

Court No. - 3

Case :- WRIT - C No. - 8644 of 2024

Petitioner :- Smt Richa Singh

Respondent :- State Of Up And 7 Others

Counsel for Petitioner :- Kunal Shah, Sr. Advocate

Counsel for Respondent :- Anand Prakash Paul, C.S.C., Pawan Kumar Singh, Vibhu Rai

Hon'ble Anjani Kumar Mishra, J.

Hon'ble Jayant Banerji, J.

(Per Hon'ble Mr. Justice Anjani Kumar Mishra)

1. Heard Shri Kunal Shah and Shri Amit Saxena (Sr. Advocate), learned counsel for the petitioner and Shri Anoop Trivedi for the contesting respondents as also learned Standing Counsel.

2. The writ petition seeks a writ of certiorari for quashing the order dated 08.02.2024 passed by the third respondent and communicated by the fourth respondent, copy whereof is filed Annexure 1 to the writ petition.

3. By this order, a sanction accorded to a map for raising constructions over part of plot nos. 361, 362, 363 and 365 No. PDA/BP/2021-22/0888 has been withdrawn in exercise of powers conferred by subsection (9) of Section 15 of the U.P. Urban and Planning Development Act, 1973.

4. Also under challenge is a consequential order dated 13.02.2024, passed by the fifth respondent, directing the petitioner to remove constructions existing over the land for which building plan had been sanctioned.

5. The facts relevant for the purposes of the writ petition are that the dispute pertains to 1123.75 sq. meters of land consisting of portions of plot nos. 361, 362, 363 and 365 situated in Kasari Masari, Tehsil Sadar, District Prayagraj. The said plots along with other were the bhumidhari plots of one Mohd. Suleman and Mohd.

Iqbal Ahmad.

6. It appears that in proceedings under the Urban Land Ceiling Act, 1976, the plots were declared surplus except an area of 1500 sq. meters, by the order dated 03.09.1982 and a consequential notification under Section 10(1) of the Act was issued. The declaration under Section 10(3) of the Act declared land of Khasra Nos. 361, 362, 363 and 365 to be surplus apart from other lands and a notice was issued to Mohd. Suleman asking for him to surrender possession over the land declared surplus.

7. On 15.06.1989, the son of Mohd. Suleman filed an application for recall of the order dated 30.09.1982 making absolute the drafts statement under Section 8(3) of the Act on the ground that Mohd. Suleman died on 03.02.1982 and the order was therefore, ex-parte.

8. The recall application was rejected but the consequential appeal was allowed on 21.01.1994, the order dated 30.09.1982 was set-aside and the matter was remanded back for a fresh decision after granting liberty to the son of Mohd. Suleman to file his objections to the drafts statement. This order of remand was affirmed by the High Court.

9. During the pendency of these proceedings, on 13.07.1990, a notification was issued under Section 4/17 of the Land Acquisition Act for acquiring 391 Bigha 18 Biswa and 11 Biswansi situated in Kasari Masari, Tehsil Sadar, District Prayagraj and this notification included portions of plots 361, 362, 363 and 365. The respondents claim to be in possession over this land. However, it appears that out of a total area of 5130 sq. meters of plot nos. 361, 362, 363 and 365 only 2622 sq. meters of land was subject matter of acquisition and 2508 sq. meters were never acquired.

10. It is the petitioner's categorical case is that out of the land which had not been acquired, she purchased land aggregating 1123.75 sq. meter by means of 3 separate sale deeds dated 17.03.2011, 24.05.2011 and 06.06.2011. On the basis of the sale deeds, the petitioner was also mutated over the land. The petitioner is alleged to have raised a boundary wall to demarcate the area purchased and two rooms and a bathroom was also constructed, thereon.

11. On 02.12.2017, portions of the boundary wall and construction raised by the petitioner was demolished by the second respondent.

12. The petitioner thereafter filed Original Suit No.506 of 2017 for

declaration and permanent injunction against the Development Authority, wherein a written statement was filed alleging that the constructions were illegal, having been raised without a sanctioned plan. The property over which the constructions had been raised was acquired by the State Government and handed over to the Prayagraj Development Authority. The property had also been declared surplus and the possession over the surplus land had been handed over to the Development Authority.

13. An application for temporary injunction in the suit was dismissed against which an appeal was filed, wherein an injunction application was also filed, but no orders were passed, thereon.

14. Since no interim order was granted, the petitioner filed a petition under Article 227 of the Constitution of India being Petition No.4209 of 2018, wherein an order of status quo was granted on 15.06.2018, which is stated to be in operation, even today.

15. On 11.01.2023, the petitioner applied for sanction of a building plan under Section 15 of the U.P. Urban Planning and Development Act, 1973, whereupon no objection certificates were called for from the Municipal Corporation, Jal Sansthan, Prayagraj and the Tehsildar. The Tehsildar, Sadar issued a no objection certificate on 25.01.2023.

16. However, since there was a doubt as to whether the sanction of a map was sought regarding properties, which had been acquired under the Land Acquisition Act or not, a joint inspection team constituting of six members was constituted to demarcate the land of the petitioner.

17. This joint inspection team on 11.04.2023 submitted a report that the land over which the building plan was sought to be sanctioned, was free from acquisition while the second respondent was in possession over the land which had been acquired under the provisions of the Land Acquisition Act.

18. On 29.04.2023, the In-charge Land Acquisition Officer, Prayagraj Development Authority is stated to have made a report that the order of the competent authority approving the draft proposal had been set aside by the District Judge and no fresh orders were passed under Section 8(4) of the 1976 Act, till the time of repeal of the said Urban Land Ceiling Act, 1976.

19. The petitioner was thereafter asked to deposit a sum of

Rs.63,62,291/- for sanction of the map, which was duly deposited on 05.06.2023. Thereafter, on 15.06.2023, a letter was issued under Section 15(3) of the U.P. Urban Planning and Development Act, 1973 sanctioning the map submitted by the petitioner.

20. However, on 27.01.2024, a show cause notice was issued to the petitioner under Section 15(9) of the Act on the ground that in her affidavit accompanying the application for obtaining sanction, the petitioner had concealed the pendency of Petition No.4209 of 2018 (arising out of the suit) and the interim order therein. Therefore, to show cause as to why the sanction order be not recalled.

21. The petitioner filed a reply to the show cause notice on 02.02.2024. In this reply amongst other things a prayer was also made to grant petitioner short time to withdraw the suit itself. However, by the order dated 08.02.2024, the order dated 15.06.2023, sanctioning the building plan furnished by the petitioner has been recalled/cancelled.

22. After the sanction was cancelled on 29.02.2024, portion of the boundary wall constructed by the petitioner has been demolished. However, the other/entire constructions were not demolished.

23. From the facts noticed above, it emerges that the case of the petitioner is that the petitioner is purchaser of portion of the plot nos. 361, 362, 363 and 365 from its owners by means of three separate registered sale deeds and on their basis, the purchaser (petitioner) was duly mutated. This portion of the aforesaid plots measuring 1123.75 sq. meters was neither subject matter of the land acquisition proceedings nor were the same declared surplus in proceedings under the Urban Land (Ceiling and Regulation) Act and there is adequate material in the form of the report of a joint inspection team to establish the same.

24. This sanction for the building plan granted earlier has been withdrawn/cancelled on account of concealment of material facts. The so called material fact was regarding pendency of a petition arising out of a suit for declaration and injunction filed by the petitioner. In the petition, an order of status quo is operating in favour of the petitioner.

25. The submission of learned counsel for the petitioner, in essence, is that in fact, there was no concealment as the respondent authorities being party to the petition were necessarily aware of the same. Even otherwise, the concealment, if any, was inadvertent and not material as nothing turned upon the same. Nor did such

concealment afford any undue advantage to the petitioner, or put the Development Authority to disadvantage.

26. It has additionally been submitted that the respondent namely the Tehsildar, respondent no.8 and the respondents 2 to 5 have not denied the title of the petitioner to the land in question over which sanction for constructions had been granted, initially. This sanction had, in any case, been granted after due diligence and after a joint inspection was conducted by the respondent authorities which established that the petitioner was seeking sanction for raising constructions over land that had been mutated in her name and which was not subject matter of either land acquisition proceedings and had not been declared surplus under the Urban Land Ceiling Act. The earlier order declaring it surplus was set-aside in appeal and the matter was remanded for fresh consideration. No orders were passed after remand till repeal of the Urban Land Ceiling Act.

27. In support of the contentions, learned counsel for the petitioner has relied upon the following judgements of the apex court:

1. *Arunima Baruah vs. Union of India and Others*, 2007 (6) SCC 120, especially paragraphs 12, 13 and 17.

2. *Harjas Rai Makhija vs. Pushparani Jain and Another*, 2017 (2) SCC 797, especially paragraph 20.

3. *State of U.P. and Others vs. Maharaja Dharmander Prasad Singh and Others*, 1989 (2) SCC 505, especially paragraphs 45 and 48.

4. *Syed Wasif Husain Rizvi vs. Hasan Raza Khan and other*, AIR 2016 Allahabad 52.

28. Shri Anoop Trivedi appearing for the respondents has submitted that the writ petition is not maintainable. The petitioner has filed an appeal before the Chairman under Section 15(5) of the Urban Planning and Development Act, 1973 as also a revision before the State Government under Section 41(3) of the said Act.

29. It has additionally been submitted that the petitioner is guilty of concealment or of having stated incorrect facts in paragraph 3 of the affidavit accompanying the application for sanction of map. It had been categorically stated in paragraph 3 that no litigation regarding the land in question was pending before any Court nor any interim order is operating. This affidavit was of the petitioner.

A reply has been furnished by the power of attorney holder, which is of no consequence and the same could not be relied upon as the power of attorney holder could not rebut or show cause against which statement was in the personal knowledge of his principal. It is submitted that the concealment of fact made by the petitioner in her affidavit is thus writ large on the face of the record.

30. He has placed reliance upon the decision of the apex court in **Civil Appeal No.7840 of 2023, Rajesh Kumar vs. Anand Kumar and Others, especially paragraph 12**, thereof as also the decision of this Court in *Misc. Bench No.12242 of 2021, Daud Ahmad and Another vs. State of U.P. through Principal Secretary Housing/Urban Planning, Lko and Others*. These authorities have been cited to canvass the issue that against the order impugned, the petitioner has a right to prefer a revision as provided under Section 41(3) of the Urban Planning and Development Act, 1973.

31. In rejoinder, the contention of learned counsel for the petitioner is that the appeal filed by the petitioner under Section 15(5) of the Act before the Chairman is not maintainable as has been held by this Court in **Jagdish Prasad Dubey vs. Allahabad Vikas Pradhikaran, Allahabad, 1992 (1) UPLBEC 694**. Besides the alleged concealment, namely the pendency of a suit and a petition before the High Court under Article 227 of the Constitution of India and the interim order operating therein did not have any direct nexus with the application for sanction of a map that could have had a material bearing on the sanction of the map itself.

32. We have considered the submissions made by learned counsel for the parties and perused the record as also the judgements cited on their behalf.

33. In our considered opinion, we are inclined to agree with the submission of learned counsel for the petitioner that nothing of substance turns upon what is alleged to have been concealed by the petitioner. The order of status quo had been obtained by the petitioner as certain demolition had been carried out by the respondent no.2 and with a view to forestall any further demolition. The constructions raised, had been substantially demolished and, therefore, the order of status quo was also to the detriment of the petitioner as no further constructions could be raised by the petitioner. In any case, the sanctioning authority was a party to those proceedings. The so called concealment did not have any material bearing upon the application for sanction of a building plan, for consideration whereof the only requirement was

to ascertain that the land over which construction was sought to be raised, belonged to the person who were seeking the sanction and also whether the proposed construction plan conformed to the building regulations and the relevant bye laws. In such view of the matter the so called concealment could not put the petitioner to any undue advantage or put the Development Authority to disadvantage.

34. The apex Court in its judgment rendered in **Arunima Barauh** (supra) in paragraph 12 has observed as follows:

"It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question."

35. The judgment in **Harjas Rai Makhija** in paragraph 20 has held as follows:-

"We agree that when there is an allegation of fraud by non-disclosure of necessary and relevant facts or concealment of material facts, it must be inquired into. It is only after evidence is led coupled with intent to deceive that a conclusion of fraud could be arrived at. A mere concealment or non-disclosure without intent to deceive or a bald allegation of fraud without proof and intent to deceive would not render a decree obtained by a party as fraudulent. To conclude in a blanket manner that in every case where relevant facts are not disclosed, the decree obtained would be fraudulent, is stretching the principle to a vanishing point."

36. Therefore, in view of the decisions of the apex court in the judgment relied upon by the petitioner, in our considered opinion, the respondents were not justified in cancelling the sanction granted earlier.

37. Although in the counter affidavit, the development authority claims to be owner of the land over which the sanction was sought, it is clear from the record that sanction had been granted only after due diligence and on the basis of a report of a joint inspection team that the petitioner was seeking permission to raise construction over land, which belonged and was recorded in the name of the

petitioner. Moreover, nothing of substance has been submitted or pointed out by the respondents to even prima facie show that the land in question was either land which had been acquired or declared surplus, especially when the material on record is manifestly to the contrary.

38. The contention also on behalf of the respondents raised by Shri Anoop Trivedi that this petition filed through a power of attorney was not maintainable. We do not find any substance in the submission in view of the judgement of the Full Bench in **Syed Wasif Husain Rizvi** (supra), which in paragraph 26 holds as follows:-

"26. When a writ petition under Article 226 of the Constitution is instituted through a power of attorney holder, the holder of the power of attorney does not espouse a right or claim personal to him but acts as an agent of the donor of the instrument. The petition which is instituted, is always instituted in the name of the principal who is the donor of the power of attorney and through whom the donee acts as his agent. In other words, the petition which is instituted under Article 226 of the Constitution is not by the power of attorney holder independently for himself but as an agent acting for and on behalf of the principal in whose name the writ proceedings are instituted before the Court."

39. The petitioner may have an alternative remedy by way of revision under Section 41(3) of the Act but since the petition has been entertained, affidavits have been exchanged, we are not inclined to go into the issue of alternative remedy because there are no disputed questions of fact involved. The issue involved in one of concealment of fact by making a false assertion which is admitted by petitioner but has been held herein above as immaterial for the purpose of grant of sanction to a building plan. As a corollary, the sanctioned map stands. If the period of completion of the building as per sanctioned plan has expired, then on an application made by the petitioner within 15 days from today, the period of completion shall be suitably extended by the competent authority.

40. In view of the forgoing discussion, we allow the writ petition and set aside the order dated 08.02.2024 passed by the respondent no.3.

Order Date :- 11.11.2024

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