

(2014) 09 UK CK 0037

In the Uttarakhand High Court

Case No : Writ Petition No. 2245 of 2014 (M/S)

Narendra Prasad Agarwal

APPELLANT

Vs

Mussoorie Dehradun Development Authority

RESPONDENT

Date of Decision : 29-09-2014

Acts Referred:

Citation : (2014) 09 UK CK 0037

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Advocate : Siddhartha Singh, Advocate for the Appellant; Rahul Consul, Advocate for the Respondent

Judgement

Servesh Kumar Gupta, J.—Having heard the learned counsel for the petitioner as well as learned standing counsel for the Mussoorie Dehradun Development Authority (hereinafter will be called as "the MDDA"), it transpires that the petitioner was the owner-in-possession of the land, in question, where at present, he runs a Wedding Point. Though the Map was sanctioned by the District Magistrate, Dehradun sometime in 1980, however, the sanction, so accorded, does not appear to have any date appending to his illegible signatures but the Map was sanctioned in the year 1980, as it also transpires from the seal and signature of Executive Engineer of P.W.D. as well as of the Assistant Engineer. This Map was initially for the purpose to start a unit under the name and style of "M/s. Doon Fertilizers and Minerals, Dehradun" but on account of certain constraints imposed by the Government, with the passage of time, the owner of the same with certain minor changes, converted it to the Wedding Point as aforementioned. He also got constructed a house in the same premises, which was later on objected to by the MDDA, where for the compounding application was forwarded by the petitioner stating therein that if the MDDA is not agreed then the owner was prepared to demolish the same even. Perhaps, the MDDA remained silent for a considerable time, so nothing could happen and the petitioner Narendra Prasad Aggarwal went on in making the bookings for

different marriages which are going to be solemnized at present as well as in near future. Several receipts have been filed by the petitioner adverting the booking of solemnization of such marriages. In these circumstances, the MDDA woke up and issued the impugned notice dated 20.9.2014 under an illegible signature of the Secretary, divulging its intention to seal the Wedding Point on 30.9.2014 and the petitioner has also been asked to remain present at the spot.

2. Learned standing counsel for the MDDA has heavily relied upon a judgment of Division Bench of Hon''ble Allahabad High Court in the case of "Suraksha Rani Chopra v. State of U.P." 2005(4) AWC 3372, wherein it was held that if after the purchase, petitioner has raised the construction to a certain extent in addition to and in contravention of the Plan sanctioned by the Development Authority, then his application for change of use should not be compounded because the construction, so raised by the petitioner, was in contravention of the sanctioned plan. In that case, the application moved by the petitioner was not dealt with and the Authority had issued the impugned notice for demolition of the construction raised in contravention of the sanctioned Plan, hence in such circumstances, the petition, so filed by the owner of the property, was dismissed.

3. Another judgment, which has been relied upon by learned standing counsel for the MDDA, is of the Hon''ble Apex Court rendered in the case of Dipak Kumar Mukherjee Vs. Kolkata Municipal Corporation and Others, In that case too, the controversy pertains to the illegal/unauthorized construction. The Hon''ble Court was of the view that in any case, un-authorized constructions cannot be encouraged and the larger public interest will prevail over the individual private interest.

4. True, there cannot be any room for doubt that the Court should always consider to protect the larger public interest against the limited individual private interests, but instantly, this Court would not like to go into deep with the circumstances, which have been before the Hon''ble Apex Court while dealing with the case of Dipak Kumar Mukherjee (Supra) and the same will be dealt with by this Court while hearing both the parties on full merits.

5. As regards the judgment of Division Bench of Allahabad High Court in Suraksha Rani's case, that case was pertaining to where a residential property was converted to a commercial one and then, compounding application was moved by the petitioner.

6. In the present controversy, the facts and circumstances are quite different. The property, in question, was already a commercial one; rather in the nature which might at sometime be hazardous to the public health since certain constraints impelled the petitioner to close his hazardous work on the basis of sundry restraints imposed by the Government. Hence, for his livelihood, he started to use the same as a Wedding Point of a common man.

7. It has been argued that the place, in question, is located in a backward area viz. in the outskirts of Dehradun where not affluent but afflicted persons come

forward to solemnize the marriage of their children. Several booking receipts have been shown before me. The Court feels that in such a sensitive days, if the premises is sealed by the MDDA, then it may cause pecuniary loss to the petitioner. Although, the same could have been ignored by this Court also but keeping in view that the solemnization of marriage of pre-fixed marriages will be disturbed which may affect the larger interest of the society very adversely, so the Court stays the effect and operation of the impugned notice dated 20.9.2014 issued by the M.D.D.A.

8. It is pertinent to mention that the Authority of the M.D.D.A. has not put his full signatures nor has written his name so that to let this Court know as to by which authority this notice has been issued. This all makes the genuineness of such a notice itself doubtful to the extent that it is difficult to understand the application of mind by the competent authority while issuing such a notice only by putting short initials without any seal.

9. Mr. Consul has already received the notice on behalf of MDDA. He will file the counter affidavit within ten weeks.

10. List thereafter.

11. Stay application no. 11009 of 2014 stands disposed of accordingly.

12. Let a copy of this order be issued today itself to learned counsel for the parties on payment of usual charges.