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CR-765-2023

IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 22<sup>nd</sup> OF SEPTEMBER, 2026

CIVIL REVISION No. 765 of 2023

*DHARMENDRA SHUKLA*

*Versus*

*DR. SANJAY DESAI AND OTHERS*

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Appearance:

Shri Gopal Das Arya - Advocate for the petitioner.

Shri Ambar Pare - Advocate for the respondent No.1.

Shri Shivendra Singh Bais - Advocate for the respondents No.2

and 3.  
.....

ORDER

1. This Civil Revision is preferred by the applicant impugning the order dated 4.5.2023 passed in MJC No. 1600017/2016 by XXII District Judge, Indore, whereby the application preferred by the applicant u/S. 307(5) of the M.P. Municipal Corporation Act was dismissed on the ground that the applicant is not the resident of Municipal area of Indore and, therefore, the application is not maintainable.

2. The short facts of the case are that the applicant moved an application u/S. 307(5) of the M.P. Municipal Corporation Act, 1956 (for short "Act of 1956") alleging that the non-applicants No. 1 and 5 have constructed a building on Plot No. 6-A, Race Course Road, Indore



in contravention of the sanction map and building permission and started a hospital there. The applicant complained the illegal construction to the Commissioner, Indore Municipal Corporation, but as the Indore Municipal Corporation has not taken any action, the applicant filed the application u/S. 307(5) of the Act, 1956 for issuance of direction to the Commissioner, Indore Municipal Corporation to remove the part of the building constructed by the non-applicants No. 1 and 5 illegally.

3. Before the trial court, respondent No. 1 and 5 moved an application on 24.8.2018 that as the applicant is not resident of Indore Municipal Corporation area, therefore, he cannot maintain any application u/S. 307(5) of the Act, 1956 and consequently the application is liable to be dismissed. The trial court by the impugned order dated 4.5.2023 allowed the application preferred by the respondents No. 1 and 5 and dismissed the application filed by the applicant u/S. 307(5) of the Act. Hence, this civil revision has been preferred by the applicant.

4. Heard Shri H.K. Sharma - learned counsel for petitioner on the question of admission.

5. Counsel for petitioner submits that in Section 307(5) of the Act, 1956, there is no restriction imposed by the legislature that the person who is residing within the local limits of the municipal area can only file the application to the District Court complaining the illegal construction by any person, therefore, the trial court has committed error



in dismissing the application filed by the applicant. It is further submitted by counsel for applicant that the applicant is not only the resident of Mhow, but is also the resident of Indore and owned a house in Sukhlia Colony of Indore. He submits that the applicant filed the documents inter-alia water tax receipts before the trial court to satisfy that he is resident of Indore, but the trial Court has not considered the same and dismissed the application.

6. Shri Sharma further submits that the trial court has wrongly interpreted the judgment delivered by the Full Bench in **Dilip Kaushal & another Vs. State of MP & Ors 2008(3) JLJ 171**. He prays for setting aside the impugned order dated 4.5.2023 and remanding the matter to the trial court to decide on merits.

7. Counsel for respondents No. 1 and 5 as well as on behalf of the Municipal Corporation opposed the arguments advanced by learned counsel for applicant.

8. After considering the arguments advanced by learned counsel for applicant, the sole question involved in this civil revision is that whether a person who does not reside within the area of which the M.P. Municipal Corporation Act, 1956 applies, can maintain an application u/S. 307(5) of the Act before the District Court complaining the illegal construction raised within the municipal area ?.

9. A reference was made to the Full Bench by Division Bench arising out of Public Interest Litigation filed under Article 226 of the



Constitution of India questioning the layout sanction by the Indore Municipal Corporation for construction of a building, to decide that whether the petitioner can maintain an application under Sub Section 5 of Section 307 of Act, 1956 before the District Court for an injunction for removal or alteration of the building or not. The Full Bench considering the provisions of Sec. 307(5) of the Act, 1956 has held that the language of sub-section 5 of Section 307 of the Act, 1956 is clear that other than the Corporation any other person can apply to the district court for injunction for removal or alteration of a building thereunder.

10. The Full Bench further held that not only the Corporation, but every other person has been given the right to apply to the District Court for injunction for the removal or alteration of any building on the ground that it contravenes any provision of the Act or the bye-laws made there under. The context and the subject matter of the statute in which the word "any" has been used is thus is wide enough to include all persons other than the Corporation or every other person other than the Corporation or any other person other than the Corporation.

11. At the same time the Full Bench held that the locus standi under sub-section 5 of Section 307 of the Act, 1956 is not restricted to a person affected by the violation complained of but encompasses all persons resides within the area to which the Act of 1956 applies. The relevant paragraphs of the judgment of the Full Bench reads as under:-

*"7. Sub-section (5) of Section 307 of the Act of 1956 itself makes it clear that the right of the Corporation or any other person to apply to the*



*District Court for injunction for the removal or alteration of any building can be only on the ground that it contravenes any provision of the Act of 1956 or the bye-laws made thereunder. Chapter XXIV of the Act of 1956 in which Section 307 is located is titled “Building Control” and contains provisions regulating the construction of buildings within the area of the Municipal Corporation. There are various other provisions in the Act of 1956 and the bye-laws made thereunder relating to buildings within the area of the Corporation which have to be complied with. Legislature has, therefore, to provide for some remedy if the provisions of the Act of 1956 or the bye-laws thereunder in respect of a building are violated. It is only for this reason that under sub-section (5) of Section 307 of the Act of 1956, a right has been conferred not only on the Corporation but on any other person to apply to the... District Court for injunction for removal of a building or alteration of any building on the ground that it contravenes any provisions of the Act or the bye-laws made thereunder. Hence, not only the Corporation but every other person has been given the right to apply to the District Court for injunction for the removal or alternation of any building on the ground that it contravenes any provisions of the Act or the bye-laws made thereunder. The context and the subject matter of the statute in which the word ‘any’ has been used is thus wide enough to include all persons other than the Corporation or every other person other than the Corporation or any other person other than the Corporation.*

*8. The Division Bench delivering the opinion in Radhakishan Sharma (supra) has lost sight of the context and subject matter of the Act of 1956 in which the word “any” was to be construed and has taken a narrow view that only a person who might feel aggrieved directly by the building in regard to his individual right to his property relying on Section 41(j) of the Specific Relief Act, 1963 which provides that an injunction cannot be granted when the plaintiff has no personal interest in the matter. The reliefs under the Specific Relief Act, 1963 are granted for the purpose of enforcing individual civil rights as will be clear from Section 4 of the Specific Relief Act, 1963. Accordingly, injunction under Part III of the Specific Relief Act, 1963 is granted to the plaintiff either to prevent a breach of an obligation in favour of the plaintiff, or to compel the performance of an obligation in his favour. Unless, therefore, there is an obligation in favour of the plaintiff which needs to be enforced, the Court cannot grant injunction. Hence, it is provided in Section 41(j) of the Specific Relief Act, 1963 that an injunction cannot be granted when the plaintiff has no personal interest in the matter. What the Division Bench has failed to appreciate is that the provisions of the*



*Specific Relief Act, 1963 do not apply to the right conferred on the Corporation and any other person under sub-section (5) of Section 307 of the Act of 1956. Under the provisions of the Act of 1956, every building must comply with the provisions of the Act of 1956 and the byelaws made thereunder and hence if there is any breach of the provisions of the Act of 1956 or the byelaws made thereunder, sub-section (5) of Section 307 of the Act of 1956 confers a right not only on the Corporation but also any other person to apply to the District Court for an injunction for removal or alteration of a building on the ground that there has been the contravention of the provisions of the Act of 1956 or the bye-laws made thereunder. This remedy under sub-section (5) of Section 307 of the Act of 1956 is independent of and different from the remedies under the Specific Relief Act, 1963.*

*9. We also find from para 16 of the opinion of the Division Bench in Radhakishan Sharma (supra) that the Division Bench has held that in the event of wrongful act affecting the public, recourse to suit in terms of Section 91 of Civil Procedure Code, 1908 (for short 'the CPC') becomes necessary. Subsection (1) of Section 91 CPC provides that in case of public nuisance or other wrongful act affecting or likely to affect the public, a suit for declaration and injunction or for such other relief as may be appropriate in the circumstances may be instituted and sub-section (2) of Section 91 of the CPC states that nothing in the section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions. Thus, it is clear that Section 91(1) of the CPC is not exhaustive of the remedies that are available to a party even in case of a public nuisance or other wrongful act affecting or likely to affect the public. The remedy of the Corporation and any other person under sub-section (5) of Section 307 of the Act of 1956 is independent of the provisions of Section 91 of the CPC and not only the Corporation but any other person can apply to the District Court for injunction for removal or alteration of a building on the ground that the provisions of the Act of 1956 or the byelaws made thereunder have been contravened.*

*10. In the result, we are of the opinion that the locus standi under sub-section (5) of Section 307 of the Act of 1956 is not restricted to a person affected by the violation complained of but encompasses all persons resident within the area to which the Act of 1956 applies. The reference is answered accordingly and the decision of the Division Bench in Radhakishan Sharma (supra) to the contrary is over-ruled. The matter will now be placed before the Division Bench."*



12. From bare reading of the judgment delivered by the Full Bench, it is crystal clear that any person can move the application under Sub-section 5 of Section 307 of the Act of 1956, however, the person should be resident of the area of which the Act of 1956 applies, meaning thereby the applicant should be the resident of Municipal Corporation area. The applicant had shown his address 28, Shreeram Colony, Gurjar Kheda, Mhow, District Indore in the application filed u./S. 307(5) of the Act of 1956 before the trial court as well as in the civil revision filed before this Court. It is not in dispute that 28, Shreeram Colony, Gurjar Kheda, Mhow, District Indore does not fall within the area of Indore Municipal Corporation and the same is within the area of Mhow Cantonment Board constituted under the provisions of Cantonment Act, 2006. The provision of M.P. Municipal Corporation Act, 1956 are not applicable to the area governed by Cantonment Act, 2006, therefore, the trial court has not committed any error in dismissing the application filed by the applicant under sub-section 5 of Section 307 of the Act of 1956.

13. In so far the contention of the applicant that he is also having a house in Sukhlia Colony of Indore is not helpful to the applicant as in the original application, the applicant has shown his address of Mhow and in the civil revision also he has shown his address of Mhow. Not only that, in the affidavit originally filed with the civil revision, which was filed as Miscellaneous Appeal initially, the applicant has shown his



address of Mhow.

14. In view of the above discussion, there is no hesitation in holding that any application under sub-section 5 of Section 307 of Municipal Corporation Act, 1956 can be maintained and filed by any person before the District Court complaining the illegal construction of any building, but the person, who files and maintains the application should be resident of the municipal area governed by the provisions of the Act of 1956 and a person who resides outside the municipal area cannot file any application u/S. 307(5) of the Act of 1956 before the district court.

15. No illegality committed by the trial court in dismissing the application filed by the applicant. Consequently, the admission is declined. The civil revision petition is **dismissed**. No order as to costs.

(VINAY SARAF)  
JUDGE

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