
(2002) 01 AHC CK 0114
In the Allahabad High Court
Case No : C.M.W.P. No. 36709 of 2001

R.K. Mittal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-01-2002

Acts Referred:

Constitution of India, 1950 — Article 14
Uttar Pradesh Industrial Area Development Act, 1976 — Section 14, 15, 3, 9(2)
Uttar Pradesh Industrial Development Area (Preparation and Finalisation of Plan)
Regulations, 1991 — Regulation 11, 2, 4(1)

Citation : (2002) 1 AWC 558 : (2002) 1 UPLBEC 444

Hon'ble Judges : S.K. Singh, J;M. Katju, J

Bench : Division Bench

Advocate : Murli Dhar and S. Farman Ahmad Naqvi, for the Appellant; A.K. Mishra and S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This petition furnishes a typical instance of a widespread malady which has infected our society and body politic, namely, the belief in the rich and mighty of our country that they are above the law.

2. Heard Sri Murli Dhar, Sri S. Farman Ahmad Naqvi, learned counsels for the petitioners, Sri A.K. Misra, learned counsel for respondents 2 and 3 and learned standing counsel.

3. This writ petition has been filed praying for a writ of certiorari for quashing the impugned order dated 18.6.2001, Annexure-1 to the writ petition and for a mandamus directing the respondents to formulate and finalise a comprehensive scheme for compounding and regularising the non-residential user of the residential premises in question. It is also prayed that the respondent be restrained from cancelling the lease granted in favour of the petitioner Nos. 1, 2 and 3 or to remove by force petitioner No. 4.

4. The facts of the case are that New Okhla industrial Development Authority (hereinafter referred to as N.O.I.D.A.), had given residential plot No. A-778 in Sector 19, N.O.I.D.A. measuring 274.37 sq metre on lease to petitioner Nos. 1, 2 and 3. It was clearly mentioned in Clause 15 of the Transfer Memorandum dated 27.8.1999 that the transferee shall use the plot and premise exclusively for residential purpose. It is alleged in paragraph 4 of the writ petition that after acquiring the leasehold rights over the above plot, petitioner Nos. 1, 2 and 3 had obtained the requisite permission from N.O.I.D.A. to raise construction in accordance with the relevant Rules and bye-laws. Thereafter, the petitioners made constructions over the aforesaid plot and started residing in the said premises.

5. It appears that subsequently a portion of the residential premises, which had been given by N.O.I.D.A. to petitioner Nos. 1, 2 and 3 exclusively for residential purpose, was let out by the aforesaid petitioners to petitioner No. 4, Andhra Bank and also to an organisation "Akariti infotec". Since this was a clear breach of the Transfer Memorandum, the N.O.I.D.A. issued notices dated 18.1.2001 and 22.2.2001 intimating petitioner Nos. 1, 2 and 3 that the use of residential plot for commercial purpose is in violation of the lease deed and asked them to stop commercial activities on the aforesaid plot within thirty days failing which the lease/transfer deed shall be revoked. However, it is evident that the petitioners continued to use the aforesaid plot for commercial activities despite the aforesaid notice.

6. In paragraph 7 of the writ petition, the petitioners have mentioned various other residential premises in N.O.I.D.A. on which commercial activities are being carried out. On this basis, learned counsel for the petitioners submitted that since there are other persons who are using their residential plots in N.O.I.D.A. for commercial purpose, hence the petitioners are being discriminated against since no action has been taken against these other persons. We do not agree with the submission. There is no question of violation of Article 14 of the Constitution of India in illegalities. For instance, a thief cannot say that many other thieves in the country have not been apprehended, and hence there is discrimination against him if he is proceeded against in a court of law.

7. Learned counsel for the petitioners then submitted that the Delhi Development Authority and Ghaziabad Development Authority have permitted conversion of residential plots to commercial purposes vide Annexures-5 and 6 to the writ petition. In our opinion, we are not concerned with D.D.A. and G.D.A., but we are concerned with N.O.I.D.A. alone. In paragraph 13 of the writ petition, it is alleged that N.O.I.D.A. has published some advertisement consequent to which those who had residential plots started submitting applications for conversion to commercial use, but suddenly N.O.I.D.A. changed its stand. Learned counsel for N.O.I.D.A., Sri A.K. Misra stated that N.O.I.D.A. never permitted conversion of residential plots to commercial use. Learned counsel for the petitioners has not been able to prove the contrary. At most, N.O.I.D.A. may have invited some

suggestions in this connection, but it never changed the relevant Rules, which prohibit conversion of residential plots to commercial use. Rather, as stated in paragraph 18 of the petition, N.O.I.D.A. issued notices to all concerned who having residential plots started commercial user of the same that their allotments will be cancelled If the commercial user of these plots is not stopped.

8. It may be mentioned that Section 9 (2) (b) of the U. P. Industrial Development Area Act, 1976, states that the authority constituted u/s 3 may, with the prior approval of the State Government, make regulations providing for the layout plan of a building, whether Industrial, commercial or residential. Hence in the layout plan for construction of a building, the purpose for which the building will be used has to be mentioned. u/s 14 of the Act, if any condition of the transfer is breached the Executive Officer may resume the site or building so transferred and may further forfeit the whole or any part of the money paid in this respect. Section 14 (2) provides that the Chief Executive Officer may cause possession of the building to be delivered to him, and may use or cause to be used such force for this purpose as may be necessary. u/s 15, penalty can be imposed for contravening any provision of the Act or Rules.

9. The New Okhla Industrial Development Area (Preparation and Finalisation of Plan) Regulations, 1991, defines "Residential Use" in Regulation 2 (k) as follows :

" "Residential Use" means use in a land and building or part thereof for human habitation and such other uses incidental to residential uses."

10. Regulation 4 (1) (b) provides that the plan for N.O.I.D.A. should include the area allotted for industrial use, residential use, commercial use, etc.

11. Regulation 11 provides for amendment of the plan. Hence, to convert the residential use to commercial use, the plan has to be amended, and that has obviously not been done. Further, it is necessary to mention that in N.O.I.D.A., the Authority does not permit change of user from residential to commercial purpose. Hence, user by the petitioners of the residential plot in question for commercial purpose is clearly illegal.

12. Moreover, the National Capital Region Planning Board Act, 1985 (which applies to N.O.I.D.A. also) has provided in Section 29 that no development should be made in the region which is inconsistent with the Regional Plan as finally published. u/s 29(2), the Board can direct any State which violates the original plan to stop such violation. Thus, even the State Government cannot violate the original plan which has been finally published.

13. In the Impugned order dated 18.6.2001, it has been stated, and in our opinion rightly so :

"This is a classic case of violation of law by the most educated and enlightened class of the country. This class in N.O.I.D.A. has tried to change not only the character of N.O.I.D.A. but have for its self-interest destroyed the peace of the neighbours."

14. In Clause 5 of the order, it has been stated that "the petitioners changed the land use of the plot without intimating the authority, and did not bother to seek any clarification or obtain permission from the authority for such change. It is a well-known fact that this authority does not permit commercial activities in the residential plots."

15. Accordingly, the N.O.I.D.A. has rejected the representation of the petitioners and directed to ensure the vacation of the bank branch and Infotec office from the residential premises and restore the building according to the prescribed building bye laws within 4 months. It was also stated in paragraph 7 of the impugned order that since the petitioner evaded compliance of the terms of the lease deed for nearly five months on one pretext or the other, he was informed that in case of failure to restore the land use of the plot within the stipulated period, the authority shall be free to take further action in accordance with law without further notice.

16. We see no illegality in the impugned order, rather we feel that N.O.I.D.A. has been too indulgent with the petitioners, and it should have cancelled the petitioners' entire lease and directed them to vacate the premises in question for gross violation of the transfer memorandum. It seems that in N.O.I.D.A., there are a large number of people who are violating the law in collusion with the officials and they think that they are above the law.

17. In *Shri Munshi Ram and Another Vs. Union of India and Others*, the Supreme Court has observed (in paragraph 9) :

"The continued unauthorised user would give the paramount lessor the right to re-enter after cancellation,,of the lease-deed. As already noticed, D.D.A. is insisting on stoppage of misuser. The misuser is contrary to the terms of the lease. D.D.A. cannot be directed to permit continued misuser contrary to the terms of the lease on the ground that the zonal development plan of the area has not been framed."

18. In the above case, the petitioners had a residential lease, which was being used for commercial purpose and hence proceedings were Initiated for unauthorised user. The present case is hence similar to the above case decided by the Supreme Court.

19. In *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, the Supreme Court has observed that unauthorised construction should be ordered to be demolished, even if the builder had spent a considerable amount.

The Court observed (in paragraph 73) :

"The High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person whose construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to

exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out, judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots."

20. In *Ram Awatar Agarwal and Others Vs. Corporation of Calcutta and Others*, , the Supreme Court directed demolition of a multi-storeyed building, which had been constructed in violation of the building rules. The Supreme Court also granted police protection to carry out the compliance order.

21. In *Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others*, the Udipi Municipality had permitted construction of a cinema house in a residential area. This grant of permission was challenged in the Supreme Court, which held that a public authority has no power to contravene the bye-laws made by that authority (vide paragraph 27). It was further held by the Supreme Court (in paragraphs 28 and 29) that Illegal commercial use by constructing a cinema house invades the right of the residents.

22. The above decisions have clearly laid down the principle that the statutory and municipal rules and regulations have to be strictly followed, otherwise there will be chaos. If N.O.I.D.A. permits violation of the rules, it means that no rule need be followed, and the rule of law is thrown to the winds. This case is a classic illustration of this kind of illegal practice. It seems that the law is hardly followed in N.O.I.D.A., or at least the rich and mighty are above the law.

23. We, therefore, direct the N.O.I.D.A. authorities to take Immediate strong action against those who have started using the residential plots wholly or partly for commercial or other non-residential use. N.O.I.D.A. does not appear to have taken any punitive action against the erring lessees even after they were found to have been using the leased property for purposes other than the purpose for which the lease was granted. If it has not already taken appropriate action consequent upon the breach of the terms of the lease or any statutory rules or regulations, It should issue show cause notices to such lessees without any further loss of time and take appropriate action in accordance with the relevant rules expeditiously. If this is not done, it will give a wrong signal that the rules and restrictions imposed in regard to the user of the leased property exist only on paper and are not meant to be taken seriously. Such an attitude may lead to chaotic conditions. If despite these observations, N.O.I.D.A. continues to show laxity in this regard, this Court would be constrained to take appropriate action

against N.O.I.D.A.

24. In the result, the writ petition is dismissed, but with the above directions.