

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

ON THE 6th OF NOVEMBER, 2024

CIVIL REVISION No. 383 of 2018

J.P.SANGHI

Versus

SMT RAJ KEMTANI AND OTHERS

Appearance:

Shri Sanjay Agrawal - Senior Advocate with Shri Yash Soni - Advocate for the applicants.

Shri N.C. Beohar - Advocate for non-applicant 1.

ORDER

This Civil Revision has been preferred by the applicant (now dead, through LRs) challenging the order dtd.16.03.2018 passed by XI Additional District Judge, Jabalpur in MJC No.52/2015 whereby applicant's application under Section 307(5) of the Municipal Corporation Act, 1956 (in short 'the Act') has been dismissed.

2. Facts in short are that the applicant filed an application under Section 307(5) of the Act seeking removal of illegal construction allegedly raised by non-applicants 1-2, with the allegations that the applicant is residing in Bungalow No.132 (old number 105) and the non-applicants 1-2 have raised construction of four storied house over an area 752 sq.ft. of plot number 351, without leaving requisite open space beside and behind the house, that too without getting sanctioned the map, for which a notice was also issued by the

Corporation. Later on the non-applicants 1-2 instituted a civil suit, which was dismissed and appeal filed against which was also dismissed. It is alleged that thereafter the non-applicants 1-2 compromised the matter with non-applicants 3-4, but such compromise being in contravention of the provisions contained in Section 308-A and B of the Act, is illegal. On inter alia allegations, it was prayed that non-applicants 3-4 be directed to remove illegal construction raised by non-applicants 1-2.

3. Non-applicants 1-2 appeared and filed reply and contended that they had raised construction over their plot after getting sanctioned the map and again for making some alteration in the house, an application for sanctioning of the map was filed, but the same was not decided within a period of thirty days, as required under Section 295(3) of the Act, resultantly the construction raised by them is legal, because even at the time of construction no objection was raised either by the non-applicants 3-4 or by the applicant. The non-applicants 1-2 have already left sufficient open space behind their house and the applicant has no right to challenge the construction raised by them, as no prejudice has been caused to him. It is further contended that as the non-applicants 3-4 have compounded the construction by getting deposited compounding fees and on that basis the second appeal has also been disposed off, by the High Court, therefore, the application deserves to be dismissed.

4. The non-applicants 3-4 did not file any reply.

5. On the basis of pleadings of the parties, trial Court framed point for determination and recorded evidence of the parties and upon due consideration of the same, dismissed the application with the observation that illegal construction has already been compounded by non-applicants 3-4 by getting deposited an amount of Rs.1,22,122/-, therefore, in the light of compromise arrived at amongst the non-applicants 1-2 and non-applicants 3-4, the same cannot be held to be illegal. Accordingly, dismissed the application vide order dtd.16.03.2018.

6. Learned senior counsel appearing for the applicant submits that the compounding done by the non-applicants 3-4, being illegal, ought to have been discarded and the construction raised by the non-applicants 1-2 being illegal and without permission, ought to have been directed to be removed. He submits that the application under Section 307(5) of the Act is not a suit, therefore, dismissal of the application on the ground of non-service of notice under Section 401 of the Act is not sustainable. He further submits that the construction made by non-applicants 1-2 has affected the regular building line, therefore, no compounding could have been ordered. He also submits that regarding compounding of the illegal construction, documents were taken on record illegally, therefore, could not have been considered in evidence and the impugned order based thereon is not sustainable. With these submissions he prays for admitting/allowing the civil revision. In support of his submissions, learned counsel for the applicants

placed reliance on a decision in the case of Hari Singh vs. Sushila Devi and another, **1996 JLJ 624** (Para 13-14).

7. Learned counsel appearing for the non-applicants 1-2 supports the impugned order and prays for dismissal of the civil revision.

8. Heard learned counsel for the parties and perused the record.

9. Even in the application under Section 307(5) of the Act, the applicant has averred that the non-applicants 1-2 have compromised the matter with the non-applicants 3-4 and the non-applicants 3-4 have compounded the illegal construction illegally, just contrary to the provisions contained in Section 308-A and B of the Act, hence, the compounding is illegal. As such it is clear that after compounding of the illegal construction, instant application under Section 307(5) of the Act was filed before the court below.

10. While passing the impugned order trial court has also taken into consideration the aforesaid aspect and vide paragraphs 9 & 10 of the impugned order, has observed that the illegal construction has already been compounded upon deposit of Rs.1,22,122/- by non-applicants 1-2 with the non-applicants 3-4 and thereafter non-applicants 3-4 did not raise any objection about legality of the construction raised by non-applicants 1-2. Even in the instant case, reply has not been filed by the non-applicants 3-4.

11. Nothing has been brought on record by the applicant, that the compounding of the alleged illegal construction had been challenged by the applicant before any authority.

12. In view of the aforesaid discussion, in my considered opinion when compounding of the alleged illegal construction, has already been done, therefore, the non-applicants 3-4 cannot be directed to remove the alleged illegal construction done by the non-applicants 1-2, because after such compounding, permission shall be deemed to have been granted under the Act.

13. Resultantly, without making any comment on question of maintainability of application under section 307(5) of the Act for want of service of notice under Section 401 of the Act, this civil revision fails and is hereby **dismissed**.

14. Misc. application(s), pending if any, shall stand closed.

(DWARKA DHISH BANSAL)
JUDGE