(1996) 05 AHC CK 0135

In the Allahabad High Court

Case No : C.M.W.P. No. 5742 of 1996

Rangji Sahkari Avas Samiti Ltd. APPELLANT

Vs

State of U.P. and Another RESPONDENT

Date of Decision : 24-05-1996

Acts Referred:

Uttar Pradesh Urban Planning and Development Act, 1973 — Section 14, 15, 20, 33, 33(2)

Citation : (1996) 05 AHC CK 0135

Hon'ble Judges : D.P. Mohapatra, C.J;Sudhir Narain, J

Bench : Division Bench

Advocate : V.K. Singh, for the Appellant; S.C. and Ranjeet Saxena, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, C.J.—The core question, which falls for determination in this case, is whether the Agra Development Authority (Development Authority for short) is competent to demand and realise external development charges and supervision charges from the Petitioner Rangji Sahkari Avas Samiti Limited, Agra, in advance before any agreement is entered and before any development work is done by the Development Authority on the land in questions. Demand raised on certain other counts is not disputed and, therefore, not relevant for the purpose of the case.

2. In the writ petition, the Petitioner has prayed, infer alia, to quash the order dated 11.1.1996 of Vice Chairman of the Development Authority (Respondent No. 2) confirming the demand of Rs. 59,89,484 as external development charges and Rs. 4,08,000.67 as supervision charges (Annexure 7). The Petitioner has also prayed for a direction to the Respondent to sanction the layout plan submitted by it forthwith and to refund the sum of Rs. 5,00,000 paid to the Development Authority as external development charges.

3. The factual matrix of the case relevant for the determination and over which

no dispute has been raised before us may be stated thus:

4. The Petitioner society submitted a layout plan to the Development Authority for its approval. Though the said plan was approved vide order dated 24.7.1991, no agreement has yet been entered into between the parties. No external development work has also been done by the Development Authority on the land of the Petitioner. Initially, the Development Authority had demanded a sum of Rs. 5,59,300 as external development charges and Rs. 3,69,138 as supervision charges from the Petitioner. Subsequently, the amounts were revised of Rs. 59,89,484 on the former count and Rs. 4,08,000.67 on the latter count. The Petitioner challenged the demands in Writ Petition No. 3813 of 1993. This Court by its judgment rendered on 13.9.1995 ordered, inter alia, that if the Petitioner makes a representation in regard to external development charges and supervision charges, the same shall be decided by a speaking order in regard to approval of the plan, submitted by the Petitioner consistent with the decision given on the representation, within three weeks from the date of production of the certified copy of the order before him and until decision of such representation, further recovery from the Petitioner on the two counts will remain stayed.

5. On an application filed by the Petitioner for modification of the said order (Civil Misc. Modification Application No. 51650 of 1995), this Court by order dated 24.11.1995 modified the order dated 13.9.1995 to the extent that if a representation is made by the Petitioner pursuant to the said order then, the same will be disposed of by the Development Authority specifying the work done by it within two weeks from the date of production of a certified copy of the order along with the representation before the Development Authority. In pursuance of the judgment/orders passed by this Court, the Vice Chairman of the Development Authority passed the impugned order vide Annexure 7 holding, inter alia, that the Development Authority is competent to realise in advance the amounts In question towards external development charges and supervision charges. Hence, the grievance of the Petitioner.

6. The trust of the submissions of Sri. V.K. Singh, Learned Counsel for the Petitioner, is that no power is vested in the Development Authority under the U.P. (Regulation of Building Operations) Act, 1958, U.P. (Regulation of Building Operations) Regulations, 1960 as also U.P. Urban Planning and Development Act, 1973 to levy/realise any amount as external development charges or supervision charges even before agreement is entered into between the parties. Elucidating the point, Sri. Singh submitted that while granting permission to develop the area as a colony, it is open to the Development Authority to attach conditions requiring the applicant to undertake developments in the area and in case, the applicant fails to abide by the conditions/stipulations in the agreement, then action may be taken against it in the manner prescribed in Section 33 of the U.P. Urban Planning and Development Act, 1973. He, however, did not dispute the position that if the Development Authority undertakes certain development work

which the person responsible for carrying out the development has failed to do, then it is entitled to realise the amount spent for such development work. According to Sri. Singh, before an agreement has been entered into between the parties and before any development work has been done, the Development Authority is not entitled to demand external development charges or supervision charges. He placed reliance on the decision of the Apex Court in the case of Ahmedabad Urban Development Authority Vs. Sharadkumar Jayantikumar Pasawalla and others, and the decision of this Court in the case of Smt. Malli Kaul and Anr. v. Allahabad Development Authority, Allahabad and Anr. 1995 (2) AWC 1071 : (1995) 2 LBEC 974.

7. Sri. Ranjeet Saxena, Learned Counsel appearing for the Development Authority supporting the impugned order passed by the Vice Chairman of the Development Authority submitted that despite permission having been granted in its favour by the Development Authority, the Petitioner had neitner undertaken any development work on the land nor made any construction on it as a result of which the area is likely to develop into slum. He placed reliance mainly on the provisions in Section 33 of the Urban Planning and Development Act, 1973 in support of his contention that the demand raised against the Petitioner on the two counts was permissible under the statute, and, therefore, should not be interfered with. To our query whether there is any specific provision under the U.P. (Regulation of Building Operations) Act and the Regulations framed under it or the U.P. Urban Planning and Development Act, authorising the levy/demand of the charges in question, Sri. Saxena was not able to draw out attention to any such provision. Section 33 on which he placed reliance, makes provision regarding power of the Development Authority to provide amenity or carry out development at cost of owner in the event of default and to levy cess in certain cases. The Section provides, inter alia, that if the authority, after holding a local inquiry or upon report from any of its officers or other information in its possession, is satisfied that any amenity in relation to any land in development area has not been provided in relation to that land which, in the opinion of the which, in the opinion of the Authority, ought to have been or ought to be provided or that any development of the land for which permission, approval or sanction had been obtained under this Act had not been carried out, it may, after affording the owner of the land or the person providing or responsible for providing the amenity a reasonable opportunity to show cause, by order require him to provide the amenity or carry out the development within such time as may be specified in the order. It is further provided in the said section that if any amenity is not provided or any such development is not carried out within the time specified in the order, then the Authority may itself provide the amenity or carry out the development or have it provided or carried out through such agency as it deems fit; provided that before taking any action under Sub-section (2), the Authority shall afford a reasonable opportunity to the owner of the land or to the person providing or responsible for providing the amenity to show cause as to why such action should not be taken. Sub-section (3) of this Section makes

provision that all expenses incurred by the Authority or the agency employed by it in providing the amenity or carrying out the development together with interest at such rate as the State Government may by order fix from the date when a demand for the expenses is made until payment may be recovered by the Authority from the owner or the person providing or responsible for providing the amenity as arrears of land revenue etc. Similarly, Sub-section (4) of this Section makes provision entitling the Authority to realise the amounts spent and expenses incurred for carrying out development in the area which the owner has failed to carry out. Concededly, it was not disputed before us that no such procedure as prescribed in Section 33 has been followed and no order levying the amount in question has been passed by the Authority. Indeed, as per statutory provisions, no such action could have been taken since no development work has been undertaken by the Development Authority which the owner (Petitioner) was legally bound to undertake, as has been done by the Development Authority.

8. The Supreme Court in Ahmedabad Urban Development Authority. (supra) ruled that in a fiscal matter, it will not be proper to hold that even in the absence of express provision, a delegated authority can impose tax or fee; such power of imposition of tax and/or fee by delegated authority must be very specific and there is no scope of implied authority for imposition of such tax or fee; delegated authority must act strictly within the parameters of the authority delegated to it under the Act and it will not be proper to bring the theory of implied intent or the concept of incidental and ancillary power in the matter of exercise of fiscal power. The Court, referring to the decisions in Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another, ; The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others, and Municipal Corporation of Delhi and Others Vs. Mohd. Yasin, . observed that it has been consistently held that whenever there is compulsory exaction of any money, there should be specific provision for the same and there is no room for intendment; nothing is to be read and nothing is to be implied and one should look fairly to the language used.

9. In Smt. Malti Kaul and Anr. (supra) this Court construing the provisions of Sections 14, 15, 20, 35 to 38, 39 and 41 of the U.P. Urban Planning and Development Act, 1973 held, inter alia, that Sections 14 and 15 of the Act, which provide for development of land with the permission of the Vice-Chairman, do not provide for levy of development fee on those, who had applied for permission; only provisions, which deal with fee are Sections 20, 33, 35 and 39A; but these Sections do not provide for development fee; they provide for different kinds of levy; Section 20 lays down that the Authority shall have and maintain its own fund to which shall be credited all fees, tolls and charges, received by it under the Act; Section 33 empowers the Authority to provide amenity or carry out development at the cost of the owner of the land, in the event of his default and recover all expenses incurred by it in providing the amenity or carrying out the development together with interest; Section 35 empowers the Development Authority to levy betterment charges as a

consequence of any development scheme executed by it in any development area resulting in A.W.C. 4. Increase in value of any property in that area; the effect of this Section is that if the value of any property has gone up due to the development scheme of the Authority, it is entitled to share the increase in value of that property by levying betterment charges in respect of the increase in value of the property resulting from the execution of the development; but before imposing betterment charges, the Authority has to make assessment order after giving reasonable opportunity of being heard to the person concerned and if thereafter these charges are not paid, the Authority is free to recover them as arrears of land revenue.

10. From the principles of law elucidated in the aforementioned cases, the position is that in the absence of any clear and specific provision in the Act or the Regulations, the Development Authority is not competent to raise a demand or realise development charges and supervision charges in advance as has been done in the present case. It is relevant to point out here that as noted earlier, no development work has been done/undertaken by the Development Authority and, therefore, the question of demanding charges on that score is premature. Regarding supervision charges, indisputably neither any work has been undertaken by the owner of the land or by the Development Authority. Therefore, a charge on this count is also premature. Further, the procedure for raising such demand, assessment, etc., as provided in the statute, has not been followed. Consequently, the position that emerges is that the demand of external development charges and supervision charges raised by the Respondent Development Authority against the Petitioner society is to be quashed as invalid.

11. Accordingly, the wrii petition succeeds and it is allowed. The order dated 11.1.1996 (Annexure 7) of the Vice-Chairman, Agra Development Authority, is quashed. No costs.