

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 17th OF OCTOBER, 2022

WRIT PETITION No. 21535 of 2022

BETWEEN:-

SAI GANGE NARMADE SEEDS PRIVATE LIMITED
THROUGH DIRECTOR JAIPRAKASH NARAYAN
SINGH S/O LATE SHRI BIHARISINGH, AGED ABOUT
45 YEARS, OCCUPATION: BUSINESS RH-24 JAL
ENCLAVE, SILVER SPRING, PHASE-1 BYE PASS
ROAD INDORE (MADHYA PRADESH)

.....PETITIONER

(BY SHRI VISHAL BAHETI, ADVOCATE)

AND

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

2. BUILDING OFFICER ZONE NO. 19 INDORE
MUNICIPAL CORPORATION INDORE (MADHYA
PRADESH)

.....RESPONDENTS

*(RESPONDENTS BY SHRI KAMAL NAYAN AIREN,
ADVOCATE)*

*This petition coming on for admission this day, the court
passed the following:*

O R D E R

Heard on the question of admission.

The petitioner has filed the present petition under Article 226 of the Constitution of India challenging the *Panchnama* dated 23.08.2022, whereby the respondents have put a lock and seal in the shop constructed by the petitioner by virtue of a rent agreement.

02. Facts of the case in short are as under:-

2.1. The petitioner is a company duly registered under the provisions of the Companies Act, 1956. M/s Speed Automobiles Limited sold the land bearing Survey No.81/3/2 admeasuring 0.147 hectare situated at Bicholi Mardana, District – Indore to Laxminarayan Dubey and Smt. Sushila Dubey vide registered sale deed dated 07.09.2000. The said land had already been diverted vide order dated 11.03.1996 by the Sub Divisional Officer. The petitioner has taken the aforesaid land on rent @ Rs.50,000/- per month from Smt. Sushila Dubey with a condition that he would be free to sublet the land after raising construction on its land.

2.2. The petitioner, constructed a tin shed structure in the month of December 2020. The petitioner has taken an electricity connection from Madhya Pradesh Vidyut Vitran Company Limited and regularly paying the rent to the owner as well as property tax to the respondents / Municipal Corporation. Accordingly, to the petitioner, it is a P.K.K. i.e. tin shed on the ground floor which comes under the category of temporary construction for which no prior permission is required from Indore Municipal Corporation.

2.3. The petitioner has also given some portion of land i.e.

1400 sq. ft. vide rent agreement dated 25.04.2022 to D-Vogue Fashion Store, which has obtained a trade license from the Municipal Corporation. The petitioner as well as above named tenant both are using premises commercially. According to the petitioner, on 23.08.2022 respondent No.2, without issuing any show-cause notice suddenly came to the business premises running in the temporary tin shed and put a lock and seal on the property which resulted in closing down the entire business activities. Since the action of respondent No.2 is *per se* illegal and without jurisdiction, and in the apprehension of demolition of the tin structure, the petitioner has approached this Court by way of the present writ petition.

03. Shri Baheti, learned counsel for the petitioner submits that the respondents have opened the lock and seal of the area which is in possession of D-Vogue Fashion Store and did not remove the lock of the petitioner's premises. The petitioner has filed an affidavit to show that the lock of the D-Vogue Fashion Store has been removed on 11.09.2022, therefore, there is discrimination against the petitioner.

04. Shri Baheti, learned counsel for the petitioner further submits that for erecting a tin shed structure on the open land, no permission is required under the provisions of the Municipal Corporation Act as well as M.P. Bhumi Sudhar Adhiniyam. There is no provision for putting a lock / seal in a shop in which the business is running under the trade license. No show-cause notice

was issued to the petitioner who is actually in possession and running its business, therefore, the impugned action is illegal and the respondents be directed to unlock the premises.

05. The respondents have filed a reply raising a preliminary objection regarding the maintainability of the writ petition. The respondents have submitted that the construction raised on the land in question by the petitioner is illegal and without permission. The landlord was served a show-cause notice on 01.11.2021; thereafter, the final order was passed on 15.01.2022, which has not been challenged till date. The respondents have also alleged that the petitioner and landlord are hands-in-glove and this petition is filed at the behest of the owner of the land. Shri Airen, learned counsel submits the subject construction is not a valid construction and the same is liable to be removed otherwise the Corporation shall be free to remove the construction at the cost of the owner.

07. Shri Airen, learned counsel for the Corporation further submits that the present tin shed construction is in the nature of a permanent structure as the petitioner is running the business in it for the last two years. The requirement of prior building permission from the competent authority of Indore Municipal Corporation cannot be bypassed by raising a permanent construction by way of a tin shed and iron pillars. The safety norms are required to be fulfilled, hence, permission from the Municipal Corporation is mandatory before raising any construction and doing any commercial activities in it. Hence, the petition is liable to be

dismissed with cost. So far as discrimination is concerned, D-Vogue Fashion Store gave an undertaking that within 30 days entire formalities would be completed and on such undertaking, the premises has been unlocked. The petitioner has not given any such undertaking. Even otherwise negative parity cannot be claimed by way of writ.

08. I have heard learned counsel for the parties at length and perused the record.

09. The petitioner took the open land bearing Survey No.81/3/2 on rent from the owner namely Smt. Sushila Dubey. Thereafter, the petitioner raised a structure from tin and iron. Out of the total area of construction, the petitioner has sublet 1400 sq. ft. area to D-Vogue Fashion Store. Admittedly the petitioner has not obtained any permission from the Municipal Corporation before raising construction and did not apply for the completion certificate. According to Shri Baheti, for the temporary construction of a tin shed structure, no permission is required as the same is permissible under the provisions of the Municipal Corporation Act as well as M.P. Bhumi Vikas Rules. The aforesaid contention of learned counsel for the petitioner is unacceptable. The petitioner has not erected a tin shed from iron pillars. The structure in question is completely covered the premises with walls, doors, windows and roof. The petitioner has done false sealing and wall paneling to make it usable like a permanent structure for commercial purposes which is being reflected in

photographs filed by the petitioner.

10. So far as the opportunity of hearing is concerned, as per Annexures-R/1 & R/2, an opportunity of hearing was given to the owner on whose land construction is made without permission. The final order has been passed on 15.01.2022 which has not been challenged till today. So far as putting of lock and seal in the shop is concerned, for which no provisions are required to be made in the Municipal Corporation Act and Rules. Once construction has been found illegal without any permission, the Corporation has a right to restrain its use of any residential/commercial activities in the interest of the safety of the general public for which putting of lock and seal is the only recourse available to the authorities.

11. As per the definition of the 'Building' as provided in section 5(7) of the Municipal Corporation Act it includes a house, outhouse, **shed**, hut and other enclosure or structure whether of masonry, brick, wood, mud, **metal** or any other material whatever, whether used as a human dwelling or otherwise, and also includes doorsteps, walls, compound walls and fencing etc. Only a tent or a temporary shed erected on a ceremonial or festival occasion is out of the definition of 'building'. Since the petitioner is doing business on the so-called tin shed structure for the last two years, therefore, it cannot be said that it is a tent or temporary shed erected on ceremonial or festival occasions.

12. Section 293 of the Municipal Corporation Act prohibits for erection or re-erection of buildings without permission. Section

301 of the Municipal Corporation Act provides for the issuance of a completion certificate and permission to occupy or use. Every person who has erected or re-erected any building shall within one month of the completion of the work deliver to the Commissioner a notice in writing of such completion and shall give all necessary facilities for inspection of such work. It further provides that no person shall occupy or permitted to be occupied any such building or use or permitted to be used any part until the permission has been granted in the manner prescribed by bylaws.

13. Section 304 of the Municipal Corporation Act also provides that no building shall be erected for a temporary purpose without the sanction of the Commissioner, or otherwise. Section 307 of the Municipal Corporation Act gives the power to remove the building illegally erected.

14. Permission from Municipal Corporation before raising any construction is required in order to check and examine so many norms or issues like ownership, FAR, the strength of the building (to be erected), fire safety norms etc. and after completion of such certificate, the Commissioner is required to verify that the construction has been done in accordance with the sanctioned map and as per the provisions of Act & Rules or not. Therefore, permission, sanction of map and completion certificate are not an empty formality, these relate to the safety of the general public who are inhabiting or visiting for residential or commercial purposes according to their use. Therefore, unless the completion certificate

is issued no one is permitted to use the premises. In the present case, a huge construction of tin is divided into two parts and in both areas business activities are going on for the last two years without there being any permission and inspection from the Municipal Corporation, therefore, impugned action has rightly been taken by the Municipal Corporation. No case for interference is made out in the matter.

In view of the above, Writ Petition stands dismissed.

(VIVEK RUSIA)
J U D G E

Ravi