

(1996) 04 AHC CK 0087
In the Allahabad High Court
Case No : Writ Petition No. 10563 of 1984

Bhuwan Chand Shah

APPELLANT

Vs

Executive Officer, Municipal Board, Nainital & Ors.

RESPONDENT

Date of Decision : 03-04-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 04 AHC CK 0087

Hon'ble Judges : R.S.Dhavan, J and V.P.Goel, J

Final Decision : Dismissed

Judgement

Ravi S. Dhavan, J.—This matter basically concerns disrupting the ecological balance of a Himalayan town by man made activities. The town is Nainital.

2. At the time when the writ petition was filed, apparently, the petitioner had no hesitation in utilising an ad interim order, which protected as an interim measure certain constructions which the respondents allege, are illegal. The respondents are the Executive Officer, Municipal Board, Nainital, the Officer Incharge, Municipal Board, Nainital, and the Collector, Nainital. A counteraffidavit has not been filed in answer to the writ petition and this in itself is not a happy situation, as it does not rule out a presumption that any objections which the respondents may have had to the petitioner carrying out illegal constructions, they colluded with him, as when the occasion did arise to put up their stand in answering this writ petition by a reply or a counteraffidavit, they conveniently evaded the opportunity. Environment and ecological balance certainly will not be protected nor respected by such a state of inactivity by the State respondents that they object as a formality but keep silent in preventing what the law prohibits.

3. The facts in this case, thus, will need to be taken from the writ petition itself. The petitioner submits that he is owner of Plot No. 2 which is the YMCA Compound, at Mall Road, Nainital. He submitted a construction plan of certain shops on his plot. The plan initially was to construct eight shops, which subsequently was modified to four. Without permission and sanction of the

municipality of the proposed plans, the petitioner took the risk to construct the shops. The petitioner himself places on record that he had to cut trees standing on the hill side and before he could proceed with the constructions of the shops. While the trees bound and held the hill, the petitioner removed them and the hill side. Thereafter, he attempted to construct a retaining wall so that the hill side does not collapse under the pressure exerted by the gaping hill side which the petitioner had sliced off and leave, in its place, a vertical retaining wall. The petitioner contends that he took sanction of the forest department by paying a marking fee of Rs. 5.00 and removed two trees. The beginning in upsetting the ecological balance had, thus, been made by the petitioner.

4. Without waiting for any sanction, which may be forthcoming from the Municipal Board, it is the petitioner's case that he started constructions of the shops and the forest department did not raise any objection when he was felling the two trees on his plot. The question arises that if the permission of the forest department had been taken to cut the two trees, to object on the construction activity was basically of the Municipal Board, though it did not preclude the forest department, in the circumstances of this case, from checking the petitioner both in the matter of cutting trees and making constructions. But on both these counts the situation of inactivity either of the forest department or the Municipal Board does not aid the petitioner. The petitioner himself discloses the scene of action in which he participated. It appears that the petitioner had cut the hill side to such an extent that it needed a retaining wall 20 feet high; instead he made one of seven feet.

5. The picture which was now emerging was that should the petitioner construct shops he would logically slice off the hill side and remove two trees. The petitioner does not dispute that he started construction activities without sanction. He admits on record that on 4 June, 1983, he received a letter from the Executive Officer, Municipal Board, Nainital, that the sanctioned plan stood cancelled as a consequence of a communication which had been received by the Municipal Board from the Collector, Nainital. The petitioner, apparently, banks on a communication of 20 June, 1983, also, from the Executive Officer, Municipal Board, Nainital by which he had been required to erect the retaining wall, to support the sliced off hill side, within fifteen days. Impliedly the petitioner draws the conclusion that perhaps he had not been prevented from carrying out the construction activities. The two have nothing to do with each other as having destroyed the hill, the least which could be done to prevent the hill side from sliding down was to buttress it with a retaining wall. The petitioner refers to his previous plan of constructing eight shops and concedes that as these would have posed a danger to the hill area he thought of reducing the constructions in a revised plan for four shops only.

6. Apparently, the respondents upon scrutinising the entire construction activity were not forthcoming with the revised plan and rejected it. In the meanwhile the petitioner took the law in his own hands and started the construction activity.

7. On behalf of the petitioner it is contended that the petitioner banks on carving out a case that as the construction plan is awaiting approval but within a time bound period, which was not forthcoming, the proceeded to construct on the fiction of deemed approval. In reality what has happened is that the petitioner himself places on record that on the revised plan which he had submitted, the respondents were not permitting him to make any constructions. Of any building activity which the petitioner may have continued, even then, he did so at his risk.

8. The petitioner refers to police officials and the officials of the Municipal Board visiting the site and, apparently, this became the cause of filing of this writ petition. When this writ petition was filed an ad interim order was passed, to the effect, that the construction, if standing, would not be demolished, but with the condition that the petitioner would also not make any further constructions on the land.

9. The balance of nature is very delicate, and hills yet have a sensitive ecology. They are prone to land slides and earth quakes. The trees hold the hills and hills holds the trees. The town of Nainital is not excluded from nature's fury. The conforming characteristic of the hills is its preservation. The standards for the preservation of the hills and manmade activities will be different than planning urban habitates on the plains. Of any set back which may have to be left for a straight street alignment on the plains, these may not hold good as a yardstick in regulating urbanisation on the mountains. For there a house may have to be set back from a hill, and yet in front may be precipice. In the hills, a street or a footpath takes the contour of the terrain.

10. The petitioner was playing with nature and was moving and shifting mountains for a vested gain to do business by cutting and slicing a hill side. If everyone were to do what the petitioner has done," then the phenomenon of the beating which the mountains take from man is easily explained. The town of Nainital has itself seen, in the last hundred years, or more, two lands slides and the reason is that the nature's buttress which supports its hills is imbalanced by habitat.

11. In the circumstances, the Court is not inclined to lend a prerogative writ to the petitioner nor can the Court certify that, what the respondents did was incorrect. In fact, what the petitioner did was violating the discipline of nature by cutting a hill side, removing the trees, for putting up commercial activities. The obligation to preserve the ecological balance of the petitioner's environment, lies on him.

Of the illegal activity which the petitioner undertook, this Court gives him six months time to remove them, failing which the Collector, Nainital, shall demolish the shops and for the collusion which the respondents indulged in by not answering this writ petition, to buttress and restore the hill side shall be their obligation.

12. A copy of this order shall be sent by the Registrar, High Court, to the District

Magistrate and Collector, Nainital. The petition is dismissed.