

**HIGH COURT OF MADHYA PRADESH:**  
**BENCH AT INDORE**  
**W.P.No.4914/2016**  
***(DIVINE CITY PVT. LTD. VS. STATE OF M.P. & OTHERS)***

**Indore, Dated: 17.01.2019**

Shri Vijay Assudani, learned counsel for the petitioner.

Ms. Bharti Lakkad, learned GA for the respondent Nos.1 and 3/State.

Shri Kailash Vijaywargiya, learned counsel for the respondent Nos.2 and 4.

The petitioner has filed the present petition being aggrieved by the order dated 15.03.2016 by which the respondent Nos.2 and 4 have declined to release the mortgaged plot for want of compliance of Rule 10 (13) (i, ii & iii) of Madhya Pradesh Nagar Palika (Registration of Colonizer, Terms and Conditions) Rules 1998 (hereinafter referred as "Colonizer Rules 1998").

Facts of the case are as under:

The petitioner is private limited company incorporated under the provisions of Companies Act engaged in the construction and development of the colonies. The petitioner purchased the land admeasuring 5.435 hectares comprised in Survey Nos.147, 148/1, 148/2, 149, 151, 152/1, 152/2, 153, 154, 155/1, 155/2 and 156. The petitioner obtained the registration of Colonizer on 27.06.2007 with the intention to develop the residential colony over the aforesaid land. Vide order dated 01.10.2007, the Deputy Director, Town & Country Planning Department, Ujjain had granted the development permission to the petitioner. The SDO vide order dated

24.11.2008 granted the permission for diversion of the land for residential purpose under the provisions of Section 172 of the Madhya Pradesh Land Revenue Code, 1959. According to the petitioner, in compliance of Rule 12 of the Colonizer Rules 1998, 57 plots have been mortgaged in favour of Ujjain Municipal Corporation vide mortgage deed dated 21.05.2008. As per sub Rule 3 of Rule 12 the plots shall remain mortgaged with the Municipal Corporation till completion of internal development work. During the pendency of the development work, Rule 10 has been brought in the Colonizer Rules 1988 w.e.f 19.04.2012 and according to which in every residential colony in the urban area, out of the area of the developed plots by the Colonizer, fully developed plots equal to 15% of the size of 32 to 40 square meters area, shall have to be reserved for a person belonging to Economically Weaker Section (EWS). As per sub Rule 12 of Rule 10 the plots/dwelling units reserved for EWS and LIG (Low Income Group) shall be sold by the Colonizer by inviting applications from the persons belonging to the aforesaid sections. The Colonizer shall prepare the list of the persons eligible for the reserved plots. The Collector is authorized to scrutinize the list within 60 days and will provide the list of person found eligible for buying the reserved residential plots/dwelling unit to the Colonizer and in case if the Collector does not pass the order within 60 days then Colonizer shall be free to sale the plots including in the list. As per sub Rule 13 the competent authority of the Municipality shall not release the mortgage plots or the bank guarantee, as the case may be, to the Colonizer unless the list of persons belonging to EWS and LIG and an affidavit stating

that the Collector has not passed any order and declaration that he will not sale the plot unit to any person who may have been found eligible by the Collector.

The respondent No.2 granted permission for the development of the colony vide order dated 13.03.2009 and thereafter, the development work has been completed on 26.10.2013 and completion certificate was issued on 28.02.2014 by the Corporation.

After completion of the development work the petitioner issued an advertisement on 22.08.2013 for sale of EWS/LIG plots. According to the petitioner in response to the aforesaid advertisement, no application has been received. The petitioner submitted an application to the Municipal Corporation for release of the mortgage plots as no one has applied for purchase of the LIG and EWS plots. The petitioner served a legal notice to the respondent Nos.2 and 4 for release of 57 mortgage plots, in turn by letter dated 15.03.2016 the respondent Nos.2 and 4 have insisted the petitioner for compliance of Rule 10 (13) (i)(ii)(iii) of Colonizer Rules 1988, hence, the present petition before this Court.

The petitioner has assailed the action of the respondent Nos.2 and 4 on the ground that as per the rules prevailing at the time of grant of permission, the plots shall remain mortgaged with the municipality till completion of internal development work. The amendment brought w.e.f 19.04.2012 by way of Rule 10 will not apply in case of the petitioner.

Even otherwise, the petitioner has already issued an advertisement twice, but none of the person from EWS/LIG group came forward to purchase the plot. The petitioner has

already given an undertaking that he will not sale the plots other than to the persons belonging to LIG and EWS. The petitioner cannot wait for indefinite period for want of applications from EWS and LIG and virtually such stringent condition has become impossible condition for the petitioner.

After notice, the respondent Nos.2 and 4 have filed reply by submitting that the respondents are bound by the provisions of Rule 10 and 13 of the Colonizer Rules, therefore, unless the petitioner fulfills the conditions the reserved plots cannot be released. In the completion certificate dated 28.02.2014, the petitioner was directed to comply the provisions of the Rules 13 of Colonizer Rules 1988 as granted on 19.04.2012.

In compliance of Court order, that respondent Nos.1 and 3 have also filed the return by clarifying the situation where inspite of the efforts made by the Colonizer if such reserved plots are not sold or transfer in such situation whether the same can be released in favour of the petitioner or not.

Respondent Nos.1 & 3 have submitted that the petitioner is bound to sale the reserved plots to the weaker section and in case the Colonizer is seeking exemption to sale the plots to the weaker section, then he can opt to pay the shelter fee under sub Rule 9 of Rule 10. It is further submitted that during the pendency of this petition, the sub Rule 12 and 13 of Rule 10 have further been amended by the State Government. The respondent Nos.2 to 4 cannot be directed to release plot unless the petitioner complies the provisions of sub rule 12 of Rule 10, hence, petition is liable to be dismissed.

I have heard learned counsel for the parties.

Section 292 (a) deals with the registration of Colonizer

or builder. Under sub Section 2 on receipt of application for registration under sub Section 1 the Commissioner of the Corporation shall subject to the rule made in this behalf either issue or refuse to issue the Registration Certificate within 30 days. Section 292(b) deals with the permission of development of colony. Prior to 03.01.2012, the Colonizer registered under Section 292(a) shall be entitled to undertake the development of the colony in the municipal area, subject to the provisions of the Municipal Corporation act and rules made therein under on condition that 15% of fully developed plot shall have to be reserved for the person belonging to the economically weaker section and 10% shall have to be reserved for the persons belonging to lower income group. After 03.01.2012, new Section 292(b) has been substituted and by which the State Government has been given authority to prescribe the size, number and location of such plots or house to be reserved for EWS and LIG group. The State Government in exercise of power conferred under Sections 292(a), 292(b), 292(c) & 292(e) read with Section 433 of the Municipal Corporation Act, 1956 framed the rules called Madhya Pradesh Nagar Palika (Registration of Colonizer, Terms and Conditions) Rules 1998. Before 19.04.2012, the reserved plots were liable to be released after completion of the development work. There was an option available to the Colonizer to make available the constructed residential house instead of developing the plots for the persons of economically weaker sections and if he does not wish to develop the plots or construct the house for EWS in colony having an area 0.4 hectares or more then he shall have to deposit the shelter fee in

the shelter fund under sub Rule 4 of Rule 10. After 19.04.2012 Rule 10 has suffered substantial amendment & according to which if the Colonizer wants to seek exemption under Rule 1 to 8, he will have to pay the shelter fee under Rule 9 and 10 and such shelter fee is liable to be deposited by the Colonizer in the municipalities, therefore, the State Government is right in making submissions that option is available to the petitioner to opt for deposit of shelter fee if he is not in a position to provide the list of persons belonging to EWS and LIG. There is no time limit prescribed under sub Rule 12 and under Rule 13 & it is mandatory for municipalities to withhold the mortgaged plots or the bank guarantee, as the case may be, unless the Colonizer has produces the list of persons belonging to EWS and LIG to whom he intends to sale the plot. So far as the declaration given by the petitioner is concerned, under sub Rule 13(iii) same is required to be submitted only after the list of the eligible persons prepared by the Collector.

In view of the above, it is clear that there is an alternate arrangement made in the rules. The Colonizer may opt for giving bank guarantee of an amount under Rule 12 sub Rule (iv). The Colonizer may also submit a bank guarantee in lieu of the mortgaged plot and so far as the allotment of plots/house reserved for the weaker section & if the Colonizer does not wish to sell the plots to the persons belonging to EWS or LIG in his colony, then he is liable to deposit the shelter fee as per Rule 10 sub rule 4, therefore, no direction can be given to the respondent Nos.2 and 4 for release of the plots in favour of the petitioner without complying the provisions of Rule 10 sub Rule 13(i)(ii)(iii).

So far as the judgement passed by this Court in case of **Smt. Sajan Bai & Another Vs. State of M.P. & Another (W.P.No.6669/2015, decided on 16.11.2016)** is concerned, that was passed under the provisions of Rule 10(4) of the Madhya Pradesh Gram Panchayat (Registration of Colonizer Terms and Conditions) Rules of 1999 where the period of 2 years is provided for the competent authority to allot the plots to the eligible persons and if the competent authority fails to allot the plot, same shall be returned back to the Colonizer by the competent authority. There is no such para-materia provision in Coloniser Rules of 1998 applicable for the municipal corporation, therefore, facts of the case are distinguishable from the facts of **Smt. Sajan Bai & Another Vs. State of M.P. & Another**. Hence, the petition is **dismissed**.

No order as to cost.

**(VIVEK RUSIA)**  
**Judge**

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