

(2015) 02 AHC CK 0104

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 6148 of 2015

Om Prakash Shukla

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Citation : (2015) 3 ADJ 190 : (2015) 113 ALR 38

Hon'ble Judges : Surya Prakash Kesarwani, J

Bench : Single Bench

Advocate : Anand Kumar Srivastava, for the Appellant; A.K. Upadhyaya and C.S.C., Advocates for the Respondent

Final Decision : Allowed

Judgement

Surya Prakash Kesarwani, J.—Heard Sri Arvind Kumar Srivastava, learned Counsel for the petitioner and Sri A.K. Upadhyaya, learned Standing Counsel for the respondents. Aggrieved with the orders dated 17.2.2011, appellate order dated 5th December, 2012 and the revisional order dated 2.1.2015, the petitioner has filed the present writ petition.

2. Briefly stated the facts of the present case are that the petitioner had obtained Plot No. 50 in the Industrial Area, Khalilabad, district Sant Kabir Nagar. He obtained a permission of the Regional Manager, U.P. Industrial Development Corporation Ltd. on 28.7.2009. Suddenly, he received an order dated 17.2.2011 passed by the Prescribed Authority, regulated area, Maghar, Khalilabad, district Sant Kabir Nagar under Section 10 of U.P. (Regulation of Building Operations) Act, 1958 whereby the construction was directed to be demolished and penalty under Section 9 of the Act was imposed. Aggrieved with this order, he filed appeal before the appellate authority under Section 15(2) of the Act which was rejected by the order dated 5.12.2012. Aggrieved with this order, petitioner filed a Revision No. 201317000052 under Section 15 of the Act which has been dismissed by the impugned order dated 2.1.2015.

3. In the order dated 17.2.2011, the Prescribed Authority has not mentioned whether the alleged show-cause notice dated 16.11.2010 for violation of Section-6 of the Act was served on the petitioner or not. No reasons have been recorded by the Prescribed Authority and merely it has been vaguely stated that from the evidences on record, it is evident that the petitioner has violated the provisions of Section 6 of the Act. On the basis of this observation, the Prescribed Authority directed the alleged construction to be demolished and penalty of Rs. 51,000/- was imposed. In the appellate order dated 5.12.2012, the appellate authority has also neither considered the submissions of the petitioner nor recorded any reason to uphold the order passed by the Prescribed Authority. The appeal of petitioner was dismissed merely repeating the observation of the prescribed authority that from the evidences available on record, it is evident that the petitioner has violated the provisions of Section-6 of the Act. Before the appellate authority, the petitioner has raised three objections namely; that he has merely raised boundary wall of 3 feet height, he has not constructed any building and the impugned order has been passed by the prescribed authority without affording any opportunity of hearing to him. None of these grounds were considered by the appellate authority. The revisional authority has also dismissed the revision of the petitioner in the same fashion by order dated 2.1.2015. Thus, prima facie, I find that there is total non application of mind by all the three authorities. They failed to discharge their duties as provided under the aforesaid Act. Proviso to Section 10(1) of the Act specifically provides that no order shall be made unless the owner is given an opportunity of being heard.

4. From the perusal of all the three impugned orders, it is evident that none of the authorities have recorded any finding as to whether notice was duly served on the petitioner, whether any building was constructed and whether the petitioner merely raised 3 feet high boundary wall. All the three impugned orders completely lack reasons for conclusion that the petitioner has violated the provisions of Section-6 of the Act.

5. It is settled law that an order without valid reasons cannot be sustained. To give reason is the rule of natural justice. While deciding an issue, the Court or quasi-judicial authority is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hall mark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself. Giving of reasons has always been insisted upon as one of the fundamentals of sound administration of justice delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken., as also the fact that the Court concerned had really applied its mind. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the

same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable, particularly, when the order is subject to further challenge before a higher forum. Recording of reason is principle of natural justice and every judicial order must be supported by reasons recorded in writing. The Apex Court in the case of Chandna Impex Pvt. Limited Vs. Commissioner of Customs, New Delhi, (2011) 186 ECR 153 : (2011) 269 ELT 433 : (2011) 8 JT 10 : (2011) 3 RCR(Civil) 843 : (2011) 7 SCALE 291 : (2011) 7 SCC 289 , held that every litigant who approaches the Court for relief is entitled to know the reason for acceptance or rejection of his prayer, particularly when either of the parties to the lis has a right of further appeal. Unless the litigant is made aware of the reasons which weighed with the Court in denying him the relief prayed for, the remedy of appeal will not be meaningful. It is that reasoning, which can be subjected to examination at the higher forums. Right to reason is an indispensable part of a sound judicial system.

6. Since no finding has been recorded by any of the authorities, in the impugned orders with regard to first objection of the petitioner that no opportunity was afforded to him and as such, impugned orders cannot be sustained. Further the objection raised by the petitioner that he has merely raised merely 3 feet high wall, has also not been considered by any of the authorities. In fact, all the three authorities have acted arbitrarily.

7. Under the circumstances, writ petition succeeds and is hereby allowed. The impugned orders dated 17.2.2011 passed by the respondent No. 4, the appellate order dated 5.12.2012 in Appeal No. 226 of 2011 passed by the respondent No. 3 and the revisional order dated 2.1.2015 in Revision No. C 201317000052 passed by respondent No. 2 are hereby set aside. The matter is remitted back to respondent No. 4 to pass an order afresh, in accordance with law after affording opportunity of hearing to the petitioner, as expeditiously as possible, preferably within three months from the date of production of a certified copy of this order. Writ petition is allowed to the extent indicated above.