

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

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 19th OF JULY, 2023

WRIT PETITION No. 5355 of 2023

BETWEEN:-

**SHREE TULJA BHAVANI AUTOMO-
BILES PVT. LTD THROUGH DIRECTOR
ABHIJET ATRAY R/O 212/3 TALAWLI
CHANDA DEWAS NAKA A.B. RAOD IN-
DORE (MADHYA PRADESH)**

.....PETITIONER

***(BY SHRI V.K. JAIN, SENIOR ADVOCATE WITH SHRI VAIBHAV JAIN,
ADVOCATE)***

AND

- 1. JOINT DIRECTOR, TOWN AND COUNTRY
PLANNING SHOPPING COMPLEX A.B.
ROAD INDORE (MADHYA PRADESH)**
- 2. MUNICIPAL CORPORATION THROUGH
COMMISSIONER BUILDING OFFICER,
ZONE-8, INDORE (MADHYA PRADESH)**

.....RESPONDENTS

***(BY SHRI VAIBHAV BHAGWAT, GOVT. ADVOCATE FOR THE STATE
SHRI PRADYUMNA KIBE, ADVOCATE FOR THE RESPONDENT NO.2)***

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

ORDER

1] This petition has been filed by the petitioner under Article
226 of the Constitution of India against the order dated 16.01.2023,

passed by the respondent No.2/Municipal Corporation, Indore, whereby, the application filed by the petitioner for building permission has been rejected by the Municipal Corporation stating that the permission/sanction of the respondent No.1, and the layout plan in the name of the owner of the plot has not been filed.

2] In brief, the facts of the case are that the petitioner is a Company registered under the Companies Act, 1956, having its registered office at Indore, and is the owner of a plot bearing Survey No.101/3 admeasuring 0.462 hector, situated at village Lasudia Mori, Tehsil & District-Indore, which the petitioner intends to use for permanent Toyota dealership in Indore city, and for this purpose, the petitioner also applied to the respondent No.1/Joint Director, Town & Country Planning u/s.29 of the Adhiniyam, 1973 for grant of development permission/approval of the site. The application was submitted by the petitioner on 05.05.2022, which came to rejected by the respondent No.1 vide its order dated 27.6.2022, on the ground that since the area is earmarked for developing a transport city, hence, it would be proper to use the land in the integrated plan of the entire area, and no purpose would be served by allowing individual permissions to the plot owners. The aforesaid order was challenged by the petitioner in an appeal under Section 31 of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (hereinafter referred to as 'the Adhiniyam, 1973') before the Commissioner, Indore who, vide its order dated 16.9.2022, has allowed the appeal after calling the Joint Director during the course of hearing, and remanding the matter back to the Joint Director with a direction that the application filed by the petitioner shall be decided

afresh after taking into account the other four permissions given in the same area to other persons, in accordance with the provisions of the Adhiniyam,1973.

3] The contention of the petitioner is that after the aforesaid order was passed by the Commissioner on **16.9.2022**, no further order was passed by the respondent No.1, the Joint Director, thus, various reminders were also issued to the Joint Director on 21.10.2022, 07.11.2022, 14.11.2022 and 28.11.2022, wherein, the petitioner also informed the respondent No.1 that the Commissioner, Indore had passed the order on 16.9.2022, but despite many reminders, no order has been passed by the respondent No.1 and, thus, as per the provisions of the Adhiniyam, 1973 after the expiry of 60 days, it shall be deemed that the permission has been granted to the petitioner, and it was also stated that the petitioner would be free to carry out the construction work. Subsequently, the petitioner also approached the Municipal Corporation with a request for sanction of the building permission, which has been refused vide impugned order dated **16.1.2023** (Annexure P/12) for want of the sanction/permission map by the Town and Country Planning department and layout in the name of the owner which was to be granted by the Joint Director.

4] Shri V.K.Jain, learned Sr. Counsel appearing for the petitioner has submitted that the Municipal Corporation ought to have allowed the petitioner to proceed with the sanction map for the reason that, the Section 30(5) of the Adhiniyam, 1973 clearly provides that if no orders are passed on an application filed under Section 29(1) of the

Adhiniyam of 1973, it should be deemed that the permission has been granted. Counsel has also submitted that even otherwise, the grounds on which, the impugned order has been passed and the request of the petitioner has been refused, is not provided under the provisions of Section 30(5) of the Adhiniyam and Bhumi Vikas Niyam and the Master Plan of Indore.

5] A reply to the petition has also been filed and along with the reply, the respondents have placed on record the letter dated 07.12.2023, whereby it is informed that the respondent No.1 has rejected the application filed by the petitioner vide order dated 07.12.2022.

6] Shri Vaibhav Bhagwat, learned Counsel for the respondent/State has also submitted that prior to passing of the aforesaid order dated 07.12.2022, letters have also been issued to the petitioner through Speed post on 21.10.2022, and also on 14.11.2022, to afford him an opportunity of hearing pursuant to the order passed by the Commissioner dated 16.09.2022, but the petitioner did not appear, and, thus, the order dated 16.01.2023 (Annexure P/12) was passed. It is further submitted that the aforesaid order has not been challenged by the petitioner, and even otherwise, a remedy of appeal is also available to the petitioner to challenge the aforesaid order as provided u/s.31 of the Adhiniyam, 1973.

7] Shri Bhagwat has further submitted that the deeming provision of Section 30(5) shall not be applicable in the present case for the reason that the said provision is applicable only when a fresh application is filed u/s.29, whereas, in the case in hand, the order was

passed by the Commissioner, remanding the matter back to the Joint Director, directing him to decide the petitioner's application, in such circumstances, the deeming provision would not be applicable subsequent to the order of remand. Thus, it is submitted that the order has been rightly passed by the respondent No.1/Joint Director, hence, no interference is called for. Counsel for the respondent has also submitted that the petitioner's contention that the order has not been communicated to him is also erroneous for the reason that, the communication was made through registered Speed post on the address given by the petitioner in the appeal filed before the Commissioner.

8] In rebuttal, Shri V.K.Jain, leaned senior counsel for the petitioner has submitted that the submissions as advanced by the counsel for the respondent that the deeming provision would not be applicable, cannot be accepted, as the purpose of enacting the aforesaid deemed provisions u/s.30(5) of Adhiniyam, 1973 is only to ensure that the citizens are not unnecessarily harassed.

9] Shri Jain has also submitted that so far as the service of notice of hearing or the order dated 07.12.2022 passed by the Respondent No.1 to the petitioner is concerned, it was never communicated to him and in fact it was communicated on a wrong address of the petitioner which is an open plot for the development of which, the permission is being sought. Whereas in the application filed by the petitioner under Section 29 of the Adhiniyam, he has clearly given his address on which, earlier decision was communicated to him. It is also submitted that although the receipts of the registered post have

also been placed on record by the respondents, but the same are vague and it does not reflect that the impugned order was communicated to the petitioner through the aforesaid registered post.

10] Shri Jain has further submitted that although the petitioner has not amended the petition, but has challenged the subsequent order dated 07.12.2022 passed by the Joint Director in the rejoinder itself, wherein it has been clearly averred that the rejoinder be treated as the part and parcel of the petition and the order dated 07.12.2022 passed by the respondent No.1/Joint Director be quashed.

11] Counsel for the petitioner has also submitted that there was no reason for the petitioner to defy the notices or the order passed by the respondent No.1, as the petitioner intends to open a showroom of a multinational company Toyota on the said land, for which, the permission has already been granted to the petitioner by the Toyota Kirloskar Motor Pvt. Ltd., the letters regarding which have also been placed on record. Thus, it is submitted that it was not in the interest of the petitioner in any manner not to approach the respondent No.1 despite that the petitioner itself had made repeated requests to the joint director to comply with the order passed by the Commissioner.

12] Counsel appearing for the respondent No.2/Municipal Corporation has submitted that so far as the Municipal Corporation is concerned, no illegality has been committed while passing the impugned order dated 16.9.2022, as the Municipal Corporation has simply complied with the Rule 14 of the Bhumi Vikas Niyam, 2012.

13] Heard the learned counsel for the parties and also perused the record.

14] From the record, it is apparent that the controversy revolves around the provisions of Section 30 which refers to grant or refusal of permission for development. S. 30(5) of the Adhiniyam of 1973, which reads as follows:-

“**Section 30(5):** If the Director does not communicate his decision whether to grant or refuse permission to the applicant within sixty days from the date of receipt of his application, such permission shall be deemed to have been granted to the applicant on the date immediately following the date of expiry of sixty days.

Provided that in computing the period of sixty days the period between the date of requisitioning any further information or documents from the applicant and date of receipt of such information or documents from the applicant shall be excluded.”

15] It is apparent from the aforesaid provision of that if the permission is not accorded or refused within sixty days from the date of receipt of the application, it shall be deemed to have been granted to him on the date immediately following the date of expiry of 60 days, unless some further information or documents are required from the applicant and the date of receipt of such information or documents from the applicant shall be excluded.

16] So far as the chronology of the events is concerned, it is as hereunder :-

<u>Date.</u>	<u>Events</u>
26/03/12	Land was delivered for non-residential purpose u/s 172 MPLRC.
15/03/22	Petitioner purchased the property by Regd. Sale Deed.
03/05/22	Applied for sanction of site plan.
06/03/22	Nazul NOC by SDO.
06/10/22	NOC by IDA regarding non-inclusion in any Scheme.
27/06/22	Respondent No. 1 refused to grant permission.
	Appeal u/s 31 was filed before the Commissioner, Indore.
16/09/22	Appellate order – setting aside the refusal and directing the Respondent No.1 to consider the case according to law and keeping in view the previous permissions granted.
23/09/22	Petitioner submitted a letter to Respondent No.1 to consider and grant permission as per appellate order attached.
07/11/22	Reminder by petitioner to respondent No.1.
18/11/22	Further reminder by petitioner to respondent No.1.
28/11/22	Petitioner's letter to respondent No.1 that since the permission is neither granted nor is refused within statutory period, therefore, endorsed site plan be provided.
00/01/22	Petitioner applied for building permission to respondent No.2.
16/01/23	IMC asking for TCP approval and refused to grant building permission.
30/01/23	Petitioner's reply/representation to the respondent No.2.

17] Admittedly, the order passed by the Joint Director dated 27.6.2022, has been set aside by the Commissioner, Indore vide order

dated 16.9.2022, on an appeal preferred by the petitioner under Section 31 of the Adhiniyam,1973.

18] It is also found that before passing the order in appeal, the Commissioner had also called the Joint Director, who had accepted that four other permissions have been granted near the petitioner's plot which was not earlier in his knowledge hence, the Joint Director was once again directed to pass appropriate order taking into account the fact that permissions have also been granted to the other four plot owners. It is also found that the Commissioner, Indore has passed its order on 16.9.2022 which was a *by-parte* order but the petitioner has also made an application in this behalf to the Joint Director on 23.9.2022, requesting him to decide the application at the earliest in the light of the order passed by the Commissioner on 27.6.2022. Thereafter, again another reminder was sent by the petitioner on 07.11.2022, 18.11.2022 and 28.11.2022. In their letter dated 28.11.2022, the petitioner also stated that since the order was passed by the Commissioner on 16.9.2022, directing the Joint Director to decide the application by a speaking order, but even after sixty days therefrom, no such order has been passed nor any letter has been communicated to the petitioners, hence, the petitioner would be entitled to presume that the permission has been granted. The petitioner also approached the Municipal Corporation who has rejected the application vide impugned order dated 16.01.2023 on the ground that the permission/sanction and the layout plan in the name of the owner is not filed.

19] This Court is also of the considered opinion that the

respondent no.1 cannot claim the benefit of issuance of notice of hearing to the petitioner dated 21.10.2022 to exclude the period of sixty days, as in the said notice only, it was informed to the petitioner that a fresh order is to be passed taking into account the other permissions granted in earlier cases, as in the order passed by the Commissioner dated 16.09.2022, it was not even directed that the order shall be passed only after giving an opportunity of hearing to the petitioner, as the joint director was only directed to pass the fresh order after taking into account the earlier permissions.

20] It is also found that the matter was remanded back to the respondent no.1 Joint Director vide Commissioner's order dated 16.09.2022, whereas, the joint director has passed the order on 07.12.2022 i.e. **after a period of 81 days i.e., 21 days after the statutory period of 60 days.** It is also found that the respondents, in their reply has filed a notice dated 21.10.2022 issued to the petitioner regarding the hearing of the matter, but in the considered opinion of this court, the respondent no.1 was duty bound to pass the order within 60 days from the order of Commissioner and his failure to do so has the effect of invoking the proviso to of section 30(5) of Adhiniyam, 1973 which is a deeming clause. Section 30(5) of the Adhiniyam, 1973 is enacted with a view to ensure that the permission of development sought under the aforesaid provisions is expeditiously processed, and if it is not so processed within 60 days' period, it should be presumed that the authority has no objection to such permission, as required by the person applying for the same; this is to ensure that no person is harassed unnecessarily, in such circumstances, it is inconsequential if

the matter was remanded back to the joint director to pass the fresh order. This court finds it inconceivable that when the legislature, in its wisdom, thought it fit to impose a cap of 60 days to pass an order under Section 30(5), it can be undone by an executive action.

21] So far as the issuance of notice to the petitioner for hearing of the case is concerned, the address on which the said notice has been sent is also disputed by the petitioner on the ground that it is an open plot and the notices were never served on the petitioner. Whereas the respondent's contention is that the address mentioned in the notice is the address mentioned by the petitioner in his appeal. Whereas Shri V.K. Jain, learned senior counsel for the petitioner has submitted that the notice ought to have been issued on the address initially submitted by the petitioner to the respondents in their application for development permission. Be that as it may, this court is of the considered opinion that since the order has been passed by the Joint Director after 60 days' period, whether the notice was served on proper address or not is of no consequence.

22] This Court also finds that even after the by-parte order was passed by the Commissioner on 16.9.2022, the petitioner has continuously knocked on the doors of the Joint Director by submitting his applications to decide the matter expeditiously, but it appears that cognizance of none of their letters was ever taken by the Joint Director and the contention of the respondent no.1 that these letters were delivered on the front desk of the respondent no.1's office and the not to the respondent no.1, is rather naive and absurd. *It is also found that*

the Commissioner, vide its order dated 16.9.2022, had specifically directed the Joint Director to take into account the other four sanctions which have been issued in favour of the other plot owners of the same vicinity, but, in the final order dated 07.12.2022, the Joint Director has not even referred to such permission given to the other four plot owners and has stuck to its own earlier order which was set aside by the Commissioner. Although counsel for the State has submitted that the petitioner cannot claim negative parity, however, there is nothing on record to demonstrate that the other four plot owners' permissions were granted by the respondent no.1 in violation of any law. This Court is of the considered opinion that non-consideration of the grant of permission to the other four plot owners also vitiates the order passed by the Joint Director. Thus, on both the grounds viz., that the impugned order dated 07.12.2022 has been passed after 60 days from the date of the Commissioner's order dated 16.9.2022, and also on the ground that it has not been passed as directed by the Commissioner, denying the ground of parity available to the petitioner, the impugned order is liable to be set aside.

23] This Court is also concerned about the growing trend in the administrative circles, of defying the orders passed of the superior officers by their subordinates, and the present case is also a personification of the same. This Court is also at pains to see that how a citizen has been made to run from pillar to post to get a sanction for development to which he was legally entitled to. It is not difficult to see as to why the multinational companies are still shying away from investing in India despite Government's sincere efforts to promote the

foreign investment.

24] Resultantly, the petition stands allowed with cost of **Rs.50,000/-**(Rupees Fifty Thousand only), and the impugned orders dated 16.01.2023 passed by the respondent no.2/Municipal Corporation as also the order dated 07.12.2022 by the respondent no.2 Joint Director, Town and Country Planning are hereby quashed. The respondent no.1/Joint Director is directed to ensure that the necessary sanctions as required by the petitioner in his application are provided to it within seven days from the date of receipt of the certified copy of this order, and the respondent No.2/Municipal Corporation is also directed to proceed further and provide building permission to the petitioner in accordance with law without any further delay.

25] The Cost of Rs.50,000/- is to be paid by the respondent No.1 to the petitioner.

26] Accordingly, the petition stands **allowed with costs.**

(SUBODH ABHYANKAR)
JUDGE

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