

न्यायालय अतिरिक्त कलक्टर, चित्तौड़गढ़ जिला चित्तौड़गढ़ (राज.)**पीठासीन अधिकारी- रतन कुमार (आर.ए.एस.)**

प्रकरण संख्या 001/2020 (GCMS 2020/00004)	दायर दिनांक 22.01.2020	निर्णय दिनांक 08.07.2021
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अनवान

विजय कुमार पिता दौलतराम सिंधी उम्र 42 वर्ष निवासी वार्ड नम्बर 1 बेंगू तहसील बेंगू जिला चित्तौड़गढ़।

अपीलान्ट**बनाम**

नगरपालिका मण्डल बेंगू जरिये अधिशाषी अधिकारी नगरपालिका मण्डल बेंगू तहसील बेंगू जिला चित्तौड़गढ़।

रेस्पोंडेंट

**--: अपील विरुद्ध निर्णय एवं आदेश नगरपालिका मण्डल बेंगू बमिसल
क्रंमाक/नपाबे/2019/1145 दिनांक 28.12.2019 ::-**

उपस्थिति :- श्री छोगालाल जाट
अनुपस्थित

अधिवक्ता अपीलांट
रेस्पोंडेंट

--: निर्णय ::-

प्रकरण का संक्षिप्त विवरण इस प्रकार है कि अपीलांट ने अपील विरुद्ध रेस्पोंडेंट के प्रस्तुत कर निवेदन किया कि अधीनस्थ नगरपालिका मण्डल बेंगू द्वारा पारित निर्णय एवं आदेश दिनांक 28.12.2019 न्याय, नियम एवं वाक्याती तथ्यों के विपरित होकर निरस्त किए जाने योग्य है। अधीनस्थ नगरपालिका बेंगू में प्रार्थना पत्र बाबत भवन निर्माण करने की स्वीकृति हेतु दिनांक 23.04.2019 को प्रस्तुत किया, उक्त आवेदन के साथ पट्टा, विक्रय पत्र व शपथ-पत्र प्रस्तुत किया गया एवं यह तथ्य प्रमाणित कराया गया कि उक्त भुखण्ड अपीलांट के स्वामित्व एवं आधिपत्य है तथा पट्टेशुदा भुखण्ड अपीलांट ने पंजीकृत बहनामें से क्रय कर कब्जा प्राप्त किया है जिस पर अपीलांट का कब्जा हो उपयोग उपभोग करता चला आ रहा है व निर्माण स्वीकृति हेतु निर्धारित शुल्क 5533/-रुपये भी अधीनस्थ नगरपालिका मण्डल में जमा करवाया तथा पट्टा प्रस्तुत कर यह प्रमाणित करवाया गया कि विवादित भुखण्ड जिसकी की निर्माण स्वीकृति चाही गई है, उक्त पट्टे की प्रति प्रस्तुत की गई एवं विक्रय पत्र के साथ प्रस्तुत नक्शे को भी



प्रस्तुत किया गया जिससे पट्टा शुदा भुखण्ड की ही निर्माण स्वीकृति चाही गई। फिर भी अधीनस्थ नगरपालिका मण्डल ने पट्टे के स्थान से अन्य स्थान पर भुखण्ड होना मानते हुए निर्माण स्वीकृति का आदेश निरस्त किए जाने का आदेश पारित कर दिया जो अवैधानिक होकर निरस्त किए जाने योग्य है। अधीनस्थ नगरपालिका मण्डल ने बिना मौका मुआयना मंगाए जिस भुखण्ड की निर्माण स्वीकृती चाही गई वह भुखण्ड अन्य स्थान पट्टे के विपरित होना मानते हुए आदेश पारित कर दिया है जो अवैधानिक होकर निरस्त किए जाने योग्य है। अधीनस्थ नगरपालिका मण्डल ने जिस भुखण्ड के संबंध में निर्माण स्वीकृति चाही गई, वह भुखण्ड नाले के समीप होना व नदी नाले का बहाव क्षेत्र प्रभावित होना मानते प्रार्थी का आवेदन निरस्त कर दिया जबकि विवादित भुखण्ड नाले से काफी दूर है जिसका की किसी प्रकार से कोई मौका मुआयना नहीं किया गया फिर भी आवेदन निरस्त किए जाने का आदेश पारित कर दिया है जो निरस्त किए जाने योग्य है। अपीलांट के भुखण्ड के ऊपर किसी प्रकार की 33 के.वी. विद्युत लाईन अवस्थित लाईन नहीं है फिर भी बिना किसी मौका मुआयना किए उक्त भुखण्ड पर 33 के.वी. की लाईन मानकर अपीलांट का ओवदन निरस्त किए जाने का निर्णय व आदेश पारित कर दिया जो अवैधानिक होकर निरस्त किए जाने योग्य है। अधीनस्थ नगरपालिका मण्डल द्वारा पारित निर्णय व आदेश दिनांक 28.12.2019 को होकर अपील अपीलांट अन्दर मियाद पेश है। अधीनस्थ नगरपालिका मण्डल द्वारा पारित निर्णय व आदेश की अपील का श्रवणाधिकार व क्षेत्राधिकार न्यायालय आपको प्राप्त होने से अपील अपीलांट न्यायालय आप में पेश है। अपील अपीलांट निश्चित न्याय शुल्क पर पेश है। अधीनस्थ नगरपालिका मण्डल द्वारा पारित निर्णय व आदेश की प्रमाणित प्रति के साथ अपील पेश है। अधीनस्थ नगरपालिका मण्डल द्वारा पारित निर्णय व आदेश के विरुद्ध प्रथम अपील पेश है, अतः श्रीमान् से निवेदन है कि अपील बहक अपीलांट विरुद्ध रेस्पोंडेंट स्वीकार फरमाई जाकर अधीनस्थ न्यायालय द्वारा पारित आदेश दिनांक 28.12.2019 निरस्त फरमाया जाकर अपीलांट को अपने पट्टेशुदा व खरीदशुदा भुखण्ड की निर्माण स्वीकृति प्रदान कराए जाने का आदेश प्रदान करावें।

इस पर अपील अपीलांट्स दर्ज रजिस्टर किया जाकर रेस्पोंडेंट को जरिये नोटिस के तलब किया गया। दिनांक 08.07.2021 को रेस्पोंडेंट के बाजवूद सूचना के अनुपस्थित रहें। इस पर हाजिर अधिवक्ता अपीलांट द्वारा बहस पत्रावली कर प्रकरण का निस्तारण आज ही किये जाने की ईशतदुआ की गई। इस पर हाजिर अधिवक्ता अपीलांट द्वारा सर्वप्रथम अपील अपीलांट को क्षेत्राधिकारिता के बिन्दु पर सुना गया। विद्वान अधिवक्ता अपीलांट ने अपनी बहस क्षेत्राधिकारिता में



निवेदन किया कि अपीलांट द्वारा अधीनस्थ नगरपालिका मण्डल बेंगलूर के समक्ष राजस्थान नगरपालिका अधिनियम, 2009 की धारा 194 के तहत अपने क्रयशुदा भूखण्ड पर नियमानुसार भवन निर्माण हेतु निर्माण स्वीकृति जारी किये जाने हेतु आवेदन प्रस्तुत किया गया। अपीलांट के आवेदन पर अधीनस्थ नगरपालिका मण्डल बेंगलूर द्वारा पत्रांक/नपाबे/201921145 दिनांक 28.12.2019 से अपीलांट के आवेदन को निरस्त किया गया। इस हेतु राजस्थान नगरपालिका अधिनियम, 2009 की धारा 194 की उपधारा 12 के तहत अपील अन्दर मियाद प्रस्तुत है। इसी ईशतदुआ के साथ विद्वान अधिवक्ता अपीलांट ने क्षेत्राधिकारिता के बिन्दु पर अपील समाप्त की। हमने पत्रावली का आद्यौपान्त अवलोकन किया। विद्वान अधिवक्ता अपीलांट द्वारा की गई बहस बाबत क्षेत्राधिकारिता का मनन किया। हमने राजस्थान नगरपालिका अधिनियम, 2009 का अवलोकन किया। अधिनियम की धारा 194 में निम्न प्रावधान प्रावधित किये गये है :-

194. Provisions relating to erection of all kinds of buildings.-

- (1) Within the limits of a Municipality, any person intending, &
- (a) to erect a new building; or
 - (b) to re-erect or to make a material addition in a building; or
 - (c) to erect or re-erect any projecting portion of a building; or
 - (d) to make or enlarge any kind of well or boring, shall submit an application in the prescribed form to the Municipality alongwith the documents required under sub-section (2) before starting the construction.
- (2) (a) The application as mentioned in sub-section (1) shall be accompanied by the following, namely: & to erect a new building; or
- (i) all documents in support of the title over the land or the building, as the case may be, alongwith a personal affidavit on oath regarding the genuineness of the documents and undisputed title over the land or the building;
 - (ii) a photocopy of the receipt of the prescribed fee deposited with the Municipality;
 - (iii) six copies of the map (showing the details of the proposed work in different colour) and the site plan. The map would particularly show the specification of construction, height of the building, permissible covered area, open spaces, set backs, parking spaces, ventilation etc.; and
 - (iv) any other information or documents required by the Municipality for its satisfaction, from time to time;
- (b) The maps required under clause (a) shall be signed and authenticated by the qualified architect or engineer registered and approved by the Municipality, Urban Improvement Trust, Jaipur Development Authority, Chief Town Planner of the State or by any other authority empowered by the State Government for such purpose from time to time.



- (3) (a) The scrutiny of title papers by the Municipality should be restricted to ensure that the land or the building as the case may be, does not belong to the government or any public agency;
(b) The applicant should have legal possession of the land or building on the date of application on the basis of documents submitted by the applicant :
Provided that the sanction of building plans by the Municipality shall not in any manner amount to creating a title in the favour of the applicant.
- (4) (a) Municipality may, by bye-laws, provide that the documents required to be submitted under sub-section (2) may be submitted in electronic form;
(b) The Municipality shall decide the application and convey its written orders within a period of two months from the date of receipt of application. The Municipality or any authority or any committee empowered to grant the permission, shall also be competent to grant or to reject or modify the map or to impose other conditions or restrictions, as may be deemed necessary. In cases where the Municipality fails to convey its decision within two months, the applicant may undertake the construction, after giving one month's clear notice to that effect to the Municipality, considering it as a case of deemed permission. However, it shall be the responsibility of the applicant and the architect or engineer to ensure that in all cases of deemed permission, the provisions of the Act, rules and bye-laws are not violated.
- (5) Where the application submitted under sub-section (1), pertains to a multi-storied building i.e. a building above height of fifteen meters, or any institutional complex or a commercial complex in an area of more than five hundred square meters, the Municipality shall obtain advice of the Regional Town Planner of the State Government, before granting the permission sought for and shall ensure that proposed plan and construction is not inconsistent with the rules, bye-laws and public convenience.
- (6) (a) The Municipality shall frame rules and bye-laws under sections 339 and 340 for uniform applicability regarding the conditions, restrictions, norms, specifications and the manner of processing the application submitted under this section;
(b) Where the application submitted under sub-section (1) pertains to non-residential building, multi-storied building, complex or construction of basement, the Municipality shall obtain the advice of the town planner of the area before granting permission sought for and shall ensure that proposed plan and construction is not inconsistent with the rules, bye-laws and public convenience.
- (7) (a) No person shall commence any type of construction without written permission of the Municipality, and the Municipality shall decide his application within the period of two months from the date of receipt of application complete in all respect;
(b) If the decision is not conveyed to the applicant within the period of two months, he shall, before commencing the construction, give clear one month's notice to the Municipality asking to take decision on his application within that period;
(c) If the Municipality still fails to dispose of the application or to inform the person, of the action which is being taken in the matter, the applicant may commence the construction taking it to be deemed permission of the Municipality, but he shall not violate any provisions of this Act, rules or bye-laws made thereunder;
(d) A written permission shall not be required where a person has submitted an application under sub-section (1) on an area less than 250 square meters the proposal is for construction of an individual single residential unit up to first floor,



and the total height of the building is not more than ten meters from the road level, including the thickness of the roof and any other structure. However, this provision shall not be applicable in any walled city area where separate bye-laws are in existence or in any area which has been declared as an heritage area under any law for the time being in force;

(e) The Chief Municipal Officer or any other person authorized by him or Chairman of the Committee authorized to exercise the powers to accord permission shall have power of inspection of site or building and to take measurement at any time for the purpose of deciding the application or to ensure that the work is being carried on according to the sanctioned plan. The Chief Municipal Officer shall issue notice to the person violating the sanctioned plan and the conditions imposed therein while erecting or re-erecting the building and it shall be lawful for him to ask such person to remove or dismantle such construction or any construction which may be in violation of the sanctioned plan. It shall also be lawful for the Chief Municipal Officer to direct the person concerned to stop construction where the construction is going on without permission;

(f) It shall be lawful for the Chief Municipal Officer or any other officer authorized by him in this behalf to seize and take in his possession the whole premises or part thereof and to prohibit the use of such premises for a period specified by him in the notice, for enforcing the provisions of this section.

(8) The Municipality shall not decide any such application in which change of present land use is involved and permission for such change is needed under section 182. The applications mentioned in this clause shall be referred to the State Government or the concerned authority under intimation to the applicant and with the directions to him not to commence the work.

(9) (a) After completion of any building having height of more than 15 meters but before its occupancy, the owner of the building, shall submit an application (alongwith the certificate of safety and verification of other facts by architect/ engineer) for issuance of occupancy certificate. The Chief Municipal Officer, after arranging necessary inspection, shall issue such certificate or ask the owner to remove the defects, if any, as may appear to him to be necessary, within the specific period from the date of receipt of such application. He shall also ensure that the applicant has not contravened the sanctioned map. It shall be the responsibility of the owner not to occupy or to allow such building to be occupied without obtaining occupancy certificate;

(b) Whoever contravenes the provisions of clause (a) shall, on conviction by a competent court, be punished with fine which shall not be less than thirty thousand rupees but which may extend to fifty thousand rupees and in case of a continuing contravention, with fine of five hundred rupees for each day of contravention, till such contravention continues.

(10) (a) If a person commences, continues or completes any kind of erection or re-erection or makes any material alteration in a building or part thereof, or erects or re-erects any projecting portion of a building in respect of which the Municipality is empowered under section 192 to enforce a removal of the projecting part or restoration to regular line of set back, or engages himself in the construction or enlargement of a well or boring, without submitting an application under sub-section (1), he shall, on conviction by a competent court, be punished with simple



imprisonment which shall not be less than one month but which may extend to three months or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees or with both;

(b) If a person commences or continues or completes erection or re-erection or makes any material alteration in a building or part thereof in contravention of the sanctioned plan or violating norms, conditions, restrictions imposed upon him, he shall, on conviction by a competent court, be punished with simple imprisonment which shall not be less than fifteen days but which may extend to forty five days or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both;

(c) If any person who has submitted an application under sub-section (1) and has availed the facility provided under clause (d) of sub-section (7), contravenes the conditions, restrictions and norms prescribed for such construction shall, on conviction by a competent court, be punished with simple imprisonment which shall not be less than fifteen days but which may extend to forty five days or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both;

(d) If it is found that the map signed and authenticated by the architect or engineer is inconsistent with the provisions of this section or the rules, bye-laws or orders made under this Act, such architect or engineer shall be blacklisted and his registration shall be cancelled by the Municipality and he shall, on conviction by a competent court, be punished with simple imprisonment which shall not be less than one month but which may extend to two months or with fine which shall not be less than five thousand rupees but which may extend to ten thousand rupees or, with both in each case;

(e) If it is found that any person has submitted fabricated or fake or false documents or has made wrong and false statement or has concealed the material facts in affidavit for obtaining Municipality's permission, he shall be liable to be prosecuted for fabrication, fraud and concealment under the relevant laws. It shall be the responsibility of the Chief Municipal Officer to initiate criminal proceedings against such person or persons including official, if any, of the Municipality involved in the said act, without delay;

(f) The officer or authority empowered for the operation of this section or official keeping record for this purpose shall be personally responsible if the period fixed for disposal of application received under sub-section (1) and in case of any notice received under clause (b) of sub-section (4) is wilfully ignored. The person or persons responsible for such ignorance shall, on conviction by a competent court, be punished with simple imprisonment for one month or with fine which shall not be less than five thousand rupees but which may extend to ten thousand rupees or with both;

(g) An employee of the Municipality, who has been assigned duties for a particular area and made responsible for reporting the matter of violation of the provisions of this section, shall ensure that such violations are reported properly without delay and the same are entered in the register kept for the purpose and take necessary action to stop unauthorized construction and if it is proved that he wilfully or knowingly ignored to stop such unauthorized construction and to make report, he shall be punished according to the provisions of sub-section (18) of section 245;



- (h) The Municipality shall have power to stop any work commenced without permission, or violating the norms of sanctioned map or without submitting an application;
- (i) In addition to the prosecution of defaulter, the Municipality shall have power to demolish whole or part of the construction which has come up without permission or violating the permission, or where permission was sought by fraud etc. as mentioned in this section.
- (11) No Municipality shall permit construction of dry latrines and if any person constructs or maintains dry latrine within the municipal area the Municipality shall take steps to demolish such latrines.
- (12) Any person aggrieved by an order of the Municipality or the committee empowered by it or an order of the prescribed authority, may file an appeal against such order within thirty days from the date of such order to the State Government or to any other officer authorized by it.

हमने अधिनियम की धारा 194 का गहनता पूर्वक अध्ययन/परिशीलन किया। राजस्थान नगरपालिका अधिनियम 2009 की धारा 194 में समस्त प्रकार के भवनों के निर्माण से संबंधित उपबन्ध प्रावधित किये गये। अधिनियम में धारा 194 के संबंध में विस्तृत प्रावधान प्रावधित किये गये हैं। इसके साथ अधिनियम की धारा 194 की उपधारा 12 में प्रावधित किया गया है कि नगरपालिका या उसके द्वारा सशक्त समिति के किसी आदेश या विहित प्राधिकारी के किसी आदेश से व्यथित कोई भी व्यक्ति, ऐसे आदेश की तारीख से तीस दिवस के भीतर-भीतर, ऐसे आदेश के विरुद्ध राज्य सरकार या उसके द्वारा प्राधिकृत किसी अन्य अधिकारी को अपील प्रस्तुत कर सकेगा। हस्तगत अपील अपीलांट राजस्थान नगर पालिका अधिनियम 2009 की धारा 194 की उपधारा 12 में वर्णित प्रावधानों के अध्यधीन प्रस्तुत की गई है किन्तु अधिनियम की धारा 194 की क्षेत्राधिकारिता इस न्यायालय को प्राप्त नहीं है। अतः अपील अपीलांट क्षेत्राधिकारिता के बिन्दु पर पोषणीय नहीं होने से नामंजूर किया जाना उचित प्रतीत होता है।

उपर्युक्त विश्लेषण के आधार पर हस्तगत अपील अपीलांट क्षेत्राधिकारिता के बिन्दु पर इस न्यायालय में पोषणीय नहीं पाई जाती है जिससे अपील अपीलांट नामंजूर की जाती है। पत्रावली की गणना निर्णित इन्द्राज की जाकर बाद आवश्यक कार्यवाही के अभिलेखागार भिजवाई जावे।

यह निर्णय खुले न्यायालय में आज दिनांक 08.07.2021 को लिखाया जाकर सुनाया गया।

(रतन कुमार)
अतिरिक्त कलेक्टर,
(प्रशासन) चित्तौड़गढ़

