

(2015) 05 UK CK 0047

In the Uttarakhand High Court

Case No : Writ Petition No. 2024 (MS) of 2008

Jagdish Chandra Punetha and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 22-05-2015

Acts Referred:

Citation : (2015) 05 UK CK 0047

Hon'ble Judges : Alok Singh, J.

Bench : Single Bench

Advocate : B.C. Pandey, Senior Advocate assisted by Paresh Tripathi, Advocate, for the Appellant; R.C. Arya, Standing Counsel, for the Respondent

Judgement

Alok Singh, J.—Present petition is preferred assailing the order dated 7.11.2003 passed by Prescribed Authority, order dated 24.6.2005 passed by Controlling Authority and order dated 11.9.2008 passed by State Government. Brief facts of the present case, inter alia, are that Prescribed Authority under the Uttar Pradesh (Regulation of Building Operations) Act, 1958 (for short, the Act) was pleased to issue show cause notice to the petitioner u/s. 10 of the Act on 26.5.2003, calling the explanation from the petitioner as to why illegal construction raised by him be not demolished; on 27.5.2003 the petitioner moved an application before the Prescribed Authority stating therein that petitioners were undertaking repair work inside the house however since the house was in dilapidated condition, being old structure, the house all of sudden fell down, thereafter the petitioner started reconstruction of the house of same dimension. Therefore, there was absolutely no need to get the map sanction; however the petitioners are ready to compound the construction which are found unauthorized. Instead of passing any order on the application dated 27.5.2003, seeking compounding of the construction learned Prescribed Authority was pleased to pass an order on 7.11.2003, imposing penalty of Rs. 82,500/- for carrying out unauthorized construction. Order dated 7.11.2003 was assailed u/s. 15-A of the Act before the Controlling Authority; however the Controlling Authority was pleased to dismiss the appeal

vide order dated 24.6.2005; order of the Controlling Authority was assailed before the State Government, however the revision also came to be dismissed vide order dated 11.9.2008; feeling aggrieved, the petitioners have preferred this writ petition.

2. I have heard Mr. B.C. Pandey, learned Senior Counsel assisted by Mr. Paresh Tripathi, learned counsel appearing for the petitioners and Mr. R.C. Arya, learned Standing Counsel appearing for the State/respondents and have carefully perused the record.

3. Mr. B.C. Pandey, learned Senior Counsel has vehemently argued that although show cause notice was issued against the petitioner on 26.5.2003 u/s. 10 of the Act, however Prescribed Authority was pleased to impose penalty by exercising the powers u/s. 9 of the Act. He further contends that power u/s. 9 of the Act can only be exercised by the Judicial Magistrate 1st Class as contemplated u/s. 11 of the Act. He further contends that Judicial Magistrate can take cognizance only when a complaint is lodged and complaint can be lodged after obtaining sanction from the Prescribed Authority. He further contends that the Prescribed Authority may accord sanction to lodge the complaint only when he finds that constructions were raised without getting approval or in deviation of the sanctioned map. He further contends that construction raised by the petitioner has already been compounded.

4. Sections 9, 10, 11 and 12 of the Act are being reproduced herein to appreciate the submission raised by Mr. B.C. Pandey, learned Senior Counsel:--

"9. Penalties. -(1) Any person who undertakes or carries out the development of any site or erects, [re-erects or makes any material change in] any building or makes or extends any excavation or lays out any means of access to a road in contravention of [any regulation made under this Act] or without the permission referred to in Section 6 or in contravention of any condition subject to which such permission has been granted, [or in violation of any action taken under sub-section (2) of Section 10 to stop the erection or re-erection of any building or the execution of any work] shall be punishable with fine which may extend to ten thousand rupees and in the case of a continuing offence, with a further fine which may extend to five hundred rupees for every day during which such offence continues after conviction for the first commission of the offence.

(2) Any person who obstructs the entry of a person unauthorized under Section 8 to enter into or upon any building or land or molests such person after such entry shall be punishable with fine which may extend to one thousand rupees.

(3) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(4) Notwithstanding anything contained in sub-section (3), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

10. Order of demolition of buildings in certain cases.--[(1)] Where the erection or re-erection of or material change in any building has been commenced or is being carried on or has been completed in contravention of [any regulation made under this Act] or without the permission referred to in Section 6 or in contravention of any condition subject to which such permission has been granted, the prescribed authority may [without prejudice to the provision of Section 9] make an order directing that such [erection, re-erection or material [change] in] shall be demolished by the owner thereof within such period not exceeding two months as may be specified in the order, and on the failure of the owner to comply with the order the prescribed authority may itself [through the local authority concerned or through such other agency as it thinks fit] cause the erection, re-erection or material change in to be demolished and the expenses of such demolition shall be recoverable from the owner in the same manner as an arrear of land revenue:

Provided that no such order shall be made unless the owner has been given an opportunity of being heard.

[(2) If the prescribed authority is satisfied that the erection or re-erection of any building or the execution of any such work as is referred to in Section 6 has been unlawfully commenced or is being unlawfully carried on it may by written notice require the person directing or carrying on such erection or re-erection or execution, to stop the same forthwith and on his failure to do so, cause the carrying on of such erection or re-erection or execution to be stopped and use or employ such reasonable force as may be necessary therefore.]

11. Jurisdiction of Courts.--No court inferior to that of a Magistrate of the first class shall try an offence punishable under this Act.

12. Previous sanction of the prescribed authority for prosecution.--[(1) No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the prescribed authority.

[(2) The prescribed authority may, and if required by the Controlling Authority shall, compound any offence punishable under this Act, either before or after the

institution of the prosecution, on such terms (which may include payment of a sum of money by way of composition for the offence) as it or the Controlling Authority, as the case may be, thinks fit)"

5. Section 10 of the Act provides that if Prescribed Authority is satisfied that any construction was raised without the permission referred to in Section 6 or in contravention of any condition subject to which such permission has been granted or construction has been raised in contravention of any regulation under this Act, the Prescribed Authority may make an order directing such construction to be demolished by the owner thereof within such period not exceeding two months and on the failure of owner to demolish such construction the Prescribed Authority may itself cause the demolition done and expenses of the demolition shall be recovered from the owner as the arrear of land revenue. Before passing order u/s. 10 of the Act, owner of the alleged unauthorized construction has to be heard.

6. Section 9 of the Act provides that if any person is found guilty of raising construction in contravention of any regulation or in contravention of sanctioned map or without any sanctioned map, such person shall be punished with fine which may extend to ten thousand rupees and in the case of a continuing offence, with a further fine which may extend to five hundred rupees for every day during which such offence continues after conviction for the first commission of the offence.

7. Section 11 of the Act provides that no court inferior to that of a Magistrate shall try an offence punishable under this Act while as per Section 12 no prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the prescribed authority. In the present case, learned prescribed authority himself has exercised the power of Section 9 of the Act by imposing penalty against the petitioners. Therefore, the orders passed by learned Prescribed Authority, Appellate Authority and Revisional Authority are absolutely without jurisdiction. Moreover, since constructions, thereafter were compounded, therefore, present petition succeeds and is allowed. Impugned orders are hereby quashed. No costs.