

(2008) 12 AHC CK 0407
In the Allahabad High Court
Case No : Writ Petition No. 1024 of 2004

Khushal Singh Bhandari

APPELLANT

Vs

Additional Secretary, Awas Department and others

RESPONDENT

Date of Decision : 02-12-2008

Acts Referred:

Uttar Pradesh Urban Planning and Development Act, 1973 — Section 15, 27, 32

Citation : (2008) 12 AHC CK 0407

Hon'ble Judges : Prafulla C.Pant, J

Final Decision : Dismissed

Judgement

1. By means of this writ petition, the petitioner has sought writ in the nature of certiorari quashing the order dated 27.12.2002 (copy annexure 1 to the writ petition), passed by Secretary, Mussorie Dehradun Development Authority (respondent no. 3), order dated 24.10.2003 (copy annexure 3 to the writ petition), passed by Commissioner & Chairman, Mussorie Dehradun Development Authority and order dated 07.10.2004 (copy annexure 5 to the writ petition), passed by Government of Uttarakhand.

2. Heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit filed on their behalf.

3. Brief facts of the case, as narrated in the writ petition, are that Mussorie Dehradun Development Authority (for short hereinafter referred as MDDA) issued a notice to the petitioner for demolition of room/godown measuring 10 x 38 ft., room measuring 13 x 11 ft. and a hall measuring 22 x 23 ft. In response of said notice, petitioner moved an application for compounding of construction and for sanctioning of the map. Vide order dated 27.12.2002, MDDA (respondent no. 3) rejected the application for compounding and issued directions to demolish the constructions in question. Aggrieved by said order the petitioner preferred an appeal (No. 239 of 200203) before the Commissioner & Chairman, MDDA. The said authority vide its order dated 24.10.2003 rejected the appeal. Consequently, the petitioner filed a revision (No. 43 of 2003) before the State Government,

which was also dismissed vide order dated 07.10.2004. Hence, this writ petition, challenging the orders on the ground that the petitioner was not given opportunity of hearing. It is further alleged that the respondent no. 3 has no jurisdiction to go into the title of the land on which the constructions are raised. It is further alleged that rejection of compounding application by the respondents is illegal.

4. In the counter affidavit filed on behalf of respondents, it is stated that the constructions were raised by the petitioner without getting sanctioned the plan from MDDA. Since the constructions were unauthorized, the petitioner was rightly given a show cause notice. It is further stated in the counter affidavit that the petitioner was given opportunity of hearing. It is also stated that the petitioner is not the owner of the land on which the disputed constructions are raised and as such the respondents were well within their rights to refuse the compounding of the constructions raised by him (petitioner).

5. In the rejoinder affidavit petitioner has reiterated the averments made in the writ petition.

6. Before further discussions, it is pertinent to mention here that it is nobody's case that the land in question on which the disputed constructions are raised is not cohered under the U.P. Urban Planning and Development Act, 1973 (for short hereinafter referred as Act). Section 14 of said Act requires that after declaration of any area as development area under Section 3 of said Act, no development of land shall be undertaken or carried out or continued in that area by any person including the Government unless permission for such development has been obtained in writing from the Vice Chairman of the authority. Section 15 of the said Act prescribes the procedure for seeking permission to raise the constructions/development. Section 27 of the aforesaid Act provides that where any development has been commenced or is being carried on or has been completed in contravention of the master plan or zonal development plan or without permission, approval or sanction referred to in Section 14, the authority can order demolition of building after issuing a show cause notice to the person concerned, who has raised the construction/development.

7. It is admitted between the parties that the petitioner had raised the disputed constructions. It is also admitted in para 2 of the writ petition itself that the petitioner was served with a notice by respondent no. 3 under Section 27 of the Act on 02.06.1999 for demolition of room/godown measuring 10 x 38 ft., room measuring 13 x 11 ft. and a hall measuring 22 x 23 ft.. It is also not disputed that petitioner himself thereafter moved an application for compounding of the construction. Said application was rejected by respondent no. 3, whereafter, the appeal preferred by him (petitioner) was also dismissed by the appellate authority and finally the revision was also dismissed by the State Government. The petitioner's grievance is three fold. Firstly, that the petitioner was not given opportunity of being heard. Since the petitioner was admittedly served with the notice and responded to the same, as such, it cannot be said that the petitioner

was not given opportunity of hearing by the respondent no. 3. The second contention of learned counsel for the petitioner is that since it is admitted to the respondents that the constructions were compoundable as such the rejection of the compounding application is illegal. This Court does not find the contention acceptable for the reason that from the record it appears that there is dispute as to the title of the petitioner over the land in question on which the disputed constructions are extended/raised. Learned counsel for the respondents argued that the petitioner has encroached upon the public land (passage) and as such, the compounding in respect of such construction was rightly rejected. This Court is of the view that merely for the reason that constructions are compoundable, it cannot be said that in each and every case, the authorities are bound to compound the case where the constructions are raised over a public land and authorities are satisfied or have reasons to believe that such constructions are raised on the public land or passage, they have a right to refuse to compound such constructions. Thirdly, it is submitted that the respondents have no power to decide the title of land over which constructions are raised. No doubt, the authorities had no power but, merely for that reason construction over the passage or rasta land cannot be validated. In the circumstances, this Court does not find any error of law committed either by respondent no. 3 (MDDA) or by the Commissioner & Chairman, MDDA, or by the State Government, in dismissing the application, appeal and revision respectively.

8. For the reasons as discussed above, this Court is of the view that the writ petition is devoid of merits and the same is liable to be dismissed. The writ petition is dismissed. The interim order dated 16.10.2004 passed by this Court is automatically stands vacated.