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**Anurag Pathak Vs. Allahabad Development Authority, Allahabad and Another**

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**SooperKanoon Citation : [sooperkanoon.com/451952](http://sooperkanoon.com/451952)**

**Court : Allahabad**

**Decided On : Sep-23-1997**

**Reported in : 1998(1)AWC225; (1997)3UPLBEC1710**

**Judge : R.R.K. Trivedi and ;M. Katju, JJ.**

**Acts : [Constitution of India](#) - Article 14**

**Appeal No. : C.M.W.P. No. 25763 of 1997**

**Appellant : Anurag Pathak**

**Respondent : Allahabad Development Authority, Allahabad and Another**

**Advocate for Def. : Amarjit Singh, Adv.**

**Advocate for Pet/Ap. : J.N. Chaturvedi, Adv.**

**Judgement :**

**R.R.K. Trivedi and M. Katju, JJ.**

1. This writ petition has been filed for the relief to quash the relevant provision in Rule 1.5 of Part two of the Building Construction bye-laws of the respondent No. 1 by which it has been provided that the land having 200 sq. meters area or above

shall alone be allowed for building construction in Civil Lines Zone of Allahabad, and for a mandamus to the respondents to accord sanction to the plan submitted by the petitioner.

2. We have heard the learned counsel for the petitioner and Shri Amarjit Singh, learned counsel for the respondents. By order dated 6.8.1997, learned counsel for the respondents was granted time for filing counter-affidavit. However, no counter-affidavit has been filed. Learned counsel for the respondents submitted that writ petition may be heard and decided finally without counter-affidavit.

3. The petitioner is an advocate practicing in this Court. On 28.8.1996 he purchased freehold land together with structures on it No. 3/A1, Drummond Road, Allahabad having an area of approximately 163.5 sq. meters. A true copy of the sale deed is Annexure 1 to the writ petition. The petitioner purchased the said property for constructing a new residential, house and chamber for his practice. On 18.10.1996, he submitted an application in the prescribed form before the respondents for approval of the map for making construction on the said land. It is stated in para 6 of the petition that this map is not being approved due to an arbitrary and illegal provision made in bye-law No. 1.5 of part 2.2 of the bye-laws relating to construction of houses according to which no land having less than 200 sq. meters in Civil Lines area can be permitted for construction. A true copy of the impugned bye-laws has been filed as Annexure 2 to the writ petition.

4. Learned counsel for the petitioner submitted that the aforesaid bye-law contained in the Note under Rule 1.5 is arbitrary, illegal and discriminatory and violative of Article 14 of the [Constitution of India](#). It has been further submitted that under the same bye-laws in the note mentioned below the chart, minimum size of plot is 90 sq. meters in proposed residential areas, by public sector bodies. There is no legal and valid reason for having such a discriminatory provision.

5. It has also been submitted that the petitioner has purchased the property after investing huge amount of hard earned savings, and if he is not allowed to construct residential house and chamber, it shall amount to depriving him of his land and he shall suffer irreparable loss and injury. On the land purchased, the structures were already existing and the petitioner is raising new construction in

place of old rotten buildings. To maintain openness of the area, the petitioner may be required to leave set back on both sides. The respondents can only regulate constructions but they cannot impose a complete prohibition against raising constructions. Learned counsel for the petitioner has also invited our attention that in Civil Lines area there are a number of houses constructed in lesser areas with permission of respondents.

6. The learned counsel for the respondents on the other hand submitted that the object behind the impugned bye-laws is to maintain openness of the Civil Lines area, thus to prevent small structures. It has also been submitted that Civil Lines is a prime area of the city and special provisions are justified for maintaining its beauty and attraction.

7. We have thoroughly considered the rival submissions of learned counsel for the parties and have also gone through the impugned bye-laws. The impugned bye-law is bad in law as it contains a total prohibition against construction over a plot in Civil Lines area which is of an area less than 200 sq. meters. The owner of a plot normally has an unquestionable right to construct over the land according to his requirement. This important civil right of enjoyment of property can only be subject to reasonable restriction imposed for regulating the construction of buildings to achieve a definite object in the interest of society in general, to maintain beauty and attraction of the area, to improve living conditions, to prevent traffic obstructions and maintain ecological and environmental balances. The purposes mentioned here are only illustrative. There may be many others. If the restriction imposed by the impugned bye-laws is considered from this angle, it cannot be justified in any manner. The petitioner could be permitted to construct with certain conditions to achieve the above objects, by leaving a little more area open.

8. The problem may be considered from another angle also. There is already in existence an old structure standing on this land which the petitioner has purchased with open land. The question is whether he should be permitted to raise a new construction in place of the old one according to his present needs? In our opinion, he cannot be prevented from replacing the old structure by a new building. In Civil Lines area, there are huge bungalows, mostly over leased lands, which are being

now converted into freehold rights over such lands. An example may be taken of a bungalow which has been inherited by several successors so as that on partition their shares fall below 200 sq. meters and the structure already in existence goes in the share of one of them. Shall it be proper. and reasonable to prohibit others from having separate residences on open land coming in their share? In our opinion, that shall be highly unreasonable and arbitrary. The concept of Civil Lines came in existence during colonial rule, which has lost its relevance and purpose in present days. It is simply an attempt to continue an anachronistic concept in modern and free India. The respondents cannot be allowed to discriminate between the citizens of this city merely on the basis of their living in different areas. All the areas should be developed with the same objects and zeal to make their living convenient and higher.

9. In this connection, it is very important and relevant to note that respondents are realising tax and fees from the citizens of this city under uniform laws and bye-laws and not on the basis of the areas where they are residing. Thus, in the circumstances, the respondents are also under legal obligation to develop all the areas uniformly unless there is some strong and special reason to discriminate which may be justified in law.

10. In our opinion, the condition that no construction shall be allowed on plots of area less than 200 sq. meter is also violative of Article 14 of the Constitution for the reason that it discriminates between persons who can afford having at least 200 sq. meters land and those who cannot afford it. Thus it discriminates between rich and poor, which is totally against the goal of social and economic justice set up by our Constitution. Learned counsel for the respondents could not give any proper and valid justification for restricting the construction of houses in Civil Lines area in favour of those only who hold more than 200 sq. meters land. The respondents have failed to establish any nexus of the impugned restriction, with any object justified in law set by them.

11. Hence this petition is allowed. The note 1, provided below the chart under bye-law 1.5 of part 2.2 of the bye-laws by which it has been provided that land having less than 200 sq. meters area shall not be permitted to be used for making

construction, is quashed. The respondents are directed to accord sanction to the map submitted by the petitioner within two weeks of production of certified copy of this order in accordance with law, but ignoring the aforesaid note 1. No order as to costs.

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