
(1994) 08 AHC CK 0015

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9356 of 1994

Mahant Shri Ishwar Das Ji

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-08-1994

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (1994) 3 AWC 1697

Hon'ble Judges : V.N. Khare, J;S.K. Jain, J

Bench : Division Bench

Advocate : R.N. Singh and A.P. Sahi, for the Appellant; A.K. Dwivedi, for the Respondent

Final Decision : Allowed

Judgement

1. Learned Counsel for the parties are agreed that this petition may be disposed of finally at the admission stage. We accordingly proceed to decide the writ petition finally.

2. By means of this petition under Article 226 of the Constitution of India the Petitioner challenges the order dated 21-2-94 whereby the Joint Secretary, Varanasi Development Authority, Varanasi communicated to the Petitioner that the map sanctioned earlier in his favour has been cancelled.

3. The Petitioner submitted a building plan for construction of a residential building before the Varanasi Development Authority, Varanasi (hereinafter referred to as the Authority). "I be allegation is that the Authority after making enquiries, sanctioned the building plan by order dated 21-2-94, and before the Petitioner could start the construction of the residential building, by the impugned order the sanction has been cancelled, it is at this stage that the Petitioner has come up to this Court by means of this petition under Article 226 of the Constitution of India.

4. Learned Counsel appearing for the Petitioner advanced two arguments. The first argument is that once the building plan has been sanctioned, the Authority has no power to review the order of sanction. The second Sub-mission is that in any case if it is held that the Respondent has power to review the order of sanction, the Petitioner was not given opportunity before the said sanction was cancelled.

5. So far as the first question is concerned, a perusal of Section 15 of the U.P. Urban Planning and Development Act shows that the Section does not empower the Authority to review the order of sanction of the building plan. Once the building plan or lay out plan has been sanctioned, the permission to erect the building neither can be revoked nor withheld or suspended unless the said sanction is obtained by fraud, concealment or misrepresentation. Learned Counsel for the Respondents urged that in the present case the sanction of map has been revoked on the ground that the Petitioner has secured sanction by concealment and misrepresentation of facts therefore, the impugned order passed by the Authority is wholly justified in law. Learned Counsel for the Respondents brought to our notice various annexure annexed with the counter affidavit showing that what the Petitioner is contemplating to construct is not a residential building, but in fact, a temple, and further it was not brought to the notice of the Authority that the proposed construction is adjacent to Alamgiri Mosque which has been declared as an ancient monument under the Ancient Monuments Remains Act, 1958, and as such it is a clear case of obtaining permission or sanction of map by concealment and misrepresentation of facts.

6. At present we are not inclined to go into these questions in detail. Suffice it to say that even if what the Respondents state is correct, these allegations were never brought to the notice of Petitioner before the sanction was revoked. A perusal of the show cause notice dated 15-2-94 discloses that in fact, the sanction was sought to be reviewed on the ground that the Petitioner intends to construct a temple instead of a residential building for which permission was required. There was no allegation in the show cause notice that a temple was sought to be constructed adjacent to the Alamgiri Mosque. In the absence of such an allegation in the show cause notice, we are of the view that the Petitioner was denied opportunity of showing cause before the order of sanction was revoked. In view of this the impugned order deserves to be quashed.

7. We accordingly allow the writ petition and quash the impugned order dated 21-2-94. It would, however, be open to Respondents to proceed against the Petitioner afresh in accordance with law.