
(2007) 04 AHC CK 0186
In the Allahabad High Court

Doon International Educational Society and Another	APPELLANT
Vs	
State of Uttaranchal and Others	RESPONDENT

Date of Decision : 02-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 2 AWC 1952 : (2007) 2 UPLBEC 43

Hon'ble Judges : Prafulla C. Pant, J; Dharam Veer, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—Both these petitions are directed against order dated 19.6.2002, passed by Government of Uttaranchal, whereby while upholding the rest of the constructions, top floor (second floor) of the building in question, has been directed to be demolished. For the sake of convenience, both these petitions are being disposed of by this common Judgment.

2. Heard learned Counsel for the parties and perused the entire record.

3. Brief facts of the case, as narrated in the Writ Petition No. 379 (M/B) of 2002, are that petitioner No. 1 Doon International Educational Society, is a Society registered under the Societies Registration Act, which runs a school at 3, Mohini Road, Dehradun. A plan was submitted by petitioner No. 1 to the Mussoorie-Dehradun Development Authority (hereinafter referred as M.D.D.A.) on 31.5.2001, for further constructions in the building. After expiry of 90 days, when no Information was received that the plan is sanctioned, petitioners started construction, as per the plan. However, later on after getting notice from M.D.D.A., the petitioners got compounded the constructions and, on 24.11.2001, deposited a sum of Rs. 5,31,789, as compounding fee.

4. The building in which the school runs consists of two Blocks, namely Block-A and Block B. The total area of the plot is 5330.27 sq. mts. and there is sufficient open space left around the building. Respondents Madhur Gupta and D. P. Juyal,

who had objections to the constructions being raised by the petitioners. filed Public Interest Litigation in the form of Writ Petition No. 931 (M/B) of 2001, Madhur Gupta v. State of Uttaranchal, before this Court. In said Public Interest Litigation, it was alleged that the constructions were being raised without sanctioned plan. The said Public Interest Litigation was disposed of by this Court vide its order dated 9.4.2002 (copy Annexure-11 to the writ petition), whereby it was directed that the grievances of the objectors would be looked into by the M.D.D.A. According to the petitioners, the population density in Dalanwala area of Dehradun, as per the master plan ranges 100-150 persons per hectare and there are several schools like Welham Boys School, Welham Girls' School, Brooklyn School, Carman School. Silver Oak School, Colonel Brown School, Young World School, Riverdale School and Charmwood International School, running in Dalanwala area of Dehradun, where the petitioners also runs their school. Again, a fresh Public Interest Litigation in the form of Writ Petition No. 174 (M/B) of 2002, was filed before this Court against the constructions raised by the petitioners by Dinesh Anand and others. Said writ petition was disposed of by this Court vide its order dated 27.5.2002 (copy Annexure-13 to the writ petition) with the observations that the petitioners of said case (Dinesh Anand and others) may file appeal under the U.P. Urban Planning and Development Act, 1973. Petitioners Dinesh Anand and others of said case appear to have preferred an appeal before the State Government placing their grievances against the constructions raised by the present petitioners. The State Government, after hearing the parties, passed the impugned order dated 19.6.2002, whereby it directed that the top floor, i.e., second floor of the building in question, be demolished. However, the rest of the constructions were not disturbed. Aggrieved by said order, Writ Petition No. 379 (M/B) of 2002 is filed by the Doon International Educational Society, and the connected Writ Petition No. 417 (M/B) of 2002 was filed by Dinesh Anand and others. The petitioners of Writ Petition No. 379 (M/B) of 2002, have challenged the order of demolition passed by the State Government on following grounds- firstly, that the petitioners' constructions were authorized constructions; secondly, that the State Government had no authority to entertain the appeal beyond the period of limitation; thirdly, that the findings of the State Government in the impugned order are whimsical, arbitrary, perverse and hypothetical; fourthly, that the impugned order is against the principles of law laid down by the Apex Court, and lastly, it is alleged that the State Government has overlooked the height of the buildings of other schools and the petitioners are being deprived illegally of using their own property.

5. On the other hand, petitioners Dinesh Anand and Ors. in connected Writ Petition No. 417 (M/S) of 2002 have assailed the impugned order dated 19.6.2002, passed by the State Government praying that entire constructions of the building, in question are against the master plan, as such, the basement, ground floor and first floor were also liable to be demolished. It is alleged in this writ petition that the disputed constructions were raised in violation of the

byelaws and the master plan. Challenging the constructions in question, on the ground that the same were raised without sanction of the plan, it is alleged that the impugned order is illegal and arbitrary to the extent it saves basement, ground floor and the first floor of the building, in question.

6. Before further discussions, it is pertinent to mention here, the orders passed by this Court in Public Interest Litigations. The Public Interest Litigation which was filed by Madhur Gupta and another in the form of Writ Petition No. 931 (M/B) of 2001, was disposed of vide order dated 9.4.2002, passed by this Court, the same reads as under:

This writ petition has been directed by the petitioners as Public Interest Litigation seeking following reliefs:

I. issue a writ, order or direction in the nature of mandamus or any other writ or direction to demolish the construction raised by the respondent No. 4 in contravention of Master Plan and provision of U.P. Urban Planning and Development Act, 1973. Rules, Regulation and bye-laws made thereunder.

II. Issue a writ of mandamus or any other writ or order to the respondent Nos. 1, 2 and 3 to perform their statutory duties provided under U.P. Urban Planning and Development Act, 1973 to immediately stop the unauthorized construction and immediately to demolish the unauthorized construction of school building in accordance with provisions of the Act.

In the writ petition nowhere the petitioners have stated that as to how the petitioners have no personal interest in the matter. The relief-I, as is the settled law, cannot be granted by this Court in exercise of its powers under Article 226 of the Constitution of India. When this was asked to the petitioners, they say that they do not wish to press the prayer No. 1.

So far as the second prayer is concerned, the respondents under U.P. Urban Planning and Development Act, 1973, are directed to look into the grievance of the petitioners and decide the matter after giving opportunity to the parties for hearing and shall pass appropriate reasoned order within a period of ten days from the date of production of certified copy of this order. Till then or till the order is passed in the matter, whichever is earlier, there shall be no construction on the disputed land. The parties shall not seek adjournment on the date fixed by the authority.

This order is passed in presence of the learned Counsel for the Mussoorie-Dehradun Development Authority, who shall furnish the copy of this order to the authorities concerned.

With the aforesaid observation, the petition is disposed of finally.

Sd. Sd. P.C. Verma, J. Irshad Hussain, J.

The subsequent Public Interest Litigation which was filed in the form of Writ Petition No. 174 (M/B) of 2002, was disposed of vide order dated 27.5.2002,

passed by this Court, reads as under:

This writ petition relates to the opening of the school in Mohini Road area of Dalanwala, district Dehradun. A public interest writ petition was filed by some of the residents of the area which was disposed of by this Bench on 9.4.2002 directing the Mussoorie-Dehradun Development Authority to decide the objections of the residents of the locality and then to pass appropriate orders on the grievance raised by the residents in accordance with law. Now this is the petition by earlier petitioners alongwith some other residents of the same locality on the same averments. Therefore, this petition is barred by Rule 27 of Chapter XXII of High Court Rules. Accordingly, the petition is liable to be dismissed.

However, it is made clear that in case the petitioners are still aggrieved by the order of the M.D.D.A., they may file appeal u/s 28 read with Section 27 of the U.P. Urban Planning and Development Act within three days from today. The State Government, if approached shall decide the matter within 15 days from the date of filing of any such application. For 15 days undertaking given by the respondents shall remain in force.

The petition is disposed of accordingly.

Sd. Sd. P.C. Verma, J. Irshad Hussain, J.

7. Mr. Alok Singh, learned senior advocate appearing on behalf of the petitioners Doon International Educational Society argued that the State Government has no power to hear appeal u/s 27 or 28 of the U.P. Urban Planning and Development Act, 1973, as such, the State Government had no power to pass the impugned order in compliance of the aforesaid order, passed in Writ Petition No. 174 (M/B) of 2002. It is true that Section 27 of aforesaid Act deals with the power of the Vice Chairman to order demolition of unauthorized construction and Sub-section (2) of Section 27 of aforesaid Act deals with the appellate power of the Chairman of the Authority. Similarly, Section 28 deals with the power of the Authority accorded under the aforesaid Act to stop the unauthorized constructions. The said power also vests with the Vice Chairman and other officers of the Authority. Having gone through the papers on record, we found that the impugned order, though, purports to have been passed in compliance of the High Court's order dated 27.5.2002, quoted above, but it is not a case where the Government has no power at all to pass any order under the U.P. Urban Planning and Development Act, 1973 (applicable to the State of Uttarakhand) in the matter. Section 41 of the aforesaid Act, reads as under:

41. Control by State Government-(1) The (Authority, the Chairman or the Vice-Chairman) shall carry out such directions as may be issued to it from time to time by the State Government for the efficient administration of this Act.

(2) If in, or in connection with, the exercise of its powers and discharge of its functions by the (Authority, the Chairman or the Vice Chairman) under this Act where any dispute arises between the (Authority, the Chairman or the Vice-

Chairman) and the State Government the decision of the State Government on such dispute shall be final.

(3) The State Government may, at any time, either on its own motion or on application made to it in this behalf, call for the records of any case disposed of or order passed by the (authority or the Chairman) for the purpose of satisfying itself as to the legality or propriety of any order passed or direction issued and may pass such order or issue such direction in relation thereto as it may think fit:

Provided that the State Government shall not pass an order prejudicial to any person without affording such person a reasonable opportunity of being heard.

(4) Every order of the State Government made in exercise of the powers conferred by this Act shall be final and shall not be called in question in any Court.

The aforesaid provision makes it clear that the Government has the power to issue the necessary directions to the M.D.D.A. or its Chairman or Vice Chairman for efficient administration under the Act. Not only this, Sub-section (3) of Section 41 clearly provides that the State Government may, at any time, either on its own motion or on application made to it in this behalf, call for the records of any case disposed of or order passed by the Authority or the Chairman for the purpose of satisfying itself as to the legality or propriety of any order passed or direction issued and may pass such order or issue such direction in relation thereto as it may think fit. Certainly, the proviso to Sub-section (3) requires that before passing a prejudicial order, the parties concerned shall be heard, in the matter. The impugned order dated 19.6.2002 shows that the State Government, before passing the order did hear the concerned parties, and it is nobody's case that they were not heard.

8. The next submission advanced by Mr. Alok Singh, learned senior advocate, on behalf of the petitioners Doon International Educational Society is that in view of the opinion expressed by Allahabad High Court in Mahant Shri Ishwar Das Ji, Mahant of Srimath Jagatguru Ramanandacharya Peeth Varanasi v. State of U.P. and Ors. 1994 (2) ARC 478 : 1994 (3) AWC 1697 , the order of sanctioning building plan cannot be reviewed nor can it be revoked, except on the ground of fraud, concealment or misrepresentation. Also, reliance is placed in this regard in State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, , in which the Apex Court has held that the permission accorded for construction can be cancelled on the ground of fraud, misrepresentation or violation of a covenant. In this connection, it is argued on behalf of Doon International Educational Society that the constructions are raised neither by committing any fraud nor misrepresentation nor concealment. Having heard learned Counsel for the parties, we are of the view that no doubt, once a sanction is given by the competent authority and the party acting upon it has raised the constructions, the same cannot be demolished lightly unless there is serious ground like fraud, misrepresentation or concealment of fact. In the

present facts of the case, we are of the view that the Doon International Educational Society were not bona fide in raising the constructions, before the plan was sanctioned. It is a case where admittedly the disputed constructions were raised after submitting the plan (before the sanction), and on receiving notices from the M.D.D.A., the matter was got compounded by depositing fee amounting to Rs. 5,31,789. Now, the question is whether the officers of M.D.D.A. had acted in accordance with bye laws and the master plan, or not? In *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, even if the builder has invested considerable amount, the unauthorized constructions can and should be directed to be demolished, if the same are found to be against the public interest or the example of bad,, governance. The impugned order dated 19.6.2002, passed by the State Government shows that, on inspection, it was found that the height of the building of the school is I much higher than the required height permissible in the residential colony. The State Government has also expressed the view that if the second , floor of the building is permitted to stand, not only would it be difficult for the children to ascend or descend the stairs but also number of vehicles coming to the school would increase so much that it would be difficult for public to move on a 20 feet wide road (i.e., Mohini Road) by the side of which Doon International Educational Society is running the school. The State Government has also taken note of the fact that by raising the height of the building in question, it would increase the noise pollution and would create the problem of parking for the public in the area. It is also stated in the impugned order that there is no need to have a second floor for a nursery school. These grounds mentioned in the impugned order can neither be said to be unreasonable nor can these be said to be arbitrary. The considerations taken into account by the State Government appear to be just and proper.

9. On behalf of the petitioners of Writ Petition No. 417 (M/B) of 2002, in which a request has been made to demolish the basement and the ground floor of the building in question, no sufficient reason is shown for doing so. They completely failed to show what error of law has been committed by the State Government in upholding the existing constructions of basement, ground floor and the first floor of the building, in question.

10. In view of the aforesaid discussion, we are of the view, that both the writ petitions, i.e., Writ Petition No. 379 (M/B) of 2002 and Writ Petition No. 417 (M/B) of 2002, are liable to be dismissed. The impugned order dated 19.6.2002, passed by the State Government needs no interference by this Court. Accordingly, both the writ petitions are dismissed. No order as to costs.