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Case Comment: Indore Vikas Pradhikaran v Pure Industrial Cock & Chem. Ltd

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FACTS OF THE CASE

The main questions raised in the *Indore Vikas Pradhikaran v Pure Industrial Cock and Chemicals Ltd.*¹ were the interpretation of the provisions of Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam and property rights as a human right. Even though the aspect of human rights is discussed briefly in this case it becomes a referral case for future decisions. The said Act was enacted to make provisions for town planning, development, implementation, and use of land and provide special powers for the compulsory acquisition of land, etc. The appellant published a draft development plan in respect of the urban development scheme in 2003 and a resolution was adopted in a meeting for speedy approval from the Government to construct a by-pass road of 60 meters in width which include lands of villages Bicholi and Kanadia. The respondent's land is situated in the said villages and was part of the Indore Planning area and the appellant is the authority of these villages. They were granted a building plan in 1991 from

¹ *Indore Vikas Pradhikaran v Pure Industrial Cock & Chem. Ltd. &Ors.*, (2007) 8 SCC 705

the panchayath authority and the same was rejected by the Joint Director of the Town and Country Planning in respect of the draft development plan. The respondents filed a writ petition praying for the issuance of a direction from the court to the authority for sanctioning the building site plan which had been submitted.

ISSUE(S)

- Whether the expansion of delegated powers of the Indore Development Plan the District Committee can automatically extend the area of operation regardless of the notification constituting it by the State.
- Whether the appellat authority can declare its intention in relation to Section 50 of the Act before the development plan attained finality.

ARGUMENTS RAISED BY APPELLANT

- Construction of any kind of building in the reserved area will destroy the town development plan.
- If a land use map or a draft development plan or a town development scheme is published, no person is permitted to obtain any permission for carrying out any kind of development contrary thereto.
- It is established that a large number of permissions were obtained by the private developers followed being implemented will result in the haphazard development of colonies and buildings and will defeat the purpose of the Act.
- As Section 50 is not subject to the publication of a final development plan would be evident from the words used like 'at any time'. Section 53 would operate as soon as an intention is expressed by the issuance of a notification in terms related to it.
- In any event, private interest should be waived for the public interest.

ARGUMENTS RAISED BY RESPONDENT

- As per the notification of the Appellant Authority, the land of the respondents is outside the planning area and the proposed town development plan would not apply to them.

But only because the planning area has been extended by the District Committee does not mean that it will automatically enlarge the territorial jurisdiction of the Appellant.

- Only the director is authorised to sanction plans for development and carry out other functions and also, and there have provisions for safeguarding the interests of the public in the Act.
- The only authority which can consider, suggest and make modifications in the draft development plan prepared by the Director is the committee constituted under Sec. 17A of the Act.
- A state can grant permission only upon the completion of the procedures established by law under Section 19 and the State Government has the power to make modifications to the development plan after granting permission it is necessary.
- The building plan was sanctioned by the Gram Panchayath being the competent authority at the relevant time, and a vested right accrued in favour of the first respondent has been acknowledged and accepted under the provisions of the Act, which cannot be taken away.

JUDGEMENT

In this case, the High Court of MP struck down the declaration made under sub-section (2) of Section 50 of the Act, observing that without a development plan for an area is published and comes into operation, a draft scheme cannot be published by the Town Development Authority under Sec.50(2) of the Act. And such a development scheme without a development plan for the area cannot restrict the right of a person to use his property in the manner he likes. Also, the notification issued by the Appellant-Authority is only in respect of the area covered by the notification dated 13.02.1974, the draft scheme prepared is ultra vires and the two villages are concerned it is beyond its territorial jurisdiction. The Supreme Court by upholding the High Court decision observed that it may cause hardship to the individual owners when a scheme is introduced as it may be prevented them from making the most profitable use of their rights over the property. So, the statute should be made in such a manner that greater hardship is not caused to the citizens. Also, the court added that the statute cannot deprive the owners of their rightful

use of the property for a long time just because they were subjects of the interesting land or property. The right to property is not only a constitutional right of a person but a human right as well.

The Supreme Court in *State of M.P v Vishnu Prasad Sharma*² observed that in the case where the provisions of the statute should be strictly construed as it deprives a person of his rights on the land without consent. There has to be no deprivation without any sanction of law³. Regarding the draft development plan, the court says that a draft plan which has not attained finality cannot be held to be determinative of the rights and obligations of the parties so, it can never be implemented. A draft can be implemented when there is a specific provision for the same in the statute. Here there is no such provision so the draft plan cannot be implemented. Until the development plan is finalized it would have no statutory or legal force and the land use as existing would continue with the rights of usage of the land.

A development scheme without a development plan will lead to a freeze on the usage of the land under Section 53 of the Act resulting in complete misuse of powers and arbitrary exercise, depriving the citizen of his right to use the land subject to the permitted land use and laws relating to the manner of usage. This would be an unlawful deprivation of the citizen's right to property which right includes the right to use the property by the law. The court also held that the notification issued by the authority for including villages Bicholi and Kanadia in the town planning scheme is illegal and beyond its jurisdiction.

CONCLUSION

The right to property is a constitutional right as well as a Human right. According to Article 17 of the Declaration of Rights of Man and of Citizens (1789) "since the property right is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it and just and prior indemnity has been paid"⁴ UDHR 1948 also recognises

² *State of M.P v Vishnu Prasad Sharma* (1966) SCR (3) 557

³ *Ibid*

⁴ Declaration of the Rights of Man, 1789

Right to Property under Article 17⁵. In modern times the ambit of human rights extends to property rights as well. No person shall be deprived of his rights to land unless of public necessity and procedure established by law.

In *Narayan Prasad v The State of Chhattisgarh*⁶, the court held that “Article 300A declares that a person’s property cannot be taken away only based on presidential fiat without any explicit legal authority or the support of a competent legislature’s statute. Although the right to property is no longer a fundamental right, it is nonetheless protected by the Constitution as a Constitutional and a human right”⁷.

*P Vidhya Devi v State of Himachal Pradesh*⁸ court held that “a person cannot be dispossessed from his property without due process of law laid down under Article 300A of Constitution and right to own private property is a human right which cannot be denied”. And ordered to pay a compensation of Rs. Ten Lakhs.⁹ And in *Jayalakshmi & Ors. v State of Tamil Nadu*¹⁰ observed that the Right to Property has a tight relation with the Right to life under Article 21 of the Constitution.¹¹

The right to own and enjoy the benefits of private property is a human right and no one can be deprived of this right without a procedure established by law. Even though the property is acquired for development or public benefit specific details of the scheme should be communicated and proper compensation to be provided. Even if it is for a public scheme the rights of a person cannot be deprived for a long period of time. Also, other constructions and projects cannot be frozen just for a single scheme. All those are violations of persons’ human rights as well as constitutional rights guaranteed under Article 300A¹² of the Constitution. In this Indore Vikas case, the court held that no actions can be taken on the part of authority before

⁵ Universal Declaration of Human Rights, 1948, art.17

⁶ *Narayan Prasad v The State of Chhattisgarh* (2017) Writ Petition (Civil) No. 306/2017

⁷ *Ibid*

⁸ *P Vidhya Devi v State of Himachal Pradesh* (2020) 2 SCC 569

⁹ *Ibid*

¹⁰ *Jayalakshmi & Ors. v State of Tamil Nadu* (2021) Writ Petition No. 181/2021

¹¹ Constitution of India, 1950, art.21

¹² Constitution of India, 1950, art.300A

the finalisation of the development plan and the appellant have no jurisdiction to include villages Bicholi and Kanadia in this project. Also, declare the Right to property is a human right as well as a constitutional right.