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

**BEFORE
HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA**

ON THE 11th OF DECEMBER, 2023

WRIT PETITION No. 12889 of 2023

BETWEEN:-

1. SMT. RITIKA HASANANDANI W/O MAHESH HASANANDANI, AGED ABOUT 52 YEARS, OCCUPATION: BUSINESS R/O G-1 SHUBH APARTMENT 20 SAKET NAGAR INDORE (MADHYA PRADESH)
2. MAHESH HASANANDANI S/O JETHANAND HASANANDANI OCCUPATION: BUSINESS G-1, SHUBH APARTMENT, 20 SAKET NAGAR, INDORE (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI VEER KUMAR JAIN, SENIOR ADVOCATE WITH SHRI NILESH SHARMA - ADVOCATE)

AND

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

.....RESPONDENTS

(BY SHRI AMOL SHRIVASTAVA - ADVOCATE)

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

ORDER

The present petition is filed under Article 226 of the Constitution of India seeking a direction to the respondents to acknowledge deemed permission regarding application dated 29/12/2022, 7/2/2023 and 24/2/2023 for obtaining

permission for change of the occupancy in the premises of petitioners(G-1, Shubh Apartment, 20 Saket Nagar, Indore M.P.)

2. The facts of the case are that the house No. 20, Saket Nagar is G-4 building and width of road is 12 meters. The petitioners purchased flat no. G-1 (ground floor) in the said building from the owner thereof on 7/2/2013. From the said date the petitioners are using the above premises along with MOS area, temporarily covered by shed) without any interruption of other flat owners of the above building because there is separate entrance for other flat owners. The petitioners are using the above premises for commercial purpose without any interruption of other flat owners and respondents. The petitioners are paying property tax at commercial rates and also continuously paying electricity bills for commercial use. The petitioner No.1 being the co-owner of the above premises has constituted a partnership firm 'Hasanandani Foods' with the consent of other co owner i.e. Petitioner No. 2 who is the husband of the Petitioner No. 1. In the said partnership firm, the other partners are her son and daughter. Now the said partnership firm wants to carry cafeteria shop for which the relevant permission has also been taken from the other Govt. department and a business license has also been obtained from the Respondent No. 2.

3. Some flat owners of the above building have taken objection before the Respondents against commencing cafeteria by the Petitioners. The Respondent No. 2 issued notice to the Petitioners on 27/09/22 for raising construction without any permission. On the very same day the Petitioners submitted application to Respondents for giving information regarding license to start cafeteria at their premises and on 04/10/2022 also given reply to notice dated 27/09/2022. Some flat owners of the above building have also filed one

writ petition being W.P. No. 21720/2022 before this Court praying therein to restrain alleged illegal construction in the above building and not to change the occupancy of the subject building and also not start any commercial activity in the said building. The said writ petition came up for hearing on 12/10/2022 and this Court passed the following order :-

"On due consideration of the aforesaid facts and circumstances of the case and on perusal of the record, this petition is disposed off with a direction to respondents Indore Municipal Corporation to ensure proper compliance of Municipal Rules and that the petitioners shall not be put to any difficulty and they shall not be forced to come again this Court for redressal of their grievance. With the aforesaid direction, the present petition stands disposed off."

4. After disposal of the said petition, on 22/11/2022 the Respondent No.2 issued notice to the Petitioners. On 24/11/2022 the petitioners filed the reply of above notice. It is submitted that for commencing the business of cafeteria the present petitioners have commenced some partition, fall ceilings, reflooring and temporary sun shades for which as per the Rule 12 Bhumi Vikas Niayam, no prior permission is required. Since the Respondents No.2 issued notice dated 22/11/2022 therefore, the Petitioners acting bonafide stopped further interior work. On 29.12.2022 the petitioners submitted application with a copy of relevant excerpt of Master Plan to the Respondent No. 2 for granting permission to commence the cafeteria.

5. Despite receipt of the said application the respondents have not given any permission to the present petitioners for commencing cafeteria in above premises. Since there was no refusal or grant issued by respondents regarding the cafeteria, therefore, on 7/2/2023 the present petitioners submitted reminder for issuing permission to the present petitioners for commencing cafeteria in

above premises. Again on 24/2/2023 the present petitioners submitted reminder for issuing permission to the present petitioners for commencing the cafeteria in above premises.

6. It is submitted that the petitioners have submitted various applications before respondent No.2/Building Officer for permission to commence the work of cafeteria. Despite the same, no permission has been granted even after various reminders and, therefore, in terms of Rule 31(h) of the Rules, the petitioner shall get a deemed 'occupancy change' in their favour.

7. Thus, in substance the petitioners are seeking a direction to the respondents to acknowledge the information regarding the 'change in occupancy' in furtherance of various applications/letters dated 29/12/2022, 7/2/2023 and 24/2/2023 in terms of Rule 31(h) of M.P. Bhumi Vikas Niyam, 2012 (hereinafter referred to as "the Rules").

8. Counsel for the respondents submitted that a complaint was made by the residents of Shubh Apartments regarding some illegal and unauthorised construction being made by the petitioner on 27/9/2022 and inspection was carried out by the respondent No.2 and it was noticed that the petitioner is carrying out some addition/alteration work and is making a construction of a cafe contrary to the building use and sanctioned map and also contrary to the master plan. In compliance to the order passed by this Court in W.P. No.21720/2022, a show-cause notice has been issued to the petitioners. The reply was filed by the petitioners and the same was considered and their contentions were rejected. The petitioners were directed to use their flat only as per the residential use mentioned in the relevant Act. It is submitted that as per the provisions of Municipal Corporation Act and Rule 12 of the Rules, a permission is required to taken up by person intending to make

addition/alteration and changes in the 'use of building' or 'occupancy change' by submitting an application before the Town and Country Planning Department. The contention of the petitioners is totally misplaced that the application has to be made before the Building Officer of the Corporation for change of use. The provisions of Rule 31(2)(h) of the Rules would not attract in the present case. The said provision deals with the permission for occupancy in Appendix E-4 form before "the authority" prior to any occupancy of the building or part thereof after construction or alteration of that building or part thereof or change in the class of occupancy of any building or part thereof.

9. It is asseverated that as per the provisions of Rule 31(g) of the Rules permission for change of occupancy application has to be submitted before the "Authority" and the word "authority" does not mean local authority. It is further contended that the use of the building as per Indore Development Plan is residential and, therefore, for change of use of land/building, application has to be made before the Director, Town and Country Planning who is the competent authority as per clause 6.3(2) of Chapter VI of Indore Development Scheme. Admittedly, as per the Indore Development Scheme, the aforesaid building is marked for "residential purpose" and its use can only be changed by Authority which is mentioned under sub clause 2 of Clause 6.3 of Chapter VI of Indore Development Scheme 2021 i.e. Competent Authority/Director, Town and Country Planning. The respondent No.2 is not the competent authority to consider the application of the petitioner for change of use of land/building or occupancy use and, therefore, the contention of the petitioner that the application has to be acknowledged as 'deemed permission' is misconceived. Neither the petitioner nor respondents have filed the entire Indore Development

Scheme, 2021 however during the course of arguments, the respondents produced copy of the Indore Development Scheme 2021 which has been taken on record.

10. Per contra, counsel for the petitioner submitted that the application would fall within the provisions of Rule 31(g)&(h) of the Rules and in Appendix E-4, as the word "concerned local authority" is mentioned in Appendix E-4, Form which is application for occupancy permit under Rule 31(2)(g) of the Rules, therefore, the petitioner has applied the said application for change of use of building and change of use of occupancy under Rule 31(2)(g) of the Rules before the respondent No.2 who did not decide within the period prescribed under Rule 31(2)(h) of the Rules and, therefore, there is a deemed permission.

11. I have heard learned counsel for the parties.

12. The sole question that arises for consideration is whether the respondent No.2/Building Officer of Indore Municipal Corporation is competent authority for considering an application for change of the occupancy in the premises/change of use of building ?

13. The State legislature has framed an Act called Madhya Pradesh Nagar Thatha Gram Nivesh Adhiniyam, 1973 (hereinafter to be referred as "the Adhiniyam") which has been amended with the assent of the Governor on 13/2/2020 published in M.P. Gazette (Extra-ordinary) dated 17/2/2020. The same has been enacted to make provision for planning and development and use of land; to make better provision for the preparation of development plans and zoning plans with a view to ensuring town planning schemes are made in a proper manner and their execution is made effective, to constitute Town and Country Planning Authority for Proper implementation of town and country

development plan, to provide for the development and administration of special areas through Special Area Development Authority, to make provision for the compulsory acquisition of land required for the purpose of the development plans and for purposes connected with the matters aforesaid.

14. Chapter IV of the Adhiniyam provides for Planning Areas and Development Plans. Section 14 of Chapter IV of the Adhiniyam provides for Director to prepare for development plans by providing existing land use map. Section 15 of Chapter IV of the Adhiniyam engrafts existing land use maps. Under Section 16 of Chapter IV of the Adhiniyam freezing of land use is prescribed. Section 17 of Chapter IV of the Adhiniyam makes provisions for contents of development plan. Section 23 of Chapter IV of the Adhiniyam confers power on the Direction, on his own motion or if so required by the State Government, shall undertake a review/evaluation of Development Plan. Section 23(A) of Chapter IV of the Adhiniyam engrafts provisions for modification of development plan or zoning plan by State Government in certain circumstances. Section 25 of Chapter IV of the Adhiniyam provides for conforming with development plan. The provision states that after coming into the force of the development plan, the use and development of plan shall conform to the provisions of the development plans.

15. Under Section 16 of Chapter IV of the Adhiniyam there is a provision of development without permission. It is provided that after coming into operation of the development plan, no person shall change the use of any land or carry out any development of land without permission in writing of the Director.

16. Thus from the aforesaid provisions of the Adhiniyam, a land use,

building use or occupancy use provided under master plan cannot be changed without permission of the Director.

17. It is not in dispute that the building in question is earmarked as residential in Indore Development Plan, 2021. In clause 6.20.1 in the table at serial No.22 restaurant/cafeteria is mentioned. Against the said entry, it is mentioned "C" which means that the consent for the same can be given by the competent authority. The competent authority under the scheme is mentioned under sub-clause 2 of Clause 6.3 of Chapter VI of the Indore Development Scheme i.e Director, Town and Country Planning. The provisions of the M.P. Bhumi Vikas Rules (the Rules) are framed in exercise of the powers conferred by sub-Section 1 of Section 85 r/w sub-Section 3 of Section 24 of the Adhinyam. The definition of the word "authority having jurisdiction" is defined under Rule 2 sub-Rule 5, which is reproduced as under:-

(5) "**Authority having jurisdiction**" (hereinafter referred to in these as "Authority") in relation to development and building activities means,-

a) the Director of Town & Country Planning or any other officer authorized by him in this behalf for granting permission for development of land in Planning areas and also in such non- planning areas where these rules are made applicable by notification.

The development of land includes,-

(i) making material change in land including its sub-division and change in its use in terms of occupancy;

(ii) construction of any type of building.

(b) the Municipal Corporation or Municipal Council or Nagar Parishad, as the case may be, or an officer authorized by or under the relevant Municipal Law or the Gram Panchayat or such other authority or officer so authorized under the Madhya Pradesh Panchayati Raj Evam Gram Swaraj Adhinyam, 1993 (No. 1 of 1994) for granting permission for construction/ alteration, demolition of building in planning

area and non- planning area falling within their respective jurisdictions.

1[(c) The land is already developed in the Central area of the adopted Development Plan, in these areas, the building permission shall be issued by the local bodies as per landuse and landuse permissibility of the Development Plan and Madhya Pradesh Bhumi Vikas Niyam, 2012.]

Explanation - (1) The expressions "Municipal Corporation" or "Municipal Council" or Nagar Parishad whenever the context so requires shall include the Administrator referred under section 423 of the Madhya Pradesh Municipal Corporation Act, 1956 (No. 23 of 1956) or "the person or committee of persons" appointed by the State Government under section 328 or Section 337 of the Madhya Pradesh Municipalities Act, 1961 (No. 37 of 1961);

18. Rule 12 part III of the Rules provides for permission for development or for construction. It provides that development or construction not to be done without permission. No person shall carry out any development or re-erect or make alterations or demolish any building or cause same to be done without obtaining a prior permission in writing in this regard from the authority, however, it is provided that no permission is required for the activities which are enumerated from clause A to clause F of the Rule 12 of the Rules. The Bhumi Vikas Rules, confers power for refusal or grant of permission for construction, alteration of building. The aforesaid provisions do not confer power to the local authorities for change of building use or occupancy use. The land/building use or occupancy use has to be as per the development plan. The permission granted by the local authorities cannot be contrary to the provisions of the development plans. The provisions of Rule 103 of the Rules provides for overriding effect to the development plan. Counsel for the petitioner does not dispute that the provisions of development plan shall override the provisions of the Rules/Regulations applicable in the plan area as prescribed in the relevant

development plan.

19. In the case of *Madhya Pradesh Housing and Infrastructure Development Board and Anr. Vs. Vijay Bodana and Ors.* reported in *(2020) 4 SCC 521*, the Apex Court in para 6 and 7 of the judgment held as under:-

Master plan falls within the category of broad development plans and is prepared by constitutionally elected bodies of local panchayats and municipalities, etc. - A zonal plan is mandated to be prepared only after the publication of the development plan - Development plan is the umbrella under which a zonal plan is made from the city and the zonal plan in turn allocates the land which could be acquired for town development schemes - M.P. Nagar Tatha Gram Nivesh Adhiniyam 1973(23 of 1973) - Ss.17,20,21 and 49- Words and Phrases - "Master plan", "zonal plan" and "development plan".

20. The procedure for grant of permission to change of use is prescribed under Clause 6.3 and Clause 6.20 of Indore Development Scheme which confers the power to the competent authority and as per sub clause 2 of clause 6.3 of the Scheme, the competent authority is Director, Town and Country Planning. Though in the Appendix E-4 under Rule 31(2)(g) of the Rules, it is mentioned "local authority" but the prescribed format deals with the application formed for occupancy permit which reads as under:-

The work of erection, re-erection or alteration in/of
 Building No.....or the.....on/in
 Plot No.....in Colony/
 Street.....Mohalla/Bazar/
 Road.....City.....has been completed under the
 supervision of.....Architect/Structural I
 Engineer/Engineer Supervisor, Registration/License
 No.....may kindly be granted permission for
 occupancy of the said building.

21. The provisions Rule 31(2)(g) of the Rules and Appendix E-4 cannot

be read to the extent that it deals with the application for change of land or building/occupancy use. If the provisions of clause 6.3 and clause 6.20 of Indore Development Scheme are read harmoniously it confers power on competent authority i.e. Director, Town and Country Planning for change of land/building use or occupancy use.

22. Admittedly, the petitioner did not submit the application for change of use of building/occupancy as prescribed under the Indore Development Scheme, 2021 and, therefore, the petitioner cannot seek that his application for obtaining permission for change of occupancy has got "deemed permission" under Rule 31(2)(h) of the Rules. The aforesaid Rules do not deal with the application for permission for change of use of building/occupancy use. The respondent No.2 cannot grant any permission for change of use of building contrary to the development plan. In the present case, admittedly, in development plan the building in question has been freezed for 'residential purpose' and for operating a cafeteria in the said building, the petitioners ought to have moved an application for permission to change of use of building or occupancy before the Director, Town and Country Planning. Thus, it is held that the respondent No.2 is not the competent authority and, therefore, the application of the petitioners for change of occupancy before the respondent No.2 was not maintainable and, therefore, there cannot be deemed permission on the said application.

23. In view of the aforesaid, I find no merit in the petition and no relief can be granted. However, for the violation of the building permission under the Rules, the respondent No.2 is granted liberty to proceed in accordance with the law.

24. Accordingly, the petition being devoid of merit and substance is hereby **dismissed**, with the aforesaid liberty.

(VIJAY KUMAR SHUKLA)
JUDGE

Pramod

