

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

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 1st OF FEBRUARY, 2024

WRIT PETITION No. 744 of 2023

BETWEEN:-

SMT. RADHA LANGRI W/O RAHUL LANGRI, R/O 525, SANDIPANI
1. NAGAR, UJJAIN, TEHSIL UJJAIN, DISTRICT UJJAIN (MADHYA
PRADESH)

SMT. VIMLA GURJAR W/O SURAJ SINGH GURJAR, R/O 526,
2. SANDIPANI NAGAR, UJJAIN, TEHSIL UJJAIN, DISTRICT UJJAIN
(MADHYA PRADESH)

.....PETITIONERS

(BY SHRI TEHJEEB KHAN, ADVOCATE.)

AND

1. THE COMMISSIONER, MUNICIPAL CORPORATION UJJAIN,
DISTRICT UJJAIN (MADHYA PRADESH)

2. BUILDING OFFICER, ZONE-5, MUNICIPAL CORPORATION UJJAIN,
DISTRICT UJJAIN (MADHYA PRADESH)

3. SUPERINTENDENT OF POLICE, UJJAIN, DISTRICT UJJAIN (MADHYA
PRADESH)

.....RESPONDENTS

(RESPONDENT NO.1 & 2 BY SHRI RISHI TIWARI, ADVOCATE.)

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

ORDER

The petitioners have filed the present petition seeking compensation for the demolition of their house illegally by respondent Nos.1 & 2.

02. The petitioner No.1 purchased the house bearing No.467, EWS

situated at Sandapani Nagar, Ujjain, and another house bearing No.556 situated at EWS, Sandapani Nagar, Ujjain vide registered sale deed dated 03.04.2019 and 16.07.2020 respectively. Likewise, petitioner No.2 purchased the house bearing No.526 situated at EWS, Sandapani Nagar, Ujjain. The husband of petitioner No.1 also purchased house No.466, EWS, Sandapani Nagar, Ujjain vide registered sale-deed dated 19.09.2016 from Sanjay Singh Thakur attorney holder of Smt. Rahisa Bi. Petitioner No.2 purchased house No.527, EWS, Sandapani Nagar, Ujjain vide registered sale-deed dated 09.03.2021, she also purchased another house bearing No.525, EWS, Sandapani Nagar, Ujjain vide registered sale-deed dated 30.03.2022 and another house No.503, EWS, Sandapani Nagar, Ujjain vide registered sale deed dated 21.07.2022.

03. According to the petitioners, petitioner No.2 was served two notices before the demolition of houses No.525, 526 & and 527 by giving one day time to submit the reply. On 12.12.2022 the petitioner No.2 approached the civil Court by filing an application under Section 94 of Civil Procedure Code, 1908 in which *status quo* was granted on 12.12.2022. According to petitioner No.1, on 13.12.2022 without giving any notice respondents Nos. 1 & 2 demolished houses No.466 & 467. The petitioners by way of this petition are claiming compensation, disciplinary action, and injunction from demolishing the remaining portion of the house.

04. Vide order dated 10.01.2023, this Court granted interim protection to the petitioner. Thereafter, the Municipal Corporation filed the reply describing the powers of demolition under Sections 293 & 294 of the M.P. Municipal Corporation Act, 1956 (for brevity “Act of 1956”) and protection from payment of compensation under Section 306 of the Act of 1956. According to the respondent, houses No.466 & 467, EWS, Sandipani Nagar, Ujjain were raised in violation of the provisions of the

Municipal Corporation Act. Shri Tiwari learned counsel submitted that no building permission was obtained by the petitioners before constructing the houses in question, therefore, the same has rightly been demolished. It is further submitted that notice dated 12.10.2022 was served by way of affixture and no reply was filed for two months, therefore, no option was left but to issue a notice under Sections 307 & 406 of the Act of 1956. It is further submitted by the learned counsel that the names of petitioner No.1 are not recorded as owners of houses No.467 & 477. So far as houses No.525, 526 & 527 are concerned, they were also raised contrary to the building permission and encroached on the MOS area. The notice under Section 307 of the Act of 1956 was served. It is further submitted that after the passing of the order dated 12.12.2022, on 17.01.2023 the Civil Judge dismissed the application filed under section 94 of the Civil Procedure Code for want of filing plaint and court fees.

05. Vide order dated 25.01.2024, this Court directed the Commissioner, Municipal Corporation to examine the record and submit the explanation before this Court. Today, an affidavit is filed by the Commissioner who recently joined on 31.12.2023 as Commissioner of Municipal Corporation, Ujjain by submitting that House No.466 situated at EWS, Sandipani Nagar, Ujjain there is no record of the building permission and the name of Rahisa Bi is recorded as an owner. On 11.10.2022 spot inspection was carried on and information was received that this house was purchased by Parvez Khan by Rahisa Bi. Panchnama was drawn and the note sheet was initiated by the Building Inspector thereafter, notice dated 12.10.2022 was issued under Section 307 of the Act of 1956 in the name of Parvez Khan and on refusal to accept the notice, a second notice dated 12.12.2022 was issued followed by third notice dated 13.12.2022.

06. The subject construction was partially demolished on 13.12.2022 and the panchnama was drawn. Likewise, house No.467 situated at EWS, Sandipani, Nagar Ujjain is also not recorded in the names of petitioners in the revenue record. The name of one Uma W/o Ajay is the recorded owner to whom the notice was issued. On 11.10.2022 spot inspection was done, and a note sheet was initiated by the Building Officer. The notice under Section 307 of the Act of 1956 was issued and on refusal to accept the notice by Uma W/o Ajay second and third notices were issued on 12.12.2022 and 13.12.2022 and thereafter, on 13.12.2022 subject construction was partially demolished. I have heard the learned counsel for the parties and perused the record.

07. The Commission Municipal Corporation Ujjain produced the not sheet prepared for the demolition of houses No.466 & 467, as per mauka panchnama dated 11.10.2022, Parvez Khan disclosed that he is an owner of the house which he purchased in the year 2016 and contrary to which there is a registered sale-deed on record in the name of the petitioner. Although they did not inform about the aforesaid sale to the Municipal Corporation by submitting a registered sale deed for mutation of their name they are residing in the said house as owner. Had the Building Officer gone to the spot he would have been informed about the name of the petitioner about the ownership. There is no such person in the name of Parvez Khan, there is no such document to show that he purchased the property only, on the basis of this so called oral information the panchnama was drawn and drastic action for demolition has been taken. It appears that *Mouka Pnachnama* is a concocted document that was prepared in the house without going to the spot. Therefore, the demolition of house No.466 by serving a notice to a fictitious person Parvez Khan is a highly illegal and arbitrary action for which disciplinary action is liable to be taken against the concerned

officers and employee.

08. Nowadays, all information about ownership of the property is available in the office of the Sub-Registrar as well as in the Municipal Corporation. The Commissioner has conveniently avoided giving an explanation about the details of deposit of property tax on the ground that the server is down. The information in the server is made available for the public but the Municipal Corporation has a physical record of payment of property tax. This could have been verified from the record as to who is depositing the property tax of this house. Despite that, there is no mutation in the name of the petitioners but the fact remains that the name of Rahisa Bi is recorded as the owner even though she has not been served any notice before demolition otherwise she would have informed the employees of Municipal Corporation that the house had been sold to this petitioner No.1.

09. Likewise, house No.467 for which also the information was obtained from the local public that it belongs to Uma Jatav whereas petitioner No.2 purchased this house. In this case also in a very casual manner, the panchnama was prepared and notice was issued in the name of Uma, for which there is no acknowledgment. Only the notice was affixed to the house and demolition was started in a very arbitrary manner.

10. As observed repeatedly by this court, it has become fashionable now for local administration and local bodies to demolish any house by drawing up proceedings without complying with the Principal of Natural Justice and publish it in the newspaper. It appears that in this case also the criminal case was registered against one of the family members of the petitioners and demolition activities were carried out. It is not the case of the respondent that in the entire area under the Municipal Corporation Ujjain, these are the only two houses that are constructed

without permission to be demolished. Admittedly, these petitioners purchased the constructed houses, not the open land, if there was no permission then there is a provision of compounding also for which the specific rules have been framed by the State Government. Instead of demolishing, they should have been called upon to get their construction regularized.

11. It is correct that no person has a right to construct the house without building permission or if the building permission is there then no construction is permissible in the MOS area. In either case, demolition should be the last recourse to be followed that too after giving a proper opportunity to the owner of the house to get it regularized. No affidavit has been filed by the Commissioner in respect of the demolition of houses No.225, 226, and 227.

12. In view of the above, this Writ Petition is **allowed**. The compensation of Rs.1 – 1 Lakh be paid to the petitioner for the illegal demolition of their house without giving opportunity of hearing and notice within 4 weeks. The Commissioner, Municipal Corporation is directed to initiate disciplinary action against the officers who prepared the forged spot panchnama. The petitioners are also directed to get their construction legalized by applying for building permission / compounding before the Commissioner and the same shall be considered in accordance with the law without being prejudice by the observations made hereinabove against the Municipal Corporation. Needless to mention here that petitioners shall be at liberty to approach the civil Court to claim actual compensation for their losses.

(VIVEK RUSIA)
JUDGE

Divyansh