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Devi Prasad and Others Vs. Allahabad Development Authority and Another

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Court : Allahabad

Decided On : Sep-17-1998

Reported in : 1999(2)AWC1241

Judge : Palok Basu and ;M.L. Singhal, JJ.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151 - Order 9, Rule 13;

[Constitution of India](#) - Article 226; Indian Easement Act - Sections 60

Appeal No. : Civil Misc. Application No. 8104 of 1997 in C.M.W.P. No. 18274 of 1998

Appellant : Devi Prasad and Others

Respondent : Allahabad Development Authority and Another

Advocate for Pet/Ap. : Shri. H.S. Nigam

Judgement :

M.L. Singhal, J.

1. This is a petition under Order IX. Rule 13, read with Section 151 of the Code of Civil Procedure for staying the operation of the order dated 15th October, 1997, passed in Civil Misc. Writ Petition No. 18274 of 1996. We have heard Shri H.S. Nigam, learned counsel for the applicants, Shri Ajit Kumar, learned counsel for the opposite parties--original petitioners and Shri J. N. Sharma, for the Allahabad

Development Authority,

2. There is a Commercial Complex near Chowk Ghantaghar, Allahabad, known as Jawahar Lal Complex, constructed by the respondent Allahabad Development Authority. In the said Complex, shops were allotted on the ground floor, first floor and the second floor. Present applicants, twenty-two in number, have been allotted shops on the ground floor of the said Complex. On the ground floor of the said Complex as per scheme originally announced, the grills were affixed in the shops of the applicants allotted on the ground floor. With the permission of the Allahabad Development Authority, the applicants removed the iron grills and replaced them by shutters, opening on the roadside. The original petitioners had grievance against the said act of the present applicants as by the said act, the parking facility for the customers has been eliminated affecting the business of the petitioners-allottees of the shops on the first and second floors of the Complex. Certain other facilities are also not being provided by the Allahabad Development Authority and so the allottees of the first floor filed writ petitions under Article 226 of the [Constitution of India](#), which were registered as Civil Misc. Writ Petition Nos. 18274 of 1996, 38022 of 1996, 23722 of 1997, 37527 of 1996, 13342 of 1997 and 12413 of 1993 and after hearing the parties, by the impugned order this Court gave certain directions. By the said order, the permission granted to the present applicants to replace grills by shutter and show case was cancelled, and the applicants were directed to close the shutters and show case within specified period. The present applicants have grievance against the said direction and consequently, have moved the present petition.

3. The first argument advanced by the learned counsel for the applicants is that the impugned direction is prejudicial to the interest of the present applicants, the constructions raised by them have to be demolished, as per orders of this Court, they ought to have been impleaded as parties in the writ petition and without impleading them, the impugned order should not have been passed. The learned counsel relied upon the decision of the Hon'ble Supreme Court in *Prabodh Verma and others v. State of U. P. and others*. AIR 1985 SC 167. About this contention of the learned counsel for the applicants, it may be pointed out that in the writ petition the acts of the Allahabad Development Authority were challenged, the

permission/licence granted to the present applicants was for a period of 1-1/2 years only, granted in the year, 1989, which had expired. The present applicants were not necessary party in the writ petition. However, the present applicants have been heard now and as such, their grievance has been alleviated.

4. The question which arises for adjudication in the case is whether the present applicants have right to replace the grills by shutters and show case in the shops abutting the road. It is not in dispute that in the Commercial Complex as originally notified, there is a provision for grill in the shops of the applicants having shops on the ground floor. Further parking facility has been provided in the Complex near the shop of the present applicants on the road, for the persons entering the Complex. Admittedly, the permission/licence to the present applicants for replacing the grills by shutters and show case was granted in the year 1989 and that for a period of 1-1/2 years only. The Allahabad Development Authority has not extended that permission so the permission/licence granted to the present applicants expired in the year 1990-91.

5. That permission/licence was a temporary permission, which lapses automatically after the expiry of the specified period. The learned counsel for the applicants argued that the said licence/permission was coupled with grant and since the present applicants acting on that licence have raised constructions of permanent nature, the said licence cannot be revoked in view of the provisions of Section 60, clause (b) of the Indian Easement Act. The learned counsel relied upon the decision of Supreme Court in Ram Samp Gupta v. Bishun Narain Inter College and others, 1987 (2) SCC 555. In that case, the Hon'ble Court held that clause (a) and clause (b) of Section 60 are not exhaustive, parties by agreement can make licence irrevocable even if it is not covered by clause (a) or clause (b). The licence is oral, the purpose of its grant and circumstances leading to the grant and also conduct of the parties have to be considered to determine whether it is irrevocable. The facts of the case before the Hon'ble Supreme Court were entirely different as the facts of that case show that in that case, a permanent licence was granted, it is not the contingency in the present case. So the provisions of Section 60(b) of Easement Act will not apply in this case and the decision of the Hon'ble Supreme Court in Ram Samp Gupta v. Bishun Narain Inter College and others

(supra) do not help the present applicants. The period of licence/permission having expired, the Allahabad Development Authority not agreeing to the further extension of the permission, the impugned constructions raised by the present applicants have to be demolished and the original shape shops of the Complex as notified to the allottees of the shops have to be restored.

6. The learned counsel for the applicants also argued that the permission/licence was granted in the year, 1989. The present writ petition filed by the petitioners suffers from lapses and delay. Further in the writ petition, the cancellation of permission/licence was not prayed for and so the permission/licence granted to the petitioners could not be revoked. About this argument of the learned counsel for the applicants, it may be argued that as shown by the documents on the records of the writ petition, the applicants having grievance against the replacement of the grills by the shutters and the show case as it had affected their business.

7. The customers visiting the Complex are denied of the parking facility and the applicants have now opened door on the road, in this state the customers are not coming in the Complex affecting the business of the allottees on the first and the second floor. Further a perusal of the writ petition shows that the applicants have grievances against the replacement of the grills by the shutters and the show case by the applicants and have also prayed for relief for providing the facilities as originally notified.

8. The learned counsel for the applicants has argued that the applicants have not come with clean hands, applicants/allottees of the shops on the ground floor without the permission of the Allahabad Development Authority have removed the grills and put the shutters and the show case. They have completely demolished the Mehsab and put 'Chhajjas' and have made a material alteration. About this argument of the learned counsel for the applicants, it may be pointed out that the shops of the Complex as notified by the Allahabad Development Authority have to be restored and if the applicants-allottees of the shops of the first floor have made any alteration without the permission of the Allahabad Development Authority, the Allahabad Development Authority shall take action for removal of the objectionable

constructions raised by the petitioners of the writ petition allottees on the first floor.

9. In view of the discussions above, we find no reason to modify or stay the impugned order. The application is, therefore, rejected.

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