

(2016) 04 AHC CK 0053

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (M/B) No. 7168 of 2014.

Omaxe Helghts Apartments Owners Association Society Duly	APPELLANT
Vs	
Lucknow Development Authority Lucknow and another.	RESPONDENT

Date of Decision : 25-04-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A
Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Planning and Development Act, 1973 — Section 15(9)

Citation : (2016) 5 ADJ 242 : (2016) 5 AllWC 4851 : (2016) 116 ALR 721

Hon'ble Judges : Amreshwar Pratap Sahi;Attan Rahman Masoodi, JJ.

Bench : Division Bench

Advocate : A.P. Singh Gaur, Advocate, for the Appellant; Gaurav Mehrotra, Aditya Pandey and Vivek Raj Singh, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

1. Heard Sri Upendra Nath Misra, learned Counsel assisted by Sri Kshemendra Shukla, learned Counsel for the petitioner, Sri Jaideep Narayan Mathur, learned Senior Counsel along-with Sri Vivek Raj Singh, learned Counsel for the respondent no. 2 and Sri Shobhit Mohan Shukla, learned Counsel for the respondent no. 1.

2. This writ petition was filed at a stage when regular suit no. 1257 of 2001 filed by the petitioner seeking mandatory injunction against the respondents had allegedly been rendered infructuous due to the reason that the respondents went on raising the disputed construction and the application filed by them under Order 39, Rule 2A also could not be disposed of by the Civil Court. The present writ petition seeking a writ of mandamus for redressal of petitioner's grievance prays for the following relief :-

"i) By a writ, order and direction in the nature of mandamus the Respondent No. 1 may be directed to dispose off the representations, dated 14.07.2014, annexed as Annexure III and IV to this writ petition within a time framed, as may be

deemed appropriate by this Hon"ble Court, considering the circumstances and in the meanwhile the Respondent No. 2 may be restrained from raising any further constructions over the property during pendency of the suit, more fully described in the schedule of property contained in paragraph No. 8 of this Writ Petition.

ii) That the costs of the present proceedings may also be allowed in favour of the petitioner against the opposite parties.

iii) Any other order or direction which this Hon"ble Court may deem fit and proper in the circumstances of the present writ petition may also be passed in favour of the petitioner."

3. Learned Counsel for the petitioner while arguing the case confined his arguments within the statutory provisions envisaged under the Uttar Pradesh Urban Planning and Development Act, 1973 read with the Uttar Pradesh Apartment (Promotion of Construction, Ownership And maintenance) Act, 2010 and the bye-laws framed thereunder and it was urged that the Lucknow Development Authority in terms of Section 15 (9) is under an obligation to take cognisance of any violation indulged into by any developer or promoter of a project which is sanctioned by the Development Authority.

4. This Court was also taken through the provisions of the Apartment Act, 2010 wherein rights of the owners of apartments in multi storied buildings have been recognised and the association of residents residing in multi storied buildings is conferred a status under law, therefore, a grievance raised by any such association before the Development Authority was projected to be within the ambit of law and also liable to be entertained and considered by the Development Authority. This relief not being in conflict with the relief sought by the petitioner before the Civil Court was therefore pressed by the petitioner vehemently and violations committed by the developer as demonstrated on the basis of material placed on record was attempted to be established to be a serious violation of the original lay out plan in respect of two plots of land i.e. plot Nos. TC/G-2/2 and TC/G-5/5 situated in Vibhuti Khand, Gomti Nagar, Lucknow upon which the residential apartment belonging to the petitioner and other alleged illegal constructions are stated to have been raised by the respondent no. 2 whereby the common facilities protected by law under the Apartment Act, 2010 are unlawfully taken away.

5. The grievance in detail has thus been raised by the petitioner in its representations contained in annexure Nos. 3 and 4 to this writ petition which inter-alia projects the violation of FAR in contravention of the original sanctioned plan.

6. Refuting the submissions made by the petitioner on the alleged violation of the sanctioned plan, the Lucknow Development Authority in its counter affidavit has largely maintained a silence on vital aspects of the matter but at the same time it is stated that the plans were duly sanctioned. The developer i.e. respondent no. 2 against whom allegations have been levelled has also filed a counter

affidavit wherein it is stated that the Lucknow Development Authority had approved the lay out plan on 17.02.2006 and later on a fresh lay out plan was also approved on 07.07.2011. It is also alleged in paragraph no. 58 of the counter affidavit filed by the respondent no. 2 that the petitioner association came into existence on 15.06.2011 when the society was registered but the list of members of the society has yet not been furnished nor a copy of the bye-laws is provided to the project developer. Objection as regard to the maintainability of the writ petition at the instance of such an association has also been raised.

7. Having regard to the rival contentions of the parties what we find is that the dispute has arisen between the association and respondent developer as regards violation of the original lay out plan which according to the developer was sanctioned on 17.02.2016 but a fresh lay out plan has also been approved on 07.07.2011. The developer on the ground of fresh lay out plan has justified the constructions so raised which are alleged by the petitioner to be in violation of the original plan.

8. It is not necessary for us to go into the factual contentions in detail inasmuch as Section 15(9) of the Uttar Pradesh Urban Planning and Development Act, 1973 clearly envisages a statutory duty on the Vice Chairman of the Development Authority to look into all such disputes at any stage. Section 15(9) of the Uttar Pradesh Urban Planning and Development Act, 1973 is reproduced below for ready reference:-

Section 15 (9) :-

"If at any time after the permission has been granted under sub-section (3), the Vice-Chairman is satisfied that such permission was granted in consequence of any material misrepresentation made or any fraudulent statement or information furnished, he may cancel such permission, for reasons to be recorded in writing and any work done thereunder shall be deemed to have been done without such permission:

Provided that a permission shall not be cancelled without affording to the person or body concerned a reasonable opportunity of being heard."

9. From a perusal of the record, we find that a detailed representation has already been submitted before the Vice Chairman, Lucknow Development Authority, Lucknow. Undisputedly the residential apartments have been constructed by the respondent no. 2 as a consequence whereof the rights in relation to common facilities have accrued to the owners/allottees of the apartment so developed by the respondent no. 2. In this view of the matter, any grievance raised by an association or by any group of individuals being owner/allottee of an apartment in a multi storied complex that is covered under the Apartment Act, 2010, is liable to be considered and decided by the Vice Chairman by examining the matter in the light of permission of the aforesaid lay out plans approved by the Development Authority.

10. We may point out that if the lay out plan once sanctioned by the Development Authority stands executed by the developer, how such a plan, can be sanctioned afresh, the matter would certainly call for necessary inquiry and inspection.

11. We may however caution both the parties to abide by the statutory laws in letter and spirit, inasmuch as deviation of the sanctioned plan, if any, being a matter of serious concern deserves to be looked into by the Development Authority after carrying out the needful exercise so as to prevent violation of law. The rights of owners in multi storied buildings in relation to common facilities are valuable rights and the same deserve to be protected within the precincts of law but at the same time the association or any such group can also not be allowed to raise a frivolous grievance so as to obstruct development of sites in order to allow their narrow interest to flourish.

12. We have already observed that a statutory duty under Section 15(9) of the 1973 Act is cast on the respondent no. 1 to look into the grievance raised by the petitioner in the light of representation as well as the relevant material that may be placed before the Development Authority and that being so the writ petition as well as the suit, at this stage, may not be the appropriate forum for decision on merits.

13. We may also observe that the petitioner himself has stated in the writ petition that the suit filed by him has become infructuous, therefore, necessary steps in relation thereto be taken before the representations are filed before the Vice Chairman and are proceeded with who may commence the proceedings for disposal of the said representation contained annexure Nos. 3 and 4 to the writ petition only upon withdrawal of the suit.

14. We accordingly direct that in case the petitioner submits a proof of bringing the suit proceedings to an end before the Vice Chairman, Lucknow Development Authority, Lucknow within three weeks from today, the Vice Chairman in that event shall proceed to examine the representation filed by the petitioner as contained annexure Nos. 3 and 4 to the writ petition which are being permitted to be filed afresh along-with supporting documents within a period of three weeks from today and the representation so filed along-with the certified copy of this order shall be considered and decided by a reasoned and speaking order by the Vice Chairman, Lucknow Development Authority preferably within a period of six weeks from the date of filing of the representation in terms of the directions above. The Vice Chairman shall afford an opportunity to the respondent no. 2 or any other necessary party and shall communicate a copy of the order to the respective parties forthwith by adhering to the schedule prescribed herein above.

15. Any construction raised by the respondent no. 2 or by any other person on the plots in question shall abide by the decision of the Lucknow Development Authority and in case any violations are noticed and found to be correct, necessary steps shall be taken by the Lucknow Development Authority in

consonance with the lawfully sanctioned lay out plan and restore the common facilities to the members of the association in accordance with law.

16. With the aforesaid observations, the writ petition is disposed of.