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Sudhansu Kumar and anr. Vs. Vice Chairman, Varanasi Development Authority and ors.

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Court : Allahabad

Decided On : Feb-23-1999

Reported in : (1999)2UPLBEC866a

Judge : Ravi S. Dhavan and ;V.P. Goel, JJ.

Acts : [Uttar Pradesh Urban Planning and Development Act, 1973](#) - Sections 15, 15(3), 15(5) and 15(9); [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petition No. 5014 of 1999

Appellant : Sudhansu Kumar and anr.

Respondent : Vice Chairman, Varanasi Development Authority and ors.

Advocate for Def. : S.C. and ;A.K. Dwivedi, Adv.

Advocate for Pet/Ap. : Ashok Bhushan, Adv.

Judgement :

Ravi S. Dhavan and V.P. Goel, JJ.

1. This matter had been heard on 16.2.1999. A final order had been passed relegating the petitioners to an alternative remedy. But learned Counsel for

petitioners Mr. Ashok Bhushan made a request to the Court that perhaps the alternative remedy relegated is not an alternative remedy, and he may be permitted to submit further, notwithstanding the order of 16.2.1999. Suffice it to say that the order of 16.2.1999 was virtually an order by consent to enable the petitioner to an alternative remedy under Section 41, as suggested.

2. Permission to submit further was granted and, in the circumstances, the matter has been put up today.

3. Now it has been urged, regard being had to the circumstances, that Section 15 has been an amendment by insertion of clause (9), there is no recourse the petitioner can take to, and the order impugned is a final order. Thus, the contention is that even the remedy under sub-section (3) of Section 41 is not available. The Court has considered the submissions as have been made today.

4. The Court has seen the amendment which has been brought into the Act. The amendment is by insertion of sub-section (9) to Section 15. The proviso to sub-section (9) is not alien to sub-section (5) of Section 15. Therefore, any action which has been taken under sub-section (9) of any permission which may have been granted under Section 15, an appeal as provided in sub-section (5), will also lie in matters of sub-section (9).

5. The petitioners may take recourse to an alternative remedy provided under sub-section (5) of Section 15, for which 30 days time is already provided under the Act. As the Court has already placed on record that the petitioner would have three weeks as prayed from 16.2.1999, this period will still be available to the petitioner as from today. Petition decided accordingly.