
(2007) 07 AHC CK 0157
In the Allahabad High Court

Ateeq Ahamad

APPELLANT

Vs

The State of U.P., Allahabad Development Authority, Vice
Chairman, Allahabad Development Authority and Secretary,
Allahabad Development Authority

RESPONDENT

Date of Decision : 03-07-2007

Acts Referred:

Indore City Municipal Act, 1909 — Section 135(2)

Uttar Pradesh Urban Planning and Development Act, 1973 — Section 32

Citation : (2007) 4 AWC 3916

Hon'ble Judges : Rakesh Sharma, J;B.S. Chauhan, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

B.S. Chauhan, J.—This writ petition has been filed seeking following reliefs:

(a) issue a writ, order or direction in the nature of mandamus commanding upon the respondents not to demolish the commercial building of the petitioner situated at plot No. 22/D, Civil Lines, Allahabad without giving opportunity of hearing to the petitioner and without taking any decision by the State Government on the letter dated 26.12.2006 of the Board;

(b) issue a writ, order or direction in the nature of mandamus commanding upon the respondents to take decision on the letter dated 26.12.2006 of the Board with further direction to the respondents to decide the application dated 25.11.2006 of the petitioner for compounding and regularizing the construction made by the petitioner on plot No. 22/D, Civil Lines, Allahabad.

2. The facts giving rise to this case are that the petitioner purchased the plot No. 22/D Civil Lines, Allahabad on 21st March, 2005 and submitted map/plan for constructing the commercial building over the said plot on 7.12.2005. The map was sanctioned. Some construction has been raised by the petitioner in contravention of the sanctioned plan as admitted by the petitioner himself in paras 12 and 17 of the petition. The map had been sanctioned for basement,

lower ground, upper ground plus two floors but construction has also been raised for the third floor of the building. It has further been admitted in para 17 that construction has been raised in addition to the sanctioned plan to the extent of additional area measuring 172.85 sq. m. and the maximum permissible height of the building could be, as per the prescribed limitation of 10 meters, has been raised to 12.06 meters. After completing the construction, petitioner submitted the application for compounding the construction raised by him in contravention of the sanctioned plan in view of the provisions of Section 32 of the U.P. Urban Planning and Development Act, 1973 (hereinafter referred to as the Act of 1973). The application of the kind, referred to above, is decided by the Vice Chairman of the Development Authority and person aggrieved, by the order passed by the Vice Chairman u/s 32 of the Act or any order passed under the 1973 Act, can file an appeal before the Chairman of the Authority who is Divisional Commissioner u/s after the Act, 1973 and further remedy of revision is provided u/s 41(3) of the Act before the State Government.

3. In the instant case, the matter has been referred to the "Board" to decide the application submitted by the petitioner for compounding the construction raised in contravention of the sanctioned plan but the Board has not yet decided the case. Hence this petition.

4. We have heard Sri Umesh Narain Sharma, learned Senior Advocate for the petitioner and Sri Zafar Nayyar, learned Additional Advocate General with Shri Vivek Verma for the respondents.

5. Sri Sharma has submitted that "Board" be directed to decide the application for compounding the construction as referred to hereinabove within a stipulated period as the matter is pending before the Board for a long time.

6. The term "Board" has not been defined anywhere in the Act 1973 nor the Constitution of the Board is provided. Direction to any authority to decide the application cannot be issued by the writ court unless it is an authority under the Statute. More so, before issuing such a direction, the Court has to address to itself to the controversy involved therein and examine the statutory provisions.

7. In *A.P.S.R.T.C. and Others Vs. G. Srinivas Reddy and Others*, the Hon'ble Supreme Court deprecated the practice of issuing direction to the authorities to decide the representations as under the garb of deciding the representations, time barred claims were entertained by the authorities and some times the matters were being decided by the person having no authority under the Statute. The relevant portion of the Judgment is as under:

We may also note that sometimes the High Courts dispose of matter merely with a direction to the authority to "consider" the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court, to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to "consider" the matter afresh. Be

that as it may.

There are also several instances where unscrupulous petitioners with the connivance of "pliable" authorities have misused the direction "to consider" issued by court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to "consider" and dispose of the representation. When the court disposes of the petition with a direction to "consider" the authority grants the relief, taking shelter under the order of the court directing him to "consider" the grant of relief. Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order "to consider" as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to "consider", may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of court's direction to "consider" the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily wagers seeking regularization/absorption into regular service is a species of cases, where there has been a large scale misuse of the orders "to consider".

8. A Division Bench of this Court to which one of us (Dr. B.S. Chauhan, J.) was a member in Writ Petition No. 8642 of 2003, *Rajendra Singh v. State of U.P.* and Ors. decided on 30.7.2003 has also held that without considering the merit of the case, the Court should not issue a direction to decide representation to any of the authorities for the reason that under the garb of getting the representation, decided, the party may succeed in getting adjudicated a time barred claim, may be by authority having no competence or by deciding the representation an order may be reviewed though remedy of review is not provided under the Statute. In the said case, under the garb of getting the representation decided, the party wanted the authority under the U.P. Motor Vehicles Taxation Act, 1997 to review its assessment. This Court while rejecting the writ petition, held as under:

The review application is not maintainable against the assessment order nor any order of rectification is permissible asking the said, authority to decide representation would amount to directing him to review the said order which is not permissible in law. Creation of a jurisdiction in a Court is a Legislative function and it cannot be conferred by any means by the Court. Reviews/Appeal is a creation of Statute and it cannot be created by acquiescence of a party or by the order of the Court vide *The United Commercial Bank Ltd. Vs. Their Workmen, and Kesar Singh and Others Vs. Sadhu*,

9. Similar view has been reiterated in Employees State Insurance Corporation Vs. All India I.T.D.C. Employees Union and Others, wherein it has been observed as under:

We may also note that sometimes the High Courts dispose of matter merely with a direction to the authority to "consider" the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court, to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to "consider" the matter afresh.

10. Issuing a direction to an authority not provided under the Act would amount to legislative function and such a course is not permissible in law.

11. It is settled legal proposition of law that while examining the correctness of an order, it must be examined by the Court as to whether the same has been passed by the authority under the Act.

12. The Hon"ble Supreme Court in Poona City Municipal Corporation Vs. Dattatraya Nagesh Deodher, while interpreting the provision under the Bombay Provincial Municipal Corporation Act, 1949, observed as under:

The benefit of this section would be available to the Corporation only if it was held that this deduction of ten per cent was "an act done or purported to be done in pursuance or execution or intended execution of this Act." We have already held that this levy was not in pursuance or execution of the Act. It is equally clear that in view of the provisions of Section 127(4)(to which we have already referred) the levy could not be said to be "purported to be done in pursuance or execution or intended execution of the Act." For, what is plainly prohibited by the Act cannot be claimed to be purported to be done in pursuance or intended execution of the Act.

13. The Hon"ble Supreme Court, in Municipal Corporation, Indore v. Sri Niyamatulla AIR 1971 S.C. 97, interpreted Section 135(2) of the Indore Municipal Act, 1909, which is similar to Section 233(1)(a) of the Act in the following terms:

The provisions contained in Section 135 of the Indore Municipal Act will be applicable to things done under the Act. It is manifest that in the present case the order of dismissal passed by Shri Ghatpande was beyond his jurisdiction and is, therefore, not an act done under the Act.

(Emphasis added).

14. The aforesaid judgments were reconsidered and approved by the Hon"ble Supreme Court in J.N. Ganatra Vs. Morvi Municipality, Morvi, . Similar view has been reiterated in Borosil Glass Works Ltd. Employees Union v. D.D. Bambode and Ors. AIR 2001 S.C. 378.

15. As the Board has neither been created nor defined under the Act, 1973, we are not inclined to issue any such direction as sought by the petitioner. Mr. U.N.

Sharma, learned Senior Counsel for the petitioner could not point out any provision, which could make reference to the "Board" or providing for reference of a matter to the "Board". The authorities are to adjudicate upon the controversy giving strict adherence to the procedure prescribed by the Statute and in no other manner. The aforesaid settled legal proposition is based on a legal maxim " Expressio unius est exclusio alterius", meaning thereby that if a statute provides for a thing to be done in a particular, then it has to be done in that manner and in no other manner and following other course is not permissible. This maxim has consistently been followed, as is evident from the cases referred to above. A similar view has been reiterated in Chandra Kishore Jha Vs. Mahavir Prasad and Others, Haresh Dayaram Thakur Vs. State of Maharashtra and Others, ; Delhi Administration Vs. Gurdip Singh Uban and Others, ; Dhanajaya Reddy v. State of Karnataka etc. etc. (2001) 4 S.C.C. 9; Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, ; Prabha Shankar Dubey v. State of Madhya Pradesh AIR 2004 S.C. 486 ; and Ram Phal Kundu Vs. Kamal Sharma,

16. The petitioner cannot be rendered remediless. There must be a forum where he can approach for redressal of his grievances. The application filed by the petitioner for compounding the construction raised in contravention of the sanctioned plan must be examined by the Vice Chairman of the Allahabad Development Authority as provided u/s 32 of the Act.

17. In view of the above, we dispose of the petition requesting the respondent No. 3 to consider the application filed by the petitioner for, compounding the construction raised him as referred "to" hereinabove in accordance with law within a period of two weeks from today. In case, petitioner wants to submit some better particulars in support of his application, he may do so within five days from today. For a period of two weeks, status quo as on today shall be maintained.

18. Sri Vivek Verma, learned Counsel appearing for the Authority shall communicate the order to the said respondent No. 3 by day after tomorrow, i.e. 05.07.2007.

19. A copy of the order be issued to the learned Counsel for the parties by tomorrow, i.e. 04.07.2007.