

Mohammad Aslam Vs. Rampur Development Authority Through Secretary and anr.

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Court : Allahabad

Decided On : Nov-28-2008

Reported in : 2009(1)AWC566

Judge : Arun Tandon and ;A.P. Sahi, JJ.

Appellant : Mohammad Aslam

Respondent : Rampur Development Authority Through Secretary and anr.

Disposition : Petition allowed

Judgement :

ORDER

Arun Tandon and A.P. Sahi, JJ.

1. Petitioner before this Court had made an application for sanction of the site plan qua construction over the plot situate at Nai Basti Jumma Colony, Degree College Road, Rampur. The site plan so submitted by the petitioner is stated to have been granted/approved by the Rampur Development Authority vide letter dated 15th May, 2008 bearing Site Plan No. 284/RDA/07-08. The petitioner is stated to have deposited the requisite fee also. The petitioner was, however, served with a notice by the Prabhari Adhikari Waqf/District Magistrate, Rampur dated 21st October,

2008 stating therein that the petitioner has encroached upon the land of kabristan and has raised unauthorized construction over the land of the kabristan. The petitioner was required to appear before the District Magistrate/Prabhari Adhikari of the waqf, failing which it was provided that appropriate proceedings shall be taken ex parte.

2. The petitioner is stated to have submitted a reply to the said letter on 27.10.2008 by speed post, when as a matter of fact he was required to appear in person before the authority concerned on 27.1.2008. However, in paragraph 13(f) of the supplementary-affidavit filed today, it has been stated that the petitioner has in fact visited the office of the District Magistrate on the date fixed, however, he was not available in the office.

3. The Rampur Development Authority, however, by means of the order dated 23.10.2008 cancelled the site plan, as was earlier approved vide letter dated 15th May. 2008, referred to above, on the ground that the petitioner had got the site plan approved in respect of a land which she claimed to be the owner on incorrect facts, inasmuch as the land in question is earmarked for public utility. The order so passed by the Secretary, Rampur Development Authority has been challenged before this Court by means of the present writ petition.

4. Initially the petitioner made an attempt to allege that the site plan No. 284, referred to in the impugned order, does not pertain to the plan as was approved for the petitioner. However, on being pointed out that the number of site plan as mentioned in the impugned order is one and the same, as is mentioned in the letter approving the site plan of the petitioner dated 15.5.2008 (Annexure-6 to the writ petition), the said contention was withdrawn.

5. The petitioner thereafter contended that the Rampur Development Authority had no jurisdiction to review its order, inasmuch as once the map has been sanctioned, cancellation of such map on whatever ground will amount to review and since no power of review has been conferred under the statutory rules, such exercise cannot be undertaken. In alternative it was contended that if Sub-section (9) of Section 15 of the Urban Planning and Development Act, 1973 is read to be the source of power for cancellation of the site plan approved earlier, such order can

only be passed after affording opportunity of hearing to the petitioner in view of the specific language of the said provision. It is, therefore, submitted that the order passed by the Development Authority cancelling the site plan, earlier approved, is legally not justified.

6. Sri Section K. Mishra, counsel for Development Authority, in reply submits that notice was issued to the writ petitioner by the District Magistrate as is apparent from Annexure-8 to the writ petition although in different capacity namely being the Prabhari Adhikari, Waqf. Since the petitioner did not respond to the said notice, the District Magistrate in his other capacity as the Vice Chairman of the Rampur Development Authority has rightly directed cancellation of the site plan of the writ petitioner. He submits that the petitioner in fact has encroached upon the land of the kabristan and therefore this Court may not interfere with the order so passed.

7. We have heard counsel for the parties and have gone through the records of the writ petition.

8. We are of the considered opinion that under Sub-section (9) of Section 15 it is mandatory for the Development Authority to afford an opportunity of hearing to a person, whose site plan has been earlier approved, disclosing the grounds on which it is proposed to be cancelled. We, however, find that ground mentioned for cancellation of the site plan, earlier approved in favour of the petitioner, under the impugned order is squarely covered by the conditions mentioned in Section 15 and therefore the provisions of the said section are squarely attracted in the facts of the present case.

9. We, therefore, not only hold that the Development Authority has ample authority of law to cancel the site plan, if the same had been got approved on the basis of the misrepresentation or any fraudulent information being made or furnished. However, for such exercise of power it is mandatory that the incumbent should have been afforded opportunity of hearing before passing of such order in view of the proviso to Section 15 (9). Since in the facts of this case no such notice was ever issued to the writ petitioner, as is evident from the order itself and in view of the statement made in paragraph 13 of the writ petition, we have no hesitation to hold that the order dated 23.10.2008 runs contrary to the provisions of Section 15

(9) proviso and therefore, cannot be sustained.

10. We may also deal with the objection raised on behalf of the respondents to the effect that the notice dated 31.10.2008 issued by the District Magistrate in his capacity as the Prabhari Adhikari, Waqf may be treated to be sufficient notice in compliance to Section 15 (9) proviso. We are of the considered opinion that the notice, which has been enclosed as Annexure-8 to the writ petition, is only for the purposes of calling upon the writ petitioner to explain as to how he is raising construction on the land alleged to be that of the kabristan. Such a notice by the District Magistrate cannot be termed to be a notice under Section 15 (9) for proceeding being taken to cancel the approved site plan. Therefore, the letter dated 31.10.2008 cannot be read to be a notice under Section 15 (9) proviso.

11. In view of the aforesaid, order dated 23.10.2008 is hereby quashed. We, however, leave it open to the Development Authority to issue appropriate notice to the writ petitioner clearly disclosing the reasons on which it is proposed to cancel the site plan earlier approved in favour of the writ petitioner. The petitioner will have an opportunity to file his reply within reasonable time and thereafter the Development Authority may proceed to take such decision as may be warranted under law.

12. Subject to above, writ petition is allowed.

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