

**Smt. Durga Devi Vs. State of U.P. and Others**

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**Court :** Allahabad

**Decided On :** Nov-17-2000

**Reported in :** 2000(3)AWC2078

**Judge :** R.H. Zaidi and ;Bhanwar Singh, JJ.

**Acts :** [Uttar Pradesh Urban Planning and Development Act, 1973](#) - Sections 14, 23(1), 27(1 and 10), 32, 41 and 41(3); Uttar Pradesh Municipalities Act, 1916 - Sections 178, 179, 180, 180(3), 222 and 298; [Constitution of India](#) - Article 226

**Appeal No. :** Writ Petition No. 8337 of 1987

**Appellant :** Smt. Durga Devi

**Respondent :** State of U.P. and Others

**Advocate for Def. :** Uma Shankar and ;Surendra P., Advs.

**Advocate for Pet/Ap. :** Raghavendra Kumar Singh, Adv.

**Judgement :**

**R. H. Zaidi and Bhanwar Singh, JJ.**

1. By means of this petition filed under Article 226 of the [Constitution of India](#), petitioner prays for Issuance of a writ, order or direction in the nature of mandamus commanding the opposite parties not to demolish the construction raised by the

petitioner in accordance with the map submitted by her to Nagar Palika, Unnao and to restrain them from realising compounding fee from her. Prayers for declaring the provision of Section 32 of the U. P. Urban Planning and Development Act, 1973, ultra vires the [Constitution of India](#) and for a writ in the nature of certiorari quashing the impugned notification dated 2.4.1986 have also been made.

2. Relevant facts of the case giving rise to the present petition as unfolded in the writ petition, are that the petitioner submitted a building plan along with the notice under Section 178 of the U. P. Municipalities Act, 1916 for short the Act, before Nagar Palika, Unnao on 19.3.1983 for permission to construct a building. For more than 30 days, the petitioner waited for the orders of the Municipal Board but the building plan submitted by her was neither approved nor disapproved within the period prescribed under the law. Therefore, the petitioner made an application on 26.4.1983 under subsection (3) of Section 180 of the Act inviting attention of the competent authority to the building plan submitted by her, as even after service of said application/notice under sub-section (3) of Section 180, no reply was received by the petitioner and her building plan was neither approved nor disapproved by the Municipal Board, the plan submitted by her stood approved. Therefore, after expiry of fifteen days of application dated 26.4.1983, she started construction of the building in accordance with the plan submitted by her and completed the same in October, 1983. It was on 7.12.1983 that Unnao-Shuklaganj Development Authority was constituted by the State Government and notice dated 12.4.1986 under Section 27 (1) of the U. P. Urban Planning and Development Act, 1973, was served upon the petitioner requiring her to show cause as to why building constructed by her be not demolished as the same was stated to have been constructed without obtaining the permission under Section 14 of the said Act. On receipt of the notice, under sub-section (10) of Section 27 of U. P. Urban. Planning and Development Act. 1973, the petitioner submitted her reply stating that the building plan submitted by her to the Municipal Board was deemed to have been sanctioned under sub-section (3) of Section 180 of the Act. Therefore, the said building cannot legally be demolished. On 10.11.1987 a notice calling upon the petitioner to deposit composition fee amounting to Rs. 5.546.20 p. within three days, was served, falling which it was threatened that the map submitted by her

shall be cancelled. On receipt of the said notice, petitioner submitted her reply denying the claim of the respondents and asserted that the building in question was lawfully constructed, same, therefore, cannot be demolished on the ground of alleged want of approval of the building plan. It has also been stated that as the respondents have extended threat to cancel the building plan and to demolish the petitioner's building, she had to make application for permission to deposit the compounding fee. Petitioner, thereafter, filed the present petition in this Court.

3. It was on 10.12.1987 that time was granted to the respondents to file counter-affidavit and this Court further directed the respondents not to demolish the construction of the petitioner.

4. On behalf of the respondents, counter-affidavit has been filed denying the claim of the petitioner. It has been stated that the writ petition filed by the petitioner was liable to be dismissed on the ground of availability of alternative remedy under Section 41 (3) of the Act. However, the facts relating to the service of notices under sub-sections 178 and 180 (3) of the Act have not specifically been denied. Only it has been stated that the building plan and notice were not filed along with the writ petition by the petitioner and only copy of acknowledgment of receipt of the application form, building plan in duplicate and photo stat copy of the registered sale deed, were filed. It has also been asserted that the construction in question was not completed within the time prescribed under the law and that the petitioner herself applied for permission to deposit the compounding fee, therefore, writ petition was liable to be dismissed.

5. Controverting the facts stated in the counter-affidavit, petitioner has filed rejoinder-affidavit reiterating and reasserting the facts stated in the writ petition.

6. Learned counsel for the petitioner vehemently urged that the building plan submitted by the petitioner, under the facts and circumstances of the present case, shall be deemed to have been approved. The petitioner was, therefore, right in constructing the building after expiry of statutory period of one month and fifteen days. The respondents have got no right to demolish the said building. He has also attacked to the validity of Section 32 of the Urban Planning Act and the constitution of the Unnao Development Authority. It was also urged that on the

relevant date, no master plan existed, therefore, respondents could not levy betterment charges, they were also not entitled to recover from the petitioner the compounding fee.

7. On the other hand, learned standing counsel supported the validity of the notice served upon the petitioner and urged that the writ petition was liable to be dismissed on the ground of availability of alternative remedy under Section 41 of the Urban Planning Act and that the petitioner illegally constructed the building in question, therefore, the same was liable to be demolished and the writ petition was liable to be dismissed.

8. We have considered the submissions made by learned counsel for the parties and also perused the record.

9. As noted above, several questions have been raised and pressed by the parties. On behalf of the petitioner. It was urged that the building plan submitted by her shall be deemed to have been approved, therefore, the petitioner was within her right to construct the building in question. If the petitioner succeeds in proving her claim and to show that the building plan submitted by her was deemed to have been approved, then it will not be necessary to examine the validity of the other arguments. We, therefore, proceed to consider as to whether under the facts and circumstances of the present case, the building plan submitted by the petitioner was deemed to have been approved or not. For the said purposes, the provisions of Sections 178, 179 and 180 of the Act, are relevant, which are quoted below ;

(only relevant quoted)

178. Notice of intention to erect building or make well--(1) Before beginning, within the limits of the municipality,

(a) to erect a new building or new part of a building, or

(b) to re-erect or make a material alteration in a building, or

(c) to make or enlarge a well, a person shall give notice of his intention to the board.

179. Plans and specifications required to validate notice.--(1) where a bye-law has been made prescribing and requiring any information and plans in addition to a notice, no notice under Section 178 shall be considered to be valid until the information, if any, required by such bye-law has been furnished to the satisfaction of the board.

180. Sanction of work by board.--(1) Subject to the provisions of any bye-law, the board may either refuse to sanction any work of which notice has been given under Section 178 or may sanction it absolutely or subject to-

(a) any written directions that the Board deems fit to issue in respect of all or any of the matters mentioned in sub-head (h) of heading A of Section 298, or

(b) a written direction requiring the setback of the building or part of a building to the regular line of the street prescribed under Section 222, or in default of any regular line prescribed under that section, to the line of frontage or any neighbouring building or buildings.

(2) in the case of refusal to sanction under sub-section (1) the Board shall communicate in writing the reasons for such refusal to the person giving notice under Section 178.

(3) Should the Board neglect or omit for one month after the receipt of a valid notice under Section 178 to make and deliver to the person who has given such notice an order of the nature prescribed in sub-section (1) in respect thereof, such person may by a written communication call the attention of the board to the omission or neglect, and, if such omission or neglect continues for a further period of fifteen days, the board shall be deemed to have sanctioned the proposed work absolutely :

Provided that nothing in subsection (3) shall be construed to authorise any person to act in contravention of this Act or of any bye-law.

(4) No person shall commence any work of which notice has been given under Section 178 until sanction has been given or deemed to have been given under this section.'

10. A perusal of the statutory provisions noted above reveals that on an application received along with the building plan, the Board may either refuse to sanction any work of which notice have been given under Section 178 or may sanction it as it is or subject to certain directions and conditions, within the time prescribed under the law. In case the Board fails to either approve or disapprove building plan the consequence of its failure would be that the building plan shall be deemed to have been sanctioned. In order to take advantage of sub-section (3) of the Act, the applicant is required to make application to the Board drawing the attention of the Board to the omission or neglect to pass an order and thereafter to wait for fifteen days. Even if after receipt of the application under sub-section (3) of Section 180, the Board does not pass any order disapproving the building plan submitted by the applicant, same is deemed to have been approved. Reference in this regard may be made in the decisions in Improvement Trust of Varanasi v. Dr. M. A. Nomani, 1960 ALJ 89. Nasiruddin v. Emperor : AIR1943 All47 ; Municipal Board, Sikandarabad. Bulandshahr v. Om Prakash, 1971 AWR 877 (HC) and Mt. Bafatan v. Emperor : AIR1933 All617 .

11. In the present case, it has not been disputed by the respondents that the notice as required under Section 178 of the Act was given by the petitioner along with the master plan and other relevant papers on 19.3.1983, which was duly served upon the Municipal Board as it is evident from Annexure-1 to the writ petition within 30 days of the receipt of said notice, no orders were passed, thereafter, the petitioner invited the attention of the Board to her notice and plan submitted on 19.3.1983 by application dated 26.4.1983. Even after receipt of the said application, no orders were passed by theMunicipal Board on expiry of the said period, therefore, the building plan submitted by the petitioner shall be deemed to have been approved. The petitioner thereafter, was at liberty to raise construction in accordance with the building plan, of course not in contravention of the provisions of the Act and of any by-law. The petitioner is not alleged to have contravened any provisions of the Act or any bye-law, therefore, subsequent proceedings taken by the respondents are wholly illegal and without jurisdiction. The respondents had no jurisdiction to serve notice upon the petitioner under sub-section (1) of Section 23 of the U. P. Urban Planning and Development Act. The petitioner might have, under the threat of cancellation of the building plan and

demolition, applied for permission to deposit the compounding fee, but legally she is not required to deposit the same.

12. It is well-settled in law that availability of alternative remedy is no absolute bar for entertaining petition under Article 226 of the [Constitution of India](#). This Court may, in appropriate cases particularly where impugned orders are found to have been passed wholly, illegally and without jurisdiction, entertain a petition and can issue appropriate writ or direction. In the Instant case, as stated above, the orders passed and action taken by the respondents are wholly illegal and without jurisdiction, therefore, present petition cannot be thrown out on the ground of availability of alternative remedy. Submissions made by learned counsel for the respondents, to the contrary, therefore, cannot be accepted.

13. In view of the aforesaid facts. It is not necessary to examine the validity of the provisions of U. P. Urban Planning and Development Act or of the notification dated 7.12.1983.

14. Writ petition succeeds and is allowed in part. Notices dated 2.4.1986 and 10.11.1987 contained in Annexures-4 and 6 are quashed. The respondents are directed not to demolish the constructions raised by the petitioner in accordance with themap submitted by her to Nagar Palika, Unnao and not to realise any composition fee from her.

15. No orders as to costs.

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