

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1832 of 2007

Abhishek Dutta 103 South Park Apartment, Kalkaji New Delhi., Delhi

---- Petitioner

Versus

1. Municipal Corporation Ambikapur through its Commissioner,
Ambikapur Distt. Surguja Chhattisgarh
2. Commissioner, Municipal Corporation Ambikapur, District-Surguja,
District : Surguja (Ambikapur), Chhattisgarh

--- Respondents

For the petitioner	:	Mr. Animesh Verma, Advocate.
For the Respondents	:	Mr. Bhupendra Singh, Advocate

Hon'ble Shri Justice Goutam Bhaduri

CAV ORDER/JUDGMENT

(Reserved on 03.05.2019)

(Pronounced on 17.05.2019)

1. The challenge in this petition is to the demand notice dated 20.02.2007 Annexure P-7 issued by the Commissioner, Municipal Corporation, Ambikapur wherein an amount of Rs.1,62,59,227/- has been asked to be paid.
2. The facts of the case are that the petitioner's father late Amulya Kumar Dutta (since deceased) had received Malik Makbuja rights on 24.80 acres of land bearing Kh.No.243/1 and 243/2 at village Namankala, Tahsil Ambikapur, Distt. Surguja (Chhattisgarh). It was stated that initially Amulya Kumar Dutta was duly recorded as Bhumi Swami of

the aforesaid land and he was in Government Service and was posted at different places. Therefore, number of persons started encroaching upon the agricultural land and the dispute started. Amulya Kumar Dutta died in the year 1960, as such, the entire property devolved on the present petitioner Amiya Kumar Dutta (since deceased) who filed the petition. It was stated that he was also in the Government Service and was posted in different parts of the State. He too was not able to manage the land, therefore, they decided to dispose of the landed property. It is further contended that the land of 24.80 acres owned by the petitioner at the relevant time was situated within the territorial limits of Gram Panchayat, Namankala which was adjacent to Ambikapur township. It is stated that since the lands were situated within the limits of village Panchayat, as such, the petitioner had applied for registration of colonizer to carve out plots and sell it u/s 61-B of the Panchayat Raj Adhiniyam, 1993. It is stated that thereafter, that different sales were made from the year 1996 till September, 1999 and one sale was made in the year 2005. The petitioners thereafter raised the demand letter Annexure P-1 dated 20th February 2007 which is impugned in this petition.

3. Learned counsel for the petitioner would submit that on 05.12.1997 Chapter 6-A of colonisation was introduced in Chhattisgarh Panchayat Raj Adhiniyam 1993. Referring to section 61-B, it is stated that the petitioner carved out different plots and sold out it to the persons, for which, registration was issued to the petitioner u/s 61-B and it is after registration, the sale was made. It is further stated that the Gram Panchayat (Registration of Colonizer Terms and Conditions) Rules 1999

(hence forth called as “Rules of 1999”) was published in the Gazette in April 1999 and subsequently on 31.03.2002, the notification was issued to the effect that the village Namankala was brought within the local limits of Municipal Corporation, Ambikapur from 31.3.2002. Thereafter, in the year 2006 a notice was issued to the petitioner from Commissioner of Municipal corporation, Ambikapur, proposing to impose recovery of Rs.1,62,59,227/-. The reply to the notice was filed stating that the Commissioner Municipal Corporation do not have authority to issue such demand. Eventually the order/demand notice dated 20.02.2007 was issued which is subject of challenge in this writ petition.

4. It is contended that since the area of sales was not within the Municipal Corporation at the relevant time, except one sale such demand could not have been made. Further referring to Rules of 1999, it is stated that the competent authority under the Rules is S.D.O., therefore, any demand so made by the Commissioner was without any authority. It is further contended that since the area comprised was subject of sale prior to 2002, the Commissioner, Municipal Corporation could not have raised demand with retrospective effect of the sale made. It is further stated that the notice issued to the petitioner on 31.10.2006 (Annexure P-5) do not whisper any word as to which provisions of law have been flouted by the petitioner. It is contended that there is violation of the Municipal Corporation Act and the Rules made thereunder, therefore, the recovery could not have been asked for as Municipal Corporation Act itself was not in force and operation in respect of the sale made. It is further submitted that in the return,

respondents came out with a new plea which was never before adopted for which no whisper was made in the notice and the order thereof.

5. Learned counsel placed reliance on a decision of the Supreme Court in ***Nandkishore Lalbhai Mehta versus New Era Fabrics Private Limited and others* (2015) 9 SCC 755** and submitted that no fresh pleading can be taken by surprise. He further placed reliance in ***State of West Bengal Versus West Bengal Registration Copy Writers Association* (2009) 14 SCC 132** and submitted that change of stand cannot be allowed. Therefore, it is submitted that *Annexure P-1* is without any authority, consequently it is liable to be quashed.
6. Per contra, learned counsel for the respondent submitted that the document filed along-with the return would show that on the date when the registration was obtained, it was within the development plan and the development plan was notified under the *Nagar Thatha Gram Nivesh Adhiniyam, 1973*. Therefore, as per section 13 sub-section (3) thereof the SDO did not have the power to issue such registration. It is stated that issuance of notice was under the *M.P. Nagar Panchayat (Registration of Colonizer Terms and Conditions) Rules, 1998* (henceforth called as “Rules of 1998”) and it was further contended that had the petitioner obtained the registration and permission from the Collector it would have been justified but the registration by the SDO cannot favour the petitioner. It is stated that as per the Registration of Coloniser Rules, the Collector should have

given the permission and as per Rule 10 since the petitioner did not have left open the requisite land for the reserved persons belonging to the weaker sections and also carried out development, recovery was sought for. Learned counsel further submits that a survey was made in the year 2006 and since the development was not carried out, as such, the demand was raised and the cost which has been sought for is meant for recovery of expenditure incurred by the Municipal Corporation for internal development.

7. A perusal of Annexure P-1, the notice of demand issued by the Commissioner Municipal Corporation Ambikapur dated 20.02.2007 purports that the petitioner has flouted the provisions of *Chhattisgarh Gram Panchayat (Registration of Colonizer Terms and Conditions) Rules 1999* and further stated that for development of plot, the lay out was not sanctioned under *Nagar Thatha Gram Nivesh Adhiniyam, 1973* and Internal Development was not carried out. It further says that after *Colonizer Rules 1999* was set into motion, different sales were made which were from Serial No.3 to 60. The sale of Serial No. 3 is of the year 2005 whereas different sales of Sl.No. 4 to 60 were made in between the period from 1996 to 1999. The petitioner has filed the registration certificate vide Annexure P-3 which was issued by the SDO on 02.07.1998. Chapter VI-A which deals with colonization was inserted by the Act on 05.12.1997 in Panchayat Raj Adhiniyam, 1993. Section 61-A & 61-B thereof are relevant which reads as under:

“Chapter VI-A-Colonization”

“61-A. Definitions. For the purposes of this Chapter “Gram Panchayat area” means such area which is situated in the Gram Panchayat within a distance of :

(i) sixteen kilometers from the limits of a Municipal Corporation Constituted under the Chhattisgarh Municipal Corporation Act, 1956 (No.23 of 1956)

(ii) eight kilometers from the limits of a Municipal Council or Nagar Panchayat constituted under the Chhattisgarh Municipalities Act, 1961 (No.37 of 1961);

(iii) three kilometers from the limits of an urban area other than those specified in (i) and (ii) above;

one kilometer from the side of a National Highway specified in or declared under the National Highway Act, 1956 (XLVII of 1956) or public road notified under section 2 of the Chhattisgarh Highway Act, 1936 (XXXIV of 1936).”

“61-B. Registration of Colonies.-(1) Any other person who intends to undertake the establishment of a colony in the Gram Panchayat area for the purpose of dividing land into plots, with or without developing the area, transfers or agrees to transfer gradually, or at the time, to persons desirous of settling down on those plots by constructing residential, non residential or composite accommodation shall apply to the Sub-Divisional officer (Revenue) for the grant of registration certificate, along-with a copy of the resolution duly passed by the Gram Panchayat in support of the establishment of the colony.

(2) On receipt of the application for registration under sub-section (1), the Sub-Divisional Officer (Revenue) shall subject to the rules made in this behalf, either issue or refuse to issue the registration certificate within thirty days.

Provided that if the Sub-Divisional Officer (Revenue) refuses to issue the registration certificate, the reasons for refusal shall be intimated to the applicant.

(3) The State Government shall have power to make rules prescribing the form of application, amount of fees for registration and other terms and conditions, for issue of registration certificate.”

8. The registration certificate (Annexure P-3) was granted u/s 61-B of the Act which is about Registration of Colonisers which says that any person who intends to undertake the establishment of a colony in Gram Panchayat area for the purpose of dividing the land into plots

with or without developing area shall apply to the SDO (Revenue) for grant of registration certificate. A perusal of the documents shows that Annexure P-3 was granted according to it. Subsequently, the Chhattisgarh Gram Panchayat (Registration of Colonization terms and Conditions) Rules 1999 was framed on 12th April, 1999 and published in Gazette dated 12th April, 1999. The sales made from serial No.4 to 60 were in between the years 1996 and 1999. In the Rules of 1999, the competent authority has been defined u/s 2(i) which reads as under:

2(i) “Competent Authority” means such Sub-Divisional Officer who has jurisdiction over the Gram Panchayat concerned”

9. Rule 12 of Rule 1999 speaks of permission for development works of the Colony and certain conditions have been provided in these Rules and the effect of non-compliance of Rule 12 is engrafted at Rule 14 which gives power to the competent authority to cancel the registration of coloniser and may take such legal action as he decides to take under the law. Therefore, the competent authority which is defined under Rule 14 has to read with section 2(i) of the definition which says that in respect of Gram Panchayat, the sub-divisional officer of the concerned Gram Panchayat shall be the competent authority. Annexure P-1 which is issued by the Commissioner Municipal Corporation is not the Competent Authority as defined under Rule 1999. It is not being disputed by the parties that the area of subject land sale came within the limits of Municipal Corporation on 31.03.2002. The notice which was issued to the petitioner on

31.10.2006 says that the petitioner has violated the Municipal Corporation Act 1956 and Municipal Corporation (Registration of Coloniser terms and Conditions) Rules 1998. In such rules, “the competent authority” by way of amendment is substituted in definition clause 2(h) by C.G. Notification No.1934/521/32/2003 dated 24th Sept. 2003 which was published in C.G. Gazette (Asadharan) dated 26.09.2013 . For the purpose of ready reference, the amendment made in Rule 2(h) in respect of “competent authority” under the Rules of 1998 reads as under :

“2(h) “Competent Authority” means in relation to such Municipal area which comes within the limit of any Municipal Corporation, Municipal Commissioner and in relation to such Municipal area which comes within the limit of any Municipal Council, Chief Municipal Officer and in limit of Nagar Panchayat, the Sub-Divisional Officer (revenue)”

10. Reading of the said rule(definition) it shows that for the purpose of competent authority, the Commissioner would be competent authority for the Municipal Corporation and the Chief Municipal Officer would be the competent authority for the Municipal Area which comes under the Municipal Council and in respect of Nagar Panchayat, the competent authority would be the Sub-divisional officer (revenue). Since the area which is subject of sale came within the Municipal Corporation on 31.03.2002, in respect of sales of land made prior to 31.03.2002 the competent authority under the Rules of 1998 would be the Sub-Divisional Officer. Sales of lands in respect of Serial No. 4 to 60 were

prior to 31.03.2002 as such the Commissioner who has issued the notice for violation of such rules cannot be termed as the competent authority for the sale made prior to the area came within the Municipal limits. If certain sales are made after the area came within the municipal limits, then it has to be separately assessed and cannot be amalgamated with the sale which were made prior to the area comprised within the Municipal Corporation limits. The application of Rule 1998 cannot be made retrospective for the sale made prior to the area came within the territorial limits of the Municipal Corporation Ambikapur.

11. In the reply of the Municipal Corporation, it is averred that the area was notified under the Nagar Thatha Gram Nivesh Niyam, 1973 and therefore, no development could be carried out. Further the averments have been made that there have been violation of M.P. Vinirdishta Bhrashta Acharan Nivaran (Registration & Development of Colonies) Rules 1982. If such averments are considered as against the notice and the order passed by the Commissioner, it shows that these grounds were never taken by the Municipal Corporation prior to filing their reply. There are no averments in the notice Annexure P-5 dated 31.10.2006 issued by the Commissioner to the Petitioner or the impugned order dated 20.02.2007 about the infringement of such right under the Act and Rules referred in the reply. Therefore, a new defence was set up before the Court irrespective of their stand which were earlier existing. The respondent in any case was required to establish the fact that the Commissioner was vested with the power to issue such notice under the C.G. Municipal corporation (Registration of

Colonizer Terms and Conditions) Rules, 1998 or The Bhoomi Vikas Adhiniyam, 1984 or the Chhattisgarh Gram Panchayat (Registration of Colonizer Terms and Conditions) Rules 1999. In view of this, after examining the power of the Commissioner, this Court is of the opinion that the Commissioner, Municipal Corporation was not vested with such power to make the demand. Consequently the order dt.20.02.2007 (Annexure P-1) issued by the Commissioner for payment of Rs.1,62,59,227/- is hereby quashed for want of authority in the given facts of this Case. However, it is made clear that the instrumentality of the State shall have liberty to proceed against the petitioner for redressal under the different statutes as available to them. Accordingly, the petition is allowed.

**Sd/-
GOUTAM BHADURI
JUDGE**