

(2011) 09 AHC CK 0411
Allahabad High Court
Case No: Writ C. No. 52779 of 2011

Kanpur Development
Authority

APPELLANT

Vs

Sri Aayurvedic
Vidyalaya

RESPONDENT

Date of Decision: Sept. 21, 2011

Acts Referred:

- Uttar Pradesh Urban Planning and Development Act, 1973 - Section 18(4), 4(A)

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Sudhir Agarwal, J.

This writ petition apparently is a glaring example of rustic attitude of Kanpur Development Authority (in short "KDA") in dealing with the public property to which it is the custodian; and gives an impression of height of mismanagement and corruption prevailing in KDA.

2. The order passed by the then District Judge, Kanpur Nagar on 24.02.2010 has been challenged in this writ petition. The noting on the side of photocopy of judgement shows that it was brought to the notice of the authorities of KDA on 09.03.2010 but it has been filed after more than one year and almost six months. Not a semblance of explanation as been given in the entire writ petition which runs only in about 18 paragraphs including the paras containing grounds. Besides the fact that the writ petition is highly belated and undue laches are unexplained totally, the judgement impugned in this writ petition also shows that the learned District Judge had to record strictures against KDA and its officials having gone through the record of case.

3. Why such a belated petition was filed and that too without any substantive ground taken in the entire writ petition, to enquire there into, this Court passed an order on 13.09.2011 directing petitioner to produce entire record and also for appearance of Vice Chairman of the Authority concerned.

4. Pursuant thereto Sri Om Narain Singh, Vice Chairman, KDA appeared and filed supplementary affidavit sworn on 19.09.2011. He also produced certain record which though he claimed to be complete in all respect but having perused the same threadbare, I do not find him correct.

5. In the supplementary affidavit the present Vice Chairman, KDA has said that he joined KDA on 22.01.2011 and till this Court passed order dated 13.09.2011, had no knowledge about pendency of case or any order passed by his predecessor on 28.11.2007 regarding the property in question and also the order dated 24.02.2010 passed by District Judge, Kanpur Nagar. His averments contained in para 24 of supplementary affidavit reads as under:

24. That it is respectfully submitted that the deponent being as Vice Chairman, K.D.A. had joined the K.D.A. on 22.01.2011 and till the order passed by this Hon"ble Court dated 13.09.2011, the depoent had no information regarding pendency of the case or knowledge about the any order passed by his predecessor on 28.11.2007 regarding the property in question and also no knowledge about the order dated 24.02.2010, passed by the learned District Judge, Kanpur Nagar.

6. The reply was very surprising and amazing. An officer who head the entire KDA, after nine months could dare to say that he has no information of a substantial matter which involves a huge chunk of property measuring more than six acres of land in a prime location at Kanpur, worth several crores. On being enquired as to who was looking after this Court case, he said that a Joint Secretary has filed the affidavit but he must have come to swear the affidavit on his own without giving any information to the present Vice Chairman. The affidavit of this writ petition has been sworn by Sri Nagendra Prasad Pandey, Joint Secretary, KDA.

7. Sri M.C. Tripathi, Learned Counsel for the petitioner categorically stated that neither the said Joint Secretary sought station leave permission from the Vice Chairman, nor submitted any leave application, nor informed the present Vice Chairman in any manner about his visit to Allahabad for swearing affidavit of this writ petition.

8. Be that as it may, the things do not rest here as much more is contained in the record.

9. The record which was produced before me gave certain information which is really perplexing.

10. A lease deed was executed by Kanpur Development Board with respect to plot No. 196, situate in Block E, Scheme-II, Babupurwa, Kanpur measuring 6.5 acres in

favour of one Mahesh Bhatt Vidyalaya Society on 11.09.1957. It was duly registered. The Society was to construct a School and develop a playground in the land in question. It was to commence construction within one month from the date of registration of lease deed and to complete the same within one year. No construction of school as required was made. The Society submitted a plan for construction of School to Kanpur Development Board on 15.04.1958 which was duly sanctioned whereafter it constructed only four rooms. The Society transferred the land in favour of Ayurvedic Vidyalaya, Kanpur by a registered lease deed dated 30.07.1963. The said transfer was approved by Kanpur Nagar Mahapalika which in the meantime had come into existence under Nagar Mahapalika Adhiniyam, 1959. No construction of School, however, was made. The Ayurvedic Vidyalaya submitted a revised plan to KDA which had come into existence in the meanwhile pursuant to U.P. Urban Planning and Development Act, 1973 (hereinafter referred to as the "Act, 1973") and the same was sanctioned by KDA on 03.11.1980. No construction still commenced. Another revised plan was submitted in 1998. It was also approved by KDA on 04.09.1998 on payment of Rs. 3,31,136/- which was deposited by respondents on 04.09.1998. It is said that a boundary wall was constructed thereafter but no further construction took place since a Public Interest Litigation got initiated before this Court in 1999 wherein an order of status quo was passed on 04.05.1999. The said writ petition was ultimately dismissed as withdrawn sometimes in 2005.

11. The respondents thereafter submitted a revised plan for sanction to KDA in 2005. It appears from the record that the said plan was not sanctioned for want of some requisite information though a proposal was made for its sanction on imposing a penalty of Rs. 85 lacs and odd. One Anil Kumar, Vice Chairman, KDA on 18.06.2005 passed an order restraining any new construction on the plot in question and also directed for issuing notice to respondents for cancellation of lease deed. There is a noting dated 19.06.2006 on the record, however, that revised map submitted by petitioner was sanctioned on payment of penalty of Rs. 83 lacs but the letter of demand was not issued to petitioner.

12. In the meantime, it appears that State Government required U.P. Vigilance Establishment to make investigation into certain frauds and illegalities committed by statutory authorities and in particular KDA regarding valuable land in Kanpur and pursuant thereto S.P. U.P. Vigilance Establishment, Kanpur issued a letter dated 06.08.2005 requiring petitioner to submit record pertaining to land in question alongwith others before him. Some further information was sought by S.P. Vigilance by another letter dated 29.12.2005. What happened therein to the said Vigilance inquiry is not clear from the record.

13. The order dated 18.06.2005 of Sri Anil Kumar, the then Vice Chairman, KDA for issuing notice for cancellation of lease deed also remain unattended.

14. One Mohd. Mustafa, Joined as Vice Chairman, KDA in the year 2007 and he observed on 17.08.2007 in a note as to why despite order dated 18.06.2005 no further action was taken and who are the persons responsible. Secretary, KDA vide note dated 21.07.2007 informed that two petty officials, namely, Prem Singh, Clerk and M.P. Vajpayee, Accountant are prima facie responsible for total inaction. Sri Mohd. Mustafa, Vice Chairman on the same date noting enquired whether Sri Nagendra Prasad Pandey, Deputy Secretary, Pramod Kumar, Deputy Secretary and Sri G.S. Goel, Chief Town Planner are not responsible. Thereupon, the Secretary, KDA submitted his note dated 25.08.2007 holding that all these three persons are also prima facie responsible. The Vice Chairman, KDA ordered for disciplinary action against these three. The notings dated 14.09.2007 and 20.09.2007 show that charge sheet was submitted against these three officials, namely, two Deputy Secretary and one Town Planner but what happened actually thereon is not on record.

15. So far as Vice Chairman, KDA's note dated 18.06.2005 and 17.08.2007 are concerned regarding notice for cancellation of lease deed, the authorities acted on and after 17.08.2007 very quickly and issued a show cause notice on 17.08.2007 itself for cancellation of lease deed and exercising right of reentry u/s 18(4) of Act, 1973. This notice was issued by Sri Ram Narayan, Joint Secretary, KDA and was served upon respondent on 30.08.2007. The respondent submitted reply dated 14.09.2007 stating that his revised plan was sanctioned on 19.06.2006 subject to payment of penalty of Rs. 83 lacs to which he is agreeable and a demand note be issued to him for enabling him to pay the said amount. It appears that another notice was issued on 03.10.2007. On 28.11.2007 the Vice Chairman, KDA passed order canceling the lease deed and making reentry over the land in question. On 29.11.2007 KDA executed the document taking possession of land in question.

16. Thereafter the things proceeded in a real strange but surprising pace. On 03.12.2007 a proposal was submitted for change of user of land, i.e., instead of School, for constructing a shopping mallcummultiples and fully developed mini stadium. On the same date all officers of KDA, namely, Land Scrap Architect, Town Planner, Chief Engineer, Superintending Engineer, District Magistrate, Vice Chairman and Commissioner signed the proposal approving change of user. The proposal was placed before KDA Board and change of user resolution was passed on 12.12.2007 signed by Vice Chairman, Commissioner, District Magistrate, Joint Director Treasury and Pension, M.D. KESCO and Superintending Engineer, U.P. Jal Nigam on the same date.

17. There appears to be some advertisement for auction of land for the said commercial user though it is not a part of record produced before me. The record shows the earliest application was submitted by one SDS Developers Pvt. Ltd. Delhi on 15.12.2007 for allotment of land. The auction of land, however, took place on 07.12.2007 wherein SDS Developers' bid was found highest, i.e., Rs. 21,000/- square meter and it was confirmed vide allotment letter dated 27.12.2007. There are certain

documents on record which gives different dates inasmuch as in File No. 7, there is a draft letter at page 10 mentioning date of auction as 15.11.2007 corrected as 17.12.2007.

18. The respondent thereafter filed appeal before the District Judge, Kanpur where an order of status quo was passed. The auction purchaser, i.e., M/s SDS Developers thereafter withdrew his offer which was allowed by KDA vide letter dated 05.12.2008 and a sum of Rs. 17,97,62,709/- alongwith interest of Rs. 41,54,990/- was refunded to him.

19. The record does not show as to how the public was made to know about alleged auction. What was the occasion for proposed change of user or whether it was already decided and thereafter immediate action was taken for cancellation of lease deed and change of user. The things really have proceeded with a surprising speed during a particular period but in a conspicuous manner.

20. The land is obviously very valuable since the bid itself was for about 27 crores.

21. The record also does not show what happened after receipt of judgment of District Judge, how the matter was processed, who advised for filing of writ petition and why such a long delay took place. Though the petitioner was required to produce all such record but the same has not been made available.

22. Considering the nature of matter, I do not find it expedient to pass an order on mere technical ground of delay and laches in a summary manner particularly when public property of high value is involved and the Court is certain and has gathered an impression from record that there is something very serious but hidden in the matter.

23. Moreover, there is another legal issue, whether a land which is Nazool land, and leased out before enactment of Act, 1973, could be dealt with u/s 18(4) and (4-A) or not.

24. Sri Shashi Nandan, learned Senior Advocate assisted by Sri M.C. Tripathi, Learned Counsel appearing for petitioner made submissions but after some times wanted some more time to prepare the matter on these questions.

25. In the meantime, Sri Nagendra Prasad Pandey, Joint Secretary is also directed to file his affidavit as to whether he was authorised to take steps for filing this writ petition, whether he sought any permission from the Vice Chairman of KDA and/or in what circumstances he came to Allahabad, swear affidavit for filing writ petition after more than one year and six months without giving any explanation for delay and whether he was so authorized by KDA.

26. Sri Om Narayan Singh, Vice Chairman, KDA and Sri Nadendra Prasad Pandey, Joint Secretary, KDA shall also remain present on the next date.

27. The record shows that in respect to land in question the State Government has ordered for a vigilance inquiry which has commenced in the year 2006. In order to have complete information about the matter, I direct the petitioner to implead State of U.P. through Chief Secretary as respondent no. 2 by numbering the present sole respondent as respondent no. 1 and a copy of writ petition shall be served in the office of learned Chief Standing Counsel within three days from today. The learned Chief Standing Counsel shall seek instructions and inform the Court about progress made in the investigation by Vigilance Establishment.

28. As prayed by Sri Shashi Nandan, Senior Advocate, list/put up this matter on 30.09.2011.