

Santosh Kumar Jain and anr. Vs. State of U.P. and anr.

Santosh Kumar Jain and anr. Vs. State of U.P. and anr.

SooperKanoon Citation : sooperkanoon.com/481092

Court : Allahabad

Decided On : Sep-01-2003

Reported in : 2003(4)AWC3103

Judge : M. Katju and ;R.S. Tripathi, JJ.

Appeal No. : C.M.W.P. No. 20464 of 1996

Appellant : Santosh Kumar Jain and anr.

Respondent : State of U.P. and anr.

Advocate for Def. : D. Gupta, ;Ramesh Upadhyaya, ;P.P. Srivastava, ;Hemant Kumar, ;Y.D. Sharma, ;J.P. Gupta and ;S.N. Upadhyaya, Advs. and ;S.C.

Advocate for Pet/Ap. : K.N. Tripathi, ;M.K. Gupta, ;U.N. Sharma and ;V.K. Gupta, Advs.

Disposition : Writ petition dismissed

Judgement :

M. Katju, J.

1. This writ petition was initially filed for a mandamus restraining respondent No. 1 from demolishing the construction over the Plot Nos. 2339 and 2340 at Pala Road, Pargana and Tahsil Koli, district Aligarh and from dispossessing the petitioners.

The petitioners also prayed for a writ of mandamus directing the respondent No. 2, Aligarh Development Authority (A.D.A.) to issue a letter of allotment to the petitioner in respect the said land as per the approval of the Vice-Chairman dated 20.9.1995. By a subsequent amendment the petitioners have also prayed for a writ of certiorari for quashing the order of respondent No. 4 dated 23.10.2001 as published in the Newspaper (Dainik Jagran) dated 1.11.2001 vide (Annexure-18 to the petition).

2. Heard learned counsel for the parties.

3. The petitioners have alleged that they purchased the aforesaid plots by means of a registered sale-deed dated 19.9.1991 from one Onkar Prasad Garg. A true copy of the sale-deed is Annexure-1 to the petition. The petitioners have alleged in para 4 that before purchasing the land they made an enquiry in order to satisfy themselves about the ownership of Onkar Prasad Garg.

4. It is alleged in para 5 of the petition that after obtaining the sale-deed the petitioners took steps to get deep pits filled and made constructions by investing more than Rs. 5 lacs. It is alleged that petitioners have erected a full fledged factory on the said plots in the name and style of M/s. Alka Locks Factory and which covers an area of 622.33 sq. metres of land. The remaining land measuring 1365.67 sq. metres is still vacant over which the petitioners propose to make residential houses for themselves and their employees.

5. It is alleged in para 6 of the petition that sometime in 1995 the petitioners were informed by some persons that the land which they have purchased have been acquired by the Aligarh Development Authority (A.D.A.) and thereafter the petitioners made enquiries and came to know that the aforesaid plots had been acquired by the respondent No. 2, A.D.A. in 1985. It is alleged that Sri Onkar Prasad Garg played fraud on the petitioners and concealed the fact that the land had been acquired by the Aligarh Development Authority. The petitioners bona fide purchased the plots for valuable consideration and invested huge money thereon. In the meantime the respondent No. 2 got a survey conducted and found the factory existing on the site, and threatened to demolish the same. Hence, the petitioners wrote a letter dated 19.8.1995 to the respondent No. 2, Aligarh

Development Authority praying that the land be allotted to them for residential purposes of the staffs and management of the company and that they are ready to pay the market value. The petitioners also enclosed a cheque of Rs. 5 lacs in favour of respondent No. 2 as earnest money. A true copy of the letter dated 19.8.1995 is Annexure-2 to the petition.

6. It is alleged in paragraphs 9 to 13 that the Secretary, Aligarh Development Authority called for a report from the Assistant Engineer/ Assistant Town Planner, Balram Singh who got the site inspected and submitted his report. In that report it was stated if the factory is demolished and the land is reallocated then about 40% of the land would be utilized in constructing road, park etc. and the Aligarh Development Authority would be able to sell only 60% of the total area. However, if the land is allotted to the petitioners then the Aligarh Development Authority would be making huge profits. Hence, recommendation was made in view of the allotment in favour of the petitioners. True copy of the report is Annexure-3 to the petition. Thereupon the Secretary, Aligarh Development Authority made a recommendation to the Vice-Chairman to accept the proposal for allotting the land to the petitioners in terms of the report of Sri Balram Singh, vide Annexure-5. True copy of the endorsement made by the Vice-Chairman is Annexure-6 to the petition. The Vice-Chairman made a noting on the file on 20.9.1995 that he agreed with the proposal to allot the land in favour of the petitioners and the aforesaid resolution be placed for approval of the Board. A true copy of the endorsement dated 20.9.1995 by the Vice-Chairman is Annexure-9 to the petition. In the meantime it is alleged that the respondent No. 2 encashed Rs. 5 lacs sent by the petitioners.

7. In para 24 it is stated that on 5.6.1996 the Executive Engineer, Aligarh Development Authority came to the factory premises and informed the petitioners he had been directed to get the factory demolished. The petitioners contacted the Secretary, Aligarh Development Authority who told them that the Commissioner, Agra Division Agra, who was also the Chairman of the Aligarh Development Authority directed for demolition of the factory premises.

8. It is alleged that a large number of workers are working in the factory and valuable machinery worth more than Rs. 50 lacs along with raw material is lying there. Since there was imminent threat of demolition, this writ petition was filed. By an amendment, application which has been allowed the petitioners have prayed for quashing of the order dated 23.10.2001 vide Annexure-18 to the petition.

9. By the amendment the petitioners have mentioned that they made an application dated 20.12.2000 to settle the matter, but they received a letter dated 9.4.2001 from the Secretary, Aligarh Development Authority stating that petitioners should pay sum of Rs. 1,04,03,204.00 as compounding fee and then the allotment will be done in their favour vide Annexure-16 to the petition. It is alleged in 35 (c) that this demand is wholly arbitrary and It does not reveal how the above figure has been reached. The petitioners have seen an order dated 23.10.2001 published in Dainik Jagran dated 1.11.2001 under Section 28A of the U.P. Urban Planning and Development Act, 1973 stating that the petitioners have made illegal constructions on the land of the Aligarh Development Authority and have constructed a lock factory there and the same should be sealed forthwith. Aggrieved, this petition has been filed.

10. A counter-affidavit has been filed by the Aligarh Development Authority and we have perused the same.

11. In paragraph 4 of the same it is stated that the plots in question were acquired by the Aligarh Development Authority vide notification under Sections 4 and 6 of the Land Acquisition Act, copies of which are Annexures-C.A. 1 and 2. In pursuance of these notifications the land in question was transferred to the Aligarh Development Authority on 23.11.1985. Photostat copy of the document showing delivery of possession to the Aligarh Development Authority on 23.11.1985 is Annexure-C.A.-3. The owner of the land Sri Onkar Prasad Garg filed a Writ Petition No. 5784 of 1983 in this Court challenging the acquisition proceedings. However, that writ petition was dismissed by this Court on 17.7.1985 vide Annexure-C.A.-4. The compensation has also been paid to Sri Onkar Prasad Garg and he had been told that there was no title left with him which could be sold to the petitioners.

12. It is alleged in para 6 of the counter-affidavit that the entire exercise appeared to be a fraudulent act done by the petitioners in connivance with the earlier owner. In para 7 of the counter-affidavit it is alleged that the petitioners knowingly constructed a factory over the land which had already vested in the Aligarh Development Authority without seeking its permission. There are about 800 residential houses of the Aligarh Development Authority besides other private residential houses in the vicinity of the petitioners' factory, and if the said factory is allowed to run, it would lead to environment hazards as the residents of the area were forced to breathe polluted air because of the fuels and other gases emitted by the petitioners' factory. Similar writ petition of Hari Singh being Writ Petition No. 23595 of 1995 and Ratnakar Arya being Writ Petition No. 19491 of 1995 were dismissed by this Court on 30.8.1995 vide Annexure-C.A.-6 to the counter-affidavit.

13. It is alleged in para 8 that the sum of Rs. 5 lacs has been refunded to the petitioners by cheque dated 2.7.1996. In para 9 it is stated that the allotment of the plots was never approved by the Board, On the contrary, the matter was placed before the Board in its meeting held on 30.3.1996. It was resolved therein that grave irregularities had been committed in dealing with the land on which Alka factory was built. The said land had been acquired for residential purpose, and hence construction and continuance of the factory could not have been permitted. It was also stated in the resolution that acceptance of Rs. 5 lacs for converting the land use from residential land to factory purpose was a grave irregularity, and this was done by the then Secretary, A.D.A. without approval of the Vice-Chairman. Hence the money was ordered to be returned and an enquiry ordered, and demolition proceedings were also ordered. A true copy of the resolution Of the. Board dated 30.3.1996 is Annexure-C.A.-7 to the counter-affidavit.

14. The relevant resolution is the second last one in Annexure-C.A.-7, which reads as follows :

^izkf/kdj.k dh Hkwfe ij vcS/k :i ls cuh vydk QSDVh dks Hkwfe vkoaVu ds lEcU/k esa A fodkl izkf/kdj.k }kjk izLrqrfd, x, izLrko dks lfpo vyhx<+ fodkl izkf/kdj.k }kjk i<+dj lquk;k x;kA bl laca/k esa v/;{k@vk;qDr egksn; }kjkfunsZ'k fn;s x;s fd fodkl

izkf/kdj.k }kjk vHkhrd tks dk;Zokgh bl ekeys esadh xbZ gS] mlesa ?kksj vfu;ferrk;sa dh xbZ gSa rFkk vuqmRrjnkf;Roiw.kZdk;Z fd, x, gSa A ;g Hkwfe Hkouksa @ Hkw[k.Mksa gsrq vkoklh; mn~ns'; Is vf/kxzghrdh x;h Fkh A vr% blesa QSDVh dk fuekZ.k fu;ekuqdwy ugha gS A QSDVhcukus esa dkQh le; yxrk gS A QSDVh ds fuek.kZ izkjEHk gksus ds le; lsiw.kZ gksus rd fodkl izkf/kdj.k ds lacaf/kr vf/kdkfj;ksa @ deZpkfj;ksa }kjkD;k izorZu dh dk;Zokgh dh xbZ A bldh lEiw.kZ tkap dh tk; rFkk mRrjnkf;Rofu/kkZfjr fd;s tk;s ,oa muds fo:) vuq'kklukRed dk;Zokgh dh tk; A Hkw&mi;ksxds foijhr vkS|ksfxd mi;ksx ds fy, Hkwfe vkoaVu gsrq lacaf/kr QDVh Is:- 05 yk[k izkf/kdj.k esa tek djf ysuk xEHkhj vfu;ferrk gS A bl laaca/kesa ;g crk;k x;k fd rRdkyhu lfpo] vyhx<+ fodkl izkf/kdj.k Jh vfuy dqekj}kjk mDr /kujkf'k lacaf/kr QSDVh Is tek djkbZ x;h vkSj lEHkor% mik/;{k}vyhx<+ fodkl izkf/kdj.k Is Lohr ugha yh xbZ A vr% mik/;{k} vyhx<+fodkl izkf/kdj.k lacaf/kr i=koyh dk ijh{k.k djsa A blesa tkap djmRrjnkf;Ro fu/kkZfjr djrs gq, ,d llrkg esa tkap vk[;k v/;{k@&vk;qDregksn; dks izLrqr djas A lacaf/kr QSDVh }kjk bl laca/k esa tek djkbZ x;h/kujkf'k rRdky okil dj nh tk; rFkk vukf/kr dh dk;Zokgh fu;ekuqlkj veyesa ykbZ tk; A mik/;{k} vyhx<+ fodkl izkf/kdj.k tkap vk[;k ,d llrkg esarFkk vuqiky vk[;k 15 fnu esa v/;{k@vk;qDr egksn; dks izLrqr djsa A

15. In para 10, it is alleged that the land in question is reserved for residential purpose in the master plan of Aligarh vide Annexure-C.A.-8. Hence, neither the erstwhile owner has any right to sell the land in question nor can the residential area land be allotted for the factory,

16. We have also perused the rejoinder-affidavit.

17. It is evident from the facts that the petitioners have committed total fraud in connivance with Onkar Prasad Garg, the previous owner. The land had already been acquired by the Aligarh Development Authority in 1985 but illegally the petitioners took possession of the same and built their factory. The petitioners have no right to do so. In the counter-affidavit it has specifically been stated that the Board of Aligarh Development Authority resolved not to allow a factory to run on the said land which was for residential use vide Annexure-C.A.-7. It appears that the petitioners in connivance with the then Secretary, A.D.A. and some other officials illegally got the residential land allotted for setting up a factory, which was

wholly illegal.

18. In *R.K. Mittal v. State of U.P.*, 2002 (1) AWC 558 ; 2002 (1) UPLBEC 444, a Division Bench of this Court held that residential land cannot be allotted for commercial or industrial purpose.

19. In *Munshi Ram v. Union of India*, 2000 (7) SCC 22, the Supreme Court has observed (in paragraph 9) :

'The continued unauthorised user would give the paramount lessor the right to re-enter after cancellation of the lease deed. As already noticed, D.D.A. is insisting on stoppage of misuser. The misuser is contrary to the terms of the lease. D.D.A. cannot be directed to permit continued misuser contrary to the terms of the lease on the ground that the zonal development plan of the area has not been framed.'

20. In the above case the petitioners had a residential lease, which was being used for commercial purpose and hence proceedings were initiated for unauthorised user. The present case is hence similar to the above case decided by the Supreme Court.

21. In *M. I. Builders v. Radhey Shyam Sahu*, 1999 (3) AWC 2508 (SC) : 1999 (6) SCC 464, the Supreme Court has observed that unauthorised construction should be ordered to be demolished, even if the builder had spent a considerable amount.

The Court observed (in paragraph 73) :

'The High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions had held that no consideration should be shown to the builder or any other person whose construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the respective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with

law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots.'

22. In *R.A. Agrawal v. Corporation of Calcutta*, 1999 (6) SCC 532, the Supreme Court directed demolition of a multi-storeyed building, which had been constructed in violation of the building rules. The Supreme Court also granted police protection to carry out the order.

23. In *K.R. Shenoy v. Udupi Municipality*, AIR 1974 SC 2177, the Udupi Municipality had permitted construction of a Cinema House in a residential area. This grant of permission was challenged in the Supreme Court, which held that a public authority has no power to contravene the bye-laws made by that authority (vide paragraph 27). It was further held by the Supreme Court (in paragraphs 28 and 29) that illegal commercial use by constructing a Cinema house Invades the right of the residents.

24. The land in question is earmarked in the Master Plan of Aligarh for residential purpose, and hence its allotment for a factory was wholly illegal and collusive. This case reveals totally fraud and collusion on the part of the petitioners. The petitioners eneroached illegally upon the land of the Aligarh Development Authority and in collusion with some officials of A.D.A. The petitioners have no right to do the same.

25. Since total fraud has been committed by the petitioners in illegally occupying the land of the Aligarh Development Authority, we impose a fine of Rs. 1,00,000 (one lac) on the petitioners for having committed gross illegality. The petitioners shall pay the said amount to the Aligarh Development Authority within two months from today failing which it will be realized by the D.M. as arrears of land revenue and then paid to the respondent No. 2. Petitioners must vacate the land in dispute forthwith failing which they will be evicted by police force.

26. For the reasons given above, this writ petition is dismissed and the interim order is vacated.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com