
(2016) 07 AHC CK 0082
In the Allahabad High Court
Case No : Writ C. No. 47766 of 2014

Partho Banerjee

APPELLANT

Vs

State of U.P. Thru" Principal Secry.

RESPONDENT

Date of Decision : 08-07-2016

Acts Referred:

Citation : (2016) 2 ARC 861

Hon'ble Judges : Ran Vijai Singh and Devendra Kumar Upadhyaya, JJ.

Bench : Division Bench

Advocate : N.K. Pandey, Advocate, for the Appellant; C.S.C, Anoop Trivedi, Rahul Agarwal, S.P. Singh, Sunil Kumar Mishra, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Ran Vijai Singh and Devendra Kumar Upadhyaya, JJ.—These proceedings under Article 226 of the Constitution of India have been instituted by the petitioner with the prayer for issuing a writ in the nature of Certiorari quashing the proceedings related to sanction of map and granting permission for construction on the site 48/1, 48/2, 48/3 and 48/5, Civil Station, Allahabad, admeasuring 4523.47 sq. meters. Petitioner has also prayed for quashing the orders dated 04.07.2013 and 05.06.2013, whereby the plan for construction has been sanctioned and permission to raise construction has been accorded by the authorities of Allahabad Development Authority (hereinafter referred to as "ADA") as required under Section 15 of U. P. Urban Planning and Development Act, 1973 (hereinafter referred to as "the Act").

2. Further prayer made by the petitioner is for issuing a writ in the nature of Mandamus restraining the respondent nos.6 and 7 from making any further construction upon the aforesaid site.

3. The petitioner has also prayed, in the alternative, to summon the records of the Revision Petition No.13/2014, pending before the State Government under Section 41 (3) of the Act and quash the entire proceedings relating to sanction of

map and granting permission for construction in favour of respondent nos.6 and 7.

4. Heard Shri N.K. Pandey, learned counsel for the petitioner, Shri C. B. Yadav, learned Additional Advocate General for the State-respondents, Shri Anoop Trivedi, learned counsel appearing for ADA and Shri Shashi Nandan, learned Senior Advocate assisted by Shri Rahul Agarwal, learned counsel representing the respondent nos.6 & 7 and perused the record including the record concerning the file produced by Allahabad Development Authority from where the order dated 04.07.2013 permitting the respondent nos.6 and 7 to raise construction under Section 15 of the Act has emanated.

BACKGROUND FACTS AS PLEADED BY THE PETITIONER:

5. It has been submitted by the learned counsel for the petitioner that the proceedings drawn by ADA for sanction of building plan, which has resulted in order dated 04.07.2013, are vitiated for the reason that the said permission has been obtained by the respondent nos.6 and 7 by concealing material facts and by misrepresentation, as such, the order dated 04.07.2013 is liable to be quashed in terms of the provision contained in sub-section (9) of Section 15 of the Act which provides that if the Vice-Chairman of Development Authority is satisfied that permission under Section 15 of the Act was granted in consequence of any misrepresentation made or is based on any fraudulent statement or information furnished, such permission may be cancelled.

6. In para 34 of the writ petition, it has been averred that since authorities of the ADA have neither passed any order under section 15 (9) of the Act on the petitioner's objection nor have they taken any steps for cancelling the permission obtained by misrepresentation and by furnishing incorrect information, therefore, the petitioner has filed a revision petition under section 41(3) of the Act before the State Government. Thus, the primary grievance of the petitioner appears to be non-disposal of the objection made by him against sanction/permission of the building plan on the ground that same was obtained by misrepresentation of facts by the respondent nos.6 and 7. Similarly in para 24 of the writ petition, it has been pleaded that the petitioner came to know that ADA, in collusion with respondent nos.6 and 7 and in a very deceitful manner, has sanctioned the map and that the petitioner vide his representation/application dated 21.4.2012 requested the Vice-Chairman of ADA by narrating the correct facts to the effect that he is the owner and valid title-holder of the plot in question and further that the dispute in respect of ownership and title of the land is pending before the courts where the respondent nos.6 and 7 are making constructions and as such in view of the pendency of the dispute before the civil court as well as before this Court, the map sanctioned by ADA be cancelled.

7. The said application dated 21.04.2012, addressed to the Vice-Chairman, is on record, wherein it has been stated that father of the petitioner late D. D.

Banerjee was the owner of the plot in question and after his death the petitioner, being son, has inherited the said property and has been in possession over the same. In the said application, it has also been averred that a dispute in respect of title is going on since the life time of his father late D. D. Banerjee before the courts which is pending presently before the civil court and before this Court. In this view, it was submitted by the petitioner in the said application dated 21.4.2012 that during pendency of various cases relating to title and ownership, respondent nos.6 and 7 have got the map sanctioned for construction concealing the factum of pendency of the civil cases in respect of title and ownership.

8. Thus, the main contention of the petitioner has all along been that in view of the pendency of the civil suits and some other cases before the civil court as well as before this Court, sanction to the building plan in favour of respondent nos.6 and 7 could not have been granted as the said sanction has been obtained by concealing material information by respondent nos.6 and 7 while making application seeking permission for construction under Section 15 of the Act. Concealment of fact, which is being alleged by the petitioner and is being attributed to respondent nos.6 and 7 while seeking permission under Section 15 of the Act is, thus, in relation to pendency of the suits and other proceedings in respect of title and ownership of the plot over which respondent nos. 6 and 7 have been granted permission to raise constructions.

9. It has been stated by the petitioner that a lease deed in respect of plot in question was executed on 28.07.1911 for a period of 90 years in favour of Manager, Allahabad Bank Ltd. Subsequently, the Bank transferred the lease rights in favour of late P. D. Banerjee, S/o Shri Avinas Chandra Banerjee whose name was recorded as a lessee in the Nazul records and after his death in the year 1937, name of his eldest son late Devi Das Banerjee was recorded. The term of the lease expired on 06.11.1960 which was thereafter renewed on 21.12.1989 in favour of late D. D. Banerjee w.e.f. 07.11.1960 for a period of 30 years with a further provision for renewal of lease subsequently for two terms of 30 years each. In the plot in question, late A. B. Saran, who was an Advocate, was living on rent in House No.17/27, Elgin Road, Allahabad. The State Government thereafter appears to have taken a policy decision to grant freehold rights over such properties and late A. B. Saran is said to have applied for grant of freehold rights on the basis of some nomination made in his favour on 12.03.1999. The said nomination is being denied by the petitioner.

10. It has also been averred by the petitioner that Civil Misc. Writ Petition No.3615 of 1999 was filed by A. B. Saran before this Court wherein an interim order was passed for not making nomination in favour of any third person by late D. D. Banerjee and B. D. Banerjee for the purpose of conversion of lease rights into freehold rights in respect of plot in question. A registered sale deed is said to have been executed by Dr. Arup Banerjee on behalf of D. D. Banerjee and B. D. Banerjee in respect of Bungalow No.17, Elgin Road, Allahabad including 1-A, Strechy Road, Allahabad on 12.03.1999 and for this transaction vendee Shri A.

B. Saran is said to have paid a sum of Rs.1.00 lakh through cheques in favour of D. D. Banerjee and B. D. Banerjee. The petitioner, however, has submitted that the said cheques were not en-cashed and the same were returned back to Shri A. B. Saran.

11. It has also been stated that the District Magistrate, Allahabad has granted freehold rights on 23.10.1999 in favour of the predecessors in interest of respondent nos.6 and 7.

12. The petitioner has also submitted that through sale-deeds dated 12.08.2008, 12.05.2008, 12.08.2008, 13.08.2008, 25.09.2009 and 24.02.2011, the land in question has been transferred in favour of respondent nos.6 and 7 by their predecessors in interest. The petitioner has pleaded that these sale-deeds are null, void and ineffective.

13. The aforesaid trail of incidents and the dispute in relation to the nomination dated 12.3.1999 and freehold rights granted on 23.10.1999 has given birth to various civil actions in the form of suits, First Appeals From Order and Second Appeal before the civil court at Allahabad and before this Court as well, details of which, as culled out from the pleadings available on record are as under :-

HISTORY AND DETAILS OF LITIGATION'S PENDING BETWEEN THE PARTIES :

i. Original Suit No.488 of 1999 was filed on 27.09.1999 by late D.D. Banerjee against the predecessors in interest of respondent nos.6 and 7 for grant of permanent injunction restraining the authorities from granting free hold rights after converting the lease rights in favour of the defendants. Further relief has been prayed that the defendants in the suit be restrained from claiming any freehold rights. The suit has been dismissed by the learned trial court on 20.03.2004 against which Civil Appeal No.33/2004 has also been dismissed by the first appellate court on 20.05.2005. Against the judgement and order of the first appellate court dated 20.05.2005 arising out of Original Suit No.488/1993, plaintiff/appellant has filed Second Appeal No.792/2005, which is pending before this Court in which respondent no.6 has been sought to be impleaded.

ii. Original Suit No.529/1999 was filed by late D.D. Banerjee seeking a declaration that the sale deed/document said to have been executed by late B.D. Banerjee and Arup Banerjee on 12.03.1999 in favour of late A.B. Saran is void. In this suit it has also been prayed that defendant No.1 be restrained through a decree of permanent injunction from alienating or transferring the suit property or conferring any right upon any person to deal with the property in suit by getting the lease hold rights converted into free hold rights. The said suit has been dismissed by learned Trial Court on 20.03.2004 against which a Civil Appeal is said to be pending before the court of District Judge, Allahabad.

iii. Original Suit No.326/2000 was filed on 27.05.2000 by Dr. Arup Banerjee, S/o Shri B. D. Banerjee to declare the documents alleged to have been executed on 11.03.1999(Agreement to sell) and 12.03.1999(Nomination) as void. Another

prayer made in the suit is to declare the document dated 23.10.1999 granting freehold rights in favour of predecessors in interest of respondent nos.6 and 7 as null, void and ineffective. Relief for grant of decree of permanent injunction has also been prayed for in respect of the suit property.

iv. SCC Suit No.16/2000 has been filed against A. B. Saran by D.D. Banerjee for eviction from the plot in question.

v. Original Suit No.24/2002 has been filed by Arup Banerjee, D.D. Banerjee, B.D. Banerjee and Archana Banerjee to declare the document dated 23.10.1999, by which the freehold rights have been settled in favour of predecessors in interest of respondent nos.6 and 7 as null, void and ineffective. Relief for grant of decree of permanent injunction has also been sought for in this suit. A further prayer for declaring the documents dated 25.05.2001 and Sale Deed dated 13.11.2001 as null and void has also been made in this suit.

vi. Original Suit No. 1378/2010 has been filed against respondent no.6 to declare that two sale deeds, both executed on 12.05.2008 in favour of respondent no.6 as null and void and ineffective. A decree for permanent injunction against defendants restraining them from interfering in the possession and also from transferring the suit property has also been sought. The said suit was filed on 11.10.2010 and the learned trial Court on 03.05.2012 passed an order directing the plaintiff to pay adequate court fee, finding the court fee paid to be deficient. Against this order, FAFO No.3407/2012 is pending before this Court.

vii. Original Suit No.1379/2010 was filed by Partho Banerjee against respondent nos.6 seeking declaration that the sale deed dated 13.08.2008 is null and void. Learned Trial Court by means of an order dated 30.05.2012 directed the plaintiff to pay sufficient court fee, however, instead of contesting the said suit by paying the requisite court fee, FAFO No.3408/2012 has been filed before this Court which is pending.

14. It is in the light of the aforesaid pending litigation's that the petitioner has vehemently pleaded that in view of existence of the dispute relating to title and ownership of the land in question, permission for construction could not have been granted by the Allahabad Development Authority in favour of respondent nos.6 and 7 for the reason that while applying for permission for construction under Section 15 of the Act, these facts were concealed by respondent Nos. 6 and 7, which have material and considerable bearing on consideration of the issue as to whether the permission to raise construction and grant of approval to building plan under Section 15 of the Act is to be accorded or not.

CASE PUT FORTH BY ALLAHABAD DEVELOPMENT AUTHORITY :-

15. It has been contended by Shri Anoop Trivedi, learned counsel appearing for the ADA that this petition is highly misconceived for the reason that the petitioner is already availing a remedy against the impugned order by way of invoking the provisions of Section 41(3) of the Act as the petitioner has filed a

revision petition before the State Government. It has, thus, been argued by Shri Trivedi that the petitioner cannot be permitted to prosecute two simultaneous proceedings; (i) before this Court by filing the instant writ petition and (ii) by filing a revision petition before the State Government invoking the provisions of Section 41(3) of the Act.

16. It has categorically been denied that the authorities of Allahabad Development Authority were in collusion with respondent nos.6 and 7. He has further stated that it is not only misconceived but absurd to suggest that building plan in question was sanctioned in any deceitful manner. In the counter affidavit filed by the ADA, it has been stated that respondent nos.6 and 7 had applied for grant of approval of building plan over the land in question on 18.05.2010 which was accompanied by registered sale deed evidencing the title of respondent nos.6 and 7. According to ADA, the said application was evaluated and vide order dated 20.09.2010 the building plan was approved and necessary sanction was also granted by the ADA. ADA has further averred in its counter affidavit that an application was submitted with modified plans for approval before the ADA which was accompanied by an affidavit stating therein that respondent nos.6 and 7 are the owner in possession of the land in question. Shri Trivedi has further stated that while considering the application filed by respondent nos.6 and 7 for sanction of modified plan seeking approval/sanction of certain modifications in the plan approved in the year 2010, the Allahabad Development Authority also took into account the application/objection made by the petitioner which was not found to be tenable. It has also been contended that in the proceedings of the suits, no injunction order was granted or operating and further that grant of approval to modified building plan submitted by respondent nos. 6 and 7 clearly stipulates a condition that in case any deed is cancelled by any court of competent jurisdiction or the title of respondent nos.6 and 7 gets affected by any judgement of any competent court, then in such an eventuality, the building plan would automatically get cancelled.

17. The said submission has been made by learned counsel appearing for ADA drawing attention of the Court to the opening paragraph and clause 9 of the order dated 04.07.2013, whereby the building plan was approved. The opening paragraph of the order dated 04.07.2013 runs as under :

" ;g vuqefr m0iz0 uxj fu ;kstu rFkk fodkl vf/kfu;e 1973 dh /kkjk 14 o 15 ds vUrxZr nh tkrh gS] fdUrq vFkZ ;g u le>uk pkfg;s fd ml Hkwfe ds lECU/k esa ftl ij la''kksf/kr gksVy ekufp= Lohd`r fd;k tk jgk gS] blls fdlh izdkj ;k fdlh LFkkuh; fudk; ;k bldk LFkkuh; vf/kdkjh ;k O;fDr vFkok QeZ ds ekfydkuk vf/kdkjksa ij fdlh dk dksbZ vlj ugha iM+sxk vFkkZr ;g vuqefr fdlh ds fefYd;r ;k LokfeRo ds vf/kdkjksa ds fo:) dksbZ izHkko u j[ksxhA

Jh latho vxzoky] eSusftax Mk;jsDVj] ekW yfyrk bUVjVsuesUV ,.M MsoyilZ izk0fy0 }kjk utwy Qzh gksYM mifoHkkftr Hkw[k.M la[;k&48@1] 48@2] 48@3 ,oa 48@5 flfoy LVs''ku] yky cgknqj ''kkL=h ekxZ] bykgkckn {ks=Qy 4523-47 oxZehVj tksu la[;k 1 ds vUrxZr gksVy fuekZ.k dh vuqefr gsrq nkf[ky la''kksf/kr

gksVy ekufp= ds izLrkfor Hkkx ij fuekZ.k dh vuqefr mik/;{k} bykgkckn fodkl izkf/ kdj.k ds vuqefr fnukad 05-06-2013 ds }kjk fuEukafdr izfrcU/kksa ds v/khu iznku dh x;h gSA"

Clause 9 of the order dated 04.07.2013 is quoted below :-

"9- Hkfo"; esa ;fn LokfeRo ds fcUnq ij fdLh U;k;ky; }kjk MhM fujLr dh tkrh gS ;k vU; fdLh fookn ds dkj.k LokfeRo ij dksbZ foijhr izHkko iM+rk gS rks Lohd`r ekufp= Lor% fujLr dj fn;k tk;sxA ekufp= dh Lohd`r ls HkkSfed vf/kdkj izkIr ugha gksxA"

18. It has been clarified by the learned counsel for the petitioner that the order dated 04.07.2013 is only communication of the decision taken by Vice-Chairman of ADA on 26.06.2013, however, on account of inadvertent typographical mistake, the date of the said decision in the order dated 04.07.2013 has been mentioned to be 05.06.2013 and hence this date should be read as 26.06.2013.

19. In the counter affidavit, the Allahabad Development Authority has also stated that the petitioner is levelling scandalous allegations against all and sundry and that the petitioner appears to be a person of litigating propensity levelling false and frivolous allegations against each and every person.

20. Shri Trivedi on the basis of the aforesaid assertions made in the counter affidavit has stated that instant petition is not maintainable on the ground of availability of alternative remedy which is statutory in nature as provided under Section 41(3) of the Act, which the petitioner is already availing. He has also argued that there is no illegality or irregularity in the decision taken by the Vice-chairman of Allahabad Development Authority while sanctioning the building plan which may warrant any interference by this Court in these proceedings.

CONTENTIONS RAISED ON BEHALF OF RESPONDENTS NO.6 & 7:-

21. Shri Shashi Nandan, learned Senior Advocate, has very strongly termed the proceedings of the instant writ petition as an attempt, on behalf of the petitioner, to abuse the process of the Court. He has forcefully submitted that the allegations made in paragraphs 52, 53 and 54 of the writ petition, are completely unwarranted, mischievous, scandalous and malicious which have been made against the persons who are Hon'ble Judges of this Court, who have played no role whatsoever either in the grant of sanction of the building plan dated 26.06.2013 or passing of the consequential formal order dated 04.07.2013 communicating the said decision. Shri Nandan has also categorically denied any role having been played by Hon'ble Judges in any respect in the proceedings of Revision Petition No.13/2014. Para 4 of the affidavit filed on behalf of respondent nos.6 and 7 is extracted herein below:

"4. That the deponent also raises a preliminary objection regarding maintainability of the present writ petition, inasmuch as malicious and indiscriminate assertions have been made against person who are presently Judges of this Hon'ble Court. Although, the aforesaid persons have played no

role whatsoever either in the grant of sanction dated 05.06.2013 and consequential order dated 04.07.2013 nor have they any role in the Revision No.13 of 2014 pending before the State Government.

The aforesaid allegations are deliberate and are meant to scandalise the dignity of the reputed persons particularly when none of them have been impleaded as party in the writ petition. The mentioning of irrelevant, scandalous allegations is with a deliberate intention to ensure that the present writ petition, which is otherwise not maintainable, may be entertained. Thus, either the petitioner should be directed to delete the scandalous allegations made against the aforesaid persons, who have not been impleaded, from the body of the writ petition or the petitioner may be directed to implead them as respondents in the writ petition so that they may be in a position to effectively refute the baseless allegations made by the petitioner against them. "

22. Shir Shashi Nandan has further argued that these allegations have been levelled, though the same are without any basis or material, only with a view to persuade this Court to entertain the instant writ petition, even during the pendency of the revision petition filed by the petitioner before the State Government under Section 41(3) of the Act against decision of the Vice-Chairman of Allahabad Development Authority, whereby the building plan submitted by respondent nos 6 and 7 has been sanctioned. He has also stated that, in fact, in the given facts and circumstances of the case as also looking to the provisions of Section 41(3) of the Act, the revision petition said to have been preferred by the petitioner before the State Government under Section 41(3) of the Act is not maintainable and hence, an attempt has been made by the petitioner to get the instant petition entertained by this Court only by levelling false and malicious allegations against Hon'ble Judges of this Court. He has further stated that there is no material to substantiate the allegations against "influential persons" and further that the allegations being bald are completely uncalled for and unwarranted. His further submission is that the petitioner had moved an application to the Vice Chairman only on 21.04.2012 for the first time with the assertion that a dispute between the petitioner and respondent nos.6 and 7 concerning title and ownership of the land in question is pending, however, in the said application, there is no assertion that the plan is against Master Plan or the Zonal Development Plan.

23. Drawing attention of this Court to the information given by the Public Information Officer, ADA to Shri Arup Banarjee by means of the letter dated 10.02.2014, it has been stated by Shri Shashi Nandan that information given by the ADA through the said letter reveals that in respect of the land in question seven different maps were sanctioned in the name of seven different persons, however, except in respect of the map sanctioned in favour of respondent nos.6 and 7, no objection has ever been raised by the petitioner against other six persons, though all these seven sanctioned plans are in respect of the same plot. He has also stated that the land on which all these seven persons have been

sanctioned building plans is the subject matter of the suits, however, the petitioner has deliberately chosen to object to the plan sanctioned in favour of the respondent nos.6 and 7 only which clearly shows mischievous intent of the petitioner. He has also relied upon the opening paragraph of the order dated 04.07.2013 and also on clauses 9 and 11 of the said order and has submitted that the order sanctioning the plan is nothing to do with any dispute relating to title and further that in case of any declaration by the competent court regarding sale-deeds executed in favour of respondents no.6 and 7, the sanction plan will automatically get cancelled.

24. Referring to Clause 11 of the said order dated 04.07.2013, it has also been stated by Shri Shashi Nandan that in case the respondent nos. 6 and 7 have concealed any fact, then the sanction map is liable to be cancelled under Section 15(9) of the Act.

25. Shri Shashi Nandan has also taken the Court to ground C pleaded in the revision petition filed by the petitioner before the State Government under Section 41(3) of the Act, wherein it has been stated that no order has been passed by the Vice Chairman on the application/objection filed under Section 15(9) of the Act. According to the Senior Advocate, there was no application, in fact, which could be said to have been preferred by the petitioner seeking cancellation of sanctioned plan under Section 15(9) of the Act for the reason that the plan was sanctioned by the decision of Vice Chairman only on 26.06.2013 on the basis of which formal order was issued on 04.07.2013. According to him, this is nothing but a deliberate attempt on the part of the petitioner to mislead the Court.

26. In sum and substance, learned Senior Advocate appearing for respondent nos.6 and 7 has not only opposed the very maintainability of the petition but also has strongly contended that the allegations contained in writ petition are unfounded and have been levelled with malicious intent with a view to give colour to a petition which is otherwise not maintainable. He has also prayed that this Court may pass appropriate orders directing the petitioner to delete the paragraphs containing scandalous assertions made against Hon?ble Judges of this Court.

SUBMISSIONS ON BEHALF OF STATE-RESPONDENTS :

27. Learned Additional Advocate General, Shri C.B. Yadav appearing for the State-respondents has denied the allegations levelled by the petitioner against the State Authorities while dealing with the revision petition filed by the petitioner. He has stated that on presentation of the revision petition before the State, Allahabad Development Authority was directed to submit its report by means of the letters dated 14.3.2014, 14.04.2014, 28.04.2014 and 21.05.2014 and since no representative from the Allahabad Development Authority was present in the proceedings, as such, next date in the matter was fixed on 08.08.2014 and by means of the letter dated 22.07.2014 of the State

Government, implementation of the order of the Allahabad Development Authority dated 05.06.2013 (26.06.2013) was stayed, however, before the said order/letter could be issued to the concerned persons or authorities, it came to the notice of the competent authority/Joint Secretary of the Government that the report of the Allahabad Development Authority dated 15.07.2014 was made available in the State Government on 18.07.2014, as such, interim order dated 22.07.2013 which was not formally issued was cancelled by the order/letter dated 24.07.2014.

PROVISIONS OF THE ACT:-

28. Certain provisions of the U.P. Urban Planning and Development Act, 1973 which are relevant for the purpose of resolving the issues involved in this case are necessary to be reproduced which are quoted below:-

29. The word "Chairman" and "Vice-Chairman" have been defined in section 2(dd) of the Act which is as under:-

2.(dd) "Chairman" and "Vice-Chairman" shall mean respectively the Chairman and the Vice-Chairman of the Development Authority.

The word "the Authority" has been defined in section 2(g) which is as under:-

2.(g). the word "the Development Authority or "the Authority", in relation to any development area, means the Development Authority constituted under Section 4 for that area;

30. The Development Authority is constituted under Section 4 of the Act, the relevant portion of which is extracted as under:-

4. The Development Authority.—(1) The State Government may, by notification in the Gazette, constitute for the purposes of this Act, an Authority to be called the Development Authority for any development area.

(2) The Authority shall be a body corporate, by the name given to it in the said notification, having perpetual succession and a common seal with power to acquire, hold and dispose of property, both move-able and immovable and to contract and shall by the said name sue and be sued.

(3) The Authority in respect of a development area which includes the whole or any part of a city as defined in the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959, shall consist of the following members, namely:-

(a) a Chairman to be appointed by the State Government;

(b) a Vice-Chairman to be appointed by the State Government;

(c) the Secretary to the State Government in charge of the department in which, for the time being, the business relating to the Development Authorities is transacted, ex-officio;

(d) the Secretary to the State Government, in-charge of the Department of Finance, ex-officio;

(e) the Chief Town and Country Planner, Uttar Pradesh, ex-officio;

(f) the Managing Director of the Jal Nigam, established under the Uttar Pradesh Water-Supply and Sewerage Act, 1975, ex-officio;

(g) the Mukhya Nagar Adhikari, ex-officio;

(h) the District Magistrate of every district any part of which is included in the development area, ex-officio;

(i) four Members to be elected by Sabhasads of the Nagar Mahapalika for the said city from amongst themselves:

Provided that any such member shall cease to hold office as such as soon he ceases to be Sabhasad of the Nagar Mahapalika;

(j) such other members not exceeding three as may be nominated by the State Government.

(4) The appointment of the Vice-Chairman shall be whole-time.

31. Under section 9 the Development Authority is required to prepare a Zonal Development Plan for each zone of the development area. Section 9 of the Act is also quoted below:-

9. Zonal Development Plans.-(1) Simultaneously with the preparation of the master plan or as soon as may be thereafter, the Authority shall proceed with the preparation of a zonal development plan for each of the zones into which the development area may be divided.

32. Sub section 2(d) of section 9 of the Act prescribes various things to be provided for while preparing the zonal development plan. Section 9(2) (d) of the Act runs as under:-

9(2)(d).-In particular, contain provisions regarding all or any of the following matters, namely-

(i) the division of any site into plots for the erection of buildings;

(ii) the allotment or reservation of land for roads, open spaces, gardens, recreation-grounds, schools, markets and other public purposes;

(iii) the development of any area into a township or colony and the restrictions and conditions subject to which such development may be undertaken or carried out;

(iv) the erection of buildings on any site and the restrictions and conditions in regard to the open spaces to be maintained in or around buildings and height and character of buildings;

- (v) the alignment of buildings of any site;
- (vi) the architectural features of the elevation or frontage of any building to be erected on any site;
- (vii) the number of residential buildings which may be erected on plot or site;
- (viii) the amenities to be provided in relation to any site or buildings on such site whether before or after the erection of buildings and the person or authority by whom or at whose expense such amenities are to be provided;
- (ix) the prohibitions or restrictions regarding erection of shops, workshops, warehouses or factories or buildings of a specified architectural feature or buildings designed for particular purposes in the locality;
- (x) the maintenance of walls, fences, hedges or any other structural or architectural construction and the height at which they shall be maintained;
- (xi) the restrictions regarding the use of any site for purposes other than erection of buildings;
- (xii) any other matter which is necessary for the proper development of the zone or any area thereof according to plan and for preventing buildings being erected haphazardly in such zone or area.

33. Section 15 prescribes the procedure for obtaining permission for construction and development as required under Section 14 of the Act. Section 15 is quoted below:

15. Application for permission.—(1) Every person or body (other than any department of Government or any local authority) desiring to obtain the permission referred to in Section 14 shall make an application in writing to the [Vice-Chairman] in such form and containing such particulars in respect of the development to which the application relates as may be prescribed by [bye-laws]

(2) Every application under sub-section (1) shall be accompanied by such fee as may be prescribed by rules.

[(2-A) The Authority shall be entitled to levy development fees, mutation charges, stacking fees and water fees in such manner and at such rates as may be prescribed:

Provided that the amount of stacking fees levied in respect of an area which is not being developed or has not been developed, by the Authority, shall be transferred to the local authority within whose local limits such area is situated]

(3) On the receipt of an application for permission under sub-section (1), the (Vice-Chairman) after making such inquiry as it considers necessary in relation to any matter specified in clause (d) of sub-section (2) of Section 9 or in relation to any other matter, shall, by order in writing either grant the permission, subject to such conditions, if any, as may be specified in the order or refuse to grant such

permission:

Provided that before making an order refusing such permission, the applicant shall be given a reasonable opportunity to show cause why the permission should not be refused:

Provided further that the (Vice-Chairman) may before passing any order of such application give an opportunity to the applicant to make any correction therein or to supply any further particulars of documents or to make good any deficiency in the requisite fee with a view to bring it in conformity with the relevant rules or regulations:

(Provided also that before granting permission, referred to in Section 14, the Vice-Chairman may get the fees and the charges levied under sub-section (2-A) deposited;)

(4) where permission is refused, the grounds of such refusal shall be recorded in writing and communicated to the applicant.

(5) Any person aggrieved by an order under subsection (4) may appeal to the (Chairman) against that order within thirty days from the communication thereof and may after giving an opportunity of hearing to the appellant, and if necessary, also to the representative of the (Vice-Chairman) either dismiss the appeal or direct the (Chairman) to grant the permission applied for with such modifications, or subject to such conditions, if any, as may be specified.

(6)The [Vice-Chairman] shall keep in such form as may be prescribed by regulations a register of applications for permission under this section.

(7) The said register shall contain such particulars, including information as to the manner in which applications for permission have been dealt with, as may be prescribed by regulations, and shall be available for inspection by any member of the public at all reasonable hours on payment of such fee not exceeding rupees five as may be prescribed by regulations.

(8) Where permission is refused under this section, the applicant or any person claiming through him shall not be entitled to get refund of the fee paid on the application for permission but the [Vice-Chairman] may, on an application for refund being made within three months of the communication of the grounds of the refusal under sub-section (4) direct refund of such portion of the fee as it may deem proper in the circumstances of the case.

(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.

34. Section 37 of the Act attaches finality to the orders passed by the Vice Chairman, Chairman and other officers of the Development Authority, which is quoted below:-

37. Finality of decision.—(Except as provided in Section 41, every decision) of the Chairman on appeal, and subject only to any decision on appeal (if it lies and is preferred), the order of the Vice-Chairman or other Officer under Section 15, or Section 27, shall be final and shall not be questioned in any Court]

35. Section 41 of the Act provides for control by the State Government for efficient administration of the Act. Section 41 of the Act is also extracted below:

41. Control by State Government.-(1) The [Authority, the Chairman or the Vice-Chairman] shall carry out such directions as may be issued to it from time to time by the State Government for the efficient administration of this Act.

(2) If in, or in connection with, the exercise of its powers and discharge of its functions by the [Authority, the Chairman or the Vice-Chairman] under this Act any dispute arises between the [Authority, the Chairman or the Vice-Chairman] and the State Government the decision of the State Government on such dispute shall be final.

(3) The State Government may, at any time, either on its own motion or on application made to it in this behalf, call for the records of any case disposed of or order passed by the [Authority or the Chairman] for the purpose of satisfying itself as to the legality or propriety of any order passed or direction issued and may pass such order or issue such direction in relation thereto as it may think fit:

Provided that the State Government shall not pass an order prejudicial to any person without affording such person a reasonable opportunity of being heard.

[(4) Every order of the State Government made in exercise of the powers conferred by this Act shall be final and shall not be called in question in any Court.]

Issues Which Arise For Consideration On Examination Of The Facts, Pleadings And Record:

36. On a scrutiny of pleadings of the respective parties, following issues emerge for consideration of the Court:

(a) As to whether this writ petition is maintainable in view of availability of a statutory remedy under Section 41 (3) of the Act which the petitioner has already invoked and is pursuing.

(b) As to whether the revision petition filed by the petitioner under Section 41 (3) of the Act against decision of the Allahabad Development Authority granting approval to the building plan submitted by the respondent nos.6 and 7 under Section 15 of the Act is maintainable.

(c) What could have been appropriate remedial course available to the petitioner in case he is aggrieved by the sanction of building plan which is said to have been obtained by respondent nos. 6 and 7 by misrepresentation and concealment of facts.

(d) What is the scope of enquiry to be conducted by the Vice-Chairman of the Development Authority under Section 15 (1) read with Section 15(3) of the U.P. Urban Planning and Development Act while dealing with an application seeking permission to raise construction in a development area.

(e) As to whether the allegations made in the writ petition, as pointed out by the learned counsel representing the respondent nos. 6 and 7, are uncalled for and deserve to be ordered to be deleted.

FINDINGS OF THE COURT:-

Issues (a), (b) and (c)

37. Issues (a), (b) and (c) are, since, intertwined, the same are being decided simultaneously.

38. As noticed above, it has been submitted by learned counsel appearing for the respondent Nos.6 and 7 that the revision petition filed under Section 41(3) of the Act against the order or decision of the Vice-Chairman granting approval to a building plan submitted by respondent nos.6 and 7 is not maintainable.

39. Learned Additional Advocate General appearing for the State has joined the learned counsel for the petitioner in submitting that the scope of power of the State Government under Section 41(3) of the Act is wide enough which encompasses in its folds adjudication on the legality or propriety of the order passed by the Vice Chairman granting permission for construction and approving any building plan. Thus, submission is that revision petition filed by the petitioner is maintainable.

40. Learned counsel appearing for the respective parties have cited various judgements which are being referred herein below.

41. Hon'ble Single Judge of this Court in the case of Savvy Home Private Ltd. v. State of U.P. And others, reported in [2012 (10) ADJ 724], has held that revision petition under Section 41(3) of the Act before the State Government is maintainable at the instance of a third party against the order passed by the Vice- Chairman of the Development Authority sanctioning the building plan. In the case of Savvy Home Private Ltd. (supra), a Division Bench judgment of this Court in the case of Vinod Kumar Bhalotia v. State of U.P. And others, reported in [2000 (38) ALR 533] has been relied upon and quoted. The relevant portion of the judgement of the Division in the case of Vinod Kumar Bhalotia (supra) is quoted below:-

"7.....In our opinion, the interpretation suggested by the learned counsel cannot be accepted as the expression, call for the records of any case disposed

of, is a wholly independent expression and it has no co-relation with the expression "Authority or the Chairman". If by an order a case has been disposed of, a revision would lie against such an order irrespective of the fact by whom the said case has been disposed of. If however a revision is filed against an order which does not dispose of a case then the same would be maintainable only if the order is passed by the Authority or the Chairman. No revision would lie against an order simpliciter of the Vice-Chairman if it does not dispose of a case."

42. Hon^{ble} Single Judge of this Court in another judgment in the case of Harjinder Singh v. State of U.P. And others, reported in [2012 (5)ADJ 246] has also held that the power conferred on the State Government under Section 41(3) of the Act is wide enough which empowers the State to examine the propriety of the orders passed by the authorities of the Development Authority.

43. Contrary to the aforesaid judgements, another Division Bench of this Court in the case of Jagdish Prasad Dubey and others v. Allahabad Vikas Pradhikaran, Allahabad, reported in [(1992)1 UPLBEC 694] has taken a view that against the order granting permission for construction and sanctioning building plan, no statutory remedy is available under the Act and hence, writ petition against such an order is maintainable. The Division Bench of this Court in the said case has, however, held that once the plan has been approved, there is no necessity to scrutinise the same, except on the allegations of fraud and misrepresentation. Relevant extract of the said judgement in para 7 is quoted below:

"7. Before we proceed to interpret Section 14 and 15 of the Act, certain cardinal principles of interpretation may be noticed. The purpose of legislation has to be ascertained first. The maxim *Est Ipsorum Legislatorum Janqam Viva Vox* means the voice of the Legislators themselves is like the living voice that is the language of a statute is to be understood and interpreted like ordinary spoken language. At the same time every part of a section has to be read together. No part of it need be left as otiose. By reading the provisions of different sub-sections of Section 15 and other provisions of the Act, including Section 14, the only irresistible conclusion is that the Legislature was conscious that against the order refusing to grant permission or refusing to grant approval of the map there can be an appeal by the aggrieved person, whereas there was no appeal when the permission has been granted as in the case of the petitioner. There was, therefore, no question of petitioner availing an alternative remedy of preferring an appeal. Further reverting to the question whether respondent could review the order granting permission and approving the map. Here also simple rules of interpretation are to be applied in order to ascertain the intendment of law givers in not providing any provision for appeal against the order granting permission to raise the construction or approval of the map and not in providing any power of review. It is an important step in my opinion to know that the Act does not mean and if it becomes clear that there is something which it does not mean, then that itself suggests or suppose to be what it does mean. It appears that the Legislature in enacting sub-section (5) of Section 15 of the Act was conscious

that in case permission has been granted for raising construction or the map submitted by the petitioner has been approved, in that even the same cannot be reviewed or cancelled except where material facts have been suppressed. The object of the Act was to provide for the development of the certain areas of U.P. According to plans and for matters ancillary thereto. Therefore, once the plan has been approved there was no necessity to scrutinise the same, except on the allegations of fraud and misrepresentation."

44. Section 41(3) of the Act empowers the State Government to call for the records of any case disposed of or order passed by the authority or the Chairman for the purpose of satisfying itself as to the legality or propriety of any order. The State Government under Section 41(3) of the Act, thus, is vested with the revisional authority to be exercised in two situations; (i) where any case has been disposed of and (ii) where any order has been passed by the Authority or the Chairman. The Division in the case of Vinod Kumar Bhalotia (supra) has interpreted this provision to mean that expression "any case disposed of" does not have any co-relation with the expression "Authority or Chairman" and further that expression "Authority or Chairman" has co-relation with the expression "order passed by" and has thus concluded that in a situation where any case stands disposed of not even by "the Authority" or "the Chairman" the revision petition will be maintainable.

45. Expression "Authority" has been defined under Section 2(g) to mean the Development Authority constituted under Section 4 of the Act, which provides that the State Government will constitute an Authority to be called the Development Authority for any development area. The Authority, thus, is a body corporate comprising of many members enumerated in section 4 (3) of the Act. The "Chairman" has been defined to mean Chairman of Development Authority in section 2(dd) of the Act.

46. However, what is noticeable at this juncture is that the judgment rendered by Hon"ble Supreme Court in the case of State of U.P. And others v. Maharaja Dharmander Prasad Singh and others, reported in [(1989) 2 SCC 505] has escaped notice of Hon"ble Division Bench of this Court in the case of Vinod Kumar Bhalotia (supra). Hon"ble Supreme Court in the case of Maharaja Dharmander Prasad Singh (supra) has clearly held that an order made by Vice-Chairman granting permission for raising construction or sanctioning a building plan is not revisable by the State Government under Section 43 of the Act. The said finding by Hon"ble Supreme Court in respect of the scope of Section 41(3) of the Act has been given referring to the provisions of Section 37 of the Act which attaches finality to the order of the Vice-Chairman. Para 48 of the judgment rendered by Hon"ble Supreme Court in the case of Maharaja Dharmander Prasad Singh (supra) is extracted herein below:

"48. Section 41(3) enables the State Government, either on its own motion or on an application made to it in this behalf to call for the records of any case disposed of or order passed by the Authority or the Chairman for purposes of

satisfying itself as to its legality or propriety and may pass such orders or issue such directions in relation thereto as it may think fit. It is relevant to note that an order made by a Vice- Chairman under Section 15(3) of the Act granting permission is not one of the orders revisable by Government under Section 41(3). Such an order, under the scheme of the Act, is not also appealable but assumes a finality contemplated by Section 37."

47. In view of what has been held by Hon"ble Supreme Court in the case of Maharaja Dharmander Prasad Singh(supra), the Court concludes that revision petition preferred by the petitioner against the order sanctioning building plan is not maintainable under Section 41(3) of the Act.

48. Having held that the revision petition preferred by the petitioner before the State Government is not maintainable, the question for consideration at this juncture would be as to whether the instant petition would be maintainable. In this regard, we may reiterate the primary assertion made on behalf of the petitioner. The petitioner has vehemently argued that the building plan in favour of respondent Nos. 6 and 7 was sanctioned by the ADA on the application preferred by the respondent Nos. 6 and 7 wherein material facts were concealed in as much as the disputes relating to title and ownership of the land in question were not disclosed by the respondent Nos. 6 and 7 and hence, the permission granted by the ADA is liable to be cancelled in terms of the provisions contained in Section 15(9) of the Act. The petitioner in this regard has referred to the application dated 21.04.2012 (Annexure 18 to the writ petition) wherein prayer has been made to cancel the sanctioned map on the grounds stated therein.

49. The grounds in the said application, as discussed above, are that sanction of the building plan has been procured by the respondent Nos. 6 and 7 during pendency of cases between the parties relating to title and ownership over the land in question. It is, thus, the case of the petitioner is that the building plan sanctioned by the ADA is based on material misrepresentation and concealment of the facts by the respondent Nos. 6 and 7 as such the same is liable to be cancelled.

50. Section 15(9) of the Act, in unambiguous terms provides that if at any time after the permission has been granted under Sub Section(3) of Section 15, 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. Grant of permission under Section 15 of the Act is a matter between the Development Authority and the person seeking sanction of the building plan. However, in a case where any third party has a grievance that sanction has been obtained by concealing material information and by misrepresentation of the facts, it is always open to such party to invoke the provision of Section 15(9) of the Act seeking cancellation of the building plan.

51. In the instant case, as already noticed above, an application was moved on

21.04.2012 by the petitioner seeking cancellation of the building plan on account of misrepresentation and concealment of the material facts after the initial plan was sanctioned/approved by the ADA on 20.09.2010. However, the revised plan was sanctioned by the Vice-Chairman on 26.06.2013 based on which formal order of permission was issued on 04.07.2013, but after the said decision dated 26.06.2013 and the order dated 04.07.2013, the petitioner has not moved any application, which he could have, under Section 15(9) of the Act before the Vice-Chairman. Thus, in the facts and circumstances of the case, the remedy which can be said to be available to the petitioner is contained in the provisions of Section 15(9) of the Act.

52. Remedy made available under Section 15(9) of the Act is a statutory remedy and in our opinion, efficacious too. In this regard the observations made in para 57 of the judgment in the case of Maharaja Dharmender Prasad Singh (Supra) by the Hon''ble Supreme Court is relevant to be quoted which run as under:-

"57. It has, therefore, to be held that the finding of the High Court that the Vice-Chairman had no competence to initiate proceedings to revoke the permission on the ground that permission itself had been obtained by misrepresentation and fraud and on the ground that there were violations of the conditions of the grant, appear to us to be unsupportable. The contention of the respondent lessees that the show cause notice, dated January 9, 1986 and the cancellation order, dated April 19, 1986 are vitiated by a surrender of a discretion on the part of the Vice-Chairman cannot also be held to be well founded. Sri Thakur''s contention to the contrary on both these points would require to be accepted."

53. Thus, we are of the considered opinion that the petitioner has an alternative and efficacious statutory remedy available to him under Section 15(9) of the Act which he could invoke for the prayers made in the instant petition.

54. Since the petitioner has got an alternative statutory remedy available to him, as such, without burdening this judgment with the catena of pronouncements of this Court as well as Hon''ble Supreme Court on the issue that in case of availability of alternative statutory remedy, the writ petition would not be maintainable (of course, in certain circumstances availability of an alternative remedy would not operate as bar to entertain a petition under Article 226 of the Constitution of India), we are of the considered opinion that for the relief being sought by the petitioner in the instant case, writ petition would not be maintainable.

Issue (d)

55. Scope of enquiry under Section 15(3) of the Act by the Vice- Chairman while considering the grant of permission for building plan is limited and it will not encompass within its folds any enquiry relating to the title and ownership of the land in question. Sub Section (3) of Section 15 provides that on an application for permission, the Vice-Chairman shall by an order either grant permission or refuse to grant such permission after conducting such enquiry as it considers

necessary in relation to any matter specified in Section 9 (2)(d) of the Act. The provision contained in Section 9(2)(d) of the Act provides for the subjects which Zonal Development Plan may cover. Perusal of Section 9(2)(d) of the Act reveals that none of the matters provided therein touch the issue relating to ownership and title of the land. The matters enumerated in section 9(2)(d) of the Act concern themselves with the overall development of the area in which building is sought to be constructed.

56. Further, we may also notice that Section 15 of the Act provides that the person seeking to obtain permission for construction shall make application in writing in such form containing such particulars in respect of development to which the application relates, as may be prescribed by the bye-laws.

57. ADA has made Building Bye-Laws, 2012 which are known as Bhawan Nirman Evam Vikas Upvidhi. Chapter-2 of the Bye- Laws, 2012 provides for the prescribed essentials for seeking permission for development. Relevant provisions of Chapter-2 of the Bye-Laws, 2012 are quoted below:-

"2-1 fodkl vuqKk gsrq vfuok;Zrk,a

2-1-1 vuqKk gsrq vkosnu

1- fodkl vuqKk ds fy;s fu/kkZfjr izi= ifjf"k"V&1 ij vkosnu i= dh nks izfr;kWa] ekufp=ksa ds pkj lsV@dEI;wVjhd"r M~kbZax ;k led{k QkesZV esa lh0Mh0 esa fu;r "kqYd vnk djus dh jlhn lfgr tek fd;s tk,axsA

2- tek fd;s tkus okys ekufp=ksa esa] dh Iyku] egk;kstuk esa fLFkfr dk ekufp=] lkbV Iyku] ryiV ekufp= vkSj lfoZlst Iyku Hkh "kkfey gksaxsA

3- ekufp= ij vuqKk iznRr gks tkus ij ,d lsV izkf/kdj.k esa vfHkys[k gsrq j[kk tk,xkA

4- leLr ekufp= vuqKkfir O;fDr }kjk rS;kj fd tk,xsa vkSj muds }kjk uke] irk] ;ksX;rk vkSj izkf/kdj.k dh vuqKfIr la[;k n"kkZrs gq, gLrk{kj fd, tk,axsA blds vfrfjDr Hkw@Hkou Lokeh ds gLrk{kj Hkh gksxsA

2-1-2 lwpuk,a ,oa nLrkost

2-1-2-1 izkf/kdj.k ;kstuk esa& vkosnu i=] ;FkkfLFkfr fuEufyf[kr lwpukvksa vkSj nLrkostksa ds lFk tek fd;k tk,xk%&

1- dCtk i= rFkk yht@ykblsUI MhM ds lFk tkjh lkbV Iyku dh izfrfyiA

2- Hkw&k.M ds LokfeRo leFkZd nLrkost ds izfrA"

58. Thus, what is required by a person to submit while making an application seeking sanction of the building plan is the map, possession letter, lease/license deed coupled with site plan and supporting documents of ownership of the land over which the building plan is sought to be approved.

59. Merely because the Bye-Laws require submission of supporting documents of ownership would not mean that Vice- Chairman while considering the matter

under Sections 15(3) of the Act can go into the question of validity or otherwise of title or ownership. A Division Bench of this Court in the case of Shyam Sunder Agarwal and another v. District Magistrate/Vice Chairman, Banda Development Authority, Banda and others, reported in [(1992) 1 UPLBEC 585 has held that the dispute pertaining to the title to the property with respect to which sanction is sought cannot be appropriately determined in such proceedings. The matter in the case of Shyam Sunder Agarwal (supra) though related to the provisions of U.P. Municipalities Act, 1916, however, we may notice that the procedure relating to sanction of map in the Municipalities Act as well as U.P. Urban Planning and Development Act, 1973 are summary in nature. Para-5 of the said judgment rendered by the Division Bench of this Court in the case of Shyam Sunder Agarwal (supra) is quoted below:-

"5. It is apparent that the objection of the respondents involves as adjudication of a dispute pertaining to the title to the land in question. It has consistently been ruled by this court right from the earliest time that disputes pertaining to the title to the property with respect to which sanction is sought cannot ought appropriately to be determined in such proceedings. Indeed there is a complete unanimity of opinion on this point, the view expressed being that such an issue is beyond the purview of the proceedings for sanction of the plan. See 1945 Allahabad-393, 1982 Allahabad: 290, 1980 Allahabad Weekly Cases-637 and finally 1991 ACJ 649".

60. Yet in another judgement of this Court in the case of Janak Singh Yadav and others v. State of U.P. and others, reported in 2005 (6) AWC 5221, another Division Bench of this Court has held the same view in para-10, which is as under:-

"10. Even otherwise the issue of title cannot be determined in summary proceedings even under the Statutes like the Act 1971. Act, 1973; Urban Development Act, Municipalities Act. For determination of such an issue, recourse has to be taken to the civil court."

Hon"ble Single Judge in the case of Wakf Al Aulad Yusufia through Mutawalbi v. Controlling Authority/Commissioner, Varanasi Mandal, Varanasi and others, report in [2009(77) ALR 429] dealing with a similar issue in a case arising out of U.P. (Regulation of Building Operations) Act, 1958 has held that where objection against the sanction granted by the authority concerned for construction of a building on the land in question involves adjudication of disputes pertaining to the title to the land in question, such disputes cannot be determined in proceedings before the authorities dealing with the sanction of plan for making construction. The Court has further held that such disputes being beyond the purview of the proceedings for sanction of the plan should be considered and decided in a regular civil suit.

61. The aforesaid discussions make the scope of enquiry under Section 15(1) and (3) of the Act very clear.

Issue (e)

62. We now proceed to consider the plea as to whether certain allegations made in writ petition, as pointed out by learned counsel appearing for the respondent Nos. 6 and 7 are uncalled for and deserve to be ordered to be deleted.

63. In several paragraphs, certain averments have been made by the petitioner which our opinion are completely unwarranted and irrelevant. In paragraph 14 of the writ petition, it has been averred that late A.B. Saran filed Civil Misc. Writ Application No. 3615 of 1999 through his Advocates (now Hon"ble Judges of this Court) and after obtaining an Agreement to Sell in respect of Bunglow No. 17, Eligin Road, Allahabad and after getting the nomination in deceitful manner in favour of his desired persons by putting Dr. Arup Banerjee under pressure and fear as well as by extending threats to kill all his family members, withdrew the writ petition on 12.03.1999.

64. In paragraph 15 of the writ petition, the petitioner has further stated that Original Suit No. 488 of 1999 was dismissed by the learned trial court illegally under the pressure of "influential persons". Again in this paragraph, it has been mentioned that defendants in Original Suit No. 488 of 1999 are so influential and powerful persons and that a common and ordinary person like the plaintiff cannot win the case against them. It has also been averred that defendant Nos. 8, 11 and 13 of Original Suit No. 488 of 1999 are sitting Hon"ble Judges of this Court.

65. In paragraph 52 of writ petition, it has been stated by the petitioner that revisional authority will-fully and deliberately at the instance and pressure of "influential persons" is keeping the revision petition pending.

66. In paragraph 53 of writ petition, it has further been stated that the revisional authority under Section 41(3) of the Act under the pressure directly or indirectly of the "influential persons" is neither passing any order on the interim relief application nor on the revision petition itself.

67. In paragraph 54 of the writ petition, the petitioner has averred that on 08.08.2014, the Joint Secretary in the Government of U.P. expressed his opinion that several "influential persons" and Hon"ble Judges of this court are involved in the matter, therefore, the revisional authority cannot dare to pass order on the revision petition.

68. It is true that some of Advocates, who have now been elevated as Hon"ble Judges of this Court are defendants in the Suit which has been referred to herein above, however, on a careful examination of the pleadings made by the petitioner in the writ petition, what emerges is that certain vague and bald allegations, without substantiating the same, have been levelled by the petitioner against the Hon"ble Judges of this Court. Reference to Hon"ble Judges of this Court at several places in the writ petition has been made as "influential persons". No material, however, has been brought on record which can establish

any undue influence having been exercised by any "influential persons" on any authority dealing with the sanction of building plan or the proceedings arising out of the same.

69. Since writ court decides petitions under Article 226 of the Constitution of India on the basis of Affidavits and Counter Affidavits, the grounds taken in the writ petition should be supported by statement of relevant and necessary facts. If the averments made in the writ petition are vague or the writ petition contains mere general allegations sans particulars then their value becomes insignificant in the eyes of law.

70. If the writ petition embodies only conclusions or inferences, such averments made in the writ petition have hardly any evidentiary value. It is trite to state that a party approaching this Court under Article 226 of the Constitution of India must plead not only relevant facts but also state facts by way of evidence in proof thereof. It is, thus, expected from the parties to state relevant particulars in the clearest possible terms.

71. Elaborating on the nature of pleadings required in writ petitions, Hon''ble Supreme Court in the case of Bharat Singh and others v. State of Haryana and others, reported in (1988) 4 SCC 534, has differentiated the pleadings under the Code of Civil Procedure and under Writ Jurisdiction. It has been observed by Hon''ble Supreme Court that in a plaint or a written statement, it is only the facts and not the evidence which are required to be pleaded, whereas in a writ petition, not only facts but also the evidence in proof of such facts have to be pleaded and annexed to it. The relevant extract of the said judgment rendered by Hon''ble Supreme Court in the case of Bharat Singh and others (supra) is quoted herein below:-

"If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertain-able. But, in spite of that, we have entertained it to show that it is devoid of any merit."

72. Thus, no ground taken in proceedings of a writ petition can be founded on mere allegation without there being any material to support such allegation.

73. We have been taken through various paragraphs of the writ petition, however, we are unable to convince ourselves as to how such references to Hon''ble Judges of this Court help the petitioner. Our attention was also drawn to the affidavit filed in support of the writ petition which has been sworn in by Ms.

Ishita Banerjee, W/o Dr. Arup Banerjee. Almost all paragraphs in the writ petition have been verified as true on the basis of personal knowledge. It appears that due care was not taken while swearing the affidavit. In paragraph No.1 of the affidavit, it has been stated by the deponent that she is doing pairvi of some Second Appeal. It is only on our pointing out that on 14.08.2015, another affidavit was filed stating therein that in the affidavit filed in support of the petition, the words "Second Appeal" be read as "Writ Petition".

74. We have also noticed that none of the affidavits filed in this petition has been sworn in by the petitioner himself but by Ms. Ishita Banerjee as pairkar and near relative of the petitioner. The petitioner himself has not come forth to swear the affidavits, though very serious allegations have been levelled against Hon"ble Judges of this Court.

75. Entire emphasis of the learned counsel for the petitioner is that on account of the Hon"ble Judges of this court the authorities including the Courts in his matters have not proceeded in accordance with law.

76. It is noticeable that in respect of the ownership and title of the land in question, several suits have been filed either by the petitioner or his relatives, however, record of FAFO No. 3407 of 2012, FAFO No. 3408 of 2012 and that of Second Appeal No. 792 of 2005 do not reflect any serious endeavour which can be said to have been made by the petitioner to get the said matters expedited. In FAFO No. 3407 of 2012 and FAFO No. 3408 of 2012, except for moving an application dated 21.08.2013 for early listing of the said cases, nothing appears to have done by the petitioner. The basic grievance which the learned counsel for the petitioner has pressed, while arguing this case, concerns the document dated 23.10.1999 whereby the freehold rights were granted in respect of the land in question in favour of the predecessors in interest of respondent Nos. 6 and 7. The Original Suit No. 488 of 1999, out of which, Second Appeal No. 792 of 2005 has arisen relates to prayer for grant of permanent injunction restraining the authorities from granting freehold rights in favour of the defendants. The Second Appeal before this court is pending since the year 2005, however, no efforts appear to have been made by the petitioner to get the proceedings of the said Second Appeal expedited.

77. The Second Appeal was presented before the Registry on 07.10.2005 without accompanying any application for interim relief/stay. Application for stay has been filed in the Second Appeal only on 26.07.2014 i.e. after lapse of a period of about nine years from the date of filing. After filing of the Second Appeal it is only on 17.01.2013 that an application was moved on behalf of the petitioner for listing. Further, we also find that notice to propose heirs of the deceased-respondent no.10 was ordered by the Court to be issued on Civil Misc. Substitution Application No.192630 of 2014 on 28.07.2014, however, steps were not taken in time for service on the proposed heirs of respondent no.10. The very fact that though Second Appeal was filed in the year 2005, however, no steps were taken by the petitioner to get it listed and further that the stay

application was moved only in the year 2014, make it clear that this case has not been prosecuted with interest and responsibility by the petitioner.

78. We, thus, conclude that the petitioner before drafting the writ petition does not appear to have made efforts to get the other matters expedited, wherein the basic issue of ownership and title of the land in question is under dispute and has made irresponsible assertions in this writ petition without supporting the same by any material. The conclusions and inferences drawn in respect of "influential persons" are thus his own imagination without any basis and foundation.

79. In the light of the aforementioned facts, we observe that oblique references to Hon''ble Judges of this Court as "influential persons" and other allegations made against them are completely irrelevant, irresponsible, uncalled for and unwarranted, hence, the same are hereby ordered to be not read and deleted.

CONCLUSIONS

80. Before concluding our judgment, we would like to refer to the argument made by learned counsel for the petitioner based on a Division Bench judgment of this Court in the case of Shahadat Hussain and others v. State of U.P. and others (Writ-C No. 46499 of 2015, rendered on 07.09.2015). Learned counsel for the petitioner has stated that in the said case certain irregularities were found to have been committed while converting the lease rights into freehold rights and thus, the Hon''ble Court directed the Chief Secretary of the State to lay down a uniform policy in the matter of consideration of applications for freehold rights. The Court further directed that if the Chief Secretary finds that District Magistrate or some other officer had illegally acted in the matter of execution of freehold deed in favour of respondent No.4 therein, he shall direct not only to initiate departmental enquiry but shall also direct lodging of a First Information Report.

81. So far as the aforesaid judgment of this Court in the case of Shahadat Hussain and others (supra) is concerned, the same has been rendered in the facts and circumstances of the said case. In the instant matter, validity of document dated 23.10.1999 by which freehold rights were granted in favour of the predecessors in interest of respondent Nos. 6 and 7 is already under challenge in Original Suit No. 326 of 2000 and also in Original Suit No. 24 of 20002. Validity of the said document dated 23.10.1999 is not under challenge before this Court in these proceedings. The petitioner, thus, has ample opportunity to plead the said issue in the pending suits. In this view, the judgement relied upon by the learned counsel for the petitioner in the case of Shahadat Hussain and others (supra) is of no avail to the petitioner.

82. So far as the submission of learned counsel for the petitioner that validity of the decision dated 26.06.2013 taken by the Vice- Chairman and that of the order dated 04.07.2013 may be considered and examined by this Court in these proceedings is concerned, we may only observe that the specific provision has been made in Section 15(9) of the Act which empowers the Vice- Chairman of

the Development Authority to cancel the grant of approval of building plan if he is satisfied that permission was obtained by material misrepresentation made or by fraudulent statement or information furnished. The question as to whether any material misrepresentation was made or fraudulent statement or information was furnished by respondent Nos. 6 and 7 while making application for grant of approval for building plan is a question of fact which, we feel, can appropriately be gone into by the Vice-Chairman under Section 15(9) of the Act, hence, we are unable to accept this plea raised by the learned counsel for the petitioner.

83. For the reasons given and discussions made above, we are not inclined to entertain this writ petition, which is hereby dismissed.

84. However, there will be no order as to costs.