inspection was conducted in presence of petitioner's Managing Director, Petitioner's 02 Architects and others. Panchnama (Annexure R/2) duly signed by petitioners representative was drawn stating that â€

(i) Half portion of the lower basement is being used for keeping machines and not for parking.

(ii) Upper basement is being used for showroom instead of storage.

(iii) Front MOS and side MOS have been covered by construction.

(iv) open balcony not kept open as per the sanctioned map.

(v) Built up area found more than the sanctioned map

(vi) Area calculations were done separately.

3,04/06/18,"Building Officer issued letter (Annexure R/3) to the petitioner-

- (i) AS per permission lower basement is reserved for parking only but is being used for keeping machines.
- (ii) Upper basement is sanctioned for store but is used as jewelry showroom.
- (iii) Front MOS is 7.40 meter instead of 9 meter.
- (iv) Side MOS was not found to be 4.57 meter.
- (v) Built up area was 2168 sq. meter which is more than the permissible area.
- (vi) 07 days' time granted to submit documents and technical report, if desired.

4,09/06/18,"Petitioner issued letter (Annexure R/4) to Building

Officer - (i) Admitted joint inspection and measurements

(ii) Temporary construction in side MOS admitted.

(iii) Admitted covering the open balcony

(iv) Calculation of measurements is in progress

(v) External elevation done by Italian marble thus MOS appears to be less.

(vi) Requested for further time to submit clarification.

5,02/07/18,"Letter (Annexure-R/5) issued by the Building Officer a under-

(i) Petitioner directed to remain present for hearing on 09.07.2018 along with detailed calculations of construction on each floor with its Architect.

6,02/07/18,"Petitioner issued letter (Annexure R/6) to the Building Officer stating that its Engineer requires copy of detailed inspection report.

7,06/07/18,"Building Officer informed the petitioner that the measurements were taken in presence of the petitioner and its Engineer. However, the petitioner is at liberty to submit opinion apart from the measurements. (Annexure R/7).

8,09/07/18,"The representative of the petitioner appeared before Building Officer. No calculations were submitted. A reply was and submitted as under (Annexure R/8)

(i) Joint Inspection report not provided.

(ii) Reference of previous letters was given and requested to decide the matter on the basis of previous communications.

9,20/07/18,"Order (Annexure R/9) passed by Building Officer and communicated to the petitioner-

(i) Half portion of Lower Basement used for fitting machines.

(ii) Upper Basement used for jewelry showroom instead of store.

(iii) Front MOS only 7.40 meter instead of 09 meter.

(iv) Side MOS not left as per the sanction.

(v) Actual construction found to be 2168.41 Sq. meter instead of 1643.53 Sq. meter. Thus, 524.88 Sq. meter construction in excess, which is 360.53 Sq meter beyond the limit of compounding.

(vi) Front MOS affects regular line of building and cannot be compounded.

(vii) Illegal construction is more than 10% of the permissible area, thus, cannot be compounded.

(viii) Commercial activity (Jewelry show room) in upper basement is not permissible.

(ix) Directed to remove illegal construction within 07 days.

petitioner has taken a somersault by disputing the same.,,

It has also been stated by the respondents that the measurements in respect of front MOS, side MOS and excess construction were supplied to the",,,

petitioner vide letter dated 04.06.2018 and due opportunity was given to the petitioner with specific direction to submit a technical report with,,

documents and the petitioner opted not to submit any such measurement, drawing etc. to support his contention.",,

The respondents have further stated that the petitioner was informed vide letter dated 09.06.2018 about the calculation in respect of F.A.R. and the,,

petitioner did not submit any calculation and proper opportunity was given to the petitioner and after hearing the petitioner, the order was passed on",,,

20.07.2018.,,

The respondents have stated that in light of the joint inspection report, there can be no compounding in respect of certain structure i.e. construction",,,

affecting the regular line of building and the construction in-excess of 10% prescribed F.A.R. The respondents have also stated that the Building,,

Officer has not rejected the application for compounding, he has simply passed an order in respect of the illegal structure, which can not be",,,

compounded and the petitioner can certainly submit an application in respect of which compounding can be done in accordance with law.,,

The respondents have also argued that in the present case Madhya Pradesh Bhumi Vikas Rules, 1984 are applicable and the Madhya Pradesh Bhumi",,,

Vikas Rules, 2012 are of no help to the petitioner. The respondents have placed reliance upon a judgment delivered in the matter of Esha Ekta",,,

Apartment v/s Municipal Corporation (2013) 5 SCC 357 as well the judgment delivered in the case of Fiends Colony Development Colony v/s State,,

(2004) 8 SCC 733 and the contention of learned counsel is that by no stretch of imagination, the structure, which is non-compoundable can be",,,

compounded.,,

This Court on 08.08.2018 has passed the following order:-,,

“Shri A.K. Sethi, learned Senior Counsel with Shri Rishabh Sethi, learned counsel for the petitioner.”,,

Shri Rishi Tiwari, learned counsel for the respondent.”,,

Learned senior counsel for the petitioner concluded arguments, and thereafter, learned counsel for the respondent has also concluded his arguments.”,,

At this stage, it has transpired that the petitioner, if he complies with the substantive objections, as reflected from the impugned order, the possibility of,,
compounding of excess construction permissible in law cannot be ruled out.,,

Under these circumstances, this Court called upon Shri Sethi, learned senior counsel to seek instructions and make submissions.”,,

Time as prayed for is granted in that behalf.,,

Call out on 17.08.2018, as prayed for.”,,

Till then, I.R. to continue.”,,

In compliance of the aforesaid order, an additional affidavit has been filed by the Building Officer, which has been filed on behalf of the respondents”,,

and it has been stated that the petitioner has made an attempt to justify the illegal construction in front MOS by stating that there are thousand of,,

buildings in the township of Indore, which are not as per the building plan and there are large number of buildings in Indore township, in which, the”,,

basements are being used for commercial activities. The stand of the respondents is that the petitioner cannot claim negative equality. The,,

respondents have also filed the photograph of the joint inspection, which took place in presence of architect and representatives of the petitioner and”,,

their contention is that by no stretch of imagination, the question of interference by this Court is warranted in the peculiar facts and circumstances of”,,

the case and the petitioner in respect of the construction which cannot be compounded, has to demolish the same and in case the petitioner does not”,,

demolish the construction, which cannot be compounded, it is the Corporation which will take action in accordance with law.”,,

Shri Rishi Tiwari has fairly stated before this Court that the petitioner is free to submit an application for compounding and the Corporation shall be,,

taking appropriate action keeping in view the categorical averments made in the reply in respect of the structure and percentage of illegal construction,,

for compounding.,,

Heard learned counsel for the parties and perused the record. The matter is being disposed of at motion hearing stage itself with the consent of the,,

parties.,,

The undisputed facts of the case reveal that the petitioner has purchased the building in question through a registered sale deed dated 27.09.2012 and,,

the petitioner, as intended to carry out repair/renovation, submitted an application on 20.08.2014. As the petitioner was deviating from the approved",,,

map, a notice was issued by the Corporation on 12.09.2014 again on 10.12.2015 directing the petitioner to remove the alleged unauthorized",,,

construction within three days.,,

The petitioner being aggrieved by the order passed by the respondents, came up before this Court and this Court by an order dated 12.12.2015 passed",,,

in W.P. No.8575/2015 has disposed of the writ petition with direction to the Additional Commissioner to grant an opportunity of hearing to the,,

petitioner and also to carry out joint inspection, if required. The petitioner did appear before the Additional Commissioner, submitted a reply and again",,,

an order was issued rejecting the petitioner's application on 25.04.2018 and the petitioner vide letter dated 14.05.2018 was directed to remove the,,

unauthorized construction, which was in-excess to the approved building plan.",,,

The petitioner has filed a second writ petition i.e. W.P. No.11711/2018 and by an order dated 18.05.2018, the petition was disposed off and this Court",,,

has passed the following orders:-,,

â€œMr. A.K. Sethi, learned senior counsel assisted by Mr. RishabhSethi, counsel for the petitioner.",,,

Mr.Â RishiÂ Tiwari,Â learnedÂ counselÂ forÂ the respondents-Indore",,,

Municipal Corporation.,,

In the light of the statement made at Bar by the counsel for the respondent-Municipal Corporation that before taking any action against the petitioner",,,

a joint inspection shall be conducted followed by an inquiry with due opportunity of hearing to the petitioner. Thereafter upon consideration of the reply,,

with documents submitted by the petitioner necessary action shall be taken, in accordance with law.",,

In view of the above, this Court sees no reason to keep this writ petition pending.",,

Accordingly the present petition is disposed of with the following directions:,,

(i) The representative of the petitioner shall remain present in the Office of Commissioner, Indore Municipal Corporation on 28.05.2018 at about 10:30",,,

am.,,,

(ii) The representative and the authorized officer of the Corporation shall visit the site and conduct the joint inspection.,,,

(iii) The petitioner shall be afforded adequate opportunity in the process of hearing.,,,

(iv) The competent authority shall pass a self contained speaking order with due advertance to the material placed on record within a period of two,,

weeks from the date of joint inspection.,,,

(iv) Till then, no coercive action shall be taken against the petitioner. It is made clear that this Court has not expressed any opinion on merits of the",,,

case.â€,,

Thereafter, a joint inspection was carried out in the matter. A Panchnama was also prepared on 13.01.2018, which has been signed in presence of",,,

architect and technical expert of the petitioner namely Shri Sanjay Shrivastava and Shri Narendra Joshi and the petitioner was informed by an order,,

dated 04.06.2018 about the unauthorized illegal construction based upon the joint inspection report. The order passed based upon the joint inspection,,

report reads as under:-,,

â€œuxj fuxe }kjk tkjh vuqKk Ã~ekad 2/884 fnukad 03@10@98 esa vafre ry?kj ikfdZax gsrq Lohd`r gSA ijUrq mlesa e'khujh yxh gksus ls mldk mi;ksx,,

ikfdZax gsrq ugh gks ik jgk gSA blh izdkj Ã...ijh ry?kj esa Lohd`fr vuqlkj Lvksj Lohd`r gSA tcfd ekSds ij Tosyjh 'kks:e lapkfy gS nks jsEi ds LFkku ij,,

,d gh jsEi fufeZr gksuk ik;k x;k gSA Hkwry ls prqFkZ ry rd Lohd`fr vuqlkj fuekZ.k ugh gSA ekSds ij dksbZ Hkh vksiU MQ~V ugh ik;k x;k gSA Vsjsl",,,

Q~yksj dk fuekZ.k Lohd`fr vuqlkj ugh gSA ekSds ij lkeus dh rjQ [kqyk ,e-vks-,l 7-40 eh ik;k x;k tcfd Lohd`fr vuqlkj 9-0 eh- miyC/k gksuk vko';d Fkk",,,

'ks""k rhuksa rjQ Hkh ,e-vks-,l fuekZ.k :i ls 4 -57 eh- miyC/k ugh gSA ekSds ij orZeku esa Hkwfe fodkl vf/kfu;e 2012 ,oa bUnkSj fodkl ;kstuk 2021 ds",,,

izko/kku vuqlkj ,Q-,-vkj dh x.kuk esa lEefyr gksus okyk {ks=Qy yxHkx 2168 oxZ eh- fufeZr gSA tks Lohd`fr ;ksX; ,Q-,-vkj- ls dkQh vf/kd gSA",,,

vr% vkidks funsZf'kr fd;k tkrk gS fd vki ekSds ij ik=rk vuqlkj fuekZ.k dks NksM+dj 'ks""k vf/kd fuekZ.k dks Lo;a gVk ysosA bl laca/k es vki",,,

nLrkostksa lfgr rdfudh izfrosnu vius i{k leFkZu gsrq izLrqr djuk pkgs rks 07 fnol ds vanj v/kksgLrk{kjh ds le{k izLrqr dj ldrs gSAâ€",,,

Thus, undisputedly, the petitioner has carried out construction in-excess to the sanctioned map.",,,

While the present petition was being heard, this Court has passed an order on 08.08.2018, which has already been quoted in the preceding paragraphs.",,,

The respondents have also filed an order dated 20.07.2018 passed by the Building Officer, wherein he has categorically given all minute details of the",,,

unauthorized construction including the construction, which is beyond the building line and the construction, which is in marginal open place. The",,,

relevant portion of the order dated 20.07.2018 reads as under:-,,

â€œemijksDr vkns'kkuqlkj fnukad 31-05-2018 dks esllZ TosylZ izk-fy- ds okLrqfon izfrfuf/k Jh ujsUnz tks'kh ,oa esllZ vkuUn TosylZ izk-fy- ds izfrfuf/k",,,

Jh vkj-ds-tSu Jh xkSjo vkuUn ,oa Jh vfHk""ksd gk.Ms ds le{k iz'uxr Hkou dk fujh{k.k dj eki fy;s x;sA la;qDr fujh{k.k dk ekSdk iapukek cuk;k x;k ftlÂ",,,

ijÂ esllZÂ vkuUnÂ TosylZÂ izk-fy-Â ds izfrfuf/k;ksa us vius gLrk{kj fd;sAA Â Â,,

Â 1- fupysÂ ry?kjÂ dsÂ vk/ks Â Hkkx ijÂ nksÂ ifg;k ikfdZax rFkk 'ksa""k Hkkx ij e'khus yxh gqbZ gS rFkk mijh ry ?kj esa vkHkq""k.k dk 'kks:e",,,

lapkfyrÂ fd;kÂ tkÂ jgkÂ Fkk tcfdÂ Hkou vuqKkÂ esa fupys ry?kj dh Lohd`fr fof'k""V :i ls ikafdZax gsrq ,oa mijh ry?kj dh vuqefr LVksj gsrq nh",,,

xbZ gSA,,

2- Hkou ds lkeus dh vksj Lohd`r ,e-vks-,l- dks fuekZ.k esa lEefyr fd;k x;k rFkk vU; rhuksa rjQ Hkh ,e-vks-,l Lohd`fr vuqlkj NksM+k tkuk ugh ik;k",,,

x;kA Lohd`r ekufp= vuqlkj [kqyh ckyduh gksuk Hkh ugh ikbZ xbZA,,

3- Lohd`r fcYVvi ,fj;k 1504-46 oxZehVj ls vf/kd fuekZ.k gksuk ik;k x;kA",,,

4- {ks=Qy dh x.kuk i`Fkd ls dh xbZ ftlds vuqlkj fLFkfr fuEukuqlkj gS&,,

1- Lohd`r fuekZ.k&1643-53 oxZ ehVj $\frac{1}{4}$ lsVcsd ,Q,vkj ds ykHk ds lkFk $\frac{1}{2}$,,

2- okLrfod fuekZ.k&2168-41 oxZ ehVj,,

3- Lohd`rh ls vf/kd fuekZ.k&524-88 oxZ ehVj $\frac{1}{4}$ 2168-41&164-35 $\frac{1}{2}$,,

4- iz'keu ;ksX; fuekZ.k&164-35 oxZ ehVj $\frac{1}{4}$ 1643-56 dk 10 izfr'kr $\frac{1}{2}$,,

5- iz'keu lhek ls vf/kd fuekZ.k &360-53 oxZehVj $\frac{1}{4}$ 524-88&164-35 $\frac{1}{2}$,,

6- QzUV ,e-vks-,l 9 ehVj ds LFkku ij 7-40 ehVj gksuk ik;k x;kA",,,

fnukad 04-06-2018 ds i= }kjk esllZ vkuan TosylZ izk-fy- dks iz'keu lhek ls vf/kd fuekZ.k dh lwpuk nsrs gq, i{k leFkZu gsrq lkr fnol dk le; iznku fd;k",,,

x;kA mijksDr of.kZr i= dh izkfIr ds i'pkr Hkh esllZ vkuan TosylZ izk-fy-dh vksj ls dksbZ O;fDr lquokbZ izLrqr ugh gqvk vfirq fnukad 09-06-2018 dks,,

esllZ vkuan TosYlZ izk-fy- }kjk ,d i= izLrqr dj leLr tkudkj gsrq le; iznku djus dk fuosnu fd;kA",,,

fnukad 29-06-2018 dks esllZ vkuan TosYlZ izk-fy- dks lwpuk i= iszf'"kr dj ekuuh; U;k;ky; ds funsZ'kkuqlkj lquokbZ gsrq fnukad 09-07-2018 dks lk; 04-",,,

30 cts leLr nLrkostks ds lkFk lquokbZ gsrq mifLFkr jgus dh lwpuk nh xbZ fnukad 09-07-2018 dks esllZ vkuan TosYlZ izk-fy- dh rjQ ls izfrfuf/k Jh vkj-,,,

ds tSu us mifLFkr gksdj muds }kjk fyf[kr esa Hkh tokc fn;k x;kA ftl vuqlkj iwoZ ds i=ksa esa le; ij voS/k@fcuk vuqefr fuekZ.k ds laca/k esa,,

Li""Vhdj.k fn;k x;kgSA mls Lohdkj fd;k tkosa ;g Hkh mYysf[kr fd;k x;k gS fd la;qDr fujh{k.k ds le; fyf[kr esa dksbZ vkiRrh ugh nh xbZ Fkh ,oa voS/k",,,

fuekZ.k@fcuk vuqefr@vuqefr ds foijhr fuekZ.k ds laca/k esa vkidks la;qDr :i ls uke djus ds nkSjku gh voxr dj;k x;k ftldk mYys[k iapukek fjiksZZV,,

esa Hkh gSA,,

dk;kZy; essa mifLFkr ds nkSjku vkuan TosylZ ds }kj foLr`r M $\hat{A}$ ^akWbax lfgr viuk i{k izLrqr dj tk ldrk Fkk ijUrQ iwoZ ds i=ksa dk gh mYys[k djrs,,

gg;s tokc izlrqr fd;k x;k gSA ftlesa mYysf[kr ckrs mijksDrkuqlkj Lohdk;Z ugh gSA foLr`r uki ls iwoZ esa gh voxr dj fn;k x;k gSA mlesa fHkUu,,

dksbZ vfrfjDr fuekZ.k ugh gS rFkk tks Hkh vfrfjDr fuekZ.k gS mlds laca/k es i= $\tilde{A}$ - 544 fnukad 04-06-2018 }kjk Li""V dj fn;k x;k gSA",,,

leLr rF;ksa dk lw{e ifj'khyu djus ij ik;k tkrk gS fd esllZ vkuan TosYlZ izk-fy- }kjk Lohd`r ekufp= ds foifjr dqy Lohd`r {ks=Qy ls 524-88 oxZehVj vf/kd,,

fuekZ.k fd;k x;k gS ftlesa ls ek= 164-35 oxZehVj iz'keu ;ksX; gSA mYys[kuh; gS fd uxj ikfyd fuxe vf/kfu;e /kkjk 308&dÂ¼dÂ½ ds vuqlkj ,sls",,,

fuekZ.k dk iz'keu ugh fd;k tk ldrk tks Hkou iafDr dks izHkkfor djrk gksA vr% QzUV ,e-vks-,l- esa fd;s x;s fuekZ.k dk iz'keu ugh fd;k tk ldrkA mih",,,

cslesUV esa dh tk jgh O;olkf;d xfrfof/k Hkh ekU; ugh gSA,,

vr% esllZ vkuan TosYlZ izk-fy- }kjk mijksDrkuqlkj fd;k x;k voS/k fuekZ.k dk;e ugh j[kk tk ldrk gS ftls 7 fnol ds Hkhrj gVk;k tk;s vU;Fkk dh lLFkrh,,

esa fuxe }kjk voS/k fuekZ.k gVkus gsrq fof/k vuqlkj dk;Zokgh dh tkosxh ftlds leLr gtZs [kpsZ dh ftEesnkjh Hkou Lokeh dh gksxhAâ€,,

Thus, the record of the case reflects that the Corporation is issuing notices right from 2014 and this is the third round of litigation, and now, the entire",,,

measurement has been done in respect of the premises and undisputedly, in respect of certain extra construction, the question of compounding doesn't",,,

arise.,,,

Section 308-A and 308-B of Madhya Pradesh Municipal Corporation Act, 1956 reads as under:-",,,

â€œ308-A. Compounding of offences of construction of buildings with permission-,,

Notwithstanding anything contained in this Act or any other Act, for the time being in force or any rules or byelaws made there under , the offence of",,,

constructing buildings without permission or contrary to the permission granted, may be compounded, if-",,,

(a) Such construction does not affect the regular building line (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 percent 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, or",,,

(d) area specified for parking of vehicles; or,,

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

(f) area specified for tanks (Talab);,,

(g) area of construction affecting regular building line:,,

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 but does not exceed two hundred fifty square meter, thirty percent of the rate of",,,

sale in respect of non-residential houses/buildings.,,

(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 the rate of",,,

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

(c) If the construction relates to a plot exceeding 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 non-residential buildings.,,

(d) If the construction relates to a plot exceeding three hundred fifty 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 buildings:,,

Provided further that the compounding shall be made in case of residential construction by the Commissioner and in case of non-residential,,

construction with the permission of the Mayor-in-Council ,,,

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

construction has been made.,,

308-B.Â RelaxationÂ inÂ CompoundingÂ the unauthorized construction.-,,

(1) Notwithstanding anything contained in Section 308-A or any other provisions of this Act or any other law for the time being in force , the",,,

Commissioner may, on the application made in this behalf by order, compound the cases involving deviations from the approved plan or map, or",,,

construction made without permission by collecting compounding fee at such rate as may be determined by the State Government.,,

(2) The application under sub-section (1) shall be made within 90 days from the date of the commencement of the Madhya Pradesh Nagarplaik Vidhi,,

(Sanshodhan) Adhiniyam, 2003 and the Commissioner shall, after making such enquiry as he deems fit decide all applications received under sub-",,,

section (1) within six months from the date of receipt. If the Commissioner fails to decide the applications received under sub-section (1) within the,,

aforesaid period he will be deemed to be guilty of dereliction of duty and liable for disciplinary action.,,

(3) Upon the issue of the order under sub-section (1), permission shall be deemed to have been granted under this Act and the Madhya Pradesh",,

Nagar Tatha Gram Nivesh Adhiniyam, 1973 and the rules and byelaws made thereunder.",,

(4) Nothing contained in sub-section (1) shall apply to any application by any person who does not have any right over the building or the land on,,

which the construction has been made or to any application in respect of any building erected or constructed in any of the following areas:-,,

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

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

(English Version)",e-iz- Hkwfe fodkl fu;e 1984,

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

(English Version)",e-iz- Hkwfe fodkl fu;e 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- fo?keku Hkou & Hkou bu fu;eksa esa nh xbZ fdlh Hkh

ckr esa fdlh {ks= dh fodkl ;kstuk esa micaf/kr laiw.kZ

ifjlhekvksa rFkk fucZU/kuk ds v;/khu jgrs gq,] ml rkjh[k dks
ftldks fd bu fu;eksa ds lqlaxr micU/k izo`Rr gks] fdlh fo?keku
Hkou ds of/kZr Hkkx dks fxjkus] mlesa ifjorZu djus ;k mldk
ifjR;kx djus dh u rks rc rd mis{kk dh tk; sxh vkSj u gh fdlh
fo?keku Hkou ds mi;ksx ;k miHkksx dks pkyw j[kus ls jksdk
tk; sxk] tc rd fd izkf/kdkjh ds er esa ,sls Hkou ;k mlds Hkkx ls
lehiorhZ laifRr dh lqj{kk dks ;k Hkou ds vf/kHkksfx;ksa dh
lqj{kk dk [krjk u gksA",