

Dist. Magistrate, Allahabad and anr. Vs. Harminder Pal Singh and anr.

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Court : Supreme Court of India

Decided On : Mar-02-2001

Reported in : AIR2001SC1054; JT2001(3)SC322; 2001(2)SCALE299; (2001)3SCC711; (2001)2UPLBEC953

Judge : Mr. S. Rajendra Babu and; Mr. Shivaraj V. Patil, JJ.

Acts : [Constitution of India](#) - Article 229; [Urban Planning and Development Act, 1973](#) - Sections 14

Appellant : Dist. Magistrate, Allahabad and anr.

Respondent : Harminder Pal Singh and anr.

Advocate for Def. : Rakesh Dwivedi, Sr. Adv., ; Joseph Pookkatt and ; Prashant Kum

Advocate for Pet/Ap. : Dinesh Dwivedi, Sr. Adv.,; R. B. Misra and; Ms. Sangeeta Sh

Judgement :

Rajendra Babu, J.

1. A lease was granted for a piece of Nazul land bearing plot No. 8, Nashibpur, Baskhtiara, Allahabad to one Begum Mehdi Husain for a period of 30 years from August 21, 1940 with the provision of two further renewals of 30 years. In 1983 the

Vice-Chairman, Allahabad Development Authority (ADA) sanctioned a plan subject to countersigning by the District Magistrate. The lease was renewed on December 4, 1987 in the names of Smt. Jagjit Kaur Gulati, Shri Harminder Pal Singh, Shri Jitendra Singh, Smt. Bhulari Devi, Shri Rajendra Singh, Shri Pramod Kumar Agarwal and Nazir Faiyaz Khan. By a letter dated January 22, 1987 all the District Magistrates in Uttar Pradesh were informed regarding construction of multi storey buildings on Nazul Land to the effect that the Government has no objection for building up multi storey building in the Nazul land as per the procedure prescribed by the Government in the order dated October 16, 1986 provided the balance lease period is more than 15 years and that as per the building construction laws, the construction of the proposed building is permissible. It was also made clear therein that in case of sale of such flats, the real rent should be realised after proportionately distributing the rent between the flat owners. Based on this Government order it is stated that the plan had been sanctioned by the Vice-Chairman, ADA. When the District Magistrate did not countersign the said sanctioned plan, a writ petition was filed before the High Court. The High Court directed the Vice-Chairman, ADA to release the sanctioned plan dated May 20, 1989 in favour of the respondents. This petition was contested both by the State and by the Vice-Chairman, ADA. The stand of the appellants is that the respondents filed an application for a plan on March 10, 1989 for the construction of the multi storey residential complex which was sanctioned by the Vice-Chairman, ADA as communicated to them on May 24, 1989. It was stated that the plan could be released after countersignature was obtained from the District Magistrate. The District Magistrate did not countersign the sanctioned plan and when the matter was pending before him, another order dated November 10, 1989 had been issued which provided that before allowing residential construction of the group housing the premium and rent should be realised on commercial rates from the lessee and thus the respondents had to pay certain sum towards premium and annual rent at certain rate. The High Court felt that the only objection raised on behalf of the District Magistrate is the payment of the premium and the rent as provided in the order dated November 10, 1989. The High Court examined the provisions of the lease deed and is of the opinion that the sanction of both the Collector and the Board was not essential and it was sufficient if the Board gave its

approval and, in the present case, the Vice-Chairman, ADA had given such sanction. After analysing the relevant enactments, it took the view that the powers of the Board stood transferred to different authorities and ultimately vested in the Development Authority and, therefore, the Vice-Chairman, ADA could grant sanction to the plan. The High Court, therefore, rejected the contention raised on behalf of the appellants thereby allowing the writ petition. Hence this appeal by special leave.

2. The lease deed has been made available to us which has been executed on behalf of the Governor of the United Provinces on the one part and Begum Mehdi Husain on the other part to be effective for a period of 30 years from August 21, 1940 which has been renewed from time to time on certain terms of agreed rent. The lease deed also provides as follows :-

'AND ALSO will within twenty four calendar months next after the date of these presents at his expense and to the satisfaction of the Collector for the time being of/Board of Allahabad in a good substantial and workmanlike manner erect and complete on such parts of the said premises as are marked out on the plan hereto annexed a dwelling-house and out-buildings according to a plan and elevation to be approved by such Collector/Board which dwelling-house and out-buildings shall be of the value of Rs. 5,000/- at least AND ALSO that no part of the external elevation or plan of such dwelling-house and out-buildings shall at any time be altered or varied from the original elevation or plan thereof without the written consent of such Collector/Board and no other building shall be erected on the said premises without the like consent.'

3. This lease deed had been granted for and on behalf of the Government is clear in terms of Article 299 of the Constitution and it is also clear by the communication No. 278/9-Nazul-87/485N/86 the Government had instructed all the District Magistrates as to the manner of construction of multi storey buildings also to be made on Nazul land, to which we have adverted to. By letter dated January 22, 1987 when that procedure had been prescribed and the lease itself is under the Nazul Rules framed pursuant to the executive orders of the Government, we fail to understand as to how any other procedure is required in matters of this nature.

The argument that the permission of the Collector or the Board is required in spite of orders made by the Government dated January 22, 1987 is untenable. Under the terms of the orders of the Government all the District Magistrates are bound to act and permit the construction on such land. Such buildings can be constructed under the Building Construction Laws. Under the Uttar Pradesh [Urban Planning and Development Act, 1973](#), the development can take place in terms of Section 14 of the [Urban Planning and Development Act, 1973](#) and whenever any development takes place, sanction of the Development Authority is required. Thus the construction had to be made only under the Building Construction Laws as stated in the Government order and there is no other requirement to be complied with. Therefore, it is unnecessary to engage our attention to the argument advanced on behalf of the appellants that the sanction of the Collector as well as the Board is required in a matter of this nature. Apart from the ambiguity arising on account of non-striking off of irrelevant portions in the lease deed, the Government order makes it clear the manner of construction of multi storey buildings on Nazul Land, the same can be complied with. If that is so, the District Magistrate's or the Collector's permission though required, it will have to be in terms of the Government order dated January 22, 1987. Thus the later order issued on November 10, 1989 had no application to the case since sanction had been given to the plan by the Vice-Chairman, ADA on May 24, 1989. Thus the view taken by the High Court is unexceptionable and calls for no interference.

4. Therefore, we dismiss this appeal.