NEUTRAL CITATION NO. 2026:MPHC-IND:28369

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR
&
HON'BLE SHRI JUSTICE ALOK AWASTHI

WRIT APPEAL No. 1908 of 2023
INDORE MUNICIPAL CORPORATION AND OTHERS
Versus
MAHENDRA KUMAR VIJAYVARGIYA AND OTHERS

Appearance:
Shri Kamal Nayan Airen - Advocate for the appellants.
Shri Vijay Gulani- Advocate for the respondents.

WITH
WRIT APPEAL No. 1910 of 2023
INDORE MUNICIPAL CORPORATION AND OTHERS
Versus
RAJESH KUMAR SETH

Appearance:
Shri Kamal Nayan Airen - Advocate for the appellants.
Shri Sunil Verma -Advocate for the respondent.

HEARD ON : 12/8/2026
PRONOUNCED ON : 07/10/2026

ORDER

Per*: *Justice Subodh Abhyankar

1] Heard.

2] This order shall govern the disposal of W.A.No.1908/2023 and W.A.No.1910/2023, as both the cases have arisen out of an identical order passed by the writ Court in W.P. No 22381/2023 and W.P.No.22253 of 2023 dated 10/10/2023.

3] For the sake of convenience, the facts as narrated in W.P.No.22381/2023 are being taken into consideration.

4] In brief, the facts of the case are that the appellant/Indore Municipal Corporation filed the aforesaid petitions under Article 226 of the Constitution of India assailing the order dated 26.5.2023 passed by the three Member Panchayat**;** whereby the fee has been fixed for conducting the proceedings u/s 387 of the Municipal Corporation Act, 1956 (hereinafter to be referred to as "Act of 1956") to be paid by the petitioner and respondent jointly. The facts leading to passing of the aforesaid order are that, on an act of demolition by the Indore Municipal Corporation, the respondent no.1 approached the District Court u/s 387 of the Act of 1956 claiming compensation from the Indore Municipal Corporation. The respondent no.1 suggested the name of Shri Rajendra Pradhan for appointment as Panch. In their response to the said application, the petitioners suggested three names for appointment as Panch. Vide its order dated 15.12.2022, the XVI District Judge, Indore constituted two members Committee Shri Kapildev Bhalla, Assistant Engineer of Indore Development Authority and Shri Rajendra Pradhan as Panch, and directed both of them to appoint an Umpire (Sarpanch) to decide the dispute. Both the members/Panchas appointed Shri Gulab Sharma, Retired District Judge as an Umpire/Sarpanch, and thus, the three-member Panchayat initiated the proceedings by issuing notice to the petitioner and respondent in which the respondent submitted a claim of Rs.30,46,200/-.

5] A reply to the said application was also filed by the petitioners. In the said proceedings, the three members of the panchayat, vide its order dated 26.5.2023, decided the fee payable to them under the provisions of the Arbitration and Conciliation Act of 1996 (hereinafter to be referred to as "Act of 1996") and directed the petitioners and respondent No.1 to pay 50-50% of the same. Out of which 30 -30% would be paid to both the Panchas

and 40% to the Umpire/ Sarpanch. The Panchayat further directed the parties to deposit Rs.80,000/- as the first installment, Rs.80,000/- as the second installment after the completion of evidence, and the remaining amount of rupees at the time of final arguments. The aforesaid order has been challenged before the Writ Court on the ground that an exorbitant claim has been made to the tune of Rs.30,46,200/-, on the basis of which the Panchayat has decided fees on the higher side, and secondly on the ground that the respondent invoked the proceedings u/s 387 of the Act of 1956, hence, he alone is liable to bear the entire expenses of the proceedings. The writ petition filed by the petitioners was dismissed by the impugned order dated 10/10/2023; hence, the present appeal.

6] Counsel for the appellants/petitioners has submitted that the writ court has erred in holding that, in the absence of any provision, the provision of Article 11 of IV Schedule of the Act of 1996, has to be invoked. It is submitted that a civil suit has already been filed by the respondent before the competent Court claiming ownership of the house and thus, no arbitration fees could have been granted to the arbitrators. It is also submitted that the fees have also been decided by the arbitrators in an arbitrary manner and only on the basis of the exorbitant claim made by the respondent.

7] Counsel for the respondent, on the other hand, has opposed the prayer and has submitted that no case for interference is made out as the writ Court has rightly held that in the absence of any provision regarding payment of arbitration fee to the panchayat, the provisions of the Act of 1996 can be borrowed. Thus, it is submitted that no case for interference is made out and the appeals deserve to be dismissed.

8] Counsel for the respondent, in the alternative, has also submitted that the respondent is ready to pay the amount which is required to be paid by the appellants/Municipal Council, and thus, the matter may be disposed of expeditiously so that the proceedings may continue before the Arbitrator.

9] Heard the counsel for the parties and perused the record.

10] So far as S.387 of the Act of 1956 is concerned; the same reads as under:-

> *"(1)If an agreement is not arrived at with respect to any compensation or damages which are by this Act directed to be paid, the amount and if necessary the apportionment of the same shall be ascertained and determined by a Panchayat of three persons of whom one shall be appointed by the Corporation, one by the party, to or from whom such compensation or damages may be payable or recoverable and one, who shall be Sarpanch, shall be selected by the members already appointed as above.(2)If either party or both parties fail to appoint members within one month from the date of either party receiving written notice from the other of claim to such compensation or damages, or if the members fail to select a Sarpanch, such members as may be necessary to constitute the Panchayat shall be appointed, at the instance of either party, by the District Court.*
> *(3)In the event of the Panchayat not giving a decision within one month or such other longer period as may be agreed to by both the parties from the date of the selection of Sarpanch or of the appointment by the District Court of such members as may be necessary to constitute the Panchayat, the matter shall, on application by either party be determined by the District Court which shall, in cases in which the compensation is claimed in respect of land, follow as far as may be the procedure provided by the Land Acquisition Act, 1894, for proceedings in matters referred for the determination of the Court:*
> *Provided that-*
>
> *(a)no application to the Collector for a reference shall be necessary; and*
>
> *(b)the Court shall have full power to give and apportion the costs of all proceedings in manner it thinks fit.*
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> *(4)In any case where the compensation is claimed in respect of land and the Panchayat has given a decision, either party, if dissatisfied with the decision, may within a month of the date thereof apply to the District Court and the matter shall be determined by the District Court in accordance with the provisions of sub-section (3).*
>
> *(5)In any case where the compensation is claimed in respect of any land or building, the Corporation may after the award has been made by the*

Panchayat or the District Court, as the case may be, take possession of the land or building after paying the amount of the compensation determined by the Panchayat or the District Court to the party to whom such compensation, may be payable. If such party refuses to accept such compensation, or if there is no person competent to alienate the land or building, or if there is any dispute as to the title to the compensation or as to the apportionment of it, the Corporation shall deposit the amount of the compensation in the District Court, and take possession of such property."

11] Whereas Section 2(4) of the Act of 1996 provides as under:

"(4) This Part except sub-section (1) of section 40, sections 41 and 43 shall apply to every arbitration ***under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement*** *and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder."*

(emphasis supplied)

12] It is apparent from the aforesaid provision that the Act of 1996 shall also be applicable to any arbitration undertaken under any other enactment and shall be governed by Part I of the Act of 1996, which governs the domestic arbitration, except insofar as the provisions of Part I are inconsistent with such enactment or with any rules made thereunder. It is nobody's case that any provision of the Act of 1956 is inconsistent with Part I of the Act of 1996. Thus, it can be safely and legally presumed that the fee prescribed under Section 11(3A) of the Act of 1996 would also be applicable in the present case.

13] In view of the same, we are of the considered opinion that no illegality or error has been committed by the writ Court in holding that the provisions of the Act of 1996 can be borrowed to determine the fee of the Arbitrators.

14] So far as the contention of the appellants that an exorbitant claim has been made and that the appellants have undertaken to pay the fees

of the Arbitrators, the same can be taken care of by the arbitration tribunal as provided u/s.31A of the Act of 1996. However, we must add that an officer of the Indore Development Authority, who is also acting as a Panch, would not be entitled to receive any remuneration/fee, and the amount of fees to be paid by the parties to the said officer shall be deposited in the account of the Indore Development Authority.

15] Accordingly**, with the aforesaid modifications,** ***both the appeals are hereby dismissed and disposed of.***

(SUBODH ABHYANKAR)
JUDGE

(ALOK AWASTHI)
JUDGE

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