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WP-38193-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 29th OF NOVEMBER, 2024WRIT PETITION No. 38193 of 2024*YARANA DHABA THROUGH TABASSUM BEE**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Ms. Pratibha Verma - Advocate for the petitioner.

Ms. Mradula Sen - G.A./P.L. for respondent Nos.1 & 2/State.

Shri Kushal Goyal - Advocate for respondent Nos.4 & 5.

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ORDER

1. This writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeking the following reliefs:-

"(a) That, a writ, direction or order in the nature of certiorari or mandamus or as deemed fit be issued quashing the impugned notice dated 31.10.2024 issued by the respondent no.4.

(b) That, a writ, direction or order in the nature of certiorari or mandamus or as deemed fit be issued restraining them demolishing the construction and directing respondents to comply with the directions issued by the Hon'ble Apex Court in the matter of **In Re: Directions in the matter of demolition of structures 2024 SCC Online SC 3291**

(c) That writ, direction or order in the nature of certiorari or mandamus or as deemed fit be issued directing the respondents to initiate legal acquisition proceeding if any, then it has to take place in consonance to the provisions of the Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 or any other cogent law and the petitioner should be compensated for such acquisition in view of the principles of natural justice.

(d) This petition may kindly be allowed.

(e) Any other relief which this Hon'ble Court deems fit be issued."

2. The petitioner is aggrieved by the action of the respondents whereby his construction is sought to be demolished.

3. Learned counsel for the petitioner has relied upon the recent decision rendered by the Supreme Court in the case of *In Re : Directions in the matter of demolition of structures reported as 2024 SCC OnLine SC 3291 para No.90 and 91*. Counsel has submitted that the respondents may be directed to adhere to the aforesaid guidelines



issued by the Supreme Court in the aforesaid decision.

4. Learned counsel for the respondents on the other hand has opposed the prayer, however, it is not denied that the Supreme Court has issued certain guidelines in the aforesaid decision.

5. In view of the same, this Court is inclined to dispose of this petition with a direction to the respondents to proceed in accordance with law, by following the directions issued by the Supreme Court in Paras No.90 and 91 of the aforesaid decision which read as under:-

"90. In order to allay the ears in the minds of the citizens with regard to arbitrary exercise of power by the officers/officials of the State, we find it necessary to issue certain directions in exercise of our power under Article 142 of the Constitution. We are also of the view that even after orders of demolition are passed, the affected party needs to be given some time so as to challenge the order of demolition before an appropriate forum. We are further of the view that even in cases of persons who do not wish to contest the demolition order, sufficient time needs to be given to them to vacate and arrange their affairs. It is not a happy sight to see women, children and aged persons dragged to the streets overnight. Heavens would not fall on the authorities if they hold their hands for some period.

91. At the outset, we clarify that these directions will not be applicable if there is an authorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a Court of law.

Demolition of Structures - Directions issued:

A. NOTICE

i. No demolition should be carried out without a prior show cause notice returnable either in accordance with the time provided by the local municipal laws or within 15 days' time from the date of service of such notice, whichever is later.

ii. The notice shall be served upon the owner/occupier by a registered post A.D. Additionally, the notice shall also be affixed conspicuously on the outer portion of the structure in question.

iii. The time of 15 days, stated herein above, shall start from the date of receipt of the said notice.

iv. To prevent any allegation of backdating, we direct that as soon as the show cause notice is duly served, intimation thereof shall be sent to the office of Collector/District Magistrate of the district digitally by email and an auto generated reply acknowledging receipt of the mail should also be issued from the office of the Collector/District Magistrate. The Collector/DM shall designate a nodal officer and also assign an email address and communicate the same to all the municipal and other authorities in charge of building regulations and demolition within one month from today.

v. The notice shall contain the details regarding:

a. the nature of the unauthorized construction.

b. the details of the specific violation and the grounds of demolition.

c. a list of documents that the noticee is required to furnish along with his reply.

d. The notice should also specify the date on which the personal hearing is fixed and the designated authority before whom the hearing will take place;

vi. Every municipal/local authority shall assign a designated digital portal, within 3 months from today wherein details regarding service/pasting of the notice, the reply, the show cause notice and the order passed thereon would be available

B. PERSONAL HEARING

i. The designated authority shall give an opportunity of personal hearing to the person concerned.

ii. The minutes of such a hearing shall also be recorded.

C. FINAL ORDER

i. Upon hearing, the designated authority shall pass a final order.

ii. The final order shall contain:

a. the contentions of the noticee, and if the designated authority disagrees with the same, the reasons thereof;

b. as to whether the unauthorized construction is compoundable, if it is not so, the reasons therefor;



c. if the designated authority finds that only part of the construction is unauthorized/noncompoundable, then the details thereof.

d. as to why the extreme step of demolition is the only option available and other options like compounding and demolishing only part of the property are not available.

D. AN OPPORTUNITY OF APPELLATE AND JUDICIAL SCRUTINY OF THE FINAL ORDER.

i. We further direct that if the statute provides for an appellate opportunity and time for filing the same, or even if it does not so, the order will not be implemented for a period of 15 days from the date of receipt thereof. The order shall also be displayed on the digital portal as stated above.

ii. An opportunity should be given to the owner/occupier to remove the unauthorized construction or demolish the same within a period of 15 days. Only after the period of 15 days from the date of receipt of the notice has expired and the owner/occupier has not removed/demolished the unauthorized construction, and if the same is not stayed by any appellate authority or a court, the concerned authority shall take steps to demolish the same. It is only such construction which is found to be unauthorized and not compoundable shall be demolished.

iii. Before demolition, a detailed inspection report shall be prepared by the concerned authority signed by two Panchas.

E. PROCEEDINGS OF DEMOLITION

i. The proceedings of demolition shall be video-graphed, and the concerned authority shall prepare a demolition report giving the list of police officials and civil personnel that participated in the demolition process. Video recording to be duly preserved.

ii. The said demolition report should be forwarded to the Municipal Commissioner by email and shall also be displayed on the digital portal."

6. In view of the same, no further order is required to be passed. Needless to say that the *status quo* shall be maintained by the respondents till the appropriate orders are passed, in accordance with the aforesaid directions.

7. Accordingly, writ petition stands *disposed of*.

(SUBODH ABHYANKAR)
JUDGE

Pankaj