Municipal Council Neemuch vs Mahadeo Real Estate on 17 September, 2019

Equivalent citations: AIR 2019 SUPREME COURT 4517, 2019 (10) SCC 738, AIRONLINE 2019 SC 1073, (2019) 12 SCALE 440, (2019) 7 MAD LJ 306, AIR 2020 SC (CIV) 18

Author: B.R. Gavai

Bench: B.R. Gavai, M. R. Shah, Arun Mishra

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.7319-7320 OF 2019
(Arising out of S.L.P.(C) Nos. 172-173 of 2019)

MUNICIPAL COUNCIL NEEMUCH .... APPELLANT(S)

VERSUS

MAHADEO REAL ESTATE AND ORS. .... RESPONDENT(S)

JUDGMENT

B.R. GAVAI, J.

Leave granted.

2. The present appeals challenge the Judgment and Order passed by the Division Bench of the Madhya Pradesh High Court, Bench at Indore, dated 31.08.2017 thereby allowing the writ petition filed by respondent No. 1 herein and the subsequent Order dated 05.07.2018 thereby, rejecting the

Reason:

Review Petition filed by the appellant.

3. The factual background, in brief, giving rise to the present appeals is as under.

The appellant, which is a Municipal Council, duly constituted under the Madhya Pradesh Municipality Act, 1961 (hereinafter referred to as the "said Act") had invited tenders for allotment of land on lease, for a period of 30 years. The land was admeasuring 163176 sq. ft. situated in Scheme No.1A (Commercial cum Residential Use), Neemuch. The Notice Inviting Tenders ("NIT" for short) was published in the daily newspapers, viz., Nai Duniya, Dainik Bhaskar, Free Press and Dashpur Express. Respondent No.1, which is a registered partnership firm along with other bidders had submitted the tender thereby giving an offer of Rs.5,81,00,106/. It had also deposited the earnest money amounting to Rs. 47,00,000/. The bids of the participants were opened in presence of the representatives of all the bidders. The bid of respondent No. 1 herein was found to be highest.

4. The appellant issued a letter dated 27.09.2008 thereby informing respondent No. 1 that its bid was accepted. Respondent No.1 was directed to deposit an amount of Rs.1,45,25,050/, i.e., 25% of the bid amount within a period of seven days. Respondent no.1 in accordance therewith deposited the aforesaid amount on 01.10.2008.

5. It appears that an objection was raised by two members of the Municipal Council under the provisions of Section 323 of the said Act before the Collector with regard to the said tender process. It further appears, that the Collector vide Order dated 18.07.2008 had stayed further proceedings of the tender process. Vide Order dated 23.12.2008, the Collector disposed of the proceeding observing therein, that the proposal be sent for approval of the State Government in the Urban Administrative and Development Department, respondent No. 2 herein, under the provisions of Section 109 of the said Act.

6. Thereafter, it appears that, there was certain correspondence between the Urban Administrative and Development Department, on one hand, and the Divisional Revenue Commissioner of Ujjain, respondent No.3 herein, on the other hand. Finally, respondent No.3 passed an order dated 03.07.2010 observing therein that, the tenders invited in connection with transfer of the said land were not competitive. He further observed in the said Order, that the NIT was published only in Indore edition of two Hindi Newspapers at Indore and as such there was no wide circulation. As such, he rejected the proposal of the Municipal Council and returned the same with the direction to invite the tenders again by publishing the NIT in at least one National level English newspaper and one State level reputed Hindi newspaper. Being aggrieved thereby, respondent No. 1 herein approached the Madhya Pradesh High Court in Writ Petition No.12204 of 2010. The Division Bench vide Order dated 31.08.2017 allowed the writ petition thereby quashing and setting aside the Order dated 03.07.2010 passed by respondent No.3 and further directing him to grant approval on behalf of the State Government for allotment of the land on lease in favour of respondent no.1. The appellant, thereafter, preferred Review Petition No. 1072 of 2017. The same was rejected. Hence, the present appeals challenging both the Orders dated 31.08.2017 and 05.07.2018.

7. We have heard Mr. Harsh Parashar, learned counsel appearing on behalf of the appellant and Mr. Kalyan Banerjee, learned senior counsel appearing on behalf of the respondents.

8. For appreciating the rival controversy, it will be relevant to refer to the provisions of Section 109 of the said Act. Section 109 reads as follows.

"109. Provisions governing the disposal of Municipal property vesting in or under the management of Council.—No streets, land public places, drains or irrigation channels shall be sold, leased or otherwise alienated, save in accordance with such rules as may be made in this behalf.—(2) Subject to the provisions of sub-section (1)—

(a) the Chief Municipal Officer may, in his discretion, grant a lease of any immovable property belonging to the Council, including any right of fishing or of gathering and taking fruits, flowers and then like, of which the premium or rent, or both, as the case may be, does not exceed two hundred and fifty rupees for any period not exceeding twelve months at a time:

> Provided that every such lease granted by the Chief Municipal Officer, other than the lease of the class in respect of which the President-in-Council has by resolution exempted the Chief Municipal Officer from compliance with the requirements of this proviso, shall be reported by him to the President-in-Council within fifteen days after the same has been granted.
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> (b) with the sanction of the President-in-Council, the Chief Municipal Officer may, by sale or otherwise grant a lease of immovable property including any such right as aforesaid for any period not exceeding three years at a time of which the premium, or rent, or both, as the case may be, for any one year does not exceed one thousand five hundred rupees;
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> (c) with the sanction of the Council, the Chief Municipal Officer may lease, sell or otherwise convey any immovable property belonging to the Council.
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> (3) The sanction of the President-in-Council or of the Council under sub-section (2) may be given either generally for any class of cases or specially in any particular case:
>
> Provided that—
>
> (i) no property vesting in the Council in trust shall be leased, sold or otherwise conveyed in a manner that is likely to prejudicially effect the purpose of the trust subject to which such property is held;
>
> (ii) no land exceeding fifty thousand rupees in value shall be sold or otherwise conveyed without the previous sanction of the State Government and every sale or other conveyance of property vesting in the Council shall be deemed to be subject to the conditions and limitations imposed by this Act or by any other enactment for the

time being in force."

9. It could thus be seen that, the aforesaid provision governs the disposal of municipal property vesting in or under the management of the Municipal Council. Clause (ii) of sub□section (3) of Section 109 of the said Act would be the most relevant provision. It provides that, no land exceeding fifty thousand rupees in value shall be sold or otherwise conveyed without the previous sanction of the State Government. It further provides that, every sale or other conveyance of property vesting in the Council shall be deemed to be subject to the conditions and limitations imposed by the said Act or by any other enactment for the time being in force.

10. It will also be relevant to refer to Rule 3 of the Municipal Corporation (Transfer of Immovable Property) Rules, 1994 (hereinafter referred to as the "said Rules"), which reads thus:

"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 offers 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 Government, effect such transfer without public auction or inviting offers in sealed covers:

Provided further that the Corporation may with the previous sanction of the State Government 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 any such transfer by lease a reasonable premium shall be payable at the time of granting the lease and annual rent shall also be payable in addition during the total period of the lease."

11. A perusal of the aforesaid Rule 3 of the said Rules would reveal, that 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 offers in a sealed cover. The proviso thereof provides 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 Government, effect such transfers without public auction or inviting offers in sealed covers. The second proviso also provides that the Corporation may, with the previous sanction of the State Government and for the reasons to be recorded in writing, transfer any immovable property to a bidder other than the highest bidder.

12. It is thus amply clear that, no land, exceeding fifty thousand rupees in the value shall be sold or otherwise conveyed without the previous sanction of the State Government. The perusal of the aforesaid Rule further makes it clear that the immovable property which yields or is capable of yielding an income shall not be transferred by sale or otherwise conveyed, except to the highest bidder at the public auction or by inviting offers in a sealed cover. No doubt, with the previous sanction of the State Government such a transfer could be effected without public auction or inviting offers in a sealed cover. The second proviso further provides that, the Corporation may, with the previous sanction of the State Government and for the reasons to be recorded in writing, transfer any immovable property to a bidder other than the highest bidder.

13. It is thus amply clear that, whenever any land which is having a value exceeding fifty thousand rupees is to be sold the same cannot be done without the previous sanction of the State Government.

14. In the present case, the learned Judges of the Division Bench have arrived at a finding that such a sanction was, in fact, granted. We will examine the correctness of the said finding of fact at a subsequent stage. However, before doing that, we propose to examine the scope of the powers of the High Court of judicial review of an administrative action. Though, there are a catena of judgments of this Court on the said issue, the law laid down by this Court in the case of Tata Cellular Vs. Union of India reported in (1994) 6 SCC 651 lays down the basic principles which still hold the field. Paragraph 77 of the said judgment reads thus:

"77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision□making authority exceeded its powers?

2. Committed an error of law,

3. committed a breach of the rules of natural justice,

4. reached a decision which no reasonable tribunal would have reached or,

5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.
(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind, (1991) 1 AC 696, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, 'consider whether something has gone wrong of a nature and degree which requires its intervention'".

15. It could thus be seen that the scope of judicial review of an administrative action is very limited. Unless the Court comes to a conclusion, that the decision maker has not understood the law correctly that regulates his decision-making power or when it is found that the decision of the decision maker is vitiated by irrationality and that too on the principle of "Wednesbury Unreasonableness" or unless it is found that there has been a procedural impropriety in the decision-making process, it would not be permissible for the High Court to interfere in the decision making process. It is also equally well settled, that it is not permissible for the Court to examine the validity of the decision but this Court can examine only the correctness of the decision-making process.

16. This Court recently in the case of West Bengal Central School Service Commission vs. Abdul Halim reported in 2019 SCC OnLine SC 902 had again an occasion to consider the scope of interference under Article 226 in an administrative action.

"31. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in Satyanarayan v. Mallikarjuna reported in AIR 1960 SC 137. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ Court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ Court by issuance of writ of Certiorari.

32. The sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a writ Court. If the decision cannot rationally be supported by the materials on record, the same may be regarded as perverse.

33. However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The writ Court does not interfere, because a decision is not perfect.

17. It could thus be seen that an interference by the High Court would be warranted only when the decision impugned is vitiated by an apparent error of law, i.e., when the error is apparent on the face of the record and is self evident. The High Court would be empowered to exercise the powers when it finds that the decision impugned is so arbitrary and capricious that no reasonable person would have ever arrived at. It has been reiterated that the test is not what the court considers reasonable or unreasonable but a decision which the court thinks that no reasonable person could have taken. Not only this but such a decision must have led to manifest injustice.

18. In the light of the aforesaid principles, let us examine the facts of the present case. Undisputedly, in the present case, before inviting the bids, prior approval of the State Government as is required under Section 109 of the said Act was not taken. It appears, that only after the tender process was finalized and the Municipal Council had taken a decision to accept the bid of Respondent No.1, two municipal counsellors raised objection under the provisions of Section 323 of the said Act, before the Collector, Neemuch. The Collector, Neemuch on 18.07.2008 had granted stay to the proceedings. Finally, the Collector, vide Order dated 23.12.2008 held that for granting the said land on lease for a period of 30 years, the approval of the State Government is necessary. Pursuant to the said order by the Collector, the matter was sent to respondent No. 2☐State Government. The Principal Secretary to the Government of Madhya Pradesh addressed a communication to the Commissioner, Ujjain Division, Ujjain (hereinafter referred to as “the Commissioner”) thereby authorising him to transfer the land in question. While doing so, the State Government also directed the Commissioner to inspect that the utilisation of the land was for the purposes as provided under Neemuch Development Plan 2011.

19. However, the Commissioner addressed a communication dated 03.03.2010 to the State Government thereby, pointing out that the rights for transferring the property having a value more than fifty thousand rupees is with the State Government. He has, therefore, solicited guidance from the State Government seeking clear orders in view of the provisions of Section 109 of the said Act and Rule 7 of the said Rules. He also pointed out to the State Government that the Municipal Council had published the NIT only in two daily newspapers of Hindi language and as such there was no sufficient competition. He also pointed out that, as such tenders were filled up by only four bidders. He specifically observed, that after noticing the rates offered, it appears that there is cartel amongst the tenderers. He further pointed out that, had the NIT been published in English and Hindi newspapers at the National and State level, then there would have been a wider competition and the higher rates could have been offered. He, therefore, proposed that while rejecting the proposal as submitted to the Council it will be appropriate to direct the Municipal Council, Neemuch, to invite the tenders again.

20. In response to the aforesaid communication dated 03.03.2010, respondent No. 2 State Government addressed another communication dated 18.05.2010 to the Commissioner. The said communication states that after re-examination the State Government has authorised the Commissioner for transferring the land in question. The said communication specifically states that if the proposal submitted by the Municipal Council was not agreeable to the Commissioner then while invalidating the proposal by the Municipal Council, he may give order for initiation of proceedings afresh. In pursuance of the aforesaid communication dated 18.05.2010, the order impugned herein is passed by the Commissioner dated 03.07.2010.

21. The Commissioner in the Order dated 03.07.2010 has found that the bids were not found to be competitive. He further found that the NIT was published only in two Hindi newspapers and as such there was no sufficient competition. He has, therefore, rejected the proposal of the Municipal Council and while doing so, returned back the same with the direction to invite the tenders again and get the NIT published in at least one National level English newspaper and one State level Hindi newspaper.

22. The situation that emerges is thus. Initially the Municipal Council, Neemuch, invited tenders for allotment of the said land on lease for 30 years. This was done without taking prior approval of the State Government as in required under Section 109 of the said Act. Two municipal counsellors raised objections before the Collector under the provisions of Section 323 of the said Act. The Collector, who initially granted stay on 18.07.2008, vide order dated 23.12.2008 directed the Municipal Council to seek approval of the State Government to the said proposal. Vide communication dated 21.12.2009, the State Government directed respondent No. 3 Revenue Commissioner to hand over the possession of the land to respondent No. 1. While doing so, the State Government directed the Commissioner to inspect as to whether the land was being put for use as per the development plan. On receipt of the communication, the Divisional Commissioner addressed a communication to the State Government on 03.03.2010 thereby, specifically pointing out that no proper publicity was given to the NIT and that the rates were not competitive as per the market value. It was specifically observed that there was a cartel among the tenderers and, therefore, sought clear orders of the State Government in view of Section 109 of the said Act. He also proposed to reject the proposal with further direction to invite fresh tenders by giving adequate publicity. In response to the said communication, the State Government re-examined the issue and by communication dated 18.05.2010 authorised the Commissioner for transferring the land in question. It is further clear from the said communication that, the State Government authorised the Commissioner to take necessary decision with regard to grant of sanction under the provisions of Section 109 of the said Act and Rule 7 of the said Rules. It specifically observed that, if the Commissioner does not agree with the proposal of the Municipal Council he may while invalidating the proposal of the Municipal Council give orders for initiation of proceedings afresh. It is in view of this authorisation that the Divisional Commissioner has passed the orders which were impugned before the Madhya Pradesh High Court.

23. We are at pains to say, that the Division Bench of the High Court by only referring to the communication dated 21.12.2009 came to the conclusion that the sanction contemplated under Section 109 of the said Act was granted by the State Government. However, the Division Bench has

totally ignored the subsequent correspondence between the State Government and the Commissioner. Perusal of the subsequent communication reveals that the Commissioner had pointed out the infirmities in the proposal of the Municipal Council and advised the State Government to reject the said proposal with a direction to the Municipal Council to invite fresh tenders. On the objection of the Commissioner, the State Government re-examined and reconsidered the issue and authorised the Commissioner to exercise powers under Section 109 of the said Act to take appropriate decision, including rejecting the proposal and directing the process of re-tendering.

24. It could thus be clearly seen that, the Commissioner, instead of blindly accepting the directions contained in the communication dated 21.12.2009, has acted in larger public interest so that the Municipal Council earns a higher revenue. Not only this, but the State Government, after the Commissioner pointing out anomalies to its notice, has re-examined and reconsidered the issue and authorised the Commissioner to pass appropriate orders including invalidating the tender process and directing initiation of fresh tender process. In the background of this factual situation, the finding of the Division Bench of the High Court that the action of the Commissioner is arbitrary and illegal, in our view, is neither legally or factually correct. As discussed hereinabove, the High Court, while exercising its powers of judicial review of administrative action, could not have interfered with the decision unless the decision suffers from the vice of illegality, irrationality or procedural impropriety.

25. In the present case, we find that the Commissioner had acted rightly as a custodian of the public property by pointing out the anomalies in the proposal of the Municipal Council to the State Government and the State Government has also responded in the right perspective by authorising the Commissioner to take an appropriate decision. We are of the considered view that, both, the Commissioner as well as the State Government, have acted in the larger public interest. We are unable to appreciate as to how the High Court, in the present matter, could have come to a conclusion that it was empowered to exercise the power of judicial review to prevent arbitrariness or favouritism on the part of the State authorities, as has been observed by it in paragraph 13. We are also unable to appreciate the finding of the High Court in para 17 wherein it has observed that the impugned decision of the authorities are found not to be in the public interest. We ask the question to us, as to whether directing re-tendering by inviting fresh tenders after giving wide publicity at the National level so as to obtain the best price for the public property, would be in the public interest or as to whether awarding contract to a bidder in the tender process where it is found that there was no adequate publicity and also a possibility of there being a cartel of bidders, would be in the public interest. We are of the considered view that the decision of the Commissioner which is set aside by the High Court is undoubtedly in larger public interest, which would ensure that the Municipal Council earns a higher revenue by enlarging the scope of the competition. By no stretch of imagination, the decision of the State Government or the Commissioner could be termed as illegal, improper, unreasonable or irrational, which parameters only could have permitted the High Court to interfere. Interference by the High Court when none of such parameters exist, in our view, was totally improper. On the contrary, we find that it is the High Court, which has failed to take into consideration relevant material.

26. In the result, the impugned Orders are not sustainable in law. The appeals are, accordingly, allowed and the impugned orders dated 31.08.2017 and 05.07.2018 are quashed and set aside. The petition of respondent No. 1 stands dismissed.

27. However, the Municipal Council is directed to refund the amount deposited by respondent No. 1 herein along with interest at the rate of 6% per annum forthwith.

28. In the facts and circumstances of the case, there shall be no order as to costs.

.....J. [ARUN MISHRA] .....J. [M. R. SHAH] .....J. [B.R. GAVAI] NEW DELHI;

SEPTEMBER 17, 2019.