

**Durga Shankar and ors. Vs. State of Raj.**

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**Court :** Rajasthan

**Decided On :** Nov-13-1996

**Reported in :** 1997(2)WLC180; 1996(2)WLN309

**Judge :** R.R. Yadav, J.

**Appeal No. :** S.B. Civil Writ Petition No. 6690 of 1992

**Appellant :** Durga Shankar and ors.

**Respondent :** State of Raj.

**Disposition :** Petition allowed

**Judgement :**

**R.R. Yadav, J.**

1. Instant writ petition has been filed for quashing impugned order dated 1.12.92, Annex. 8 to the writ petition, issued by the respondent No. 2. The petitioners also prayed that respondent No. 2 may be restrained from demolishing the building in question or any part thereof belonging to the petitioners.

2. Heard the learned Counsel for the parties. Perused the materials available on record.

3. Brief facts leading upto filing of the instant writ petition are that petitioner Durga Shankar applied on his behalf and on behalf of other petitioners for construction of first floor on his existing building as per plan marked as Annx. 1 to the writ petition. He deposited Rs. 25/- as fee alongwith his application for permission. The original receipt No. 48 dated 28.10.91 is filed as Anx. 2 to the writ petition.

4. It is also evident from the averments made in Para 3 of the writ petition that the Municipal Council, Bikaner sanctioned the plan Annex. 1 and, in pursuance thereof, the petitioners deposited Rs. 180/- as permission fee vide receipt No. 63 dated 14.11.91 which is filed as Anx. 3 to the writ petition. Consequently, on 15.11.91, Municipal Council, Bikaner issued the sanction order which is filed as Anx. 4 to the writ petition.

5. It is averred in Para 4 of the writ petition that due to serious illness and sad demise of wife of Shri Nathuramji, eldest brother of petitioners No. 1 and 2, the sanctioned construction was commenced in the end of July 1992 within the period of one year as envisaged under Section 170(9) of the Rajasthan Municipalities Act, 1959 (hereinafter referred as the Act of 1959).

6. It is also averred that on 31.10.92, the petitioners also submitted an application for permission of the projection as per clause 12 of the sanction marked as Anex. 4. The Municipal Council passed the order in construction file No. 359 on 28.10.91 for depositing Rs. 3150/- as the projection fee. Consequently, on 11.11.92 the petitioners deposited Rs. 3150/- vide receipt No. 86 which is filed as Anx. 6 to the writ petition.

7. Irrespective of due service on the respondents, no return has been filed.

8. From the facts and circumstances stated in the writ petition supported with an uncontravened affidavit and Annexures, I am satisfied that the construction which was sanctioned by respondent No. 2, Municipal Council, Bikaner on 15.11.91 has commenced within one year as envisaged under Section 170(9) of the Act of 1959. I am of the view that Section 170(9) of the Act of 1959 envisage that the petitioners shall not commence the construction work after expiry of one year from the date of which they became entitled to start construction but it does not

prescribe any outer limit within which the construction is to be completed.

9. It is true that if the work is not commenced within one year then the fresh permission would be necessary but if the work has already commenced within the prescribed period of one year then it is not necessary to complete the construction within one year from the date of permission.

10. Consequently, the order impugned dated 1.12.92, Anx. 8, is hereby quashed and the instant writ petition is allowed with costs. The respondents are restrained from demolishing the construction in question.

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