
(1982) 08 AHC CK 0001
In the Allahabad High Court
Case No : Writ Petition No. 360 of 1978

Husain Ahmad

APPELLANT

Vs

Chief Judicial Magistrate, Faizabad and Others

RESPONDENT

Date of Decision : 03-08-1982

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 178, 7

Citation : (1982) AWC 871

Hon'ble Judges : S.C. Mathur, J

Bench : Single Bench

Advocate : Haider Abbas, for the Appellant; Ashok Nigam and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.C. Mathur, J.—Husain Ahmad has directed this petition against rejection of his application for sanctioning plan of his proposed construction under the provisions of the U.P. Municipalities Act, 1916, The sanction has been refused on the basis that the land over which construction is sought to be made, belongs to the Nazul and is vested for management in the Nagar Palika, opposite party No. 2. After the application for sanction was rejected, the Petitioner preferred appeal before the Chief Judicial Magistrate, Faizabad but the same was rejected by order, dated 31-10-1977, Annexure No. 2.

2. The learned Counsel for the Petitioner has challenged the above orders on two grounds—(1) The sanction could not be refused on the ground of title. (2) The sanction already stood accorded under Sub-section (3) of Section 180 and, therefore, there was no question of refusing the sanction.

3. Sub-section (3) of Section 180 provides as follows:—

should the board neglect or omit for one month after the receipt of a valid notice u/s 178 to make and deliver to the person who has given such notice and of the nature specified in Sub-section (1) in respect thereof, such person may by a

written communication call the attention of the board to the omission or neglect, and, if such omission or neglect continues for a further period of fifteen days, the board shall be deemed to have sanctioned the proposed work absolutely:

Learned Counsel argued that the Petitioner had applied for sanction on 1-7-76 but the application was not disposed of within one month and, thereafter, the Petitioner made a written communication on 8-9-1976 drawing attention of the Municipal Board to the omission and neglect but in spite of this no order was passed and the permission thus stood accorded. This question does not appear to have been raised before the Chief Judicial Magistrate, Faizabad, opposite party No. 1 who heard the Petitioner's appeal. The order does not refer to any such argument and the Petitioner too has not stated in the writ petition that any such argument was advanced before him. A copy of the memorandum of appeal has also not been placed on record. The Petitioner's allegation that a written communication was sent on 8-9-1976, has not been accepted on behalf of the Municipal Board. In the circumstances, the plea cannot be entertained at this stage.

4. So far as the first question is concerned, the learned Counsel's argument was that the sanction could be refused only if the plan contravened the byelaws or affected public health or safety. The argument was based on the provision contained in Sub-section (1) of Section 180. On the other hand on behalf of the Nagar Palika it was argued by its learned Counsel that the sanction could be refused on other relevant grounds also. According to the learned Counsel the relevant ground in the present case was that the property belonged to Nazul and the same was in the management of the Board and it was the statutory duty of the Board to protect the property so vesting. The learned Counsel relied upon Clause (q) of Section 7 of the U.P. Municipalities Act, 1916. In support of the same argument the learned Counsel has also relied upon Clause (f) of Section 116. He has further cited 1968, Shanker Lal v. Municipal Board of Auraiya Allahabad Law Journal 197.

5. The provisions dealing with the sanction of building plans are contained in Chapter VII of the Act. Section 178 requires a notice to be given to the Board regarding erection of a new building or a new part of the building. Sub-section (1) of Section 180 provides as follows:-

180. Sanction of work by Board.-(1) Subject to the provisions of any bye law the board may either refuse to sanction any work of which notice has been given u/s 178 or may sanction it absolutely or subject to-

(a) any written directions that the board deems fit to issue in respect of all or any of the matters mentioned in sub-head (h) of heading A of Section 298, or

(b) a written direction requiring the set-back of the building or part of a building to the regular line of the street prescribed under section: 222, or, in default of any regular line prescribed under that section, to the line of frontage of any neighbouring buildings.

On the basis of the use of the words "subject to the provisions of any bye-law" the learned Counsel argued that unless there was breach of a bye-law, the sanction could not be refused. I am unable to agree with the submission of the learned Counsel. The meaning of these words is that the sanction will have to conform to the bye-laws framed by the board. These words do not limit the jurisdiction of the board to refuse sanction only when there is infringement of a bye-law. While refusing sanction the board can take into account all relevant facts including the fact that there was no conflict with any of its statutory duties. Section 7 prescribes the duties of the board. In Clause (q) it is mentioned thus:-

protecting, maintaining and developing the property vested in, or entrusted to the management of the board.

6. In view of the above provisions if a property is vested in the board or is entrusted to it for management, it is the duty of the board to protect it, to maintain it, and to develop it. The board will be failing in the discharge of its statutory duty if it allows such property to be occupied by others without obtaining valid title thereto. In respect of a Nazul land title could be acquired by obtaining a lease-deed or any other deed of transfer. It is not the Petitioner's case that he has obtained any lease deed or any deed of transfer. The Petitioner's case on the other hand is that he is himself the Bhumidhar of the land in dispute. In proceedings for sanction of plan this dispute on question of title of course could not be gone into but if the property was entered in the property register of Nazul and was vesting in the Municipal Board, the Municipal Board could with justification refuse to sanction the plan. In the present case the title vests prima facie in the Nazul. Along with the counter affidavit Nazul Intakhab Register Bandobast for the year 1337 Fasli was filed in which plot No. 726-Ba has been recorded in the name of Nazul. In paragraph 3 of the counter affidavit also it has been asserted that throughout, the plot in question has been a Nazul land. In the circumstances, it cannot be said that the sanction was refused on extraneous considerations.

7. On the legal question the view that I have taken finds support from a decision of this Court in *Shanker Lal v. Municipal Board of Auraiya* (Supra). At page 200 it was observed as follows:-

An examination of these provisions of the Act to my mind indicates that the Municipal Board as the custodian of the health, safety and convenience of the public has been given very wide powers to refuse sanction of a proposed work. If the sanction has been refused on the ground that the construction would contravene a bye law or that it would be prejudicial to the health or safety of the public or any other person the owner "of the land, proposed to be constructed upon would not have even a right to receive compensation from the Board. If the refusal is based on grounds other than these, the only right a person has is the right to receive compensation. To my mind as long as the refusal is based on a ground not extraneous to the legitimate duties of the Board and as long as it is not mala fide it is not open to challenge as being invalid.

At page 201 it was further observed thus:-

...as the custodian of the civic rights of the citizen responsible for the health, sanitation, planning etc. of the town in deciding as to whether a proposed construction should be sanctioned or not the Board should bear in mind all its powers, duties and functions....

8. In view of the above if the Board in the present case while refusing sanction has drawn upon its statutory duty u/s 7(1) (q), it cannot be said to have acted arbitrarily or illegally.

9. Learned Counsel for the Petitioner in support of his argument that the order was based upon extraneous considerations, cited Boddepalli Sanyasappa Rao and Another Vs. Sanapala Papinaidu and Others, and Kavilpura Ezhuvaran Muthu's son Chathunni and Others Vs. Pathiyil Rugmini Amma's son Appukuttan Nair and Others, I have gone through these authorities and neither of them has any application to the facts of the present case. In the former case the refusal of sanction was based on a right of easement claimed by a private individual. Under the Act it was not one of the duties of the Municipal Board to protect such a right and it was, therefore, held that the refusal was based on extraneous considerations. The later case related to a criminal offence and has no application to the facts of the present case.

10. In view of the above, the petition fails and is hereby dismissed with costs to opposite party No. 2 Nagar Palika, stay order, if any, shall stand discharged.