



2015, passed by the High Court of Madhya Pradesh. The fourth Appeal is filed by Nagar Palika, Khachrod<sup>1</sup>, in which the Nagar Palika-original respondent No. 6 in the petition has challenged the aforesaid judgment and order dated 20.04.2015.

**2.1** Writ Petition No. 6079 of 2014, which was filed by respondent No.1 herein, styling it as a Public Interest Litigation<sup>2</sup>, came to be allowed by the High Court directing the authorities concerned to remove all the shops constructed by the Municipal Council, which shops were allotted to the private Appellants herein, accepting the case that the said constructed shops were erected on the land known as '*Dussehra Maidan*' reserved for *Dussehra* festival and related cultural events.

**2.2** The private appellants herein who are the allottees of the shops in question and in occupation and possession thereof, were not arraigned as parties in the public interest petition. In view that the direction was issued to remove their shops in their absence, they in two batches of 12 and

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<sup>1</sup> Hereinafter, 'Municipal Council'.

<sup>2</sup> Hereinafter, "PIL".

14 in numbers respectively, filed two review petitions, which came to be dismissed by the High Court.

**3.** The public interest petitioner-respondent No. 1 herein, projecting himself to be a social worker and an agriculturist, contended *inter alia* that the land comprised in Survey Nos. 4228/1, 4228/2 and 4229/1 admeasuring total 3.260 Hectares at Khachrod, District Ujjain, was a government land known as ‘*Dussehra Maidan*’ and that the same was reserved to be utilised only for the purpose of holding cultural events on *Dussehra* to celebrate the Festival. A case was put forward that the Municipal Council had unauthorisedly constructed the shops because of which the area of the ‘*Dussehra Maidan*’ was eaten up and that it would hamper the cultural activities.

**3.1.** It appears that the public interest petitioner lodged a complaint before the Tehsildar, Khachrod, Ujjain<sup>3</sup>, who forwarded the same to the Revenue Inspector and a report of inspection was prepared stating *inter alia* that 54 shops were built by the Municipal Council. The Inquiry Report

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<sup>3</sup> Hereinafter, “Tehsildar”.

further mentioned that in addition to the shops, also stood a school building and a hostel at the place. In the report, it was observed that it was not possible to ascertain as to whether the possession was legal or illegal.

**3.1.1.** In the prayers advanced in the said public interest petition, a direction was asked for against the respondent authorities to demolish the construction on the said land, to initiate administrative enquiry against erring officers and to take out criminal proceedings against the persons responsible. The public interest petitioner further prayed to restore the land as '*Dussehra Maidan*' asserting the use claimed to have been earmarked for the said land.

**3.2.** The facts in the background were that an advertisement dated 04.03.2005 was issued by the Municipal Board, Khachrod for auctioning seven newly constructed shops at the place in question and a document of 'Conditions of Auction' came to be issued on 16.03.2005. An Allotment Letter dated 21.03.2005 was issued to one of the appellants and a Rent Agreement dated 19.05.2005 in respect of a newly built shop was executed. The allottee-

appellant deposited Rs. 1,07,000/- towards the premium amount. It is stated that between the years 2005 and 2014, several rent agreements in respect of the shops which came to be constructed from time to time, were executed. The allottees-appellants remained in continuous possession of their shops.

**3.2.1.** It further appears that the project of construction of shops at the place was under contemplation of the Municipal Council as back as in the year 1995, when it had passed Resolution No. 82 of 1995 for constructing shops at Ujjain Darwaja, on the boundary of '*Dussehra Maidan*'. For some reason, the work could not be executed. The decision was reaffirmed in the subsequent decisions dated 13.12.2002 and 05.06.2003 by passing Resolution Nos. 45 and 21 afresh. In the year 2005 and onwards, the constructed shops were auctioned by the Municipal Council and came to be allotted upon executing necessary documents.

**3.2.2.** It appears that during the pendency of the public interest petition, the High Court passed order dated

06.01.2015, to direct the Tehsildar to conclude the proceedings of Case No. 03-A/68/13-14 within stipulated period and submit a report. The Tehsildar proceeded *ex parte* against the Municipal Council and ordered immediate demolition and removal of all the 54 shops on the said land which according to the Tehsildar were constructed illegally by the Municipal Council.

**3.3.** The High Court accepted the case of the public interest petitioner, did not find favour with the defence of the Municipal Council, and allowed the petition issuing direction to remove the shops. As stated, the appellants herein, who were the allottees-in-occupation and in possession of the said shops, were not made parties in the said petition. They, therefore, filed the review petitions. The High Court refused to entertain the prayer for review.

**3.4.** The stand of the Municipal Council evinced in the reply affidavit in the public interest proceedings was that by virtue of Section 100 of the Madhya Pradesh Municipalities Act, 1961<sup>4</sup>, the land in question had vested in the

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<sup>4</sup> Hereinafter, "Municipalities Act".

Municipality. It was stated that the '*Dussehra Maidan*' land was adjacent to the areas which fell within the municipal limits. It was suggested that provisions of Section 48 of the Madhya Bharat Municipalities Act, Section 36 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 as well as the provisions of the Gwalior State Municipalities Act had also the effect of vesting the said land in the municipality. The Municipal Council thus asserted that the land having vested in it, the ownership thereof was with the Municipality, and it could legally utilise the land to construct the shops in larger public interest.

**3.4.1.** Also, in the affidavit filed in the present proceedings, the Municipal Council reasserted the very stand adding that the land was transferred to the Municipality as per the Gwalior Government Gazette, dated 14.09.1929, and that the Municipality has been maintaining the land out of the municipal funds. Circular No. 3, Samvat 1998 of the Revenue Department titled as 'Domestic Boundary Document', produced along with the reply, was referred to which provided that the open land in the municipal area would vest in the municipality wherever the

municipality has been established. Yet another letter dated 16.12.1933 was mentioned to support the say that the land stood vested in the municipality. The petition was contested by contending further that the petitioner had an alternative efficacious remedy under the Municipalities Act.

**3.4.2.** As regards the case of the public interest petitioner that the constructions were made on the land belonging to Najul Department, it was stated by the Municipal Council that in the Khachrod municipal area, there was no Najul land, that the subject matter land was the property of Nagar Palika, requiring no permission to be taken from the Najul Department. It was an unequivocal stand of the respondent Municipal Council that the construction alleged as illegal was neither unlawful nor was in the nature of obstruction for conducting the cultural activities, and that no complaint was ever received that the standing of shops adversely affected the *Dussehra* cultural activities.

**3.5.** The State Government in the affidavit reply filed in the present proceedings rivally claimed that the land in question belonged to the State Government and that Khasra

of the year 2003 onwards went to suggest that the land was known as '*Dussehra Maidan*' and was earmarked for cultural and other public programmes. It was contended that since the land was owned by the State Government, any construction thereon without prior approval of the competent State authority was not permissible and that in the present case no such sanction or approval was obtained. It was stated that the State authority was also required to initiate proceedings against private individuals as well as the Municipal Council by issuing notices for unauthorised possession of and construction on the land.

**4.** Heard learned counsel Mr. Divyakant Lahoti for the private appellants, learned Additional Solicitor General Mr. Brijender Chahar for the respondent State, learned Additional Advocate General Ms. Manisha T. Karia for the respondent Khachrod, Municipal Council—the appellant in the other appeal, and learned counsel Mr. Arjun Garg for original public interest petitioner-respondent No. 1, with all other respective assisting advocates, at length.

**5.** While the contours of the controversy were drawn as above, the High Court while proceeding to allow the petition, seriously erred on two fronts in exercising its jurisdiction. These errors of the High Court may be considered at the outset, before adverting to the main substratum.

**5.1.** Firstly, in rejecting the review petitions filed by the appellants herein, the High Court committed a manifest mistake. The review was preferred with a crystal pleading and the admitted fact that the appellants who were in the capacity of allottees-cum-occupants-cum-possessors of the shops since long were not impleaded as parties. They were not heard by the High Court before passing the order dated 20.04.2015 for demolition of shops allotted to them.

**5.2.** It may be true that the exercise of review jurisdiction by the courts takes place on limited grounds, therefore, not to be a routine exercise. It is nevertheless well settled that review powers under Order XLVII, Rule 1 of the Code of Civil Procedure, 1908, or inherent review powers under Article 226 of the Constitution, could be exercised on

the grounds permissible for the purpose. One of the accepted grounds is that the review of a judgment and order can be undertaken when there exists an 'error apparent on the face of record' or any other sufficient ground.

**5.2.1.** An error apparent on the face of record is thus a ground for invoking the review jurisdiction, and in a given case where such apparent error exists, reviewing of the judgment or order becomes imperative. An error apparent on the face of record is one when in comprehending such error, elaborate reasoning is not required. It is one which does not involve debatable issues.

**5.3.** In **Satyanarayan Laxminarayan Hegde and Others vs. Mallikarjun Bhavanappa Tirumale**<sup>5</sup>, this Court observed in paragraph 17, 'an error which has to be established by long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of record.' The observations in **T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay vs. M/s. Volkart Brothers,**

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<sup>5</sup> 1959 SCC OnLine 10

**Bombay**<sup>6</sup>, in which the scope of rectification under Section 154 of the Income Tax Act, 1961 was under interpretation, this Court furthered its reasoning as to what could be treated as an error apparent, observing that ‘a mistake apparent on record must be an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may conceivably be two opinions.’

**5.4.** In **Meera Bhanja vs. Nirmala Kumari Choudhury**<sup>7</sup>, this Court stated that an error apparent on the face of record must be such an error which strikes on mere looking at the record. More recent decisions in **S. Madhusudhan Reddy vs. V. Narayana Reddy and Others**<sup>8</sup>, in **S. Murali Sundaram vs. Jothibai Kannan and Others**<sup>9</sup> and in **Arun Dev Upadhyaya vs. Integrated Sales Service Limited and Another**<sup>10</sup>, similarly explained and reiterated the connotation ‘an error apparent on the face of record’.

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<sup>6</sup> (1971) 2 SCC 526

<sup>7</sup> (1995) 1 SCC 170

<sup>8</sup> (2022) 17 SCC 255

<sup>9</sup> (2023) 13 SCC 515

<sup>10</sup> (2023) 8 SCC 11

**5.5.** Thus, an error which is self-evident and which can be detected without resorting to a long-drawn process of reasoning, is classified as ‘an error apparent on the face of record’. The error of this kind and nature justifies the court to exercise its powers of review. The purpose of exercise of any statutory power and exercise of all kinds of jurisdictions, in their ultimate analysis, is to do justice to the party who stands prejudiced or seriously discounted for its rights by virtue of the judgment or order affecting such party, by curing the error committed by the court. When ‘an error apparent on the face of record’ is noticed or found to exist, the court should not hesitate to exercise the review powers to set right the injustice and restore the justice to the aggrieved party.

**5.6.** Keeping in view the above parameters to be applied for reviewing any judgment and order, when by impugned judgment and order dated 20.04.2015, the High Court directed the demolition of the shops, the persons who were the allottees of shops through auction, who had paid the auction price and who had remained in possession of the shops for long period, were indispensably required to be

heard. They were the necessary parties. They were not arraigned as parties, yet the directions against them were issued by the High Court.

**5.7.** These persons-the review petitioners were directly affected parties who were to suffer the consequences of the order and the directions without their representation in the proceedings and without opportunity to put forth their case. For them their Fundamental Right to do trade and business was at stake getting infringed. They were indeed necessary parties in absence of whom, the order and the directions of the kind and nature could not have been passed by the High Court. The order of the High Court was not just in breach of natural justice but was also one which resulted into extremely serious civil consequences finally smothering the rights of the third parties-the review petitioners.

**5.8.** A judgment and order which is passed in absence of the necessary parties, without joining them and directions are issued by which they stand directly affected in terms of their rights, making them suffer the prejudice and the civil consequences, has to be treated as tainted with the vice of

‘an error apparent on the face of record’. In the present case, the High Court ought to have exercised its review jurisdiction. The High Court took the view that as the petition was pending, the review petitioners must be aware of the same and further observed that there was no error apparent on record, completely misconceiving the law and misdirecting itself.

**6.** In the second place, before the High Court in the public interest writ proceedings, both the Municipal Council and the State Government claimed and asserted their respective ownership over the land on which the shops were constructed. When it comes to deciding and adjudicating the questions relating to the title or ownership of the property, it is well settled that jurisdiction under Article 226 of the Constitution cannot be exercised to address the questions of such nature.

**6.1.** As back as in **Sohan Lal vs. Union of India**<sup>11</sup>, while examining the scope of writ jurisdiction under Article 226 of the Constitution, this Court observed that before it, there

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<sup>11</sup> (1957) 1 SCC 439

was a serious dispute on questions of fact between the parties and also the question whether one Jagan Nath had acquired in law any title to the property in dispute. This Court further stated that the proceedings by way of a writ were not appropriate in as much as the decision of the Court would amount to a decree declaring the title and deciding the rival claims of title to the property in dispute.

**6.2.** The writ court could not have entered into the field of such investigation and a remedy before the civil court or any other remedy available in law would be the correct recourse, emphasised this Court. In **State of Rajasthan vs. Bhawani Singh**<sup>12</sup>, and also in **Shalini Shyam Shetty vs. Rajendra Shankar Patil**<sup>13</sup>, while delineating the limits of writ jurisdiction under Article 226, this Court reiterated that the disputed questions relating to title cannot be satisfactorily gone into or adjudicated in a writ petition.

**6.3.** Given this well settled law, it is to be observed that a writ court would not be justified in granting the relief in a writ petition where grant of such relief is to be considered by

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<sup>12</sup> 1993 Supp (1) SCC 306

<sup>13</sup> (2010) 8 SCC 329

necessarily touching upon and forming an opinion, directly or indirectly, on the aspects and issues concerning the title or ownership of the property. The public interest jurisdiction of the Constitutional Courts stems from plenary jurisdiction under Article 226 of the Constitution, and a public interest petition, for its substance, procedure and purpose, is a petition under Article 226 of the Constitution. Therefore, travelling into the area to adjudicate the titular issues would be a wrongful exercise of public interest jurisdiction.

**6.4.** In the present case, the High Court while directing the demolition of the shops allotted to the appellants-allottees, in the backdrop, had to form an opinion that the land did not belong to the Municipal Council. In respect of vesting and ownership of the land on which the shops were constructed by Municipal Council, the conflicting claims were asserted by the Municipality and the State Government. In holding that the constructed shops were unauthorised and illegal construction by the Municipality, the High Court indeed intruded in the realm of ownership dispute between the Municipal Council and the State Government. Taking a view on this score was not

permissible for the High Court in a writ exercise or in a public interest jurisdiction.

**7.** On the core aspect of the question of construction of shops by the Municipal Council and alleged reduction of the '*Dussehra Maidan*' and alleged obstruction to the cultural activities carried out on the *Maidan*, the High Court misjudged the facts and the entire issue in ordering the demolition of the shops.

**7.1.** While in the very initial report given by the Tehsildar, it was stated that it could not be ascertained as to whether the construction of shops was legal or otherwise, the ground position could be clinched from the map produced by the Municipal Council along with its reply depicting the geographical locations at the area. The map was a certified map authenticated by Superintendent Engineer and Chief Municipal Officer of the Nagar Palika. The court could go through and see the map and locations indicated therein with the help of learned counsel for the parties.

**7.2.** What was shown in the map was not in dispute. The map clearly reflected that the disputed line of constructed shops opened towards and abut the public road. The shops are on the boundary of the *Maidan* and across the road of the *Maidan*. It was further clear that right behind the line of the shops, there stands buildings of a Sanskar Kendra, a community hall and boys' hostel. On the other side of the Sanskar Kendra, the construction of a hall is shown. Other constructions of school etc. are also there just behind the Sanskar Kendra, followed by a large open area of the *Maidan*.

**7.3.** The structures of the shops are far away from the actual ground-the area of '*Dussehra Maidan*'. As stated above, there are constructions of a school, a community centre and a hostel in between. In no way it is possible to merge or treat any part of the '*Dussehra Maidan*' with the strip of land on which shops are constructed. A large area for '*Dussehra Maidan*' exists unhindered. There is ample open space available to be used as *Maidan* to conduct the cultural activities and *Dussehra* festival programmes,

without being affected in any manner by the existence of the shops in question.

**7.4.** It could be well noticed from the map that the shops are at much distance from the actual open area of *Maidan*. The question of reduction of or obstruction to the open *Maidan* area does not arise. It is to be observed that the festival of *Dussehra* is celebrated by the people in the *Maidan* every year and there has been no complaint from the residents about any obstruction being caused by the shops.

**8.** Any public interest litigation in its outcome aims at promoting a larger public interest. The public interest petition is a medium to achieve and preserve public good. An order passed or directions issued in a public interest petition should not operate to derecognise or to damage legitimate private interest or the lawful rights enjoyed by the citizens or those third persons who may not be party to the proceedings. An order in the public interest petition should not become antithetic to the very idea and object underlying the public interest jurisdiction.

**8.1.** The private appellants before this Court in whose absence the High Court passed directions to demolish, were the allottees-occupants of the shops. They could not have been treated to be encroachers or illegal occupants in that sense in as much as they had entered into occupation and possession pursuant to participation in the auction process and upon payment of price, as also after executing the lease documents with the Municipal Council. Several allottees occupied the shops since 2005 onwards and have been paying the rent to the Municipal Council. They were to be availed in the minimum, their right to defend and establish their case. The kind and nature of the directions to demolish the shops and the manner in which such directions were passed by the High Court operated to defeat the very idea of public interest.

**9.** Amidst the say of the Municipality that the public interest petitioner was a disgruntled person, one who was not allotted the shop, the petition smacked to have been instituted with oblique motive, which ended up, unfortunately by becoming detrimental to the notion of public interest and to the injustice of the private appellants.

It is advisable that the court always remains cautious and disciplined in dealing with and in disposing of the public interest petitions.

**10.** As a result of the forgoing reasons and discussion, the impugned judgment and order dated 20.04.2015 passed in Writ Petition No. 6079 of 2014 as well as orders dated 15.05.2015 passed in Review Petition Nos. 123 of 2015 and 125 of 2015 by the High Court are set aside. The PIL petition before the High Court is dismissed.

**10.1.** It would, however, be open to State to take appropriate action, if it can, under law against the Municipality for raising illegal constructions. This Court does not express any opinion on the merits on that count.

**11.** All the four appeals are allowed accordingly.

.....**J.**  
**[VIKRAM NATH]**

.....**J.**  
**[N.V. ANJARIA]**

**NEW DELHI;**  
**March 19<sup>th</sup>, 2026.**