

Alka Jaiswal Vs. Allahabad Development Authority and ors.

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Court : Allahabad

Decided On : Nov-18-2008

Reported in : 2009(1)AWC571

Judge : Arun Tandon and ;Dilip Gupta, JJ.

Appellant : Alka Jaiswal

Respondent : Allahabad Development Authority and ors.

Disposition : Petition allowed

Judgement :

Arun Tandon and Dilip Gupta, JJ.

1. These petitions have been filed for quashing the condition imposed in the Master Plan-2021 which provides that the building plans in residential areas of Civil Lines, George Town and Tagore Town shall not be approved where the area of the plots is less than 200 sq. meters.

2. The factual position in all these cases is that the petitioners who had purchased plots in residential areas in Civil Lines, Allahabad had submitted building plans for sanction before the Allahabad Development Authority, Allahabad (hereinafter referred to as the 'Development Authority') but they have been rejected on the sole ground that the area of the plots in all the cases is less than 200 sq. meters.

Reliance has been placed upon the provisions contained in Clause 4A (Residential) of the Zoning Regulations contained in the Allahabad Master Plan-2021.

3. We have heard learned Counsel for the petitioners and the learned standing counsel for the State as well as the learned Counsel for the Development Authority.

4. Learned Counsel for the petitioners have submitted that the aforesaid restriction is arbitrary and discriminatory and in support of their contention have placed reliance upon the decision of this Court in *Anurag Pathak v. Allahabad Development Authority*. and Anr. 0044/1998 : 1998(1)AWC225 , wherein Rule 1.5 of Part 2 of the Building Construction Bye-laws of the Development Authority containing identical stipulation that plots measuring 200 sq. meters or more shall alone be considered for sanction of building plan in Civil Lines Zone was quashed by this Court. It is the submission of the learned Counsel for the petitioners that, for the same reasons, the identical provision made in the Allahabad Master Plan-2021 should also be quashed.

5. It has, therefore, become necessary to place the relevant portions of the aforesaid judgment rendered by a Division Bench of this Court in *Anurag Pathak (supra)*. The same read as follows:

We have thoroughly considered the rival submissions of learned Counsel for the parties and have also gone through the impugned bye-laws. The impugned bye-law is bad in law as it contains a total prohibition against construction over a plot in Civil Lines area which is of an area less than 200 sq. meters. The owner of a plot normally has an unquestionable right to construct over the land according to his requirement. This important civil right of enjoyment of property can only be subject to reasonable restriction imposed for regulating the construction of buildings to achieve a definite object in the interest of society in general, to maintain beauty and attraction of the area, to improve living conditions, to prevent traffic obstructions and maintain ecological and environmental balances. The purpose mentioned here are only illustrative. There may be many others. If the restriction imposed by the impugned bye-laws is considered from this angle, it cannot be

justified in any manner. The petitioner could be permitted to construct with certain conditions to achieve the above objects, by leaving a little more area open.

The problem may be considered from another angle also. There is already in existence an old structure standing on this land which the petitioner has purchased with open land. The question is whether he should be permitted to raise a new construction in place of the old one according to his present needs? In our opinion, he cannot be prevented from replacing the old structure by a new building. In Civil Lines area, there are huge bungalows, mostly over leased lands, which are being now converted into freehold rights over such lands. An example may be taken of a bungalow which has been inherited by several successors so as that on partition their shares fall below 200 sq. meters and the structure already in existence goes in the share of one of them. Shall it be proper and reasonable to prohibit others from having separate residences on open land coming in their share? In our opinion, that shall be highly unreasonable and arbitrary. The concept of Civil Lines came in existence during colonial rule, which has lost its relevance and purpose in present days. It is simply an attempt to continue an anachronistic concept in modern and free India. The respondents cannot be allowed to discriminate between the citizens of this city merely on the basis of their living in different areas. All the areas should be developed with the same objects and zeal to make their living convenient and higher.

In this connection, it is very important and relevant to note that respondents are realising tax and fees from the citizens of this city under uniform laws and by-laws and not on the basis of the areas where they are residing. Thus, in the circumstances, the respondents are also under legal obligation to develop all the areas uniformly unless there is some strong and special reason to discriminate which may be justified in law.

In our opinion, the condition that no construction shall be allowed on plots of area less than 200 sq. meter is also violative of Article 14 of the Constitution for the reason that it discriminates between persons who can afford having at least 200 sq. meters land and those who cannot afford it. Thus, it discriminates between rich and poor, which is totally against the goal of social and economic justice set up by

our Constitution. Learned Counsel for the respondents could not give any proper and valid justification for restricting the construction of house in Civil Lines area in favour of those only who hold more than 200 sq. meters land. The respondents have failed to establish any nexus of the impugned restriction, within any object justified in law set by them. Hence, this petition is allowed. The note 1, provided below the chart under bye-law 1.5 of part 2.2 of the bye-laws by which it has been provided that land having less than 200 sq. meters area shall not be permitted to be used for making construction, is quashed. The respondents are directed to accord sanction to the map submitted by the petitioner within two weeks of production of certified copy of this order in accordance with law, but ignoring the aforesaid note 1....

6. Learned Counsel for the petitioners have submitted that in view of the reasons mentioned in the aforesaid judgment it makes no difference whether the offending part is contained in the Building Construction Bye-Laws or the Master Plan-2021.

7. A perusal of the aforesaid judgment in Anurag Pathak (supra) clearly shows that the condition that no construction shall be allowed on plots of area less than 200 sq. meters was held to be unreasonable and arbitrary and also violative of Article 14 of the Constitution.

8. It needs to be mentioned that the respondent -Development Authority has not brought on record anything to show that the said judgment in Anurag Pathak (supra) had been subjected to challenge before the Hon'ble Supreme Court. Learned Counsel appearing for the State and the Development Authority only submitted that the Master Plan-2021 has been issued under the provisions of U. P. Urban Planning and Development Act, 1973 (hereinafter referred to as the 'Act') with the approval of the State Government and, therefore, no plan which is contrary to the provisions contained in the Master Plan can be approved.

9. It is true that the Master Plan-2021 has been issued under the provisions of the Act, but as noticed hereinabove, Clause 4A (Residential) contained in the Zoning Regulations of the Master Plan imposes a condition that building plans for plots with less than 200 sq. meters in certain residential areas shall not be approved which condition, for the reasons mentioned in the case of Anurag Pathak (supra), is

arbitrary and discriminatory and violative of Article 14 of the Constitution as the reasons pointed out by this Court in Anurag Pathak for quashing the offending part apply with equal force in respect of Master Plan-2021 also. The offending part mentioned above which is contained in the Zoning Regulations, therefore, deserves to be quashed.

10. In the result the writ petitions succeed and are allowed. Clause 4A (Residential) contained in the Master Plan-2021 is quashed and a direction is issued to the Development Authority to consider the grant of sanction to the building plans by ignoring the said condition and the earlier orders disapproving them.

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