

(2013) 01 AHC CK 0136

Allahabad High Court (Lucknow Bench)

Case No: Civil Miscellaneous Writ Petition No. 2971 of 2001

Smt. Kanak Garg

APPELLANT

Vs

U.P. Avas Evam Vikas Parishad

RESPONDENT

Date of Decision: Jan. 21, 2013

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 - Section 12(2), 15(1)(h), 81, 82, 83

Citation: (2013) 2 ADJ 161

Hon'ble Judges: Saeed-Uz-Zaman Siddiqi, J; Rajiv Sharma, J

Bench: Division Bench

Advocate: A.K. Srivastava, Hans Raj Yadav, Rajesh Kumar Tripathi and Santosh Kumar, for the Appellant; Mahesh Chandra, Nakul Dubey and R.K. Mehrotra, for the Respondent

Final Decision: Allowed

Judgement

1. Heard learned Counsel for the petitioner and Sri Mahesh Chandra, learned Counsel for the respondents.

Through the instant writ petition under Article 226 of the Constitution of India, the petitioner challenges the order dated 7.6.2001 contained in Annexure 11 to the writ petition, whereby unauthorised constructions made upon Plot Nos. 64/17, 65/17, 78/17 and 79/17 was directed to be demolished inter alia on the grounds that the petitioner constructed structures unauthorisedly over the plots in question without getting the map sanctioned.

Counsel for the petitioner submits that the petitioner was allotted commercial plot Nos. S-64/17, S-65/17, S-78/17 and S-79/17 situated at Rajaji Puram Colony, Lucknow by the Uttar Pradesh Avas Evam Vikas Parishad, Lucknow vide letter dated 6.2.1990 and the physical possession of the plots in question was handed over to the petitioner on 7.5.1991. On 16.10.2000, registered sale-deed was executed in favour

of the petitioner. According to the petitioner, after taking possession of the plots in question, the petitioner applied for sanctioning the map, which was approved vide letter dated 25.10.1991 for plot No. S-64/17; vide letter dated 28.11.1991 for plot Nos. S-65/17 and S-79/17; and vide letter dated 26.10.1991 for plot No. S-78/17. Thereafter, the petitioner raised construction in accordance with sanctioned map.

2. According to the petitioner, though the construction existing on the plots in question is identical to the construction made on other commercial plots situated in the same vicinity, the Executive Engineer/Prescribed Authority issued notice to the petitioner on 11.1.2001, stating therein that constructions made on the plots in question was raised unauthorisedly. In response to the said notice dated 11.1.2001, the petitioner submitted his reply on 16.1.2001. Being not satisfied with the reply of the petitioner, another notice dated 21.3.2001 was issued to the petitioner, stating therein that maps of the petitioner were not approved by the Parishad. Subsequently, vide impugned notice dated 7.6.2001, it has been informed to the petitioner that: as the maps for construction were not sanctioned, as such, unauthorised construction is to be demolished. Feeling aggrieved, the instant writ petition has been preferred by the petitioner.

3. Learned Counsel for the petitioner submits that Appendix-I of U.P. Housing and Development Board Regulations, 1982 framed in exercise of the powers under Clause (n) of Section 95(1) read with Section 15(1) (h) of U.P. Avas Evam Vikash Parishad Adhiniyam, 1965, empowered for charging compounding fee for unauthorised construction u/s 81 of the Act. He submits that if construction has been made according to bye-laws and regulation but if the applicant has not obtained prior permission for the construction, then, Rs. 1000/- or Rs. 500/- is provided in Item No. 7 but in the instant case, the petitioner has raised the structures upon the plot in question after approval of the map by the Parishad. Therefore, it was incumbent upon the authorities to see that the constructions, which were raised by the petitioner, falls under compounding or not and only thereafter, they should have proceeded further but not doing so, is in contravention of the statutory provisions of Sections 82 and 83 of the 1965 Adhiniyam. Thus, the impugned notice dated 7.6.2001 is not tenable in the eyes of law.

4. Per contra, Sri Mahesh Chandra, learned counsel for the respondent submitted that the order of demolition was passed by the Executive Engineer in the capacity of the competent authority duly authorised by the Housing Commissioner in exercise of the powers conferred u/s 12(2) of the U.P. Awas Evam Vikas Parishad Adhiniyam, 1965 by notification dated 2.5.2001. The said order of demolition was issued as the constructions were not raised in accordance with sanctioned plan. While admitting that the maps were approved, it was stated on behalf of the respondents that constructions were not raised in accordance with sanctioned building plan and as such, action as prescribed under law was taken. Further, it is not the right of the petitioner to get unauthorised and illegal constructions compounded inasmuch as

illegal constructions without sanctioned plan cannot necessarily be compounded.

5. Before dealing with the merits and demerits of the case, we would like to mention that this writ petition was filed in the year 2001 and a co-ordinate bench of this Court, while entertaining the writ petition being satisfied with the assertions of the petitioner, passed an ad interim order directing for maintaining status quo over the property in question.

It is an admitted fact that the lay out plan for constructing the structures over the plots in question were sanctioned by the competent authority. In the order dated 7.6.2001, it has been indicated that the petitioner has informed that maps were approved but Architect and Planning Unit-V has informed vide letter dated 18.5.2001 that no maps have been sanctioned. This allegation of the respondents is falsified by the statement made in paragraphs 5 and 16 of the counter-affidavit. Thus, it is imminently clear that the impugned order of demolition is based on incorrect facts and reflects non-application and callous attitude of the respondents. However, during the course of arguments, learned counsel for the petitioner admitted that the authorities have ample power under the Adhiniyam to order for demolition of unauthorised construction subject to following the due procedure as envisaged under the Act and Regulation.

6. In our considered view, while issuing notice/order for demolition, it is imperative upon the authorities concerned to indicate in the notice as to how much area of the property was the subject-matter of unauthorised constructions. Had a proper show-cause notice been served upon the petitioner, he could have shown that the alleged violation of the provisions of the Act is of negligible character, which did not warrant order of demolition. Aforesaid view of ours, is fortified by the decision rendered by the Apex Court in Municipal Corporation, Ludhiana Vs. Inderjit Singh and Another . In the instant case, since the description of unauthorised construction has not been indicated in the impugned order of demolition, it cannot be sustained. It appears that authorities were swayed with the fact that constructions were raised without getting the lay out plan sanctioned but later on, in the counter-affidavit, they admitted that the petitioner did get the lay out plan approved but raised unauthorised constructions.

In view of the above, the impugned order of demolition dated 7.6.2001 being defective in nature, is hereby quashed.

The writ petition stands allowed in above terms.