

State of M. P. and Another

Vs

Municipal Corporation, Indore

Civil Appeal No. 623 of 1973

(M. P. Thakkar, B. C. Ray JJ)

06.03.1987

JUDGMENT

THAKKAR, J. –

1. This appeal by special leave against the judgment of the High Court of Madhya Pradesh has been preferred possibly on account of some misconception and some misapprehension. The State appears to have been exercised in regard to the question whether the Municipal Corporation can sell open plots of lands which have been vested in it in trust for the "purposes of the M.P. Municipal Corporation Act". In fact, no such point has been decided by the High Court, much less decided against the view canvassed by the State Government. This will be clear from the following passage extracted from the judgment under appeal :

In this view of the matter, it is not necessary for us to go into the question of the extent of rights that were conferred under the various statutes relating to these properties on the petitioner, and the effect of subsequent enactments on those rights.

The High Court has in terms made it clear that the question as regards the rights conferred on the Corporation relating to these properties has not been examined. So also in paragraph 8 the High Court has observed that "the question about the extent of the rights of the Corporation is not necessary to be gone into". It is, therefore, abundantly clear that the High Court has not made any pronouncement as regards the rights of the Municipal Corporation in respect of open plots of lands which have been vested in the Municipal Corporation in trust 'for the purposes of the Act'. All that the High Court has done is that it has passed an order in the following terms :

Consequently this petition is allowed and the orders passed by the Collector, Indore, and Commissioner, Indore, on the basis of the government order, which has been described as instructions, declaring all open lands within the Corporation limits as Nazul lands and directing the petitioner not to deal with or dispose of such lands, and also the orders passed on that basis by the Nazul Officer dealing with those lands, are set aside. Consequently all open lands that vest in the petitioner before these orders were passed shall vest in the petitioner.

The discussion in the judgment goes to show that the said order was passed in the context of the letter addressed by Collector (Shri W. S. Tambe) being DO letter dated September 29, 1965, to the Commissioner of the Municipal Corporation (S. C. Dube). The letter insofar as material was in the following terms :

My dear Dube,

Please find herewith a copy of Local Government (Urban) Deptt. Memo No. 11199/7594/XVIII-C.I. dated September 10, 1964 a copy of which was sent to you by the Sub-Divisional Officer, Indore, for information and necessary action vide No. SDO/I/65 dated February 11, 1965.

2. A perusal of paragraph 3 will show that the unoccupied lands situated within the Municipal limits do not belong to any urban local body in any absolute right and the lands not specifically vested in any Municipal Council shall continue to be treated as intra-Municipal Nazul lands and that the management and control thereof will be that of the State Government in the Survey and Settlement Department.

3. Under these circumstances the sale of land to be held by you on October 6, 1965 as per publication of Indore Municipal Corporation Notification No. 119 in the issue dated September 26, 1965 of daily newspaper 'Nai Duniya' at page 6, does not appear to be proper. You are therefore requested to examine the matter in the light of the above government orders and intimate how this sale has been undertaken. It is requested that pending the clarification in the matter, the sale may be withheld.

The Municipal Corporation took an exception to this saying that the Collector had no jurisdiction to direct that the lands would hereafter be managed and controlled by the State Government by addressing such a letter. This again is evident from the grievance made by the Municipal Corporation in its writ petition giving rise to the present appeal. The relevant passage is extracted hereinbelow :

There were certain departmental instructions to that effect issued by the government. Consequently, according to the petitioner, the Collector, District Indore, wrote a letter to the Commissioner, Indore Municipal Corporation, challenging the right of the Corporation to dispose of some of these open plots of land by the Corporation. This resulted in an exchange of correspondence, and a representation was made to the Collector on November 8, 1968. The Revenue Commissioner, Indore Division, sent an order to the Administrator, Municipal Corporation, Indore directing that no new leases should be given by the Corporation in respect of any open land within the limits of the Corporation as, according to the Commissioner, these lands fell within the Nazul Department and could, therefore, only be leased out by the Nazul Officer. In consequence of this, the petitioner-Corporation, after making a demand of justice, has filed this petition before us.

It is, therefore, clear that the entire controversy centered around the question as to whether the Collector could issue such a direction to the Commissioner on the basis of instructions issued by the State Government. And the High Court has concluded that the Collector has no such power to do so at an administrative level without going into the question as regards the power of the Municipal Corporation to deal with the lands vested in it in trust for the purposes of the Act which were under the management of the Corporation as per the Statutory provisions. It may be mentioned that under the Madhya Pradesh Municipal Corporation Act, 1956 government's power of 'control' have been vested in the appropriate authority under Chapter XXXVI in Sections 417 to 426(b). For instance, under Section 421 the government has the power to suspend any resolution or order or to pass an order in writing prohibiting the doing of any such act which in the opinion of the government is not in accordance with law or which attracts the exercise of powers under Section 421. If the

government therefore wanted to pass any order in exercise of its 'control jurisdiction' the same could have been passed under the statutory authority of Section 421 or any other relevant provisions of law. This could not have been done by way of administrative instructions on the basis of any communication addressed by the government to the Collector or the Collector to the Municipal Corporation. All that the High Court has done is to hold that such a power cannot be taken away by an administrative circular as is evident from the following passage :

It is, therefore, clear that whatever incident of property vested in the petitioner under respective provisions of the Act referred to above could not be taken away by an administrative circular, order or instruction.

Under the circumstances, it is apparent that the apprehension entertained by the State Government that the question as to the right of the Corporation to deal with such plots of land vested in trust for the purposes of the Act has been determined by the judgment under appeal is ill-founded. We, therefore, see no reason to interfere with the order passed by the High Court. The appeal therefore fails and is dismissed. There will be no order as to costs.

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