

Smt. Bimla Devi and Another Vs. Allahabad Development Authority and Others

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Court : Allahabad

Decided On : Nov-06-1996

Reported in : AIR1997All224

Judge : Ravi S. Dhavan and ;A.B. Srivastava, JJ.

Acts : [Uttar Pradesh Urban Planning and Development Act, 1973](#) - Sections 8, 10, 13(2), 16, 27, 27(1) and (2), 28, 28(1), 32, 41(3) and 53; [Constitution of India](#) - Article 226

Appeal No. : Writ Petn. No. 5470 of 1985

Appellant : Smt. Bimla Devi and Another

Respondent : Allahabad Development Authority and Others

Advocate for Def. : Standing Counsel and ;Ashok Mohitey, Adv.

Advocate for Pet/Ap. : B.K. Narayana and ;Dhruva Narayan, Adv.

Judgement :

ORDER

Ravi S. Dhavan, J.

1. This writ petition is about constitutions made unauthorisedly and the scope of condoning the unauthorised structures by an exercise known as compounding. The issue plainly is on what is the concept, in urban planning, of condoning an unauthorised construction on the payment of a penalty and at what stage an unauthorised construction falls within the realm of an illegal act, the condonation of which the law does not permit under any circumstances.

2. The facts on record in this case are:

In Allahabad, the north sector of it, at the crossing of Beli Road and Batuk Krishna Banerjee Road, is a property which originally was owned by Lt. General D.W. Chakrovorti. It was purchased subsequently by the late Kedar Nath Tiwari, who became its owner. The municipal number of the property is 2-A, Beli Road. Kedar Nath Tiwari died leaving the property in the hands, of his heirs, namely, Smt. Bimala Devi, his widow and Shri Nirmal Chandra Tiwari, his son. During the pendency of the present writ petition, Nirmal Chandra Tiwari, the petitioner No. 2, died. His heirs were permitted to be brought on record.

3. The facts which become issues between the petitioners, the Allahabad Development Authority and the State of Uttar Pradesh, was an aspect on which there is no issue. The petitioners admit that their predecessor-in-interest, the late Kedar Nath Tiwari, had submitted a plan for constructing a lodging house for students, regard being had to the circumstances, that the property was near the Allahabad University and that were easing out a shortage for housing students. In the petition they admit when they submit that before the construction started, on the advice of the contractor, with a view to make the ultimate finished building a paying proposition, i.e., profitable return on the capital, deviations were made from the original plan, as sanctioned by the Allahabad Development Authority. It is admitted that the building as it stands completed now has a market and flats for rent. The contention is that a lot of money has been spent in constructing the building and people have been inducted into the building as tenants, students in the lodging part of it and shopkeepers in the market part of it.

4. The writ petition also accepts that while the constructions were deviated from the original plan, the petitioners received a notice from the Allahabad Development

Authority cautioning the petitioners to desist from the construction beyond the plan as was sanctioned. At one stage, it is accepted in the petition that as the petitioners had continued to construct, the police had arrived requiring the petitioners to stop the construction. The only explanation given in the writ petition is that the building, at that time when the police arrived, was almost complete in the shape as it exists today. The notice intimated the predecessors-in-interest of the petitioners that unauthorised constructions were and are being made and further constructions be stopped. This notice was under Section 28 of the U.P. Urban Planning and Development Act, 1973. The petitioners also mentioned in the writ petition that they gave an assurance to the local administration that the construction would be stopped. It is admitted today at the time of hearing of the writ petition also that the constructions did proceed despite the notice to stop it and the building has been completed to the finish.

5. Ultimately, the petitioners contend that they appeared before the Mukhya Nagar Abhiyanta (The Chief City Engineer) of the Allahabad Development Authority and made a request that all the constructions which have been made by deviating from the sanctioned plan be compounded. Of the accepted petition that the sanctioned plan was violated and deviated and the constructions were completed, the record bears this out blatantly. Thus, it is contended that a request for revised compounding was submitted for being considered but ultimately the Allahabad Development Authority did not accept the deviations from the original plan and the Administrator of the Nagar Mahapalika, Allahabad (City Corporation, Allahabad) passed an order on 29 March, 1979 that the illegal constructions should be demolished. It is contended that this order by which the revised plan showing the illegal constructions were not accepted was passed behind the back of the owner of the property, i.e., late Kedar Nath Tiwari. Against this order by which demolition of the unauthorised construction had been ordered, an appeal was filed under Section 28(1) of the Act, aforesaid. This was Appeal No: 8 of 1975; Kedar Nath Tiwari v. Secretary, Allahabad Development Authority Allahabad. The appeal lay before the Chairman, Allahabad Development Authority i.e., the Commissioner, Allahabad Division Allahabad. On the appeal, the appellate authority on 5 May 1980 passed the following order:

'Appeal No. 8/1975

Kedar Nath v. Allahabad Development Authority

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