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Laxmandass Krishnani
V.
Municipal Council, Guna & Anr.

04/04/2017

Shri K.N.Gupta, Senior Advocate with Shri R.K.Sharma, counsel for the applicant.

Shri Arun Dudawat, counsel for the respondent no.1.

Shri Girdhari Singh Chauhan, Public Prosecutor for the respondent no.2/State.

This petition under Section 482 of CrPC has been filed against the order dated 19/02/2016 passed by IIIrd Additional Sessions Judge, Guna in Criminal Revision No.212/2015 by which the order dated 13/10/2015 passed by JMFC, Guna in Criminal Case No.2099/2010, framing charge under Section 339-C of Madhya Pradesh Municipalities Act, 1961, was affirmed.

The necessary facts for the disposal of the present application in short are that the respondent no.1 filed a criminal complaint against the applicant for offence under Section 339-C of Madhya Pradesh Municipalities Act. It is the case of the respondents that the applicant is a *Bhumi Swami* of Agricultural land bearing Survey No.1176/1/6 area 0.248 hectare which is situated within the limits of the Municipal Council. A person who is intending to take up a work of establishment of the colony(s) in the area of Municipal Council for the purposes of dividing the land into plot with or without developing the area, transfers or agrees to transfer gradually or at a time, to persons desirous of settling down on those plots by constructing residential or non-

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residential or composite accommodation is required to get himself registered as a colonizer as per the provisions under Section 339-A of Madhya Pradesh Municipalities Act. After obtaining the registration, the applicant was required to get the land diverted as per the provisions of Section 172 of the MPLR Code. It was further alleged that after getting the land diverted, the applicant was required to carry out certain development works as per the provisions of Madhya Pradesh Nagar Tatha Gram Nivesh Adhinium. It was also alleged that without getting himself registered as a colonizer and without getting the land diverted, the applicant, with an intention to establish the colony, divided the entire land in different plots and started selling the same and, thus, violated the statutory provisions. The SDO, Guna, by its order dated 22/09/2010, informed the respondent that the applicant by executing registered sale deeds on 23/11/2009, 01/12/2009, 01/06/2009, 12/08/2009, 12/08/2009 and 05/06/2009 has sold the plots to different persons and has also started raising construction of a colony. Thus, it was alleged that the applicant has violated the provisions of Madhya Pradesh Nagar Palika (Registration of Colonizer, Terms and Conditions) Rules, 1998 as well as under Section 339-A of Madhya Pradesh Municipalities Act, 1961. The applicant has not obtained any permission under any statutory provisions and, accordingly, the complaint was filed.

By order dated 13/10/2015, the Magistrate rejected

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the contention of the applicant that the complaint has been filed by an incompetent person and, accordingly, framed charge under Section 339-C of Madhya Pradesh Municipalities Act and fixed the case for recording of evidence of the witnesses.

Being aggrieved by the said order of the Magistrate, the applicant filed Criminal Revision No.212/2015 which has suffered dismissal by order dated 19/02/2016 passed by IIIrd Additional Sessions Judge, Guna.

It is contended by the counsel for the applicant that as per the provisions of Section 312 of Madhya Pradesh Municipalities Act, 1961, legal proceedings cannot be instituted without previous sanction of the council and, since, in the present case, the sanction of the council has not been obtained before filing of the complaint, therefore, the complaint suffers from legal defect and, accordingly, it is liable to be dismissed. It is further submitted that the allegations are that without obtaining the license as required under the Madhya Pradesh Nagarpalika (Registration of Colonizer, Terms and Conditions) Rules, 1998, the applicant had divided the land into plots and had intended to take up the work of establishment of colony, therefore, the prosecution of the applicant is bad as the competent authority has not filed the complaint. The competent authority has been defined and, therefore, in view of rule 15-C of Madhya Pradesh Nagarpalika (Registration of Colonizer, Terms and Conditions) Rules, 1998, the complaint filed through the Chief Municipal Officer, Municipal Council, Guna is bad. It

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is further submitted by the counsel for the applicant that before filing the complaint, the Chief Municipal Officer has not applied its own independent mind and has filed the complaint merely on the direction of the SDO.

Per contra, it is submitted by the counsel for the respondent that the Chief Municipal Officer has been defined under Section 3(5) of Madhya Pradesh Municipalities Act, 1961 and he is competent to perform or discharge any of the powers, duties or functions of Chief Municipal Officer to the extent which such officer is so empowered. It is further submitted that the complaint has been filed strictly in accordance with the provisions of Madhya Pradesh Municipalities Act, 1961. It is further submitted by the counsel for the State that although undisputedly the SDO had also advised the Municipal Council to file the complaint but the Municipal Council, Guna was competent to file the complaint when the violation of the provisions of Section 339-A of Madhya Pradesh Municipalities Act, 1961 were brought to its knowledge by the SDO, Guna.

Heard the learned counsel for the parties.

Section 312 of Madhya Pradesh Municipalities Act, 1961 reads as under:-

"312. Power to institute legal proceedings and obtain legal advice.-

With the previous sanction of the Council, the Chief Municipal Officer, or such other officer, as may be authorized by the Council in this behalf, may on behalf of the Council-

(a) institute, defend or withdraw from legal proceedings under this Act, or under any rule or by law made thereunder, or

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under any other enactment for the time being in force;

(b) admit, compromise or withdraw any claim made under this Act or under any rule or bye-law made thereunder, or under any other enactment for the time being in force; and

(c) obtain such legal advice and assistance as he may, from time to time, think it necessary or expedient to obtain for any purpose referred to in the foregoing clauses of this section, or for securing the lawful exercise or discharge of any power or duty vesting in or imposed upon the Council, any of its committees or any municipal officer or servant”

Referring to the words “legal proceedings” as mentioned in Section 312(a) of Madhya Pradesh Municipalities Act, 1961, it is submitted by the counsel for the applicant that it has a wide connotation and, therefore, even the “prosecution” should also be included in the word “legal proceedings”.

The contention raised by the counsel for the applicant is misconceived and cannot be accepted. It is well established principle of law that the legislature has not used a single word without any purpose as legislature is deemed not to waste its words or to say anything in vain. Every attempt should be made to give purposive meaning to each and every word used by the legislature in a statute.

The moot question for determination is that whether the word “legal proceedings” would include “criminal prosecution” or not.

Section 313 of Madhya Pradesh Municipalities Act, 1961 reads as under:-

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"313. Council may prosecute.- (1) The Council, the Chief Municipal Officer or any other officer authorized by the Council in this behalf in the case of Municipal Council and the Council or any other officer authorized by the Council in this behalf in the case of Nagar Panchayat may direct-

(i) any prosecution for any offence under this Act or under any rule or bye-law made thereunder;

(ii) Proceedings to be taken for the recovery of any penalties and for the punishment of any person offending against the provisions of this Act or of any rule or bye-law made thereunder;

(iii) that the expenses of such prosecutions or other proceedings be paid out of the Municipal fund:

Provided that no prosecution for an offence under this Act or under any rule or bye-law made thereunder shall be instituted except-

(i) within 12 months next after the date of the commission of such offence; or

(ii) if such date is not known or the offence is a continuing one, within twelve months next after the date of which the commission or existence of such offence was first brought to the notice of the Council or of any officer or servant whose duty it is to report such offence to the Council.

(2) Any prosecution under this Act or under any rule or bye-law thereunder may, save as therein otherwise provided, be instituted before any Magistrate; and every fine or penalty imposed under or by virtue of this Act or any rule or bye-law thereunder, and any compensation expenses, charges or damages for the recovery of which no special provision is otherwise made in this Act may be recovered on application to any Magistrate by the distress or sale of any movable property within the limits of his jurisdiction

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belonging to the person from whom the money is claimed.”

Thus it is clear that the criminal prosecution by the Municipal Council is governed by the provisions of Section 313 of Madhya Pradesh Municipalities Act, 1961 whereas the remaining legal proceedings are governed by the provisions of Section 312 of the Madhya Pradesh Municipalities Act, 1961. When a separate Section has been incorporated in the Madhya Pradesh Municipalities Act, 1961 for criminal prosecution by the Municipal Council, then, it cannot be said that the provisions of Section 313 would be governed by the provisions of Section 312 of Madhya Pradesh Municipalities Act, 1961. The Council, Chief Municipal Officer or any other officer authorized by the council in this behalf may direct any prosecution for an offence under this Act or under any Rule or by law made thereunder.

It is further submitted that the provisions of Section 313 of Madhya Pradesh Municipalities Act, 1961 would apply only when a complaint is filed by an officer under the directions of either the Council or the Chief Municipal Officer or any other officer authorized by the Council in this behalf and when the Chief Municipal Officer himself decides to file a complaint, then the provisions under Section 312 of Madhya Pradesh Municipalities Act, 1961 would come into play.

This submission made by the counsel for the applicant cannot be accepted. If the Chief Municipal Officer has authority to direct anybody to file a complaint on behalf of the Council, then he can certainly file a

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complaint by himself on behalf of the Council. Whether the complaint has been filed by the Chief Municipal Officer himself on behalf of the Council or the complaint has been filed by any other person under the directions of the Chief Municipal Officer on behalf of the Council, would not make any difference.

Suffice it to say that for every criminal prosecution by the Council, only the provisions of Section 313 of the Madhya Pradesh Municipalities Act, 1961 would apply and the provisions of Section 312 of the Madhya Pradesh Municipalities Act, 1961 would not govern the criminal prosecution by the Council.

Hence, it is held that the complaint filed by the Chief Municipal Officer on behalf of the Municipal Council, Guna is in accordance with law and hence, the submission made by the counsel for the applicant with regard to the maintainability of the complaint filed by the Chief Municipal Officer on behalf of the Municipal Council, Guna is hereby rejected.

It is next submitted by the counsel for the applicant that under Rule 15-C of Madhya Pradesh Nagarpalika (Registration of Colonizer, Terms and conditions) Rules, 1998, the complaint can be filed only by the competent authority and the competent authority has been defined under Rule 2(h) of Madhya Pradesh Nagarpalika (Registration of Colonizer, Terms and Conditions), Rule 1998 which reads as under:-

"2(h) "Competent Authority" means in relation to such Municipal area which comes within the limit of any Municipal

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Corporation, Municipal Commissioner and in relation to such Municipal area which comes within the limit of any Municipal Council or Nagar Panchayat, the Sub-Divisional Officer (Revenue);”

Rule 15-C of the Madhya Pradesh Nagarpalika (Registration of Colonizer, Terms and Conditions) Rules, 1998 reads as under:-

“15-C. Action to be taken against the person for construction of the illegal colony.- Action for punishment shall be taken in accordance with the law against the person for construction of illegal colony and action for recovery of the amount which is to be recovered from such person shall also be taken by the competent authority.”

From the plain reading of Rule 15-C of the Madhya Pradesh Nagarpalika (Registration of Colonizer, Terms and Conditions) Rules, 1998, it is clear that this rule is in two parts. The first part of the rule speaks of action for punishment which shall be taken for construction of illegal colony and the second part of the rules deals with the action for recovery of the amount which is recoverable from such person shall be taken by the competent authority. The first part of the rule is independent of the second part of the rule. If the interpretation of the rule as suggested by the counsel for the applicant is accepted, then it would mean that the complaint can be filed only by the competent authority i.e., the SDO whereas this interpretation is not permissible as it would result in head on clash with Section 339-C of Madhya Pradesh Municipalities Act, 1961. The Co-ordinate Bench of this Court in the case of

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Vishawveer and Anr. v. State of M.P. decided on **04/12/2013** in **MCRC No.599/2013** has held as under:-

“In the present case, the complaint filed by the learned SDO is without authority, therefore, the FIR (Annexure A/1) registered on the report of SDO for offence punishable under Section 339(C) of Municipalities Act is not maintainable and same is hereby quashed.

With the aforesaid petition stands allowed and disposed of.”

Therefore, the contention made by the counsel for the applicant that the complaint can be filed only by the competent authority as per the provisions of Rule 15-c of the Madhya Pradesh Nagarpalika (Registration of Colonizer, Terms and Conditions) Rules, 1998 is misconceived and is hereby dismissed.

It is next contended by the counsel for the applicant that it is apparent from the complaint that no independent mind has been applied by the Chief Municipal Officer or the Council and the complaint has been filed merely in compliance of the order passed by the SDO, therefore, the complaint deserves to be quashed.

Suffice it to say that the allegations against the applicant are that he had carried out the colonization work without getting himself registered as a colonizer and without getting the land diverted as well as without obtaining necessary sanctions under public statutes.

It is not the case of the applicant that he is holding any license for developing the colony as required under

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Section 339-A of Madhya Pradesh Municipalities Act or under Madhya Pradesh Nagarpalika (Registration of Colonizer, Terms and Conditions) Rules, 1998 or under any other statute. If any fact has been brought to the knowledge of the Municipal Council by the SDO and, if, an advice is given by him to the Municipal Council to lodge a complaint, then it cannot be said that the said complaint was lodged merely in compliance of the order of the SDO.

Under these circumstances, this Court is of the view that this petition under Section 482 of CrPC sans merit and is accordingly **dismissed**.

AKS

(G.S.Ahluwalia)
Judge