

Ashok Kumar Tumberia Vs. Hardwar Development Authority, Hardwar and Another

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Court : Allahabad

Decided On : Jan-07-1997

Reported in : AIR1997All220

Judge : Ravi S. Dhavan and ;V.P. Goel, JJ.

Acts : [Uttar Pradesh Urban Planning and Development Act, 1973](#) - Sections 32;
[Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petn. No. 1115 of 1994

Appellant : Ashok Kumar Tumberia

Respondent : Hardwar Development Authority, Hardwar and Another

Advocate for Def. : P.M. Gupta, Adv.

Advocate for Pet/Ap. : Shashi Kant and ;S.N. Kesarwani, Adv.

Judgement :

ORDER

1. This is a matter from Hardwar where the petitioner desires that the notices issued to him by Hardwar Development Authority dated 28, September, 1993 and 18 October, 1993, annexures 6 and 7 respectively, demanding compounding fee

of Rs. 2,67,588/- for making the illegal constructions, be quashed.

2. The Court has heard counsel for the petitioner Sri S. N. Kesarwani and Sri P. M. Gupta, learned counsel appearing on behalf of Hardwar Development Authority.

3. The Court neither agrees with the petitioner nor with the respondents. Of the illegalities which the petitioner has committed by making constructions without permission, the Hardwar Development Authority seems to have compromised the situation and nakedly watched the construction of a building which was not supposed to be made completed and then belittling and compromising its status as a Development Authority to compound a construction which had been made illegally.

4. As far as the writ petition concerned it is devoid of details on what exactly is the title of the petitioner to the land on which the constructions were made illegally and without permission. The petitioner avoids giving this essential fact to the Court and the Hardwar Development Authority has made no effort to find out the petitioner's ownership on the area where the constructions were attempted and later completed despite notice to the petitioner. The first notice is dated 30-6-1993, Annexure-3 to the writ petition. It cautions that the building opposite Mayur Hotel, Upper Road, Hardwar, being made without a sanction plan, the constructions as on that day being the basement and the ground floor cease forthwith. One aspect is very relevant that at the time when this notice was delivered to the petitioner a basement had been dug and was under construction along with the ground floor. How did the petitioner proceed with the construction to complete the entire building when he had already been cautioned to stop the construction. The petitioner completed the construction in the face of this notice. He violated the law. Both law and equity are against the petitioner.

5. The notice of the Hardwar Development Authority dated 30-6-1993 make it clear that on either side of the road, called Upper Road at Hardwar, on one side there is a Mayur Hotel and on the other side the illegal constructions of the petitioner. These constructions are on the roadside. Do these constructions violate the street alignment? What was the petitioner's title to the land on which the constructions have been made? Was the petitioner allotted the land for

construction as licensee by the local administration? Was the petitioner owner of the land as opposed to a licensee? The Court is reflecting on these aspects as the petitioner has given no facts.

6. Prima facie from the record of the writ petition it appears that his occupation is of a land on the road side but this has to be determined as a measure of certainty. If it is on road side violating the side walk or a pavement, Patri or the drain which follows the road, then the question of sanction or any compounding by the Hardwar Development Authority does not arise. If these constructions are beyond the line of street alignment then the set back has to be left. This set back, cannot be violated. The laws which govern an urban habitat to ensure that this space should be left as a set back from the edge of the road determines the line of street alignment. Constructions on both these areas whether the road, side walk-Patri, drain or the set back from the edge of the road, if violated are illegalities which cannot be cured and are incapable of being cured. Far from compounding these constructions, the constructions cannot even be permitted.

7. The Court is concerned that the Hardwar Development Authority seemed to be compromising its duties whereas at one stage it asked the petitioner to stop the construction, thereafter it was a silent spectator to these illegal constructions being completed gradually and violating the very notices which restrained the constructions from proceeding. This is collusion. First asking the petitioner not to make constructions and ultimately creating a record so that the compounding fee of Rs. 2,67,588/- is charged, reflects very badly on an administration which is supposed to regulate urbanisation.

8. In the circumstances the Court considers it appropriate that this entire matter shall stand remanded to the local administration. The Court is now requiring the District Magistrate/Collector Hardwar to make an enquiry into this matter and first find out where exactly is the location of the constructions made by the petitioner, whether it is on the road side, side walk, pavement or protected space of setbacks. If the answer to this enquiry is in the affirmative, then these constructions have to go. Further the District Magistrate/Collector, Hardwar will cause an enquiry to be made how the constructions were completed after the notice of 30-3-1993 and

despite the fact that the petitioner was on a notice to desist from constructions. Whoever were embroiled in this collusion, appropriate action shall be considered and taken by the District Magistrate/Collector, Hardwar. The District Magistrate/Collector, Hardwar, will also en-sure that no further constructions are carried out by the petitioner nor any finishing work under-taken nor the buildingis let out while this enquiry is in progress.

9. The Court does not find any merit in this writ petition and it is dismissed. The Court also is not satisfied with the defence of the Hardwar Development Authority in the counter affidavit.

10. The petition is dismissed with costs.

11. The interim orders dated 19-1-1994 and 16-2-1994 are discharged.

12. A copy of this order may be sent to the Principal Secretary, Urban Development, Uttar Pradesh, Shashan, Lucknow.

13. Learned Standing Counsel present in Court Mr. Krishna Prasad and Mr. P. M. Gupta, appearing on behalf of the respondents, have been authorised to send a copy of this order to the District Magistrate Collector, Hardwar.

14. Petition dismissed.