

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8361 OF 2009

Municipal Corporation, Bhopal

..Appellant

versus

Mohd. Yunus

..Respondent

WITH

CIVIL APPEAL NO.8362 OF 2009

O R D E R

Civil Appeal No. 8361 of 2009

The respondent herein initiated civil proceedings against the Municipal Corporation, Bhopal before the 2nd Civil Judge, Class II, Bhopal. The Civil Court, while recording its conclusions, observed as under:

"12. on the basis of above discussion, in the opinion of this Court, the plaintiff has succeeded to prove his case against the defendant, therefore, the suit of the plaintiff is hereby decreed as follows:-

- i) That the defendant is directed by mandatory injunction, that if possible plaintiff be allotted lease of plot of 15x15 sq. ft. where plaintiff presently is running his temporary shop or near to that area, on depositing the lease amount to the Corporation in regard to grant of permanent lease and if plot is leased out, the permission for permanent construction be granted.
- ii) The defendant is directed not to disturb the space of plaintiff till permanent lease is not granted nor he be dispossessed from the space through its employees.
- iii) It is also hereby ordered to the defendant to bear the entire legal expenses of the plaintiff."

It is not a matter of dispute that the Municipal Corporation, Bhopal did not prefer an appeal to assail the order passed by the Civil Judge. In the above view of the matter, the judgment and decree dated 22.09.2001 attained finality.

Since the directions contained in the judgment and decree

dated 22.09.2001 were not complied with, the respondent initiated execution proceedings. The Executing Court, namely, 4th Additional Civil Judge, Class-I, Bhopal by an order dated 19.7.2007 rejected the objections raised by the Municipal Corporation, Bhopal, and directed the Corporation to comply with the judgment and decree dated 22.9.2001.

Dissatisfied with the above order dated 19.7.2007, the Municipal Corporation, Bhopal preferred writ petition No. 12549 of 2007 before the High Court of Judicature at Jabalpur, Madhya Pradesh (hereinafter referred to as the 'High Court'). The High Court, by its order dated 24.9.2008, upheld the order passed by the Executing Court. It is in the above circumstances that the Municipal Corporation, Bhopal has approached this Court by filing the instant civil appeal.

The primary contention of the learned counsel for the appellant is, that the direction contained in paragraph 12(i) of the judgment dated 22.9.2001 is not executable on account of the fact that the same is barred under Rule 3 of the Madhya Pradesh Municipal Corporation (transfer of Immovable Property) Rules, 1994 (hereinafter referred to as the '1994 Rules'). Rule 3 of the afore-mentioned 1994 Rules is being extracted hereunder:

"Rule 3: No immovable property which yields or is capable of yielding an income shall be transferred by sale or otherwise conveyed except to the highest bidder at a public auction or by inviting offer in a sealed cover:

Provided that if the corporation is of the opinion that it is not desirable to hold a public auction or to invite offers in sealed covers, the corporation may, with the previous sanction of the State Govt. effect such transfer without public auction or inviting offers in sealed cover:

Provided further that the corporation may with the previous sanction of the State Govt. and for the reasons to be recorded in writing, transfer any immovable property to a bidder other than the highest bidder:

Provided also that for such transfer by lease a reasonable premium shall be payable at the time of granting the lease or annual rent shall also be payable till addition during the total period of the lease."

Having considered the submissions advanced at the hands of the learned counsel for the appellant, we find no merit therein. Transfer of immovable property, capable of yielding income, is not wholly barred. Even, in the absence of an auction, transfer of immovable property is permissible in certain circumstances. Insofar as the Municipal Corporation is concerned, it had recommended the transfer of the plot of land under reference in compliance with the directions issued by the Civil Court dated 22.09.2001 with the following observations:

" MUNICIPAL CORPORATION, BHOPAL
CORPORATION CONFERENCE NO. 2 DT 2.11.2002

The Case of Mohd. Yunus and Shri Ajiz for allotment of land, measuring 15 x 15 foot on permanent lease near 5, Bus Stop, T.T.Nagar, along with recommendation No.41 dt. 27.8.2002 of Mahapore Parishad be sent to Govt. for approval."

It is the contention of the learned counsel for the appellant that the State Government did not accept the recommendations made by the

Municipal Corporation, Bhopal. We find no merit in the submission advanced at the hands of the learned counsel for the appellant. The recommendations made by the Municipal Corporation was inappropriate. While making the aforesaid recommendation, the Municipal Corporation ought to have clearly mentioned, that the instant recommendation was being made in compliance of a judgment rendered by a Civil Court, which had attained finality. The Municipal Corporation seriously erred in ignoring the above noticed factual position. Had the said factual position been brought to the notice of the State Government, we have no doubt whatsoever, that the State Government under the first proviso to Rule 3 of the 1994 Rules, would have sanctioned the transfer of the land in question, without public auction or inviting offers in a sealed cover.

Having recorded our aforesaid observations, we are satisfied that the instant appeal deserves to be dismissed. We are also satisfied in directing the Municipal Corporation, Bhopal to make a fresh recommendation for compliance of the direction issued by the Civil Court, especially, the direction contained in paragraph 12(i). While making the recommendation, and while seeking the previous sanction of the State Government under Rule 3 of the 1994 Rules, the Municipal Corporation shall inform the State Government, that the instant transfer is being effected in compliance with a judgment/decreed of a Civil Court.

With the above observations, the instant civil appeal is dismissed.

Civil Appeal No. 8362 of 2009

Learned counsel for the parties submit, that the instant appeal be disposed of in terms of the order passed today in Civil Appeal No. 8361 of 2009, titled Municipal Corporation, Bhopal vs. Mohd. Yunus. Ordered accordingly.

.....J.
[JAGDISH SINGH KHEHAR]

NEW DELHI;J.
FEBRUARY 12, 2014. [MADAN B. LOKUR]

ITEM NO.104 COURT NO.13 SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 8361 OF 2009

MUNICIPAL CORP., BHOPAL Appellant (s)

VERSUS

MOHD.YUNUS Respondent(s)

(With office report)
WITH Civil Appeal NO. 8362 of 2009
(With office report)

Date: 12/02/2014 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR
HON'BLE MR. JUSTICE MADAN B. LOKUR

For Appellant(s) Mr. B.K.Satija,Adv.

For Respondent(s) Mr. Shakil Ahmed Syed,Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed order.

(Parveen Kr.Chawla)	(Phoolan Wati Arora)	
Court Master	Assistant Registrar	

[signed order is placed on the file]