

(1965) 10 AHC CK 0002

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 22 of 1963

Anand Kumar and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 21-10-1965

Acts Referred:

Constitution of India, 1950 — Article 166
Land Acquisition Act, 1894 — Section 4

Citation : AIR 1966 All 545

Hon'ble Judges : W. Broome, J; Jagdish Sahai, J

Bench : Division Bench

Advocate : S.N. Kakkar, K.C. Agarwal and D.P. Mittal, for the Appellant; Jagdish Swarup and N.D. Pant and Shanti Bhushan for the State, for the Respondent

Final Decision : Allowed

Judgement

W. Broome, J.—The ten petitioners in this case have formed themselves into an association for the development of a residential colony in Ghaziabad (district Meerut). In accordance with the directions given to them by the authorities from time to time they revised their layout plan and it was eventually sanctioned by the Prescribed Authority established under the U.P. Regulation of Building Operations Act 1958. The sanction was conveyed to the petitioners in a letter dated 30-8-1962; but on 6-9-1962 another letter was addressed to the petitioners by the Prescribed Authority, informing them that the Government had stayed the operation of the sanction; and eventually on 3-10-1962 the Prescribed Authority informed the petitioners that the sanction was withdrawn. In the present petition the petitioners ask for a writ of certiorari to quash the orders dated 6-9-1962 and 3-10-1962, staying and withdrawing the sanction that has been granted on 30-8-1962, and for a writ of mandamus commanding the opposite parties (the State of U.P., the Land Acquisition Officer, the Prescribed Authority and the Controlling Authority of the Ghaziabad Regulated Area, the Improvement Trust of Ghaziabad and the Ghaziabad Municipal Board) to abstain from interference with the implementation of that sanction.

2. Under the U.P. Regulation of Building Operations Act enacted in the year 1958 (for the regulation of building operations with a view to prevent haphazard development of urban and rural areas; a Regulated Area has been declared in and around the town of Ghaziabad and a Prescribed Authority had been appointed and a Controlling Authority set up for the Area to carry out the provisions of the Act. S. 6 of the Act prohibits the development of any site and the erection or material alteration of any building in the Regulated Area without the previous permission in writing of the prescribed Authority; and u/s 7 the Prescribed Authority "after making such enquiry as it considers necessary in relation to any directions which may have been issued under this Act or in relation to any other matter" has either to grant or to refuse permission (subject to such conditions as may be specified in the order). Section 7-A empowers the Prescribed Authority, after permission has been granted, to cancel such permission where it is satisfied that the permission was granted "in consequence of any material misrepresentation made or any fraudulent statement or information furnished" u/s 15 of the Act an order of the Prescribed Authority refusing or granting permission u/s 7 or cancelling permission u/s 7-A is appealable to the Controlling Authority, whose decision shall be final and not be open to question in any Court. The State Government, however, has revisional powers u/s 15-A in respect of any case disposed of by the Controlling Authority; and u/s 14 the State Government has been granted the further power of giving directions on matters referred to in section 5 (including the final omnibus clause of that section, which covers "any other matter which is necessary for the proper planning of any regulated area and for preventing building being erected haphazardly in such area").

3. In the present case the Prescribed Authority, having satisfied itself that the various objections raised to the petitioners' layout plan had been properly met and complied with, referred the case in November 1961 to the Controlling Authority; but the Controlling Authority in its meeting of 20-11-1981 decided to defer consideration of the case until such time as the Master Plan of Ghaziabad had been finalised. On 9-8-1962 the Controlling Authority held a further meeting and passed the following resolutions:

Item No. 12 plan of Dewan Anand Kumar and others:-

The applicants were represented by Sri N.G. Mathel and was heard. It was brought to the Controlling Authority's notice that the plan was considered by the Controlling Authority in the meeting of November 1961 and it was decided that they should be kept pending till the finalisation of the Master Plan of these areas. The Authority was of the view that since the Master Plan had been approved by the Government, there was no objection in sanctioning this colony. The plan should be considered on merits.

Acting on the instructions contained in this resolution, the Prescribed Authority proceeded to consider the petitioners' plan on its merits and on 30-8-1962 accorded sanction to the petitioners for the development of their residential

colony on the basis of this plan. The subsequent letter of the Prescribed Authority informing the petitioners on 6-9-1962 that the Government had stayed the operation of the sanction did not reveal the reason for this action; but the final letter of 3-10-1962, whereby the sanction was withdrawn, stated as follows:

I am to inform you that the sanction of Anand Vihar Colony which was accorded on the basis of the decision of the Controlling Authority at item No. 12 of the minutes of the meeting held at Ghaziabad on 9-8-1962 referring to the above colony is hereby withdrawn because the Controlling Authority In its meeting, held on 15-9-1962 did not confirm the above item of the previous meeting.

Mr. Shanti Bhushan, appearing for the State, has clarified this somewhat cryptic pronouncement by stating that what was really meant was that at the time when the Controlling Authority passed its resolution regarding Item No. 12 on 9-8-1962, mentioning that "since the Master Plan had been approved by the Government, there was no objection in sanctioning this colony", the Master Plan had in actual fact act been sanctioned by Government Direction No. 8 issued by the State Government u/s 14 of the U.P. Regulation of Building Operations Act lays down that-

(a) The prescribed Authority shall not approve the plans or statements unless It Is satisfied that-

.....

(ii) The development and proposed use of the land and standards are in conformity with the proposals and standards of the Master Plan of the regulated area approved by the Controlling Authority.

Obviously if there is no finalised and sanctioned Master Plan in existence the Prescribed Authority has no means of knowing whether any development plan submitted to it for sanction is in conformity with such Master Plan or not; and consequently it is not possible for the Prescribed Authority to approve any development plan until the Master Plan has been finalised and sanctioned by the State Government. It was for this reason that the Controlling Authority at its subsequent meeting of 15-9-1962 refused to confirm the resolution on item No. 12 that had been passed at the meeting of 9-8-1982.

4. The stand taken by the opposite-parties In this matter is set forth in para 5 of the counter-affidavit sworn by Sri B.J. Khodaiji, Deputy Secretary in the Local Self Government Department, and filed in this Court on 7-7-1965, which runs as follows:

That with regard to the contents of paragraph 13 of the petition, the State Government considered and approved the Master Plan of Ghaziabad in July 1902 but the formal sanction of the same was issued by the State Government on 4th September 1962 and it appears that the Controlling Authority, without waiting for the formal sanction from the Government as required under paragraph 1(v)(f) of the Directions issued by the Government u/s 14 of the U.P. (Regulation of

Building Operations) Act, 1958 (hereinafter referred to as the Act), observed that since the Master Plan had been approved by the State Government there was no objection in sanctioning the layout plan of the petitioners and that the plan should be considered on merits. The Controlling Authority had, by that time in fact, not received the formal sanction of the State Government.

The position has been still further clarified by a supplementary affidavit of the same Deputy Secretary filed on 29-9-1965, which reveals that the draft Master Plan for Ghaziabad was considered and approved by the Council of Ministers on 26-7-1962 and this approval was communicated to the Secretary of the Housing Department on 30-7-1962; but the formal letter duly signed by the Under Secretary of Housing Department, stating that the Governor had approved the Master Plan of Ghaziabad, was not sent to the Chairman or the Controlling Authority of the Ghaziabad Regulated Area until 4-9-1962.

5. The dispute between the parties had been considerably narrowed down by these clarifications. Mr. S.N. Kacker, appearing for the petitioners, maintain that as soon as the draft Master Plan was approved by the Council of Ministers on 26-7-1962, it must be deemed to have been finalised and sanctioned; and the approval given by the Prescribed Authority to the petitioners' development plan on 30-8-1962 was therefore perfectly valid (for it is not denied that this development plan was fully in accordance with the provisions of the said Master Plan, approved by the Council of Ministers on 26-7-1962 and formally announced by the Under Secretary of the Housing Department on 4-9-1962). On behalf of the State on the other hand it is contended that the mere approval given by the Council of Ministers to the Master Plan on 26-7-1962 cannot be construed as the final sanction of that plan, and the plan can only be deemed to have been finally approved and sanctioned by the State Govt. when it was promulgated in the name of the Governor by means of the Under Secretary's letter dated 4-9-1962 with the result that the sanction accorded to the petitioners' development plan by the Prescribed Authority on 30-8-1962 must be held to have been premature and Ineffective, because at that time no finalised and sanctioned Master Plan had come into existence.

6. Mr. Shanti Bhushan argues that, in view of the provisions of Article 166 of the Constitution, which lays down that "all executive actions of the Government of a State shall be expressed to be taken in the name of the Governor", there could not be any binding sanction of the Ghaziabad Master Plan by the State Govt. until the Under Secretary's letter of 4-9-1962 was issued, conveying sanction in the name of the Governor; and in support of this proposition he relies on certain observations made by the Supreme Court in *Bachhittar Singh Vs. The State of Punjab*, . Particular reliance is placed on the following passage:

The business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The Constitution, therefore, requires and so did the Rules of Business framed by the Rajpramukh of Pepsu provide, that the action must be taken by the authority

concerned in the name of the Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State or here by the Rajpramukh. We may further observe that constitutionally speaking, the Minister is no more than an adviser and that the head of the State, the Governor or Rajpramukh, is to act with the aid and advice of his Council of Ministers. Therefore, until such advice is accepted by the Governor, whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the head of the State. Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Which or them can be regarded as the order" of the State Government? Therefore, to make the opinion amount to a decision of the Government it must be communicated to the person concerned.

It is to be noted, however, that the main point stressed in these observations of the Supreme Court is that finality is conferred on a decision of the State by Its communication to the person concerned. This is made clear by the subsequent passage from the same ruling-

Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order, For, until the order is communicated to the person affected by it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional In character.

The case with which we are at present concerned, however is clearly distinguishable, for it is admitted in the supplementary affidavit filed on 29-9-1965 that the decision taken by the Council of Ministers on 26-7-1962, approving the Master Plan, was communicated to the Commissioner of the Meerut Division in a D.O. letter written by the Secretary of the Housing Department on 3-8-1962; and it cannot be denied that the Commissioner was a "person concerned" in the matter, since it was he who was functioning as the prescribed Authority in the Ghaziabad Regulated Area.

7. It is clear moreover from the pronouncements made by the Supreme Court in various cases that Article 166 of the Constitution should not be interpreted too rigidly and strict literal compliance with the provisions of this Article should not be insisted upon vide (1) Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others, ; (2) The State of Bombay Vs. Purushottam Jog Naik, ; (3) Seth Bikhraj Jaipuria Vs. Union of India (UOI), ; (4) State of Rajasthan and Another Vs. Sripal Jain, and (5) R. Chitralekha and Another Vs. State of Mysore and Others, . These rulings leave no room for doubt that the provisions of Article 166 are not mandatory but merely directory. Article 166 only lays down the procedure for authenticating an executive decision of the Government of a State; and the mere omission to authenticate a decision in the manner prescribed by

this Article will not invalidate the decision. It follows from this that for the purpose of determining when a particular executive decision was arrived at by the Government the date when the decision was promulgated in name of the Governor in accordance with Article 166 is of minor importance the crucial date is the date when the decision was actually taken by the Minister concerned or by the Council of Ministers (subject of course to the proviso that such a decision will not be binding on the Government until it is communicated to the person affected thereby, as laid down in *Bachhittar Singh Vs. The State of Punjab*, quoted above).

8. We are satisfied therefore, that in the present case the decision taken by the Council of Ministers on 26-7-1962 had the effect of sanctioning the Ghaziabad Master Plan (even though it was not formally promulgated in the name of the Governor until the Under Secretary's letter was issued on 4-9-1962) and that decision became binding on the Government as soon as it was communicated to the Commissioner of the Meerut Division by the D.O. letter sent to him on 3-8-1962. The Master Plan had thus been sanctioned by the Government in a binding manner before the Prescribed Authority sanctioned the petitioners' development plan on 30-8-1962; and it was not open to the authorities subsequently to cancel that sanction accorded to the petitioners' plan on the lame excuse that the Council of Ministers approval of the Master Plan had not been promulgated in accordance with the provisions of Article 166 at the time when the prescribed Authority gave his sanction.

9. Accordingly we allow this petition with costs and quash the impugned orders dated 6-9-1962 and 3-10-1962. The sanction given by the prescribed Authority to the petitioners' development plan on 30-8-1962 will therefore, revive, but we wish to make it clear that this decision of ours does not in any way preclude the Government from taking steps to acquire the petitioners' land in pursuance of the notification issued under S. 4 of the Land Acquisition Act on 13-8-1962.