

(2016) 10 AHC CK 0159
In the Allahabad High Court
Case No : C.M.W.P. No. 24963 of 2016

M/s. Hind Plywood Industry	Vs	APPELLANT
Lucknow Development Authority		RESPONDENT

Date of Decision : 18-10-2016

Acts Referred:

Uttar Pradesh Urban Planning and Development Act, 1973 — Section 26(A)(4), Section 59(6)(c)

Citation : (2017) 121 ALR 300

Hon'ble Judges : Amreshwar Pratap Sahi and Raghvendra Kuma, JJ.

Bench : Division Bench

Advocate : Avinash Chandra and Akhilesh Kumar Kalra, Advocates, for the Petitioners; C.S.C., Gaurav Mehrotra, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Amreshwar Pratap Sahi and Raghvendra Kuma, JJ.—The challenge raised in this writ petition is to a notice served upon the petitioner under the provisions of the U. P. Urban Planning and Development Act, 1973 by the Lucknow Development Authority calling upon the petitioner to remove its effects as the same amounted to an encroachment over Plot No.3/2 & 3/3, Industrial Area, Aish Bagh, Lucknow. It is stated in the notice that said land was owned by the erstwhile Lucknow Improvement Trust, which now stands devolved upon the Development Authority in terms of Section 59 (6) (c) of the 1973 Act. Consequently according to respondent-Lucknow Development Authority this amounts to an encroachment and this unauthorized possession of the petitioner should, therefore, be removed forthwith with the aid of police. Aggrieved this petition has been filed.

2. A mention was made earlier today to take up this case out of turn and we have accordingly summoned the records. We have also heard Sri N. C. Mehrotra, learned counsel appearing on behalf of the Lucknow Development Authority as well as the learned Standing Counsel for respondents no.3 to 9.

3. Sri A. K. Kalra, learned counsel for the petitioner contends that the notice completely ignores the correct status of the land as existing today over which the petitioner is in possession since times immemorial. He submits that there is ample evidence on record to demonstrate the lawful possession of the petitioner including the orders passed by the Civil Court and thus, the interest of petitioner is protected by judicial intervention. He has further invited the attention of the Court towards the order dated 17th October 2013 passed by the learned Civil Judge, Senior Division in an Execution Case on an application under Order 21, Rule 97 of the Civil Procedure Code. The contention is that the claim of the petitioner being protected, the respondent-Lucknow Development Authority does not have any power to act in violation of the said order passed by the Civil Court. It is further submitted that the respondent no.10 has got the lease deed executed and renewed in his favour, but the same cannot override the orders of the Court where the respondent no.10 is a defendant. It is further submitted that the Lucknow Development Authority ought not have intervened in the matter at the instance of respondent no.10 & 11, yet the Lucknow Development Authority appears to have favoured respondent no.10 by issuing a notice of encroachment on the petitioner. It is, therefore, submitted that this exercise of power by the Lucknow Development Authority is otherwise malafide and is not in accordance with law.

4. Sri Mehrotra, for the respondent authority submits that the petitioner is in unlawful possession and there being no right, title or interest established in favour of the petitioner, the writ petition has been filed only with a view to frustrate appropriate proceedings that had been taken under the provisions of 1973 Act. It is further submitted by Sri Mehrotra that the petitioners have been put to notice on 9th February 2016 calling upon them to submit any documents that may be in the possession of the petitioner for such consideration and grant of any relief or passing of any order, but the petitioner having failed to provide any such material, the Lucknow Development Authority was left with no option to treat the possession of the petitioner to be an encroachment and, accordingly, a notice was issued by the Lucknow Development Authority that is fully justified.

5. We have considered the submissions raised and at this stage, we do not find it necessary to issue any notices to respondent no.10 & 11 as the Lucknow Development Authority is attempting to take action under the 1973 Act considering the land belongs to the Erstwhile Lucknow Improvement Trust and the possession of the petitioner to be unlawful as indicated above.

Section 26 (A) (4) of the U. P. Urban Planning and Development Act, 1973 reads as under :-

"If there are grounds to believe that a person has made any encroachment or obstruction on a land in a development area which is not a private property, the Authority or an officer authorised by it in this behalf may serve upon the person making encroachment or obstruction, a notice requiring him to show cause why he shall not be required to remove the encroachment or obstruction within such

period not being less than fifteen days as may be specified in the notice, and after considering the cause, if any, shown by such person, may order removal of such encroachment or obstruction for reason to be "recorded in writing."

6. Since the notice proceeds on the assumption that the land belongs to the erstwhile Improvement Trust now under the control of Development Authority and not a private property, the provisions of Section 26 (A) (4) of the 1973 Act are clearly attracted. The said provisions clearly stipulate that in the event any such action is to be taken for removal of encroachment then the alleged encroacher has to be given 15 days" time for filing an objection and after considering the cause, if any, an order has to be passed for reasons to be recorded in writing. Not only this, there are further provisions indicated in the event any person in occupation is treated to be an encroacher.

7. In the light of aforesaid provisions, it would be, therefore, appropriate that the petitioner is permitted to file his objections before the Lucknow Development Authority in response to the removal notice dated 7th October 2016, which shall be done within a week from today. The Lucknow Development Authority shall thereafter proceed to pass appropriate orders and it shall be open to the authority to collect any material including that from respondent no.10 for the purpose of such disposal. The authority shall take into consideration the objections of the petitioner as also any orders passed by the Civil Court in this regard and then proceed to pass appropriate orders in accordance with law within a month thereafter. Till such orders are passed by the Lucknow Development Authority, the Authority shall not proceed to take any action as proposed under the impugned notice.

8. The writ petition is disposed of with aforesaid the aforesaid directions.