

The High Court of Madhya Pradesh : Bench At Indore

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

RESERVED ON THE 10th OF MAY, 2022

WRIT PETITION No. 9706 of 2019

Between:-

1. SURESH PATIDAR S/O SHRI CHUNNILAL JI , AGED ABOUT 70 YEARS, OCCUPATION: AGRICULTURE 187/4, TELEPHONE NAGAR, INDORE (MADHYA PRADESH)
2. HARINARAYAN PATIDAR S/O SHRI RAMGOPALJI , AGED ABOUT 55 YEARS, OCCUPATION: AGRICULTURE 187/2, TELEPHONE NAGAR, INDORE (MADHYA PRADESH)
3. SUBHASH PATIDAR S/O SHRI BHAGIRATHJI , AGED ABOUT 52 YEARS, OCCUPATION: AGRICULTURE 187/3, TELEPHONE NAGAR, INDORE (MADHYA PRADESH)
4. MOHANLAL PATIDAR S/O SHRI RAMCHANDRA JI , AGED ABOUT 65 YEARS, OCCUPATION: AGRICULTURE 187/5, TELEPHONE NAGAR, INDORE (MADHYA PRADESH)
5. CHATURBHUI PATIDAR S/O SHRI CHUNNILALJI , AGED ABOUT 66 YEARS, OCCUPATION: AGRICULTURE KHASRA NO. 1300/2, TELEPHONE NAGAR, INDORE (MADHYA PRADESH)

.....PETITIONER

(BY SHRI V.K. JAIN, SENIOR ADVOCATE WITH MS. VAISHALI JAIN, ADVOCATE)

AND

1. INDORE MUNICIPAL CORPORATION
COMMISSIONER MUNICIPAL CORPORATION,
INDORE (MADHYA PRADESH)

2. JOINT DIRECTOR TOWN AND COUNTRY PLANNING
DEPARTMENT SHOPPING COMPLEX, AB ROAD,
INDORE (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI MANOJ MUNSHI, ADVOCATE)

WRIT PETITION No. 9792 of 2019

Between:-

1. REKHA W/O C.S. BIJU VASUDEVAN , AGED ABOUT 45
YEARS, OCCUPATION: HOUSE WIFE H. NO. 2,
GULMOHAR RESIDENCY, 1324, 1325/2, KHAJRANA
NEAR PALIWAL NAGAR, INDORE (MADHYA
PRADESH)

2. MANSI W/O SHRI SUDHIR KAPADNIS , AGED ABOUT
54 YEARS, OCCUPATION: HOUSEHOLD H.NO. 6,
GULMOHAR RESIDENCY 1324 AND 1325/2,
KHAJRANA, NEAR PALIWAL NAGAR, INDORE
(MADHYA PRADESH)

3. SUDHIR S/O SHRI KRISHNARAO KAPADNIS , AGED
ABOUT 54 YEARS, OCCUPATION: HOUSEWIFE H.NO
6, GULMOHAR RESIDENCY 1324 AND 1325/2,
KHAJRANA , NEAR PALIWAL NAGAR, INDORE
(MADHYA PRADESH)

4. YUSUF ALI S/O HAIDER ALI , AGED ABOUT 53
YEARS, OCCUPATION: BUSINESS H. NO. 10,
GULMOHA RESIDENCY 1324 AND 1325/2, KHAJRANA
NEAR PALIWAL NAGAR, INDORE (MADHYA
PRADESH)

5. VIRAJ NARANG S/O SHRI VINOD NARANG , AGED

ABOUT 38 YEARS, OCCUPATION: BUSINESS H. NO. 14, GULMOHAR RESIDENCY, 1324 AND 1325/2, KHAJRANA NEAR PALIWAL NAGAR, INDORE (MADHYA PRADESH)

.....PETITIONER

(BY SHRI V.K. JAIN, SENIOR ADVOCATE WITH MS. VAISHALI JAIN, ADVOCATE)

AND

1. INDORE MUNICIPAL CORPORATION
COMMISSIONER MUNICIPAL CORPORATION,
INDORE (MADHYA PRADESH)

2. JOINT DIRECTOR TOWN AND COUNTRY PLANNING
DEPARTMENT SHOPPING COMPLEX, AB ROAD,
INDORE (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI MANOJ MUNSHI, ADVOCATE)

WRIT PETITION No. 19410 of 2020

Between:-

1. GHANSHYAMDAS SONI S/O MOTILAL SONI , AGED
ABOUT 63 YEARS, OCCUPATION: RETIRED 178
TELEPHONE NAGAR (MADHYA PRADESH)

2. SHRI RAM LAKHAN DWIVEDI S/O SHRI RAM SIYA
DWIVEDI , AGED ABOUT 76 YEARS, OCCUPATION:
RETIRED R/O: 179, TELEPHONE NAGAR , INDORE
(MADHYA PRADESH)

3. SMT. MAMTA VED W/O PUKHRAJ VED , AGED
ABOUT 56 YEARS, OCCUPATION: SERVICE R/O: 180,
TELEPHONE NAGAR , INDORE (MADHYA PRADESH)

4. SHRI MANGILAL KULMI S/O SHRI DARYAY SINGH ,
AGED ABOUT 65 YEARS, OCCUPATION: RETIRED
R/O: 181, TELEPHONE NAGAR , INDORE (MADHYA

PRADESH)

5. SHRI VINOD KUMAR MEHROTRA S/O SHRI MOHANLAL MEHROTRA , AGED ABOUT 83 YEARS, OCCUPATION: RETIRED R/O: 182, TELEPHONE NAGAR, INDORE (MADHYA PRADESH)

6. SHRI SHARAD CHANDRA SHUKLA S/O SHRI RAM CHANDRA SHUKLA , AGED ABOUT 68 YEARS, OCCUPATION: SERVICE R/O: 183, TELEPHONE NAGAR, INDORE (MADHYA PRADESH)

7. SHRI BHANWARLAL SHOKLAL S/O SHRI HIRALAL SHOKLAL , AGED ABOUT 78 YEARS, OCCUPATION: RETIRED R/O: 184, TELEPHONE NAGAR , INDORE (MADHYA PRADESH)

8. SMT. UJJAWALA GHANTE W/O SHRI S.K. GHANTE , AGED ABOUT 60 YEARS, OCCUPATION: HOUSEWIFE R/O: 185, TELEPHONE NAGAR , INDORE (MADHYA PRADESH)

9. SHRI SATISH KUMAR SHARMA S/O SHRI SHRAVAN KUMAR SHARMA , AGED ABOUT 58 YEARS, OCCUPATION: RETIRED R/O: 186, TELEPHONE NAGAR , INDORE (MADHYA PRADESH)

10. SHRI KEDAR JOSHI S/O SHRI MANOHAR JOSHI , AGED ABOUT 35 YEARS, OCCUPATION: SERVICE R/O: 187, TELEPHONE NAGAR, INDORE (MADHYA PRADESH)

11. SMT. GEETA SONI S/O SHRI MANSUKHLAL SONI , AGED ABOUT 60 YEARS, OCCUPATION: HOUSE WIFE R/O: 188, TELEPHONE NAGAR, INDORE (MADHYA PRADESH)

.....PETITIONER

(BY SHRI)

AND

1. THE STATE OF M.P. THROUGH PRINCIPAL SECRETARY VALLABH BHAWAN (MADHYA

PRADESH)

2. JOINT DIRECTOR DIRECTORATE OF TOWN AND
COUNTRY PLANNING O/O : JOINT DIRECTOR T.N.C.P.
SHOPPING COMPLEX AB ROAD, INDORE (MADHYA
PRADESH)

3. COMMISSIONER INDORE MUNICIPAL
CORPORATION INDORE (MADHYA PRADESH)

4. BUILDING OFFICER INDORE MUNICIPAL
CORPORATION ZONE 10, IMC , INDORE (MADHYA
PRADESH)

.....RESPONDENTS

*(BY SHRI MANISH NAIR, DEPUTY ADVOCATE
GENERAL & SHRI MANOJ MUNSHI, ADVOCATE)*

WRIT PETITION No. 22218 of 2021

Between:-

SUBHASH PATIDAR S/O SHRI BHAGIRATH JI
PATIDAR , AGED ABOUT 56 YEARS, OCCUPATION:
AGRICULTURE 187/3 TELEPHONE NAGAR (MADHYA
PRADESH)

.....PETITIONER

(BY SHRI MANOJ MANAV, ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH PRINCIPAL
SECRETARY VALLABH BHAWAN BHOPAL (MADHYA
PRADESH)

2. INDORE MUNICIPAL CORPORATION THR ITS
COMMISSIONER INDORE MUNICIPAL
CORPORATION (MADHYA PRADESH)

3. BUILDING OFFICER ZONE NO. 10, INDORE
MUNICIPAL CORPORATION INDORE (MADHYA
PRADESH)

4. TOWN AND COUNTRY PLANNING SHOPPING COMPLEX, AB ROAD, INDORE (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI MANISH NAIR, DEPUTY ADVOCATE GENERAL & SHRI MANOJ MUNSHI, ADVOCATE)

WRIT PETITION No. 22219 of 2021

Between:-

MOHAN PATIDAR S/O SHRI RAMCHANDRA PATIDAR , AGED ABOUT 67 YEARS, OCCUPATION: AGRICULTURE 187/5 TELEPHONE NAGAR (MADHYA PRADESH)

.....PETITIONER

(BY SHRI MANOJ MANAV, ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH PRINCIPAL SECRETARY VALLABH BHAWAN BHOPAL (MADHYA PRADESH)
2. INDORE MUNICIPAL CORPORATION THROUGH ITS COMMISSIONER INDORE MUNICIPAL CORPORATION (MADHYA PRADESH)
3. BUILDING OFFICER ZONE NO. 10, INDORE MUNICIPAL CORPORATION (MADHYA PRADESH)
4. TOWN AND COUNTRY PLANNING SHOPPING COMPLEX, AB ROAD (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI MANISH NAIR DEPUTY ADVOCAT GENERAL & SHRI MANOJ MUNSHI, ADVOCATE)

WRIT PETITION No. 22220 of 2021

Between:-

HARINARAYAN PATIDAR S/O SHR RAMGOPAL PATIDAR , AGED ABOUT 62 YEARS, OCCUPATION: AGRICUTLURE 187 TELEPHONE NAGAR (MADHYA PRADESH)

.....PETITIONER

(BY SHRI MANOJ MANAV, ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH PRINCIPAL SECRETARY VALLABH BHAWAN BHOPAL (MADHYA PRADESH)

2. INDORE MUNICIPAL CORPORATION THR ITS COMMISSIONER INDORE MUNICIPAL CORPORATION (MADHYA PRADESH)

3. BUILDING OFFICER ZONE NO. 10 INDORE MUNICIPAL CORPORATION (MADHYA PRADESH)

4. TOWN AND COUNTRY PLANNING SHOPPING COMPLEX, A.B. ROAD, INDORE (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI MANISH NAIR DEPUTY ADVOCAT GENERAL & SHRI MANOJ MUNSHI, ADVOCATE)

WRIT PETITION No. 22671 of 2021

Between:-

VISHNU KUMAR S/O LATE RAMNIVAS BHAIYA , AGED ABOUT 66 YEARS, OCCUPATION: BUSINESS KHASRA NO. 1326/2 VILLAGE KHAJRANA, MANISHPURI COLONY INDORE (MADHYA PRADESH)

.....PETITIONER

(BY SHRI VISHAL BAHETI, ADVOCATE)

AND

1. INDORE MUNICIPAL CORPORATION THROUGH COMMISSIONER INDORE MUNICIPAL CORPORATION INDORE (MADHYA PRADESH)
2. THE BUILDING OFFICER ZONE NO. 10 INDORE MUNICIPAL CORPORATION (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI MANOJ MUNSHI, ADVOCATE)

WRIT PETITION No. 22672 of 2021

Between:-

MADHURI SHUKLA W/O DR. SATISH SHUKLA , AGED ABOUT 77 YEARS, OCCUPATION: RETD. PROFESSOR 1322 MANISHPURI (MADHYA PRADESH)

.....PETITIONER

(BY SHRI S.C. BAGADIA, SENIOR ADVOCATE WITH SHRI RUSHIL SHUKLA, ADVOCATE)

AND

1. INDORE MUNICIPAL CORPORATION THROUGH THE COMMISSIONER INDORE MUNICIPAL CORPORATION, (MADHYA PRADESH)
2. BUILDING OFFICER ZONE 10 INDORE MUNICIPAL CORPORATION (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI MANOJ MUNSHI, ADVOCATE)

WRIT PETITION No. 22706 of 2021

Between:-

SAIFI RAJA S/O SHRI HAIDAR HUSSAIN , AGED ABOUT 60 YEARS, OCCUPATION: BUSINESS KHASRA NO. 1297, GYAN PARK COLONY, KHAJRANA, INDORE, M.P. (MADHYA PRADESH)

.....PETITIONER

(BY SHRI A.K. SETHI, SENIOR ADVOCATE WITH SHRI LOKENDRA JOSHI, ADVOCATE)

AND

1. INDORE MUNICIPAL CORPORATION COMMISSIONER
INDORE MUNICIPAL CORPORATION (MADHYA PRADESH)
2. THE COMMISSIONER INDORE MUNICIPAL CORPORATION INDORE (MADHYA PRADESH)
3. BUILDING OFFICER, ZONE NO. 10 INDORE MUNICIPAL CORPORATION OFFICE OF INDORE MUNICIPAL CORPORATION, INDORE (MADHYA PRADESH)
4. THE JOINT DIRECTOR DIRECTORATE OF TOWN AND COUNTRY PLANNING OFFICE OF THE JOINT DIRECTOR, TOWN AND COUNTRY PLANNING SHOPPING COMPLEX, A.B. ROAD, INDORE (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI MANOJ MUNSHI, ADVOCATE)

These petitions coming on for order this day, JUSTICE VIVEK RUSIA passed the following:

ORDER

(Delivered on this 14th day of June, 2022)

Regard being had to the similitude in the controversy involved in the present cases, with the joint request of the parties, these matters are heard finally and are being decided by this common order.

This is the third round of litigation before this Court regarding the challenge to the widening work. The State Government published a draft Master Plan for Indore City, 1991 in which 80 feet wide link Road was proposed from A.B. Road to Ring Road via and Saket Nagar (in short- “the Road”). The 80 feet wide Road from A.B. Road to the house of Jankilal Bhaiya had already been constructed. Thereafter, Indore Master Plan, 2021 came into force w.e.f. 01.01.2008 in which the width of the road has been reduced to 40 feet Since there was a delay in the construction of the second part of the 80 feet wide Road from the house of Jankilal Bhaiya to Ring Road by Indore Municipal Corporation, a Writ Petition in the nature of Public Interest Litigation i.e. W.P. No.698 of 2002 (PIL) came to be filed before this Court. The petitioner being an association of residents of the locality alleged that the Indore Municipal Corporation and Town & Country Planning Department are not constructing 80 feet wide Road in their locality connecting the existing A.B. Road with the Ring Road. It was further alleged that at the instance of the private respondent, the State Government vide orders dated 12.07.2002 and 09.03.2020, reduced the width of the said Road

from 80 to 40 feet Accordingly, it was prayed that the respondent / State of Madhya Pradesh and Municipal Corporation be directed not to change the alignment and 80 feet width of the Road

02. The writ petition was disposed of with an observation that the Road should first be widened up to 40 feet and within a period of six months after the Road is widened, the authority should decide based on traffic during the peak hour as to whether the road should be widened up to 80 feet if necessary by the acquisition of adjacent land and property. It has been further observed that since the map will have to be sanctioned by the Indore Municipal Corporation, it is the Indore Municipal Corporation which will determine as to how exactly 40 feet width of the land will be left from the centre of the Road by the respondents No.4 & 5.

03. The relevant paras are reproduced below:-

“15. We have perused the two communications dated 08.03.2000 and 20.04.2000 of the Joint Director, Town and Country Planning Department to the Director, Town and Country Planning Department all other communications of the authorities of the Town and Country Planning Department on the subject on which reliance has been placed by the respondents No.1 and 4 and in the said communications though relevant factors have been mentioned while fixing the width of the road 40 feet, the most relevant factor namely the existing traffic and the traffic in future on the said road connecting Anand Bazar area with Ring Road does not find mention. We have held that the traffic requirement of an area including the road or street or means of access would be of paramount relevance while deciding

as to what should be the width of the road or street or means of access. But since the existing width of road is less than 40 feet, it will not be possible for the authority now to decide as to whether a road of the width of 40 feet will be able to take care of the moving traffic of the area in question. It is only after the road is widened to 40 feet and the traffic in the area moves on such road of 40 feet width that the authorities will be able to assess as to whether the road requires to be widened up to 80 feet or not. For this reasons we of the considered opinion that as per the impugned decision in Annexure P/4 the road should be first widened up to 40 feet and within a period of six months after the road is so widened authorities should take decision on the basis of the traffic during the peak hours as to whether the road should be widened up to 80 feet if necessary by acquisition of adjacent land and properties. We are also of the considered opinion that till the authorities decide within the aforesaid time or six months as to whether the road requires widening up to 80 feet, the interim order passed by this Court on 6.5.2002 restraining the respondent No.4 from making any construction on front 40 feet from the centre of the road should continue but it will be open for respondent No.4 to make construction by leaving 40 feet land open from the centre of the road in accordance with the sanction of the Indore Municipal Corporation. Similarly we direct that the respondent No.5 also will not make any construction in the front 40 feet measured from the centre of the road. These restraints on respondents No.4 and 5 are necessary in the public interest or the general interest of the development of the area because if constructions are made by them in the meanwhile on the front side of their land, it may not be possible for the authorities to expand the road to 80 feet by acquisition and payment of heavy compensation even if the requirement of the traffic in the area may warrant expansion of the road to 80 feet. Since the map will have to be sanctioned by the Indore Municipal Corporation,, it is the Indore Municipal Corporation which will determine as to how exactly this 40 feet width of the land will be left from the centre of the road

by respondent No.4 and 5.”

04. After disposal of the aforesaid writ petition, a dispute arose in respect of alignment of the Road hence **M.C.C. No.824 of 2006** was filed seeking clarification in the aforesaid order as alleging that the respondents are misinterpreting the order in respect of maintaining the centre line of the road. The M.C.C. No.824 of 2006 was disposed of vide order dated 14.05.2008 by observing that from the house of Jankilal Bhaiya the Road is to be extended up to Ring Road and since the Road proceedings from Saket Nagar up to the house of Jankilal Bhaiya is 80 feet, hence, the straight line up to Ring Road is required to extend and shall have to leave 20 feet from each side of the Road.

05. The relevant paras of the above order are reproduced below:-

“06. It appears that the Authorities have misunderstood the direction on the basis of their own peculiar interpretation. The reference point has been picked up by the Authorities on the basis of the width of the existing Road between the house of Jankilal Bhaiya and Ms. Madhuri. As a matter of fact, what was intended by the directon was that the Road proceeding from Saket Nagar upto the house of Jankilal Bhaiya, which is 80 feet wide presently, shall be extended in the straight line upto the Ring Road. Once it is clear that the Road is required to be extended, it is obvious that aligning Road 40 feet wide with the Road 80 feet wide, the Authorities shall have to leave 20 feet from each side of the Road which is 80 feet and construct the Road further of 40 feet width. Even if it is required to align the Road from the reference point, the centre point would be 40 feet from both sides o the present Road and if the said centre line is taken ahead, the 40 feet

Road directed to be constructed will have to be 20 feet on the right side and 20 feet on the left side of the line.”

06. Being aggrieved by the above order passed by the Division Bench of this High Court in M.C.C. No.824 of 2006, Jankilal Bhaiya and other owners of the houses situated on both sides of the Road approached the Apex Court by way of SLPs. Initially, the Apex Court restrained the respondents to construct the Road. Vide order dated 06.02.2019, the Apex Court directed the Commissioner, Indore Municipal Corporation to file an affidavit indicating the fresh requirement of widening of the Road. The Commissioner filed an affidavit stating that the construction of 80 feet wide road would be in the large public interest. After considering the affidavit filed by the Indore Municipal Corporation, the Apex Court has dismissed the SLP vide order dated 21.02.2019 with an observation that in case Indore Municipal Corporation is acquiring any land of the appellant, the compensation be made to them in accordance with the law.

07. After the dismissal of the SLP, the Indore Municipal Corporation has prepared the alignment layout for construction of 24 meters wide (40 feet) the Road from the house of Jankilal Bhaiya to Ring Road which is filed as Annexure-R/1/8 of 61. Since the said proposed map is not in a straight line and there are 2 – 3 curbs on the Road, which requires demolition of certain parts of the houses situated on both sides of the Road, the

petitioners have approached this Court by filing these writ petitions. In some Writ Petitions, the petitioners are alleging that Indore Municipal Corporation is not maintaining the straight line from the house of Jankilal Bhaiya to Ring Road as such deviation is not permissible after the dismissal of the SLP. Some of the petitioners are asserting that the Municipal Corporation has no power to change the alignment and if any change is required, the State Government is the competent authority to change the Master Plan under Section 23-A of the Nagar Tatha Gram Sudhar Adhiniyam, 1973 (the Adhiniyam,1973)

Facts of W.P. No.9706 of 2019 [Suresh Patidar & Others v/s Indore Municipal Corporation & Another]

08. The petitioners are the owners of land bearing Survey Nos.1300/2 & 1300/3 admeasuring 0.1640 and 0.3930 hectares situated at Village – Khajrana, Tehsil & District – Indore. According to the petitioners, they became the owner of the land by way of succession as the above land is the ancestral property. The *Rinpustika*, *Bhuabhilekh* and Khasra B-1 and B-2 are in the name of family members of the petitioners. The petitioners have raised a construction over the aforesaid land after obtaining due permission from the then Gram Panchayat, Khajrana on 16.07.1975. Thereafter, in the year 1980, the aforesaid village came within the limit of Municipal Corporation, Indore. The petitioner made the construction strictly in accordance with the Building Plan approved by the Gram Panchayat. According to

the petitioners, their predecessor-in-title applied for sanction of the site plan and after considering the width of the Road i.e. 24.38 meters, the plan was approved vide memo No.88 dated 15.04.1993, and accordingly, they were required to leave only 3.16 meters land for construction of the Road. According to the petitioners, on 25.04.2019, the officers/employees of Indore Municipal Corporation came in front of the house and drew a red line on the house of the petitioners for demolition of the house for widening of 40 feet Road. According to the petitioners, in the Master Plan (Development Plan, 1991), 80 feet wide Road was proposed in front of the house of the petitioners and accordingly, the site plan of the petitioners as sanctioned by Indore Municipal Corporation only 3.19 meters was earmarked as a setback.

09. The petitioners are seeking relief that Indore Municipal Corporation be directed to construct the Road as per width and alignment prescribed in Master Plan/ Indore Development Plan.

Facts of W.P. No.9792 of 2019 [Rekha & Others v/s Indore Municipal Corporation & Another]

10. The petitioners are the residents of row houses Nos.2, 6, 10 & 14 situated at Gulmohar Residency constructed on Khasra No.1924 & 1325/2 situated at Village – Khajrana. The petitioners purchased the said houses through registered sale deeds dated 02.02.2018, 29.05.2003, 12.08.2005 and 03.02.2006. According to the petitioners, their houses are not

coming in the way of widening of the Road up to 40 feet and despite that on 25.04.2019, respondent No.1 came on the site and marked a red line on the house of the petitioners for the purpose of demolition. The petitioners are seeking relief that Indore Municipal Corporation be directed to construct the Road as per width and alignment prescribed in Master Plan/ Indore Development Plan.

Facts of W.P. No.19410 of 2020 [Ghanshyamdas Soni v/s The State of Madhya Pradesh & Others]

11. The petitioners have filed the present petition in the nature of Public Interest Litigation (PIL) seeking compliance of order dated 09.05.2006 passed in W.P. No.698 of 2002 and order dated 14.05.2008 passed in M.C.C. No.824 of 2006.

Facts of W.P. Nos.22218, 22219 & 22220 of 2021 [Subhash Patidar v/s The State of Madhya Pradesh & Others] [Mohan Patidar v/s The State of Madhya Pradesh & Others] & [Harinarayan Patidar v/s The State of Madhya Pradesh & Others]

12. These are the petitioners who have already filed W.P. No.9792 of 2019 and now they have filed these separate writ petitions challenging the validity of the order dated 05.10.2021 passed by the Building Officer, Indore Municipal Corporation by which they have been directed to demolish the construction coming in the way of widening of the road up to 40 feet from the house of Jankilal Bhaiya to Ring Road. The petitioners are

seeking relief that Indore Municipal Corporation be directed to construct the Road as per width and alignment prescribed in Master Plan / Indore Development Plan.

Facts of W.P. No.22671 of 2021 [Vishnu Kumar v/s Indore Municipal Corporation & Another]

13. The petitioner is the owner of land bearing Khasra No.1326 situated at Village – Khajrana, Teshil & District – Indore. The petitioner purchased the said land through a registered sale deed dated 24.08.1974 and thereafter, got mutated his name in the record of respondent No.1. According to the petitioner, the house was constructed on the aforesaid land after due permission of Gram Panchayat, Khajrana on 27.09.1974. Hence, no illegal construction has been raised by the petitioner. According to the petitioner, only 10 feet area of the petitioner's property is coming within the alignment of the Road as proposed in Master Plan, 2021, but the Indore Municipal Corporation is not constructing the Road as per the Master Plan, 1991 to maintain the width of 40 feet of the Road and accordingly, served a notice dated 30.01.2020 for removal of the setback of 6552.70 = 316.2 sq. m. for the widening of the Road. The petitioner has submitted a representation and vide order dated 05.10.2021, the Indore Municipal Corporation has rejected the representation. According to the petitioner, the Indore Municipal Corporation is bound to construct 40 feet Road as per Master Plan, 2021. According to the petitioner, the correct

facts were not placed before the Division Bench while deciding M.C.C. No.824 of 2006, therefore, a direction has been given to maintain the straight line from the centre of the Road proceeding from Saket Nagar because of which the area of 3510 sq.ft. of the house of the petitioner is going to be demolished. It is further submitted that for this land the petitioner is entitled for compensation as per the present market rate which comes to Rs.10.00 crore. It further submitted that in SLP. No.8648 of 2012, the Apex Court has directed that the land be acquired and till today the respondents have not initiated any process for acquisition of the land, therefore, the respondents be directed to first acquire the land, pay the compensation and then construct the Road.

Facts of W.P. No.22672 of 2021 [Madhuri Shukla v/s Indore Municipal Corporation & Another]

14. The petitioner has filed this petition being aggrieved by the order dated 05.10.2021 and also seeking direction to the respondents to construct a Road strictly in compliance with the orders passed by this Court in W.P. No.698 of 2002 (PIL) and M.C.C. No.824 of 2006. According to the petitioner, Indore Municipal Corporation, while constructing the 40 feet wide Road by way of broadening the existing road 20-20 feet both sides from the centre line which is nothing but willful disobedience of directions given by this High Court and because of which some portion of the house of the petitioner is going to

be demolished.

Facts of W.P. No.22706 of 2021 [Saifi Raja v/s Indore Municipal Corporation & Another]

15. The petitioner has filed this present petition being aggrieved by the order dated 05.10.2021 passed by the Building Officer, Zone No.10 being violation of the order dated 09.05.2006 passed in W.P. No.698 of 2002 and 14.08.2006 passed in M.C.C. No.824 of 2006 as well as the order dated 25.02.2019 passed by the Apex Court in SLP No.8648 of 2012. The petitioner is an owner of a house situated at Gyan Park Colony, Khasra No.1294, Indore which he purchased vide sale deed dated 31.03.1995. Thereafter, he applied for building permission which was granted on 02.11.1996. According to the petitioner, Indore Municipal Corporation is not constructing the Road as per the directions given in M.C.C. No.824 of 2006 and proposing to demolish some part of the house. Hence, the petitioner has approached this Court seeking relief that Indore Municipal Corporation be directed to construct the Road as per width and alignment prescribed in Master Plan / Indore Development Plan.

Submissions of learned counsels for the petitioners

16. Shri V.K. Jain, learned Senior Counsel for the petitioners in W.P. Nos.9706 & 9792 of 2019 argued that the petitioners are not against the widening of the Road up to 40 feet but it should be constructed strictly as per the Master Plan. Now the Indore

Municipal Corporation is constructing a Road by changing the alignment and not maintaining the alignment as per Master Plan, due to which some portions of the house of the petitioners are going to be demolished. It is further submitted that these petitioners have constructed their house after the layout was sanctioned by the Municipal Corporation and they have strictly left the setback area for construction of 80 feet wide Road and if it is maintained then there would be no demolition of any house of the petitioner. It is further submitted that there cannot be any development or construction contrary to the provisions of the Master Plan and mandatory provision of Section 25 of M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973. It is also to be examined whether the respondents can demolish the house of the petitioners in violation of Article 300A without any acquisition and payment of compensation.

17. Shri Manoj Manav, learned counsel for the petitioners in W.P. Nos.22218, 22219 & 22220 of 2021 has adopted the arguments of Shri V.K. Jain.

18. Shri A.K. Sethi, learned Senior Counsel for the petitioner in W.P. No.22706 of 2021 has further added that even otherwise in terms of Master Plan, 2021 proposed subject Road does not pass through the ownership of the land of the petitioners and no such deviation is permissible without modifying the plan under Section 23-A of Adhiniyam of 1973. The layout of the petitioners' house was duly sanctioned in terms

of the Master Plan, 1975 and 1991, therefore, the respondent / Corporation be directed to widen the Road up to 40feet strictly as per Master Plan

19. Shri S.C. Bagadia, learned Senior Counsel appearing for the petitioner in W.P. No.22672 of 2021 submits that Municipal Corporation is constructing the Road disobeying the direction given by this Division Bench of this High Court in M.C.C. No.824 of 2006. Once this Court has held that the Road has been constructed in a straight line from Saket Nagar then no curbs or changing the alignment is permissible.

20. Shri Vishal Baheti, learned counsel for the petitioner in W.P. No.22671 of 2021 has vehemently argued that this petitioner had constructed the house when this area was within the limit of Gram Panchayat, Khajrana. The petitioner is not required to get the sanction plan from the Municipal Corporation. If Indore Municipal Corporation wants to construct a 40 feet wide Road by using the property of the petitioner then as per the direction given by the Apex Court, they should first acquire the land and pay the compensation before starting construction of the Road. It is further submitted by the learned counsel that the Indore Municipal Corporation is proposing to give an additional FAR / TDR to the petitioner in lieu of the compensation for which the petitioner is not ready to accept such a proposal. The respondents are proposing to take 316.2 sq.m. land of the petitioner by offering additional FAR / TDR. It

is further submitted that judgment passed in the case of *Ravindra Ramchandra Waghmare v/s The State of Madhya Pradesh reported in (2017) 1 SCC 667* will not apply in the present case. Since the petitioner's construction does not come under the category of encroachment, therefore, the provisions of Section 305 of the Municipal Corporation Act do not apply. Hence, Indore Municipal Corporation be directed to raise the construction strictly in accordance with the Master Plan and after payment of compensation to the petitioner.

Submissions of the learned counsel of Indore Municipal Corporation

21. Shri Manoj Munshi, learned counsel submits that width of the Road from A.B. Road to Ring Road was 100 feet in the Master Plan and accordingly, building permissions were granted to the land owners for both the sides of the road in the year 1975 and the Master Plan, 1991 was implemented in which also the width of the Road was 24 meter (80 feet). The width of the Road from the house of Jankilal Bhaiya to Ring Road which is passing through Telephone Nagar was 100 feet as mentioned in letter No.983 dated 06.03.2006 issued by the Joint Director. The Joint Director vide letter dated 29.09.1983 has approved the development plan from the house of Jankilal Bhaiya to Ring Road considering the width of Road as 100 feet and accordingly, the Municipal Corporation has sanctioned the building permission in Harsh Nagar considering the width of Road as 100

feet However, in the Master Plan, 2021, the said width has been reduced to 40 feet by the State Government which became the subject matter of W.P. No.698/2002. Vide order dated 09.05.2006, this Court directed first to widen up the Road up to 40 feet and within six months the decision be taken for further widening of the Road up to 80 feet after considering the traffic of the Road during peak hour. It is further submitted by the learned counsel that in M.C.C. No.824 of 2006, this Court has made it clear that the existing Road which is 80 feet is required to be extended up to Ring Road. Thereafter, the Apex Court dismissed the SLP. Shri Munshi further made it clear that Corporation is constructing the Road strictly in accordance with Master Plan, 2021 by maintaining the alignment of the Road for which no land is liable to be acquired and not a single house is going to be demolished. The Indore Municipal Corporation is constructing the Road in such a manner that only boundary walls or some part of the porch of the houses are required to be demolished and emphasizing the minimum possible demolition of the house for which the petitioners should not have any objection. For the satisfaction of the petitioners, the Municipal Corporation has given the aforesaid submissions in writing and the same is reproduced below:-

- “1. The Corporation shall construct the subjected Road **strictly in accordance to the Indore Development Plan 2021.**
2. The Road shall be **first constructed with the 40 feet width** and later on in future it shall be widened to

80 feet in second phase as per the directions of the Hon'ble High Court and Affidavit submitted by the Commissioner in the Supreme Court after assessing traffic load.

3. **100 feet wide land is available** to the Corporation in front of Telephone Nagar and Harsh as per TNCP sanction plan of both the colonies for construction of Road.

4. Since, 100 feet wide land is available to the Corporation in front of Telephone Nagar and Harsh Nagar, therefore there shall be no construction of Road on any private land.

5. So far, Vishnu Kumar Bhaiya (WP 22671/21) and Smt Madhuri Shukla (WP 22672/21) are concerned, the Division Bench of this Hon'ble Court vide order 09/05/2006 passed in **WP No. 698/2002 in para 15 of the order** has restrained both of them (as Respondent No. 4 and 5) to raise any construction up to 40 feet both the sides from the centre of the Road and directed the Corporation to construct the Road 40 feet wide in the first phase and further widen it to 80 feet in second phase considering the traffic load thereon. Thus, as on date there is no construction of building exists except boundary walls of both the petitioners. Thus, 80 wide land is available without any building thereon.

6. Thus, in view of above there is free land available up to 80 feet wide between the houses of Vishnu Kumar Bhaiya (WP 22671/21) and Smt Madhuri Shukla (WP 22672/21) and thereafter 100 feet wide land available in front of Harsh Nagar and Telephone Nagar, without having building construction thereon except boundary wall.

7. In case of WP 22706/21(Saify Raja), the part of the house of this petitioner is perpendicular on the subject Road, thus in construction of 40 feet wide Road the boundary wall and part of porch would fall within the Road line.

8. So far alignment is concern, this Hon'ble Court vide order dated 14/05/2008 passed in MCC 824/2006 has observed in para 6 that *“Even if it is required to align the Road from the reference point, the center point would be 40 feet from both sides of the present*

*Road and if the said center line is taken ahead, the 40 feet Road directed to be constructed will have to be 20 feet on the right side and 20 feet on the left side of the line". Thus, corporation has aligned the Road taking center point of the **Present Road.**"*

22. Shri Munshi learned counsel has placed reliance upon a judgment delivered by the Apex Court in the case of *Ravindra Ramchandra Waghmare (supra)* by submitting that the Apex Court has held that Section 305 of the Municipal Corporation Act empowers construction/widening of the Road on even a private land by removing the structure. Under this Section vesting of the land is automatic and it does not violate the owners' right over the property. It has also been observed in para 55, 57 and 59 that admissibility of TDR and additional FAR is a lawful compensation and Section 305 is not violative of Articles 14 & 19 of the Constitution of India.

23. We have heard learned counsel for the parties at length and perused the record.

Appreciation and Conclusions

24. After hearing the above submissions and perusing the record, we are of the considered opinion that we are not required to reconsider each and every ground raised by the petitioners in this third round of litigation. The issue of the width of the Road and alignment has already been decided in the Writ Petition and M.C.C. No.824 of 2006 aforesaid. The orders passed in aforesaid cases have already been upheld by the Apex Court.

25. So far as the 40 feet width of the Road is concerned,

none of the petitioners has any objection. The only issue raised by the petitioners is the alignment of the road proposed by the Indore Municipal Corporation. According to some of the petitioners, Indore Municipal Corporation is bound to construct the road as per the Master Plan. According to learned Senior Counsel Shri V.K. Jain and Shri Sethi, and learned counsel Shri Baheti and Shri Manav in Master Plan, there is no proposal of construction 80 feet wide road in a straight line from Saket Nagar to Ring Road. There are various curbs / bends on the Road and if the Road is constructed strictly in accordance with the Master Plan then there would be no demolition of the house of the petitioners. According to Shri S.C. Bagadia, learned Senior Counsel, there should be widening of road up to 40 feet in a straight line as already directed by Division Bench of this High Court.

26. According to the petitioners in W.P. No.19410 of 2020 (PIL) & W.P. No.22682 of 2021, this Court in M.C.C. No.824 of 2006 has already held that Road from the house of Jankilal Bhaiya to Ring Road to be constructed on straight line and said order has attained finality, therefore, writ petitions are liable to be dismissed.

27. So far as the houses and the land of Harsh Nagar and Telephone Nagar are concerned, the maps were sanctioned by the Municipal Corporation observing the 100 feet wide Road and in Master Plan, 80 feet the road was proposed but now the

State Government reduced the width of the Road to 40 feet. Hence, that part of the road is also in a straight line. The only controversy in respect of the alignment of the road passing between the house of Jankilal Bhaiya and Madhuri Shukla. If the Road is constructed in a straight line then the maximum portion of the house of Vishnu Kumar is going to be demolished and the entire house of Madhuri Shukla would be saved. The Municipal Corporation has prepared proposing curve in that section in order to demolish the minimum area of both the houses.

28. It is clear from the aforesaid proposed layout that the Indore Municipal Corporation is trying to maintain the straight line as directed by this Court in M.C.C. No.824 of 2006. According to Shri Munshi learned counsel, the Corporation has prepared this alignment layout in order to minimize the acquisition and demolition of the houses constructed on both sides of the Road. According to learned counsel for the petitioners, the issue of alignment was neither in the Public Interest Litigation nor in M.C.C. No.824 of 2006. The correct facts were not placed in the M.C.C. No.824 of 2006., therefore, the Court has directed to the construction of the Road maintaining a straight line. These grounds are not available to the petitioners as has been raised in the present petitions because the SLP filed against the order passed by the Division Bench has already been dismissed, therefore, these orders are binding on

the Corporation and the Corporation is bound to construct the Road strictly as per the direction given by this Court. Relevant paragraphs of the order passed in M.C.C. No.824 of 2006 is reproduced below:-

“06. It appears that the Authorities have misunderstood the direction on the basis of their own peculiar interpretation. The reference point has been picked up by the Authorities on the basis of the width of the existing road between the house of Jankilal Bhaiya and Ms. Madhuri. As a matter of fact, what was intended by the direction was that the Road proceeding from Saket Nagar upto the house of Jankilal Bhaiya, which is 80 feet wide presently, shall be extended in the straight line upto the Ring Road. Once it is clear that the Road is required to be extended, it is obvious that in aligning road 40 feet wide with the Road 80 feet wide, the Authorities shall have to leave 20 feet from each side of the road which is 80 feet and construct the Road further of 40 feet width. Even if it is required to align the Road from the reference point, the centre point would be 40 feet from both sides of the present Road and if the said centre line is taken ahead, the 40 feet Road directed to be constructed will have to be 20 feet on the right side and 20 feet on the left side of the line.”

07.....

08. The petition for clarification is thus, disposed of and It is further submitted by the learned counsel that directed that the Authority concerned shall construct the road on the basis of alignment of the existing 80 feet wide road from Saket to Jankilal Bhaiya , as clarified in above.”

29. It is clear from the aforesaid paras that Division Bench of this Court was of the view of the Authorities have misunderstood the directions and on the basis of their own interpretation picked up a reference point on the basis of the width of the existing Road between the house of Jankilal Bhaiya

and Madhuri Shukla and as a matter of fact the Road from Saket Nagar to the house of Jankilal Bhaiya is already 80 feet wide Road and the same is liable to be extended in a straight line up to Ring Road and if it is required to align the Road from the reference point, the centre point would be 40 ft from both sides of the present Road i.e. the Road from Saket Nagar to the house of Jankilal Bhaiya. If the said line is taken ahead up to Ring Road then to construct a 40 feet wide Road, there would be a 20-20 feet wide Road on both the sides from the centre line. In para 8 again it has been made clear that Authority concerned shall construct the road on the basis of the alignment of the existing 80 feet wide road from Saket to Jankilal Bhaiya.

30. In the M.C.C. No.824 of 2006 this Court has explained/clarified as to what would be the centre line of the 40 feet wide road to be constructed from the Jankilal Bhaiya till Link Road. We would like to add that the construction of "straight line road" in the city area that too by way of broadening of existing does not mean it has to be constructed by drawing straight line in the map by scale/ Ruler. There can't be a straight-line road by drawing a straight line by scale (Ruler) on the city map. Certain curves / bends on the road cannot be avoided without disturbing both the starting and terminal points of the road. Even the 80 ft wide road from A.B. Road to the house of Jankilal Bhaiya is not in a straight line and certain bends are there. The ground position cannot be ignored for that

there is a specific provision in the Indore Master Plan also. Here the Indore Municipal Corporation is the implementing agency of the Master Plan, hence, looking to the ground reality and to avoid minimum damage to the existing houses, a layout has been prepared and according to Shri Munshi except for boundary walls or porch, no houses are going to be demolished while maintaining the width of 40 feet road from the centre line i.e. 20-20 both the side. The Indore Municipal Corporation has made it clear before this Court that the Corporation shall construct the subjected Road **strictly in accordance to the Indore Development Plan 2021**. Hence, Indore Municipal Corporation is directed to proceed and complete the widening work of the link road of 40 feet from the house of Jankilal Bhaiya to Ring Road.

31. This Court while passing the interim orders in M.C.C. No.824 of 2006 has already directed Jankilal Bhaiya and Madhuri Shukla to construct their house by leaving 40 feet land in front of their houses, therefore, this Court cannot modify or review the order passed in M.C.C. No.824 of 2006. The Corporation is bound to construct the Road strictly as per the direction given by this Court in M.C.C. No.824 of 2006 and as per Master Plan as far as possible by maintaining the equilibrium. As far as the case of Vishnu Kumar (W.P. No.22671 of 2021) is concerned, the Apex Court has already directed the Municipal Corporation that if the acquisition is required the

same can be done in accordance with the law. Hence, no fresh directions are liable to be issued in these petitions. The Corporation is bound to act in accordance with the direction given by the Apex Court in the SLP No.8648 of 2012 and the law laid down in the case of *Ravindra Ramchandra Waghmare (supra)*.

The Director, Town & Country Planning is the custodian of the Master Plan and he has to see whether it is being properly implemented, therefore, widening of the Road be monitored by the Director himself by any Additional Director authorized by him.

In view of the above discussion, all the Writ Petitions are finally disposed of .

Let a copy of this order be kept in the file of connected writ petitions also.

(VIVEK RUSIA)
J U D G E

(AMAR NATH (KESHARWANI))
J U D G E

Ravi