
(1982) 01 AHC CK 0057

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 2695 of 1974

Khan Chand and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-01-1982

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh (Regulation of Building Operations) Act, 1958 — Section 1, 10, 2, 5, 6

Citation : (1982) AWC 220

Hon'ble Judges : S.D. Agarwala, J; R.M. Sahai, J

Bench : Division Bench

Advocate : H.S. Nigam, for the Appellant;

Final Decision : Allowed

Judgement

R.M. Sahai, J.—In this petition filed under Article 226 of the Constitution of India the short question that arises for consideration is whether Controlling Authority and the State Government committed any error in determining compounding fee leviable on Petitioner for having raised construction without obtaining permission of Prescribed Authority.

2. On an area of approximately 4400 sq. feet ownership of which is not disputed, shops and residential accommodation were constructed on ground and first floor some time in 1966. Prescribed Authority, Regulated Areas, Nainital served notice on Petitioners, u/s 10 of U.P. (Regulation of Building Operations) Act to show cause by 20-5-67 as to why these constructions may not be demolished and fine imposed as they were built without obtaining prior permission u/s 6 of the Act. Although the notice was contested but the Petitioners do not appear to have pressed it except requesting the Prescribed Authority to recommend to the Controller for compounding. On 25-9-1968 Prescribed Authority made inspection of the site and found that entire construction was unauthorised as it was raised without obtaining prior sanction of competent authority. Petitioners were found to have contravened Master plan by constructing commercial accommodation in

residential locality, encroached nazul land and paved public land. Thereafter overseer appears to have submitted report showing exact measurement etc. which was considered by Prescribed Authority and he passed an order copy of which has been filed as annexure "II" to the supplementary affidavit. It appears that the overseer had recommended heavy compounding fee therefore the Petitioners requested the Prescribed Authority that although they were willing to compound but the matter be referred to controlling authority to enable them to afford an opportunity to appear before him to get the compounding fee reduced. The Prescribed Authority held that although constructions and offence committed by Petitioners was not compoundable but they were substantial and provided important facility to public and its destruction would be waste of money. He, therefore, directed the constructions to remain subject to certain conditions to which the Petitioners agreed. The conditions were:

(a) the encroachment in the form of brick platform and all cemented constructions shown in the diagram attached to my inspection note should be removed by the O. P.

(b) all the shops which are at present used as workshop and sales shops for agricultural implements and tractors should be removed from the building.

(c) in the vacated spaces shops necessary of civil aminity such as readymade garments, tailors, sweetmeat will be permitted.

(d) no further constructions on the building or extending it should be made by the O.P. without consulting the Prescribed Authority and not in accordance with the master plan.

3. After receipt of this recommendation and on application of Petitioners controlling authority also made spot inspection and found that Petitioners while raising constructions on their land illegally encroached over 34" x 12" sq. feet of government land. In respect of compounding fee he held on 4-4-72 that determination of it under (ii)(2) and (iii)(b) at Rs. 27843.80 made earlier was not proper and it should be Rs. 28294.00 as pointed out in the report of overseer dated 2-4-72. This was made subject to condition of removal of encroachment from 34" x 12" and non user of shops for workshop or other mechanical business. As the Petitioner did not comply with order dated 4-4-72 and appeared to avoid service of the order despite knowledge the controlling authority passed another order on 27-9-72 directing Petitioners to remove constructions within 10 days of the order and in case of failure Tahsildar Kicha was directed to get it done at government cost recovery of which may be made from Petitioners. Against this order Petitioners went up to State Govt. but the revision was dismissed on 15-1-74.

4. The finding of encroachment of 34" x 12" government land is based on spot inspection made by controlling authority and measurements done at that time it has not been shown that this finding suffers from any error of law. Rather the counsel for Petitioners did not press it seriously. Similarly the direction for non

user of shops as workshop or for mechanical business is clearly within Sub-section (i) of Section 5 as the constructions have been raised in an area which is meant for residential buildings.

5. Coming to the main question of compounding fee it has not been disputed on behalf of State that compounding fee was leviable in accordance with various paragraphs of the Minutes of the meeting of the controlling authority of Kicha Regulations Area, district Nainital held on 30-5-62 at 11 a.m. in the office of the Commissioner, Kumaun Division, Nainital filed as annexure 7 to the supplementary affidavit. Paragraph 4 of the minutes deals with schedule of compounding fee to be charged by Prescribed Authority. The controlling authority approved three categories out of which compounding fee in case of Petitioners, has admittedly been levied under sub-paragraph (2) of category No. (II) and sub-paragraph (3)(b) of category No. (III) which are quoted below:

CATEGORY No. II

2. For carrying out of development without obtaining prior sanction of the Prescribed Authority, or when the development is not in accordance with the sanctioned plan in such a way that the bye laws in force have been contravened but the land used in accordance with the Master plan and the required front set backs have been left open, the following fees shall be charged.

Total plinth area of the development carried out

Upto 1000 sqft Rs. 500/- 1001 sft to 2000 sft, Rs. 1000/- Above 2001 sft. (about 5% of cost). Rs. 1500/.

The term front set backs mentioned in these rules also means set backs towards other than front street if the site of the applicant abuts on more than 1 street and where the side set back required in the bye laws to be left open is equal to the front set back.

(b) Where the development involves the constructions of compounding wall, laying of streets, storm water drains etc. provided that the bye laws of the land use proposal of the Master plan have not been contravened, the fee shall be as follows:

5% of the development cost or Rs. 500/- whichever is more.

Category No. III

3. (a) For the development carried out without obtaining prior sanction of the Prescribed Authority or when the development has been so carried out that it is not in accordance with the plans sanctioned for such developments thereby, the Master plan has been contravened, no compounding fee shall be charged and the development must be demolished.

(b) Where the development as mentioned in (a) above is such that it does not contravene with the proposals of the Master plan but the front set back have not

been left open, the fees to be charged shall be equal to one and a half times the cost of land required to be left open based on the prevailing value of land in the area.

The above fee shall be in addition to that may be charged under Sections 1 and 2 of these rules.

6. In paragraph 13 of the supplementary affidavit the calculation made by Overseer which was adopted by the Controlling Authority has been quoted. It reads as under : -

1. As per category No. II (2) 5% of the building cost of Rs. 1,32,410.00 Rs. 27.50 for 4816 sft. Rs. 6622.00 2. As per category No. III (b) 1-1/2 times Rs. 21672.00 cost of the land at Rs. 3.30 per sft. for 4816 sft. i.e. Rs. 4.50 per sft.----- Total Rs. 28294.00

7. It shall be seen that compounding fee under category No. II (2) has been determined on building cost whereas under Minutes it has to be done on plinth area and the maximum leviable above 2001 sq. ft. is Rs. 1500/-. It appears that the authorities were led away with about 5% of cost mentioned below, above 2001 sq. ft. But this does not lend support to determination at 5% of building cost. If compounding fee would have been correlated to building cost where plinth area was more than 2001 sq. feet then what about where constructions were only 1000 and 1001 to 2000 sq. feet. How will Rs. 500/- and Rs. 1000/-of compounding fee for these categories would be justified. If all the three are together it is obvious that for the last category the maximum has to be Rs. 1500/-. In any case, determination of compounding fee on building cost was arbitrary and contrary to the minutes.

8. As regards compounding fee under category III (b), the authorities have committed manifest error of law. In the report submitted by Prescribed Authority, it was clearly mentioned that the offence of Petitioners was not compoundable but as the authorities accepted Petitioners request and have done it under this category.