

(2013) 01 AHC CK 0167
In the Allahabad High Court
Case No : Writ Case No.42132 of 2011

Emgee Projects India Pvt.Ltd.

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 15-01-2013

Acts Referred:

Citation : (2013) 01 AHC CK 0167

Hon'ble Judges : Ashok Bhushan, J and Abhinava Upadhyia, J

Final Decision : Disposed Of

Judgement

Abhinava Upadhyia, J.

Heard Sri P.N.Saxena, learned Senior Advocate assisted by Sri Amit Saxena, learned counsel for the petitioner, Sri C.B.Yadav, learned Additional Advocate General assisted by Sri Shashank Shekhar Singh, learned Additional Chief Standing Counsel for the Staterespondents and Sri M.C.Tripathi, learned counsel for the Kanpur Development Authority.

Counter and rejoinder affidavits have been exchanged between the parties and with the consent of the learned counsel for the parties, the writ petition is being finally disposed of.

By means of this writ petition the petitioner has prayed for quashing the order dated 23.2.2011 passed by respondent no.3 stopping the construction over the land of the petitioner.

The petitioner claims to be the purchaser of Plot No.13, Block 16, Sutherland House, Civil Lines, Kanpur, in auction sale of the assets of the British India Corporation. Predecessor in title of the petitioner British India Corporation was under liquidation and the assets of the Corporation was transferred to the petitioner's Company. It is pleaded in the writ petition that the bid was approved by the Asset Sale Committee constituted by BIFR on 15.1.2004.

The petitioner's case is that after purchase of the land a sanctioned plan was

submitted to the Kanpur Development Authority which sought no objection from all the authorities including the District Magistrate. It is submitted that the District Magistrate passed an order dated 26th October, 2009 giving his no objection on several conditions as mentioned in the letter. Subsequent to the letter of the District Magistrate the Kanpur Development Authority vide its letter dated 25.11.2009 has granted sanction of the plan subject to the condition mentioned therein including the conditions as imposed by the District Magistrate.

The petitioner's grievance is that the Additional District Magistrate without any notice and opportunity to the petitioner directly issued letter dated 23.2.2011 directing the Officer in Charge, Police Station Kotwali, Kanpur Nagar for taking action to stop the construction made by the petitioner and the petitioner was asked to appear before the Additional District Magistrate along with the documents of title. The letter was also sent to the Kanpur Development Authority to examine as to whether construction is being made in pursuance of the sanctioned plan and if the plan has been sanctioned what is the basis for sanction of the plan and the actual facts be placed before the District Magistrate.

The writ petition was entertained. The respondents were allowed time to file counter affidavit.

A counter affidavit has been filed on behalf of respondents no.1 to 3. A supplementary affidavit has also been filed on behalf of respondents no.2 and 3.

In the counter affidavit which has been brought on record a stand has sought to be taken that the Cawnpore Improvement Trust transferred the Sutherland Houe to M/s. Begg Sutherland Company Limited the predecessor in interest of the petitioner. It is further sought to contend that the land belongs to the State Government being nazul land and an application for mutation of the name of British India Corporation was rejected by the Collector in the year 2004 and again an application was filed on 12.9.2005 by the British India Corporation for recording the name of the British India Corporation before the Prabhari Adhikari (Nazul) and it was only in the year 2005 that the name of British India Corporation could be recorded in the Nazul record.

Sri C.B.Yadav, learned Additional Advocate General submitted that the State Government never transferred the nazul land in favour of either Improvement Trust and Kanpur Improvement Trust or in favour of the predecessor in interest and the Collector earlier had also objected to the transfer of the land adjoining to the Collector's Bungalow, Kanpur as well as to the Improvement Trust, Municipal Board, Kanpur and the land being nazul land the Collector has every right to stop any construction therein.

We have heard learned counsel for the parties and perused the order which has been impugned in the writ petition as well as the letter written by the Additional District Magistrate (Finance and Revenue) Kanpur Nagar dated 23.2.2011 which is addressed to the Prabhari Nirakhak, Police Station Kotwali, Kanpur Nagar to stop the construction. The letter further states that with regard to title of the

land enquiry is being made and till the enquiry is completed, it is not appropriate that any construction be allowed to be made.

From the material which has been brought on record including no objection given by the Collector and the sanction of the plan by the Kanpur Development Authority on 25.11.2009 it does appear that the petitioner was proceeding to make construction in pursuance of the sanction of the plan and in pursuance of the sale deed. The order has been issued by Additional District Magistrate without any notice and without giving any kind of opportunity to the petitioner. The order has not been passed by the Kanpur Development Authority making any allegation that the constructions are being made in violation of the terms and conditions of the sanction order. The District Magistrate has issued an order on the ground of some enquiry regarding title being made. Merely some enquiry was pending the same was not sufficient ground to issue prohibitory order. If there were any plea or ground regarding title of the land, appropriate course open for the respondent was to issue appropriate notice and thereafter take a decision. The order dated 23.2.2011 having been passed in violation of the principles of natural justice, can not be sustained and is hereby set aside.

Learned Additional Advocate General submits that looking to the facts which has been brought on record including the fact that several correspondence took place between the Government and the Kanpur Development Authority and the Improvement Trust and the nature of the land which continued to be recorded as nazul land till 2005, it is appropriate that the State Government be permitted to consider the issue and take decision regarding the nature of the land and the nature of the rights of the State Government qua the petitioner.

Sri P.N.Saxena, learned senior counsel appearing for the petitioner submits that even if the State Government is permitted to take a decision, the State Government be required to give appropriate notice to the petitioner. He further submits that in the event the Government gives notice to the petitioner, the petitioner shall appear and file his objection regarding the notice pertaining to the title of the land in dispute.

In view of the aforesaid, we are of the view that the ends of justice be served to set aside the order dated 23.2.2011 with the liberty to the State to draw the proceedings for determining the nature of the title of the land after giving appropriate notice to the petitioner. However, it is made clear that we have not expressed any opinion on the merits of the claim either of the parties and leave it to the Government to decide with regard to title in issue.

Subject to the aforesaid, the writ petition is finally disposed of.