

(2009) 05 AHC CK 0771
In the Allahabad High Court

Sangam Lal Pandey

APPELLANT

Vs

State of U.P.and others.

RESPONDENT

Date of Decision : 29-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0771

Hon'ble Judges : Pradeep Kant, J and Syed Nazim Husain Zaidi, J

Final Decision : Allowed

Judgement

S.N.H. Zaidi, J.

By a detailed order, we have passed an interim order on 14.5.09 to the following effect:

"Till 18.5.09 as per statement given by Sri D.K. Upadhyaya, the inmates shall not be transferred or shifted to any other place. The status quo as exists today with respect to trees, and the jail buildings with all other existing constructions shall be maintained till 18.5.09 and they shall not be demolished."

Thereafter the said interim order has been continued. In the meantime, time was granted to the respondents' counsel to obtain instructions and to indicate as to whether there is a policy decision for shifting the jail and if so, the reasons there for. They were also required to indicate that when the three jails in question are already having land of an area of more than 195.5 acres then what useful purpose would be served in shifting the jail 20 or 25 Kms. away from the present place, and far from the city where also they will have only 200 acres of land.

It was repeatedly asked but the State has not disclosed as to what use the entire area of this 195.5 acres would be put after the inmates, officers and staff of the three jails are shifted to the new proposed location.

In the writ petition, it has been specifically stated that all the three jails are being evacuated only for the purpose of extension of Ambedkar Sthal, which already occupies a vast area of 30 acres and is adjacent to the jail building.

The State has chosen not to give any answer despite repeated queries being put to Sri D.K. Upadhyay, learned Chief Standing Counsel, who only says that till date no decision has been taken as to what use would be made of these premises when they are evacuated.

The learned Chief Standing Counsel also placed before us a chart showing the facilities which are not available in the present jail and which are to be provided in the new premises, which includes school, hospital and many more facilities, like community centre etc.

The petitioner who appears in person submits that in fact no policy decision has been taken, but it is a camouflage just to get the area of these jails under their control for expanding the existing Sthal. A Committee said to have been presided by the Chief Secretary, the minutes of which, the learned Chief Standing Counsel has placed, was formed so as to clear the docks for the plans. He further says that all that area which is available with the present jails is more than sufficient for modernization of jails and for providing all those facilities including additional barracks also. There is in fact no requirement for getting the jails vacated or to shift them to such a far off distance.

Further submission is that unless the government decides to shift the jail for any overwhelming public purpose, there cannot be any reason for shifting the jails particularly when in the city of Lucknow the jails cannot be said surrounded by residential areas nor is located in the densely populated area. On one side of the jails, there is huge open space of 30 acres or so, named as Ambdkar Sthal, in front there is main V.I.P. Road, leading to Cantonment area, therefore, shifting of jails under the pretext of shortage of accommodation for the prisoners and for providing them facilities, is a device, to acquire such a large chunk of Government land, to be used for expansion or laying done the Parks or an Sthal.

Learned counsel for the petitioner further submitted that the respondents in a similar fashion demolished the Irrigation Colony consisting of hundreds of offices flats and office building, known as Parikalp Nagar within next two days when before the Court, the statement was given by the respondents counsel that they have till that date, had not taken any decision to demolish the same and later on some park has been extended.

We do not, however, find it expedient to comment upon the aforesaid allegations, as we are informed, it is the subject matter of another writ petition, and also because such oral statements cannot be taken into consideration.

Reiterating his stand, the petitioner has also submitted that apart from the fact that the jail premises cannot be allowed to be used for extending parks and sthals the government building (jails) can also not be allowed to be demolished for the said purpose.

The use of any government building, shifting of jails to any other location or dealing with the government buildings, primarily lie within the exclusive domain

of the State Government. But if any action even in this regard, is found to be totally unreasonable and arbitrary, it requires consideration by the Court, to what extent, it can interfere.

Prima facie, we are satisfied that if the action of shifting of jails is for any collateral purpose, the same can be brought under judicial scrutiny.

We are thus, prima facie, satisfied that the unwillingness on the part of the respondents in not disclosing as to what use they would put the jails after getting them evacuated and though they do not say that the jail buildings would be demolished, but at the same time they also do not say that it will not be demolished, and that the demolition may be undertaken for using such a big land, which is presently occupied by a large number of buildings and apartments, coupled with the observations made by us in our earlier order dated 14.5.09, we direct that the interim order shall continue and the inmates of the jail would not be transferred to any other jail. We further direct that no demolition of any construction existing in the jails' premises would be made till further orders.

Despite time being granted, the respondents have also not chosen to answer the query raised that under what circumstances and for what purpose, such a large number of green trees were cut and are being cut.

However, if the State Government decides to modernize the present jail and wants to raise any constructions for the benefit of the jail inmates, providing them facilities as may be permissible under law, they are free to do so in the existing premises.

The interim order is being passed in continuation of our earlier order dated 14.5.09, which shall remain in force, till further orders of the Court.

The respondents may file counter affidavit within four weeks. Rejoinder affidavit, if any, may be filed within one week thereafter.

List in the month of July, 09 for hearing.