

Ashok Kumar Singh Vs. Collector

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Court : Allahabad

Decided On : Mar-03-2004

Reported in : AIR2004All234; 2004(2)AWC1729

Judge : V.M. Sahai and ;Krishna Murari, JJ.

Acts : Uttar Pradesh Roadside Land Control Act, 1945 - Sections 3, 3(1), 6(6) and 13(2); Uttar Pradesh Roadside Land Control Rules, 1964 - Rule 7 and 7(1); [National Highways Act, 1956](#)

Appeal No. : C.M.W.P. No. 45152 of 1999

Appellant : Ashok Kumar Singh

Respondent : Collector

Advocate for Def. : S.C.

Advocate for Pet/Ap. : V. Singh, Adv.

Disposition : Petition dismissed

Judgement :

V.M. Sahai, J.

1. The petitioner was appointed dealer by the Indian Oil Corporation for Liquid Petroleum Gas (in brief the LPG) at Tilhar, district Shahjahanpur, He purchased a

land on 30.5.1986 by registered sale deed on Tilhar Road. He was granted licence on 14.7.1986 by the Government of India, Department of Explosives for construction of godowns for storage of LPG on 5.7.1986. The Municipal Board sanctioned the map of the petitioner for construction of show room and godown. The petitioner on 16.7.1986 made an application for permission to the District Magistrate, Shahjahanpur for construction for godown and showroom on National Highway No. 24, Lucknow-Bareilly Road and submitted the sanctioned map along with other papers as provided by Section 6 of the U. P. Roadside Land Control Act, 1945 (in brief the Act). The application of the petitioner was sent by the office of the District Magistrate on 18.7.1986 to the Resident Engineer, National Highway, Shahjahanpur. The petitioner did not receive any communication from the office of the District Magistrate and after expiry of about three months period on 18.10.1986 he presumed that the permission for construction of godown and showroom has been deemed to be granted under Section 6(6) of the Act. Therefore, he constructed the godown and the showroom at a distance of 65 feet from the centre of the road and opened Tilhar Gas Agency.

2. The State of Uttar Pradesh filed a case under Section 4 (1) of the U. P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 before the Prescribed Authority, Tilhar, Shahjahanpur. The prescribed authority on 23.4.1993 dismissed the case and dropped the proceedings against the petitioner. Thereafter the Resident Engineer, National Highway filed an application on 25.6.1993 before the Collector under Section 13 (2) of the Act for demolition of godown and showroom on the ground that it had been constructed in the controlled area without obtaining prior permission of the Collector. The Collector on 6.12.1993 issued notice, which was replied by the petitioner. On behalf of the Resident Engineer Sri Ram Prakash Agarwal, Junior Engineer filed his affidavit in support of the case. A report was called by the Collector from the Tehsildar who submitted his report on 19.5.1997 along with a site plan. The Collector on 15.9.1999 directed demolition of the showroom and the godown being within 110 feet from centre of the road. The order dated 15.9.1999 has been challenged by the petitioner in this petition.

3. We have heard Sri V. Singh, learned counsel for the petitioner and learned standing counsel appearing for the respondents. The learned counsel for the

petitioner has urged that the petitioner had applied for permission to the Collector in writing on 16.7.1986 to construct the showroom and the godown and since no order was passed on this application by the Collector, nor any communication was received by him, therefore, in view of Section 6 (6) of the Act, the permission was deemed to have been granted without any condition and the constructions were not liable to be demolished. He further urged that Rule 7 of the U. P. Roadside Land Control Rules, 1964 (in brief the Rules) provides that the construction of the building should not be allowed from the centre line of any road on National and Provincial Highways in open and agricultural areas 75 feet and in urban and industrial area 60 feet. Since the construction of the petitioner had been made at a distance of about 65 feet from the centre of the road on the national highway in an urban area, therefore, the construction of the petitioner was within permissible limits and it could not be demolished and the impugned order passed by the Collector was liable to be quashed.

4. On the other hand, learned standing counsel for the respondents has placed reliance on a notification dated 9.2.1956 and has urged that the petitioner had constructed his showroom in a controlled area on a National Highway in urban area within 110 feet from the centre of the road, therefore, the constructions were illegal and the impugned order did not suffer from any error of law.

5. The aims and object of the Act was to check the growing tendency to extend the building over the road resulting in congestion and obstructing smooth and convenient movement of traffic, therefore, the Act was enacted as far back as 1945.

6. Section 3 (1) of the Act reads as under :

'3. (1) The State Government may, by notification in the Official Gazette declare any land within a distance of four hundred and forty yards from the centre line of any road to be a controlled area for the purposes of this Act :Provided that in the case of a National Highway the highway itself shall not be deemed to be a controlled area.'

7. From perusal of this Section 3 (1) it is clear that the State Government could issue a notification declaring any land within a distance of 440 yards to be controlled area. In exercise of this power the State Government issued Notification No. 6998-M.S./XXIII-PWC-193-C-47, dated 9.2.1956 under the Act declaring 220 feet of the road as controlled area. The relevant notification is extracted below :

'No. 6998-M.S. /XXIII-PWC-193-C-47.--With reference to this department Notification No. 607-C/XXIII-193-C-47, dated May 1, 1952, issued under Sub-section (2) of Section 3 of the U. P. Roadside Land Control Act, 1945 (U. P. Act No. X of 1945), the Governor, after considering the report made under Sub-section (4) of the said section is pleased, under Sub-section (5) (b) thereof, to declare the land described in the Schedule hereto annexed to be controlled areas for the purpose of the said Act :

Schedule

Description of the lands declared to be controlled areas.

The lands lying on either side of and within boundary lines drawn parallel to the centre line of the road described below at a distance of two hundred and twenty feet from it.

Sl. No.

Description

Approximate length of the road

Mauza or revenue estate Included in whole or part in the area declared to be controlled areas

Pargana

District

1

2

3

4

5

6

M.

Fr.

Ft.

(1)

Lucknow-Bareilly Road

0

3

250

Panra

Shahjahanpur

Shahjahanpur

(2)

Ditto

0

1

0

Girl

Do

Do

(3)

Ditto

0

7

550

Itoria

Do

Do

(4)

Ditto

1

0

0

Bartara

Do

Do

(5)

Ditto

0

0

110

Jhua Kalan

Do

Do

(6)

Ditto

0

3

370

Chiswan

Do

Do

(7)

Ditto

D

5

620

Bhatlyara

Do

Do

(8)

Ditto

1

3

30

Jamka

Do

Do

(9)

Ditto

0

6

205

Jomohl

Do

Do

(10)

Ditto

1

7

495

Ballya

Do

Do

(11)

Ditto

0

5

580

Ahmadpur Nayazpur

Do

Do

(12)

Ditto

I

6

410

Sahajahanpur

Do

Do

(13)

. Ditto

0

3

410

Ditto

Do

Do

(14)

Ditto

1

5

0

AzIzganJ

Sadar

Do

(15)

Ditto

0

1

295

Sahajahanpur

Sahajahanpur

Do

(16)

Ditto

0

4

416

Kakra

Do

Do

(17)

Ditto

I

0

330

Rahman Nagar

Do

Do

(18)

Ditto

0

5

330

Ditto

Do

Do

(19)

Ditto

0

3

145

Bemlyahar

Do

Do

(20)

Ditto

0

3

248

Gopalpur

Do

Do

(21)

Ditto

1

1

80

Nagartya

Do

Do

122)

Ditto

0

6

371

Banthra

Do

Do

(23)

Ditto

0

7

290

Ditto

Do

Do

(24)

Ditto

1

0

330

Kapsenda

Do

Do

(25)

Ditto

0

3

335

Gorgala

Do

Do

(26)

Ditto

0

6

495

Ferozpur

Do

Do

(27)

Ditto

0

4

330

Khizrabad

Do

Do

(28)

Ditto

0

3

485

Tilhar

Do

Do

(29)

Ditto

2

2

0

Ditto

Do

Do

(30)

Ditto

0

1

0

Mansoorpur

Ttihar

Do

(3D

Ditto

0

6

300

Wanheli

Do

Do

(32)

Ditto

0

4

240

Wanhela

Do

Do

(33)

Ditto

0

2

150

Blithla

Do

Do

(34)

Ditto

0

7

220

Do

Do

Do

(39

Ditto

0

4

440

Kharya Sakloo

Do

Do

(36)

Ditto

1

2

200

Feelnagar

Do

Do

(37)

Ditto

1

1

400

Miranpur-Katra

Do

Do

(38)

Ditto

0

6

290

Ditto

Do

Do

By Order,

H. A. Siddiqi,

Secretary.'

8. The petitioner has not challenged the notification or its validity in this writ petition. It is clear from perusal of the notification of 1956 that 220 feet on either side from the center of the road from Panra to Miranpur Katra on Lucknow-Bareilly Road was declared to be controlled area and no constructions could be made without the permission of the Collector.

9. It was urged by learned counsel for the petitioner that the [National Highways Act, 1956](#), a Central Act came into force on 15.4.1957, therefore, the notification issued by the State Government under the State Act could not survive. He urged that the road in dispute being a National Highway is covered by the [National Highways Act, 1956](#) and any notification issued under the U. P. Act prior to 1957

cannot be given effect to after 15.4.1957. This argument of the learned counsel for the petitioner is devoid of any merit. This question had been considered by a Division Bench of this Court in *Sub-Divisional Officer, Hasanganj, district Unnao and Ors. v. Mohammad Bashir*, 1966 ALJ 257. It was held as under :

'The National Highways Act was not in force on the date of the issue of the notification and the road did not vest in the Union Government. Once the notification was validly issued, the land on both sides of the road mentioned in the notification became controlled area. The notification did not cease to be valid merely because subsequently the road became a national highway. Under the National Highways Act it only vested in the Union Government ; even if it be said that this meant that it was to be developed and maintained by the Union Government and that the responsibility of the State Government to develop and maintain it ceased, it does not follow that the notification which was valid at the time of its issue became invalid. The National Highway Act was, not given retrospective effect and the Lucknow-Jhansi road became a National Highway only with effect from 15.4.1957 and not with effect from any earlier date. The National Highway Act does not contain any provision laying down that any notification issued by the State Government under Section 3 (1) of the U. P. Act would become null and void with effect from 15.4.1957, if the road became a National Highway. Sub-section (7) of Section 3 made it clear that the notification was to remain in force until it was revoked ; it was not revoked by the State Government and no provision laid down that it was to be deemed to be revoked on the passing of the National Highway Act. Once the land on the sides of the road was declared to be controlled area, it remained controlled area even though the road became a National Highway and ceased to be 'road'.'

10. The learned counsel for the petitioner then urged that Rule 7 (1) (ii) provides for the principles on which the Collector could grant permission. Since the permission sought was within the guidelines as provided in the rule, the Collector should have granted permission. In any case the Collector having failed to grant permission or pass any order within three months, the permission would be deemed to have been granted under the rule. This rule cannot be read in isolation. To appreciate it, it is necessary to examine in brief, scheme of the Act. Section 3

empowers the State Government to declare any land within a distance of four hundred and forty yards from the centre of any road to be controlled area. The effect of a notification issued under this section is provided for in Section 5 of the Act. It prohibits erection or re-erection of any building in a controlled area notwithstanding anything contained in any other law except with the previous permission of the Collector. Section 6 entitles any person desiring to obtain permission under this section by making an application in such form and containing such information as may be prescribed. Section 17 empowers the State Government to make rules providing for the manner in which an application under Sub-section (1) of Section 6 shall be allowed. Rule 7 has been made in exercise of power under Section 17 and provides the principles on which permission can be granted. We may now extract Rule 7 as below :

'Principles on which permission will be granted.--In determining the grant of permission on an application, the Collector shall take into consideration the following :

(1) (i) Bus stand should be set back sufficiently from the general building line limit prescribed for the road so as to permit of a service road subject to a minimum distance of 100 feet from the centre of the road. Access to the stand should be limited to the one point on the main road.

(ii) Construction of buildings shall not be allowed within the building lines, i. e., within the distances specified below from the centre line of any road of the description given in the following table :

Sl.No.

Congestion of roads

Open land

Urban hland

(1)

(2)

(3)

(4)

(1)

National and Provincial Highways

.

75

60

(2)

Major District Road

.

60

45

(3)

Other District Roads

.

SO

30

(4)

Village Roads

.

20

20

(5)

Cement Concrete Tracks

.

30

30

(6)

Motor Roads (In hill)

.

50

Question does not arise.

(7)

Bridle Roads (In hills)

.

25

Ditto

(2) The opening of sullage towards the road shall not be permitted.

(3) The approach should be in such a manner as not to interfere with or endanger the flow of traffic on the road.

(4) No construction or excavation likely to affect public health shall be allowed within the controlled area except after obtaining the advice of the Health Officer.'

11. In the instant case we are concerned with construction of building, therefore, Sub-rule (ii) of Rule 7 requires examination. A bare perusal of the rule indicates that it prohibits Collector from granting permission within the building lines. The word building line is explained to mean within the distance specified in the chart from the centre line. It is thus clear that the Collector cannot grant permission for construction in a controlled area within the building line. Since the petitioner had applied for permission on a National Highway in Urban and Industrial area, no permission could have been granted within 60 feet from the centre line of the road. The petitioner's construction is within this area as it is clear from the Tehsildar's report which is extracted below :

^iwoZ lwpuk ds vuwlkj okn la[k12 /kkjk 13 2 U.P.R.S.L.Control Act ds vUrxZr fuEukafr O;kfDr;ksadh mifLFkfr esa iSekb'k dh A

xSl ,tsUlh dk dk;kZy; IM+d ds e?;ls 58* 6** ij fufeZr gS rFkk xSl ,tsUlh dh xksnke dh pkjnhokjh IM+d ds e?; ls65*& 6** ij fufeZr gS rFkk dk;kZy; dk nf{k.kh dksuk IM+d ds e?; ls76*&6** ij rFkk xksnke dh pkjnhokjh dk nf{k.kh dksuk IM+d ds e/; ls116*&6** ij fLFkr gS A

jk- fu-] frygj

19-5-97

g- jk/k';ke**

g- vfuy prqosZnh

g- '.k dqqqqekj

12. The next question is whether the failure of the Collector to pass any order on the application within three months resulted in grant of deemed permission under Section 6 (6) of the Act. The sub-section is extracted below :

'(6) If at the expiration of a period of three months after an application under Sub-section (1) has been made to the Collector no order in writing has been passed, the Collector's permission shall be deemed to have been given without the imposition of any conditions.'

13. It is true that if the Collector does not pass any order under Section 6 (6) of the Act within a period of three months, then in law it would be deemed that permission for making the construction has been granted by the Collector. Section 6 (1) clearly provides that an application to obtain permission from the Collector for making construction has to be made in writing to the Collector in such form and containing such information as may be prescribed. In First Schedule, Form I has been prescribed which is as under :

'FIRST SCHEDULE

FORM I

(Referred to in Rules 3, 4 and 5)

Form of Application

To,

THE COLLECTOR.....

Sir,

In pursuance of the provisions of Sub-section (1) of Section 6 of the U. P. Roadside Land Control Act, 1945 (U. P. Act No. X of 1945), I/we, seek permission to..... In the controlled area adjacent to Road.....

The following documents as required by the rules are attached :

(a) Certified extract of village records about the land in question.

(b) Site-plan.

(c) Building plan.

(d) Specification of the proposed construction.

(e) Further information (if any).

Yours faithfully.

Signature

Dated :

Full address of the applicant.....'

14. We have examined the application dated 16.7.1986 filed as Annexure-3 to the petition. We find that the application of the petitioner filed under Section 6 (1) of the Act was not in the prescribed form as mentioned in the First Schedule nor the documents required to be filed along with the application had been submitted by the petitioner along with his application. Therefore, the application of the petitioner was not in accordance with the provisions of Section 6 (1) of the Act. We are of the opinion that in the absence of any proper application made by the petitioner, the permission cannot be deemed to have been granted by the Collector under Section 6 (6) of the Act.

15. The learned counsel for the petitioner has lastly urged that he had made constructions in the year 1986 and is running Tilhar Gas Agency in the showroom and godown and the constructions may not be demolished. We have entered in 21st Century. The State's highways are under tremendous pressure due to increase in the traffic. Free flow of the traffic on the highways cannot be disturbed mainly because the petitioner has made the construction of showroom and the godown illegally near the road. The petitioner does not have any right to make construction next to the road. The Act clearly provides in Section 3 (1) of the Act that the State Government could notify upto an extent of 440 yards to be a controlled area. It clearly gives a warning to the citizens to keep off the road and not to make any construction, as no one has got any right to come to the controlled area. The breadth of the road is reserved for future planning of the road

of the highways. It is matter of common knowledge that roads are being widened and at many places four lane roads are being constructed to meet the ever increasing need of the traffic. Therefore, in public interest constructions should not be made in the controlled area and if any construction has been made illegally, it requires to be demolished. The public interest is paramount.

16. Reliance was placed on an order dated 7/9.9.1998 passed by the Collector in case of another person who too had not made the application in proper form. It is sufficient to say that an erroneous or an illegal order does not create any right in favour of a petitioner to claim that similar illegality be permitted.

17. We are aware that only a portion of petitioner's construction is within the building line but we are not inclined to grant any relief, as the application of the petitioner was not in accordance with law.

18. The writ petition fails and is accordingly dismissed.

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