

Smt. Neeta Agarwal Vs. Commissioner/Chairman, Allahabad Division/Allahabad Development Authority and ors.

Smt. Neeta Agarwal Vs. Commissioner/Chairman, Allahabad Division/Allahabad Development Authority and ors.

SooperKanoon Citation : sooperkanoon.com/488167

Court : Allahabad

Decided On : Aug-25-2009

Reported in : 2010(1)AWC353

Judge : Tarun Agarwala, J.

Appellant : Smt. Neeta Agarwal

Respondent : Commissioner/Chairman, Allahabad Division/Allahabad Development Authority and ors.

Disposition : Petition allowed

Judgement :

Tarun Agarwala, J.

1. The petitioner has challenged the validity and legality of the order dated 19th July, 2000, passed by the Secretary of the Allahabad Development Authority directing the petitioner to remove the unauthorised construction within 15 days from the receipt of the order, failing which, an order for demolition of the property at the expense of the petitioner would be passed. The petitioner's appeal before the Commissioner was also dismissed by an order dated 14th May, 2002.

2. The facts leading to the filing of the present writ petition is that the dispute relates apparently to plot No. 33 Darbhanga Colony, Allahabad which was originally owned by Labh Singh. This plot No. has now been changed to plot Nos. 129 and 129/1 Darbhanga Colony. It is alleged that Labh Singh died in 1967 and that the property devolved in equal shares upon Nirmal Singh and Surendra Singh. On 23rd of August, 1991, one portion of the plot was sold to respondent No. 3, Smt. Shanti Rani Agarwal by means of a registered sale deed and that the said respondent came in possession of it. On 1st February, 1993 a registered agreement to sell was executed between the petitioner and Surendra Singh for a sum of Rs. 5 lacs for sale of 430.03 sq. mtrs. of land, pursuant to which, a registered sale deed was executed between the parties on 19th of February, 1994.

3. Prior to the execution of the sale deed in favour of the petitioner, a notice is alleged to have been issued by the Allahabad Development Authority (hereinafter referred to as the Authority) to one person known as Shyam Agrawal, resident of 33 Darbhanga Colony, in which it was alleged that the said person had raised unauthorised construction of a room, a garage and a latrine, and therefore, directed the said person to remove the unauthorised construction within 15 days. The said notice is alleged to have been served by affixation on 25th February, 1994, and subsequently, an order dated 4th of March, 1994 was passed under Section 27 of the Urban Planning and Development Act, 1973 (hereinafter referred to as the Act) against Shyam Agrawal for removal of the unauthorised construction from the plot in question. It is further submitted that another order dated 29th October, 1994, was passed under Section 27 of the Act for removal of the unauthorised construction.

4. The matter remained at that stage and no further action was taken by the Authorities. On 19th July, 1997 Sanjay Agrawal, son of respondent No. 3 purchased a part of plot No. 33 Darbhanga Colony, and subsequently thereafter, filed a complaint dated. 25th July, 1998 before the Authority regarding unauthorised construction being raised by the petitioner. In this complaint, it was alleged that the petitioner was raising construction of a balcony on the first floor and was also erecting a gate and that he had also covered the setback. On this complaint, the Junior Engineer submitted a report on 17th August, 1998 and again

on 22nd August, 1998, indicating therein that the petitioner had raised unauthorised constructions and, recommended that an order for demolition be passed. It seems that no further action was taken by the Authority and the respondent made further representation on 19th July, 1999 and again on 4th of August, 1999, and when nothing happened, the said respondent filed Writ Petition No. 26146 of 2000 which was disposed of by an order dated 25th May, 2000 directing the Authority to decide the representation.

5. Based on the aforesaid direction, the Authority woke up from its slumber and issued a notice dated 5th July, 2000 to the petitioner to produce the sanctioned lay out plan of the house in question. The petitioner, upon receipt of the said notice, sent a reply dated 10th July, 2000 by Speed Post requesting the Authority to supply a copy of the representation and the copy of the writ petition filed by the respondent, so that the petitioner was made aware of the alleged unauthorised constructions raised by her and to enable her to file a proper reply. Instead of supplying a copy of the representation or the copy of the writ petition, and granting time to the petitioner to file a copy, the Secretary by an order dated 19th July, 2000, disposed of the representation of the respondent holding that the petitioner had raised unauthorised constructions without the sanction of a lay out plan from the Authority, and therefore, directed the petitioner to remove the unauthorised constructions within 15 days.

6. In the meanwhile, pursuant to the notice dated 5th July, 2000, the petitioner filed Writ Petition No. 34865 of 2000 which was dismissed by an order dated 16th August, 2000. The petitioner thereafter preferred an appeal before the Commissioner which was dismissed by an order dated 14.5.2002. The petitioner has thereafter filed the present writ petition.

7. The aforesaid facts has been culled out from a perusal of the writ petition, the counter-affidavit and the record which has been produced by the Allahabad Development Authority.

8. Heard Shri Yogesh Agrawal, the learned Counsel for the petitioner, Shri B.B. Paul, duly assisted by Shri A.P. Paul for the Allahabad Development Authority and Shri M.K. Gupta, the learned Counsel for respondent No. 3. The order of the

Secretary which is alleged to be an order under Section 27 of the Act is based on the following facts, namely:

9. That an order under Section 27 for removal of the unauthorised construction was earlier passed on 4th of March, 1994 and again on 29th of October, 1994, in spite of which, the petitioner has not removed the unauthorised construction. Further, on the basis of the complaint dated 25th July, 1998, an enquiry report dated 17th August, 1998 and 22nd August, 1998, was submitted in which it was clearly indicated that the petitioner had raised unauthorised construction on the plot in question. The appellate order only indicates that in view of the aforesaid orders passed under Section 27, the petitioner had raised unauthorised constructions without sanction of a map, and therefore, the order of removal of the unauthorised constructions was validly passed.

10. The learned Counsel for the petitioner submitted that the impugned order cannot be sustained since no proper opportunity was granted to the petitioner. Further, no proceedings under Section 27 of the Act was ever initiated against the petitioner nor could the notice dated 5th July, 2000 be contemplated to be a notice under Section 27 of the Act.

11. On the other hand, the learned Counsel for the Allahabad Development Authority has tried to justify the action of the Authority and submitted that since the petitioner had raised unauthorised construction, the petitioner was not entitled to the discretionary relief in a writ jurisdiction. The learned Counsel submitted that the order under Section 27 had been passed in the year 1994 and that there was a further report in the year 1998, in respect of which no step was taken by the petitioner to remove the construction. Accordingly after issuing a notice to the petitioner on 19th of July, 2000, and after according an opportunity of hearing which was not availed by the petitioner, the impugned order was passed. The learned Counsel, consequently, submitted that the principles of natural justice was complied by them.

12. Shri M.K. Gupta, the learned Counsel for respondent No. 3 submitted that the petitioner had not only raised unauthorised constructions which has stopped the light and air coming into her land, but had also encroached upon her land and that

the respondent had been complaining since 1994 about the alleged illegal constructions being raised by the petitioner, which fell on deaf ears, and eventually, the Authority woke up when a mandate was issued by the High Court. The learned Counsel submitted that the impugned order was validly passed since the petitioner had raised unauthorised construction, and consequently, this Court should not interfere in the order to the petitioner to remove the unauthorised constructions.

13. Having heard the learned Counsel for the parties at some length and having perused the original record of the Authority, the Court is startled by the manner in which the Authority has proceeded in the matter. The impugned order indicates that an order under Section 27 of the Act was passed on 4th of March, 1994, and on 29th October, 1994, against the petitioner, for raising unauthorised constructions. This fact is patently erroneous. The Court has perused the orders dated 4th March, 1994 and 29th October, 1994 from the record produced by the Authority and finds that this order as well as the notice issued by the Authority was against one Shyam Agrawal, resident of 33 Darbhanga Colony. Who is this Shyam Agrawal is not known, but it has no nexus or relation with the petitioner. The petitioner alleges to be the husband of Santosh Agrawal. There is nothing to indicate that Shyam Agrawal is related or associated in any manner with the petitioner. There is nothing on record to suggest that the alleged constructions raised by Shyam Agrawal are existing on the land of the petitioner. The Court further finds that the initial notice issued by the Authority on 20th January, 1994 to Shyam Agrawal was prior to the execution of the sale deed in favour of the petitioner. The petitioner's sale deed was executed 19th February, 1994. Consequently, it can safely be presumed that the order passed against Shyam Agrawal did not relate to the petitioner. The impugned order talks about the complaint of Sanjay Agrawal, son of respondent No. 3 dated 25th July, 1998 and the report of the Junior Engineer dated 17th August, 1998 and 22nd August, 1998. No doubt, the Authority took cognizance of the said complaint and started an investigation, but no further action was taken by them and the record suggests that upon submission of the report, the matter was consigned to the record. Further, this Court finds that the report made by the Junior Engineer appears to be an ex parte report without accosting the petitioner about the complaint made by Sanjay

Agrawal.

14. The respondent No. 3 and her son have made several complaints with regard to the unauthorised construction raised by the petitioner. The Authorities appear to have moved in a very lackadaisical manner and further appears that it is only when an order of the High Court was passed directing the Authority to decide the representation of the respondent No. 3 that a notice to the petitioner was issued.

15. In my opinion, the notice dated 5th July, 2000 cannot be treated to be a notice to the petitioner under Section 27 of the Act. It was a notice to the petitioner in relation to the disposal of the representation of the respondent No. 3 pursuant to the direction of the High Court. If the Authority, upon disposal of the representation of the respondent No. 3, came to the conclusion that the petitioner had raised unauthorised construction, it was open to the Authority to take steps under the Act by issuance of a notice under Section 27 of the Act. No such effort was made by the Authority.

16. This Court further finds that pursuant to the notice dated 5th of July, 2000, the petitioner sent a reply on 10th of July, 2000 by Speed Post which was duly received by the respondent on 12th of July, 2000. The Authority has not considered the reply of the petitioner, nor has provided the requisite details, namely, the copy of the representation and the copy of the writ petition and proceeded to pass the impugned order. In my opinion, the said order suffers from the vice of arbitrariness, and consequently, violation of principles of natural justice. The said order cannot be sustained.

17. In the light of the aforesaid, it is clear that the impugned order passed by the Secretary cannot be sustained and is quashed. The appellate order consequently cannot be sustained and is also quashed. The writ petition is allowed. In the event the Authority is of the opinion that an unauthorised construction has been raised by the petitioner without a sanctioned plan, it would be open to the Authority to take necessary steps in accordance with the provisions of the Urban Planning and Development Act, 1973.

