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Ranjit Singh Vs Vice Chairman, A.D.A. and Others

C.M.W.P. No. 13699 of 2002

Court: Allahabad High Court

Date of Decision: Aug. 28, 2003

Acts Referred:
Uttar Pradesh Urban Planning and Development Act, 1973 â€" Section 15, 27, 27(3), 27(4), 37

Citation: (2003) 6 AWC 4865

Hon'ble Judges: R.S. Tripathi, J; M. Katju, J

Bench: Division Bench

Advocate: G.K. Singh, V.K. Singh, S.N. Singh and A.P. Sahi, for the Appellant; A.K. Mishra and Vimlesh Srivastava, for the Respondent

Final Decision: Allowed

Judgement

M. Katju, J.
By means of this writ petition the Petitioner has prayed for a mandamus directing the Respondent Nos. 1 and 2 to implement

the order dated 8.1.2002, Annexure-4 to the writ petition passed by the Respondent No. 2 and to get the unauthorised construction made by the

Respondent No. 3 Baijnath Maurya demolished. It has been mentioned that the Respondent No. 3 has sold the disputed property to Respondent

No. 4. Sri A. K. Misra has appeared for the Respondent Nos. 1 and 2 and has filed a counter-affidavit. The Respondent Nos. 3 and 4 both have

been served with notice of this petition and the Respondent No. 4 has appeared through his counsel Sri Vimlesh Srivastava and has filed counter-

affidavit.

2. Heard the learned Counsel for the parties.

3. The Petitioner claims to be the owner of the house in Nazul Plot No. 7, Civil Station, Allahabad. The residential house of the Petitioner is

numbered as 7/2, Civil Station, Allahabad. The Petitioner purchased free hold right in the said plot from the State Government through the District

Magistrate, Allahabad vide registered deed dated 15.10.2000.

4. It is alleged in paragraph 5 of the writ petition that the Petitioners building was constructed in 1969 after getting the building plan approved by

the prescribed authority. The plan was approved on 10.6.1969 and permission to raise constructions was given by the same order. In respect of

the first storey, sanction was given by the A.D.A. on 20.6.2001.

5. It is alleged in paragraph 6 of the writ petition that Alkapuri and Aakashpuri colonies were constructed by the Allahabad Development Authority

on Hastings Road Housing Scheme in plot No. 9 which is adjacent to plot No. 7 referred to above. Apart from a large number of residential flats,

the Allahabad Development Authority constructed there 18 scooter and car garages on the ground floor and 18 servant quarters on the first floor.

Out of the aforesaid 18 quarters, 12 are in one block and the remaining 6 are in another block.

6. It is alleged in paragraph 7 of the writ petition that for the use of 12 servant quarters situate in Block 1 a soak pit was constructed on the open

land which was there on the northern side of the aforesaid quarters and it was connected with the nala running from east to west on Muir Road. In

paragraph 8 of the writ petition it is alleged that another soak pit was on the open land which is in the western side of the Second Block consisting

of six servant quarters for its use, and this soak pit was also connected with a nala adjacent to aforesaid plot No. 7 from south to north. The open

space which was in between the aforesaid nala and the servant quarter was in the shape of a pakka lane. This open land was left for the purpose of

cleaning the aforesaid soak pit.

7. It is alleged in paragraph 9 of the writ petition that the Respondent No. 3 was an ex-employee of the Allahabad Development Authority and his

son Sunil Kumar Maurya is an employee of Allahabad Development Authority. The Respondent No. 3 and his son managed to get two sale deeds

executed in their favour on 13.7.1999 and 3.11.2000 in respect of the aforesaid open land in which the soak pit was situated which was left for

cleaning and maintenance of the aforesaid soak pit. After purchasing the said land they started raising constructions thereon without getting any plan

sanctioned by the Allahabad Development Authority. The Petitioner immediately made complaint against the unauthorised construction of the

Respondent No. 3 on the aforesaid land of public utility before the Vice Chairman, Allahabad Development Authority vide Annexures-1 and 2 to

the writ petition and again made a representation before the Chairman and Vice Chairman, of the Allahabad Development Authority on 5.11.2001

vide Annexure-3 to the writ petition. It appears that the Respondent No. 3 also moved an application for compounding of the unauthorised

construction. Both the representations of the Petitioner and compounding application filed by the Respondent No. 3 were disposed of by a

common order dated 8.1.2002 Annexure-4 to the writ petition. By this order the application of the Respondent No. 3 for compounding was

rejected and a direction was given to demolish the unauthorised construction. Despite this order no demolition was done. The Respondent No. 3

transferred his property to Respondent No. 4. The Petitioner again made a representation before the Vice Chairman, A.D.A., on 29.1.2002 vide

Annexure-6 to the writ petition. He also made another complaint on 8.2.2002, which was disposed of by the Allahabad Development Authority by

order dated 15.2.2002 vide Annexure-7 to the writ petition. In this order it is stated that the suitable action will be taken in pursuance of the order

dated 8.1.2002 and unauthorised construction made by the Respondent No. 3 would be demolished. However, no action has been taken by the

Allahabad Development Authority thereafter. Hence this petition.

8. A counter-affidavit has been filed by the Allahabad Development Authority and in paragraph 4 of the same it is alleged that a civil suit has been

filed by the Respondent No. 3 against the Allahabad Development Authority and against the Petitioner being Suit No. 290 of 2001 before the Civil

Judge (Junior Division), Allahabad. Another Suit No. 145 of 2002 has been filed by the Respondent No. 4 in which no temporary injunction was

granted by the trial court but a civil revision was filed in which an interim order of status quo was passed on 27.3.2002, which is still operating.

Hence, it is alleged that the demolition could not be done.

9. A counter-affidavit has also been filed by the Respondent No. 4, who was mentioned about his suit and about the order of status quo in the

revision. He had also filed an appeal u/s 27(3) of the U.P. Urban Planning and Development Act, 1973 before the Chairman, Allahabad

Development Authority which is pending but no interim order was passed. Hence he filed the aforesaid suit.

10. It may be mentioned that Section 27(4) of the Act states:

The decision of the Chairman on the appeal and, subject only to such decision, the order under Sub-section (1), shall be final and shall not be

questioned in any court.

Similarly, Section 37 of the Act states:

Except as provided in Section 41, every decision of the Chairman on appeal, and subject only to any decision on appeal (if it lies and is

preferred), the order of the Vice Chairman or other officer u/s 15, or Section 27, shall be final and shall not be questioned in any court.

11. Thus, there is a specific bar to a suit against the order u/s 27 and hence, the suit itself was not maintainable.

12. Since the suit is specifically barred, in our opinion, the order of status quo passed in Civil Revision No. 304 of 2002 was also clearly illegal and

without jurisdiction and hence, can be ignored.

13. For the reasons given above the petition is allowed. The Allahabad Development Authority is directed to implement the order dated 8.1.2002

forthwith.