

The Methodist Church in India, Bareilly Vs. the Bareilly Development Authority and anr.

The Methodist Church in India, Bareilly Vs. the Bareilly Development Authority and anr.

SooperKanoon Citation : sooperkanoon.com/464965

Court : Allahabad

Decided On : Jan-11-1988

Reported in : AIR1988All151

Judge : S.K. Dhaon and ;D.S. Sinha, JJ.

Acts : [Constitution of India](#) - Article 226; Uttar Pradesh Urban Planning and Development Act - Sections 14

Appeal No. : Civil Misc. Writ Petn. No. 11369 of 1987

Appellant : The Methodist Church in India, Bareilly

Respondent : The Bareilly Development Authority and anr.

Advocate for Def. : Murli Dhar, Adv. and ;Standing Counsel

Advocate for Pet/Ap. : Shashi Nandan, Adv.

Disposition : Petition allowed

Judgement :

D.S. Sinha, J.

1. In the instant petition the Methodist Church in India, Bareilly, had challenged the two officers of the Deputy, Secretary, Bareilly Development Authority, Bareilly, dt. 17-6-1987 and 15-7-1987, true copies whereof are enclosed as Annexure V to the petition, and Annexure III to the affidavit, filed in support of the amendment application respectively. Through these orders the constructions, being raised by the petitioner, have been declared illegal and it has been called upon to demolish them. The events, giving rise to the instant petition, are as follows :

2. On 14-3-1983, the petitioner submitted to the Bareilly Development Authority, Bareilly, hereinafter referred to as the Development Authority, a plan for approval and permission under Section 14 of the U.P. Urban Planning and Development Act, 1973 hereinafter called the Act for raising certain constructions at 95, Civil Lines, Bareilly. The plan was approved and the requisite permission for raising constructions was accorded by means of an order dt. 11-11-1983, a true copy whereof is Annexure I to the petition. This order was subject to several conditions. One of the conditions, namely, condition No. 6, was that the period of approval and permission would be three years and in the event of non-completion of the construction within the said period fresh approval and permission would have to be taken for raising the remaining constructions.

3. Only after about two and a half months of the approval and permission a communication dt. 27-1-1984, true copy whereof is Annexure II to the petition, was issued from the office of the Development Authority, purporting to inform the petitioner that by means of an order dt. 24-1-1984 the plan submitted by the petitioner had been rejected. The actual order dt. 24-1-1984, referred to in the said communication, is Annexure 9 to the counter-affidavit of Sri Varma Jeet, Deputy Secretary, Development Authority, files along with the application, praying the Court to vacate the ex parte interim order.

4. Thus two conflicting orders, one approving the plan and according permission to raise constructions, and, the other rejecting the plan submitted by the petitioner, creating an embarrassing situation, came into existence. Quite naturally, it was a difficult situation for the petitioner and, it appears, the matter was taken up to the Government of Uttar Pradesh. The Government, after considering the facts and

circumstances of the case, came to, the conclusion that the entire matter ought to be reconsidered. Accordingly, the Deputy Secretary, Avas Anubhag-3 of the U.P. Government wrote a letter dt. 8-4-1985 to the Development Authority, advising reconsideration and a fresh action according to law. This letter is on record as Annexure III to the writ petition.

5. In pursuance of the advice of the Government tendered to it the Development Authority reconsidered the entire matter and took a fresh decision to the effect that the approval and permission, accorded on 11-11-1983, would stand restored and be operative, and the order of cancellation dt. 24-1-1984 would, in the circumstances stated in the file, become ineffective. This decision of the Development Authority was communicated to the petitioner by means of a letter dt. 30-5-1985. A true copy of this letter dt. 30-5-1985. is Annexure IV to the petition.

6. The net result was that the order dt. 11-11-1983, approving the plan and according sanction to raise constructions, which remained inoperative after the order dt. 24-1-1984. revived and became operative on 30-5-1985. entitled the petitioner to proceed with the constructions on the basis of the approval and permission granted by the Development Authority vide order dt. 11-11-1983. And the petitioner embarked upon the proposed constructions.

7. Suddenly, the Development Authority passed the impugned order dt. 17-6-1987, purporting to be under Sub-section (1) of Section 28 of the Aqt, declaring the constructions, raised by the petitioner, to be unauthorised and calling upon it to stop further constructions immediately. The ground for passing the impugned order, as disclosed in the order, was the expiry of the period of approval of the map. This order dt. 17-6-1987, which is Annexure V to the petition, was served on the petitioner on 19-6-1987.

8. Feeling aggrieved by the above order of the Development Authority, dt. 17-6-1987, the petitioner instituted this petition on 23-6-1987. The petition was directed to be listed on 7-7-1987. It, however, came before one of us (Hon. S.K. Dhaon, J.) on 17-7-1987. The petition was admitted and the operation of the order dt. 17-6-1987 was stayed until further orders.

9. In the meantime the Development Authority passed another order dt. 15-7-1987 in the purported exercise of the powers under Sub-section (1) of Section 27 of the Act again declaring the constructions, being raised by the petitioner, to be unauthorised and calling upon it to demolish the same within a period of 30 days. The petitioner has challenged this order also through requisite amendment application, which was allowed by us on 4-11-1987.

10. It appears that on 9-9-1987 the instant petition was reported to be cognizable by a Division Bench. Consequently, the petition came up for admission again before us.

11. The respondents have entered appearance and filed counter-affidavits. Rejoinder-affidavits on behalf of the petitioner have also been filed.

12. In view of the fact that the circumstances of the case warrant early adjudication of the controversy, we have, with the approval and consent of the learned counsel for the parties, heard the petition finally and proceeded to decide it at the admission stage itself.

13. The learned counsel for the petitioner contended that inasmuch as the order dt. 11-11-1987, whereby the plan submitted by the petitioner was approved and permission toraise constructions was accorded, stipulated, vide condition No. 6, that the petitioner would have three years to complete its constructions and the said order having been rendered nugatory by means of the order dt. 24-1-1984 and it having been revived only on 30-5-1985, the constructions being raised by it could not be treated to be beyond the time granted, viz. three years on 17-6-1987. And that being so, the Development Authority acted illegally in stopping the constructions and directing demolition thereof on the ground of the expiry of the period of approval and permission.

14. For the Development Authority, it was contended that the sanction dt. 11-11-1983 was forged and fictitious; that the order dt. 7-6-1987 merged into the order dated 15-7-1987, passed under Sub-section (1) of Section 27 of the Act and the said order being appealable under Sub-section (2) of Section 27 of the Act, the petitioner had an effective alternative remedy, the discretionary jurisdiction under

Article 226 of the Constitution should, therefore, be not exercised in favour of the petitioner; that in any case the period of three years, stipulated in the order dt. 11-11-1983, could not be extended by exclusion of the period during which the said order remained under eclipse; and finally that the constructions being raised by the petitioner were in contravention of the master plan of the city of Bareilly, prepared under U.P. (Regulation of Buildings Operations) Act 1958, read with the directions issued thereunder and if they were allowed to proceed that would be illegal, this Court should, therefore, decline to exercise discretionary jurisdiction in favour of the petitioner.

15. The fate of the instant case turns on the answer to the question whether on 17th June, 1987, when the order under Section 28(1) of the Act was passed, the period of validity of the approval and permission dt. 11-11-1983 had exhausted. If the answer is in negative it would mean the existence of a valid approval and permission wiping out the very fulcrum of the entire proceedings which culminated into the two orders impugned in this petition.

16. Condition No. 6 of the order of approval and permission dt. 11-11-1983, which stipulated the period of its validity, reads as under :

'Svikriti ki avadhi teen varsh hai. Teen varsh tak nirman karya poora na hone ki dasha men shesh nirman karya hetu punah svikriti prapt karni hogi.'

17. From a bare perusal of the above condition it is obvious that the approval and permission was to be operative till 10th Nov., 1986 on which date the period of three years expired. But it was rendered futile on 24th Jan., 1984 when the Development Authority passed order rejecting the plan submitted by the petitioner. On the strength of the approval and permission dt. 11-11-1983 it could certainly not have been possible for the petitioner to proceed with the constructions in question after 24-1-1984. This anomalous position continued till 30-5-1985 when the order dt. 24-1-1984 was declared by the Development Authority to be in effective and order dt. 11-11-1983 according approval and permission was restored and made operative. Quite apparently, the petitioner remained precluded from proceeding with the proposed constructions during the period between 24-1-1984 and 30-5-1985 on account of the order of rejection of the plan by the

Development Authority itself and not on account of any lapse on its part. The said period, which works out to be nearly one and a quarter year, has, therefore, to be excluded while computing the period of validity of the approval and permission dt. 11-11-1983 stipulated by condition No. 6.

18. It would be highly unjust, totally unfair and most inequitable to permit the Development Authority to take advantage of its own wrongful act of rendering the order of approval and permission dt. 11-11-1983 nugatory, futile and ineffective by passing the conflicting order dt. 24-1-1984 which had to be recalled on 30-5-1985 on the advice of the Government of Uttar Pradesh.

19. If we reckon the period of three years of validity of the approval and permission after discounting the period of one and a quarter year during which the petitioner was illegally prevented from raising constructions on account of the order dt. 24-1-1987 the approval and the permission would continue to be effectively operative till about 10th March, 1988 and the constructions raised by the petitioner cannot legally be viewed to be unauthorised. The two impugned orders dt. 17-6-1987 and 15th July, 1987, passed under Sections 28(1) and 27(1) of the Act respectively, which are founded on the misconceived ground of expiry of the period of validity of approval and permission, crumble down.

20. The first contention raised on behalf of the Development Authority to the effect that the order of approval and permission dt. 11-11-1983 was forged and fictitious is absolutely hollow. The authenticity of the order dt. 11-11-1983 which is being doubted for the first time before us was never under shadow at any point of time earlier. On the other hand the Development Authority itself re-affirmed it by means of its order dt. 30-5-1985.

21. 'Rule of alternative remedy, relied upon on behalf of the respondents, does not oust the jurisdiction of this Court to grant relief under Article 226 of the Constitution if it is found necessary for promotion of justice and prevention of injustice which is the primary object of the constitutional provision. The impugned orders dt. 17-6-1987 and 15-7-1987 have already been demonstrated to have been passed on misconceived ground of expiry of the period of validity of the approval and permission granted to the petitioner under Section 14 of the Act. It would,

therefore, lead to miscarriage of justice to relegate the petitioner to the alternative remedy of appeal under Section 27(2) of the Act.

22. The third contention of the respondents that the period of three years, stipulated in the order dt. 11-11-1983, could not be extended by exclusion of the period during which the said order remained under cloud has no merits. We have already held earlier that for determining the period of validity of the approval and permission the period of one and a quarter years, during which the order dt. 11-11-1983 remained ineffective, will have to be deducted.

23. Last submission of the respondents that this Court should decline to exercise discretionary jurisdiction under Article 226 of the Constitution in favour of the petitioner as the constructions being raised by the petitioner were contrary to the master plan of the city of Bareilly is stated only to be rejected inasmuch as this is not the ground on which the impugned orders of the Development Authority are founded. Moreover, the question whether the constructions being raised by the petitioner are in contravention of the master plan is basically a question of fact which should not be investigated by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution.

24. In the result, the petition succeeds and is allowed. The impugned orders dt. 17-6-1987 and 15-7-1987, passed by the Development Authority under Sections 28(1) and 27(1) of the Act respectively, are quashed. The respondents are commanded to refrain from demolishing the constructions already raised by the petitioner and also not to interfere with the constructions to be raised by it on the basis of the approval and permission dt. 11-11-1983 till April, 1988. The parties shall bear their own costs.