

(1996) 08 AHC CK 0132

Allahabad High Court

Case No: C.M.W.P. No. 1295 of 1994

Jan Sankalp Sahakari Avas Samiti
Ltd.

APPELLANT

Vs

Agra Development Authority and
Another

RESPONDENT

Date of Decision: Aug. 26, 1996

Citation: (1996) AWC 730 Supp

Hon'ble Judges: V.P. Goel, J; Ravi S. Dhavan, J

Bench: Division Bench

Advocate: Sushil Harkauli, for the Appellant; Swami Dayal and Kishna Shanker Chaudhry,
for the Respondent

Final Decision: Dismissed

Judgement

Ravi S. Dhavan and V.P. Goel, JJ.

This is a writ petition filed by a Housing Society, known as Jan Sankalp Sahakari Avas Samiti Ltd., Agra. The petition has been filed to claim certain reliefs from the Agra Development Authority, Agra, Respondent No. 1 (A.D.A.). The Secretary, Agra Development Authority, has been arrayed as Respondent No. 2. The reliefs as sought are that the Court issue a writ of mandamus directing Respondent No. 1, A.D.A. to release the mortgaged plots of the Petitioner held as security for internal development and the cash security of Rs. 8,13,354 or its proportionate 90 per cent to the Petitioner and, further, not to realise any amount towards the compounding charges in excess of the sum of Rs. 17,500 already deposited by the Petitioner and as demanded by the order dated 2.12.1992 of the ADA

2. The issues between the Petitioner and the A.D.A. are in reference to compounding charges, in effect, on the layout plan of the colony and the individual plots as have been development. As the Petitioner is a housing society, the contention of the A.D.A. is that there have been errors in the layout plan. Secondly, there have been 54 violations by the member constitutions of the housing society inasmuch as of the

set-backs to be left on the plots so allotted to the members have been violated. In arguments the Petitioners on the other hand contends that, firstly, as the layout plan was sanctioned in 1990, the question of any violation by the housing society does not arise. Secondly insofar as the violation of the set-backs by the owners of the plot are concerned, this individual violation cannot be settled by adjusting and realising the amount as penalty from the cash security of the housing society.

3. No writ of certiorari has been sought by the Petitioner to quash any order which may be suffering from an error apparent on the face of the record or a manifest error or for that matter an order being without jurisdiction. It is not the contention of the Petitioner that Respondents did not have the authority for the action which they have taken.

4. The issues raised in this writ petition spring from a misunderstanding on the concept of urban planning both as an obligation to provide for public housing, which a colony is, as well as construction of houses on individually owned plots.

5. It is not unknown that in the politics to provide for public housing the State compromises with laws which govern urban development and violates the standards of conforming uses of land. Individuals in their temptation to increase their occupation of property rights, which be could not vest otherwise violate and build on set-backs which the law requires to be left open. Unless the concept of compounding is understood the issues as raised in this writ petition cannot be sorted out.

The Court will take up the two issues one by one.

6. First is the matter of errors in the layout plan. When public housing is being catered to, the law requires places to be left as a discipline and a pattern for housing, community facility and public utilities. This aspect is sufficiently provided for under the U.P. Urban Planning and Development Act, 1973 and the regulations framed in pursuance of it by local authorities. There can be no compromise in the let of discipline and regimentation in planning for public housing as ultimately it affects the quality of a habitat. Roads narrower than prescribed. No parks. No street alignment. Drains not following a geometry of a straight line or a curve. Shops breaching the tranquillity of residential areas. And all this because private and individual interests, usurp spaces earmarked for the public and community good.

7. The fact that a plan may have been sanctioned for a housing society is one aspect of the matter. The execution of the plan also needs to be monitored. The A.D.A. says that there have been violations of the layout plan. The Petitioner refutes this. In this regard, of any specific violation or deviation from the layout plan which may have been indulged in by the housing society, aforesaid, can best be removed if the A.D.A. would indicate it so to the Petitioner. The matter would then receive correction and remedial measures by the Petitioner housing society, by conforming to the layout plan as Indicated by the A.D.A.

8. In arranging for urbanisation, what the law prescribes it does not permit compromise and there can be no question of any compounding whether it is individual or institutional. For instance, if the Act, aforesaid, provides that an area has to be left apart as community and public facility, it has to be that way.

9. The second aspect as alleged by the A.D.A. is that in 54 cases there has been violations of both front and back set-backs on individual plots. Leaving a setback on a plot while building is part of the discipline in urban planning. This is a symmetry which cannot be disturbed. Every property owner or a rate payer is obliged to conform to this pattern, otherwise it will play above with the systems of the plans and simultaneously these violations will act as nuisance to the neighbour, affect the community and the public. Here the concept of compounding may not be made applicable. For instance, if in a locality the building regulations require that the front and back set-backs will be twenty five feet and fifteen feet respectively, then this distance cannot be narrowed, curtailed or bridged. When the housing of individuals is taken to be that of a community, then individual discipline reflects on community discipline. in the specific context, set-backs control distance of houses from the street and, thus, affect street alignment and the drainage. Violation of these spaces to be left as open and called set-back spaces cannot be condoned. It is an illegality. Only the building has to be removed.

10. Then what may be condoned? If the front set-back is twenty five feet and the building is thirty feet away from the line of street alignment and should construction be made on the five feet towards the street without permission, this would be an irregularity. Permission to build ought to have been taken. This act can be condoned but with a penalty. This penalty is known as compounding fee, commonly known as compounding.

11. Summing up and in the net result, narrowing, occupying and reducing the area of set-backs or violating conforming uses and spaces in urban planning is an illegality, which is incurable and even if a Municipality, Corporation or Development Authority wants to compound the offence, the law does not permit it. [Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others,](#) . The Illegal constructions have to be removed even under bane of prosecution of officials who permitted it. Conforming uses of land have to be given sanctity and protection. This is the rule of law in urban planning. [Dr. G.N. Khajuria and others Vs. Delhi Development Authority and others,](#) .

12. The reliefs sought in the petition cannot be granted. The Petitioner, as a housing society, is more interested in the release of its security. Simultaneously, it has been contended in the petition and accepted that the matter does relate to internal development of the layout plan developed by the Society for housing, though allotted to individual members. in the reliefs sought, the housing society also refers to compounding charges. These aspects, thus, clearly disclose that there is something which has to be sorted out by the Society as a layout plan and insofar as

the members are concerned, there appear to be either Irregularities or illegalities as steps to compound the offence are being contemplated. Building activities, whether institutional or individual, have to conform to the law. Institutions cannot violate the sanctity of conforming uses; Individuals cannot violate areas which are reserved as set-backs. As it is accepted that there may be issues in accepting the layout plan of the housing society and the maps of the plot owners, these issues cannot be sorted out in the present writ petition. The Petitioner has not given the details, nor could these details be answered by the A.D.A.

13. Such issues cannot be permitted to linger and in the public interest, violation of law which controls urbanisation cannot be condoned. These matters can only be sorted out by the Respondents, particularly, the A.D.A. in the circumstances, upon the A.D.A. indicating, the defects in the layout plan insofar as the housing society is concerned, and the defects in the individual maps of the plot owners, as the case may be, what can be compounded and what cannot be compounded, of the illegalities which are incurable and the law does not permit a compromise, adequate time will be given to the housing society or its members to remove the encroachments or the occupation of land which the law does not permit to be usurped, failing which the occupation shall be removed, if necessary, by demolition of the structures. This criteria shall apply equally in ensuring the sanctity of the conforming uses of land, for example greens and parks, in the layout plan of the housing society and also the set-backs of the individual plots whether front, back or the sides.

14. Of the irregularities which may be committed by the house owners in having built them without permission, provided the law could sanction the building maps, penalty, as a compounding fee may be considered by the A.D.A., but upon Indicating specifically the nature of the Irregularity so that its condonation on payment of penalty is a logical consequence. What the law cannot sanction, there cannot be condonation nor compounding.

15. Of the specific details of the illegalities which cannot be condoned and of the irregularities which may be compounded, as explained in this order, details will be given to the housing society, and the plot owners. The layout plan will be remedied by the Society. Insofar as there is a defect in the maps or the constructions made by the plot owners and the aberrations caused, the maps will be corrected if the law so permits. The constructions, if the law permits condonation, will be compounded by the levy of a penalty. Illegalities cannot be cured. Maps cannot be corrected nor constructions condoned. Buildings made in such circumstances, the authorities are obliged to remove them.

16. Action will be taken by the A.D.A. consequential to notice both to the housing society and the individual plot owners, as the case may be, setting on record the defects in the maps, the constructions and the layout plan. Notice to plot owners will also be served apart from directly to them, through the housing society.

17. The reliefs as have been prayed in the petition by the Petitioner, Jan Sankalp Sahakari Avas Samiti Ltd., Agra, cannot be granted but action against the Petitioners will be consequential and in the light of the observations made in this order. The reliefs in the petition are denied.

The petition is, thus, consigned as dismissed.