

(2004) 03 AHC CK 0020
In the Allahabad High Court
Case No : C.M.W.P. No. 11907 of 1984

Kripa Shanker and Another	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 15-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh (Regulation of Building Operations) Act, 1958 — Section 15, 7A

Citation : (2004) 5 AWC 4144

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : R.N. Singh and S.N. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

2. This Petition is directed against an order of the State Government dated 8.6.1984 (Annexure-3 to the writ petition) by means of which the Controlling Authority (Respondent No. 3) has set aside the order dated 20.7.1977 u/s 15 of the Uttar Pradesh (Regulation of Building Operations) Act, 1958 (hereinafter referred to as "the Act").

3. Brief facts of the case, giving rise to this writ Petition, are that after the building plan applied by the Petitioners was sanctioned, they constructed a house on forest land. Subsequently an application u/s 7A of the Act was made by the Forest Department, inter alia with the allegations that the plan had been got sanctioned by misrepresentation of facts. The prescribed authority after considering the matter came to the conclusion that none of the allegations made in the aforesaid application was true with the result he rejected the application vide its order dated 20.7.1977 (Annexure-1 to the writ petition). Aggrieved by the order of the prescribed authority dated 20.7.1977 the Forest Department filed an appeal u/s 15 of the Act. In the appeal the Petitioners raised a

preliminary objection that the appeal was incompetent inasmuch as the appeal lay only against an order allowing the application u/s 7A of the Act and not against the rejection of the application. However, the controlling authority upheld the objection of the Petitioners and dismissed the appeal as incompetent vide its order dated 12.9.1981 (Annexure-2 to the writ Petition). Aggrieved by the order dated 12.9.1981 the Forest Department filed a Revision No. 2519/37-3-84/11 of 1982 before the State Government who vide impugned order dated 8.6.1984 directed the controlling authority to decide the appeal on merits holding that the appeal before the controlling authority was competent.

4. The contention of the learned Counsel for the Petitioners is that the impugned order passed by the State Government is illegal as it is against the provisions of the Act. He submits that it is settled principle of law that an appeal is a creature of statutes and has to be specifically provided that no appeal can lie as a matter of course whereas in the instant case appeal is provided only against an order allowing the application and not against an order rejecting the application u/s 7A of the Act.

5. The argument is not sustainable. It is fallacious that u/s 7A of the Act, appeal can be filed only against an order allowing the application and not otherwise. It is corollary that an appeal is maintainable against an order rejecting the application u/s 7A of the Act also. Further it appears from the record that the Petitioners had encroached upon the land of the Forest Department where there was a jhopri in which there was a licensed liquor shop. It also appears from the record that the Petitioners had submitted a plan for pucca construction by concealment of facts and the Petitioners had made pucca construction without there being any legal right in their favour. The Petitioners have no right and title over the land belonging to Forest Department and therefore, the construction is wholly illegal and void. The finding of fact given by the prescribed authority is as under:

6. To the query whether the Petitioners are still possessing licence to run the liquor shop on the said land, the learned Counsel for the Petitioners could not answer confidently. Even if it be so, they can open the liquor shop at some other place and not on the State Government land without permission.

7. There is no illegality or infirmity in the impugned order. The appellate Court has, as a matter of fact, found that the Petitioners are in unauthorised occupation of the forest land. In this view of the matter this is not a fit case for interference under Article 226 of the Constitution and the writ Petition is liable to fail.

8. The writ petition is accordingly dismissed. The interim order dated 23.8.1984 is vacated. No. order as to costs.