

(2011) 06 SC CK 0030

In the Supreme Court Of India

Case No : Petitions for Special Leave to Appeal (Civil) No. 15693 of 2011

Sanjay Adlakha

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 01-06-2011

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (2011) 6 SCALE 419 : (2011) 4 UJ 2203

Hon'ble Judges : G. S. Singhvi, J; Chandramauli Kumar Prasad, J

Bench : Division Bench

Advocate : Manoj Swarup and Ankit Swarup, for the Appellant;

Final Decision : Dismissed

Judgement

1. This petition filed against order dated 27.04.2011 passed by the Division Bench of the Punjab and Haryana High Court dismissing the Letters Patent Appeal filed by the Petitioner against order dated 27.03.2009 passed by the learned Single Judge dismissing the writ petition filed by him with cost of Rs. 25,000/- cannot but be termed as frivolous piece of litigation.

2. Smt. Kheri Bai (predecessor of the Petitioner) submitted an application dated 11.10.1995 to the competent Authority of the Faridabad Municipal Corporation (for short, "the Corporation") for change of land use in respect of residential plot measuring 640 square yards, which she had purchased in 1962 and for permission to construct a commercial building comprising basement, ground floor and first floor. The Corporation granted permission for change of land use and also sanctioned the building plan. However, in complete disregard to the sanctioned plan and zoning regulations, Smt. Kheri Bai started huge unauthorised construction. The concerned authorities of the Corporation tried to persuade Smt. Kheri Bai to stop illegal construction, but she did not pay any heed to their advice and made unauthorised construction measuring about 7,450 square feet. After completing the construction, Smt. Kheri Bai made an application for regularisation of the illegal construction. The then Joint

Commissioner of the Corporation obliged her subject to the payment of compounding fees amounting to Rs. 39,49,920/-.

3. If the predecessor of the Petitioner had paid the amount, the gross violation of the sanctioned plan and the zoning regulations would have been regularised. However, instead of paying the compounding fees, Smt. Kheri Bai dragged the Corporation and the State Government into unwarranted litigation, which has culminated in the filing of this petition. She filed Civil Suit No. 816 of 1996 for grant of a declaration that the demand made by the Corporation is illegal. She also prayed for grant of a permanent injunction to restrain the functionaries of the Corporation from taking action against the illegal and unauthorised construction made by her. She also applied for temporary injunction but her prayer was rejected by the trial Court and the first appellate Court. In the revision filed by Smt. Kheri Bai, the learned Single Judge of the High Court passed order dated 2.9.1998, which reads as under:

Issue notice to the Respondents to show cause why revision be not admitted returnable on 16.9.98. The building of the Petitioner will not be demolished subject to the condition that the Petitioner deposits a sum of Rs. 20 lacs within two weeks from today. If the said amount is not deposited, the interim injunction shall be liable to vacated. Notice Dasti.

If service is not effected on the Respondents then the injunction would be liable to be vacated.

4. Smt. Kheri Bai did not deposit Rs. 20 lacs in terms of the aforesaid order.

5. The suit filed by Smt. Kheri Bai was finally dismissed by the trial Court vide judgment dated 7.1.2000. She did not pursue the matter by filing an appeal. After her death, the Petitioner and other legal heirs of the deceased filed an appeal along with an application for condonation of 1320 days' delay. District Judge, Faridabad dismissed the appeal on the ground of delay and also on merits. Regular Second Appeal No. 2134/2004 filed by the Petitioner and other legal heirs of Smt. Kheri Bai was dismissed by the High Court on 7.4.2005.

6. After having lost the case in three Courts, the Petitioner tried his luck by filing a departmental appeal against the demand notice dated 3.4.1996. The same was dismissed by Commissioner and Secretary to the Government of Haryana, Urban Development Department vide order dated 7.12.2004 with a direction that property bearing No. 21/12BPNIT, Faridabad be demolished.

7. The Petitioner challenged the order of the Commissioner in Writ Petition No. 4354 of 2005. After enjoying the interim protection for a period of one year and six months against the demolition of unauthorised construction and coercive measures, which could be taken by the Corporation for recovery of the compounding fee, the Petitioner withdrew the writ petition with liberty to file fresh one. The order permitting withdrawal of writ petition was passed by the Division Bench of the High Court on 14.9.2006. Immediately thereafter, the

Petitioner filed Writ Petition No. 15586/2006, which was dismissed by the learned Single Judge with cost of Rs. 25,000/- by recording the following observations:

It is quite unfortunate that the Petitioner has been successfully hoodwinking the Corporation through sheer abuse of the legal process. It was more than 10 years back that this Court directed the Petitioner's mother to deposit a sum of Rs. 20 lacs but the Petitioner (or his deceased mother) failed to comply with the said direction. Still, they have been able to retain the unauthorized building and enjoying its fruits from last about 14 years. During the course of hearing of this writ petition also, the Petitioner was advised to comply with the order dated 2.9.1998 at least at this stage to prove his bona-fide. The suggestion has not found favour with the Petitioner. The record reveals that the Petitioner has scant respect for the municipal laws or the building bye-laws framed thereunder. The brazen violators like the Petitioner need to be reigned in at the earliest, more so when the incident pertains to Faridabad whereby this Court has witnessed large scale unauthorized constructions/encroachments by land mafia, may be due to inaction or connivance of the local authorities.

8. The Letters Patent Appeal preferred by the Petitioner was dismissed by the Division Bench of the High Court, which unequivocally disapproved the conduct of the Petitioner. The new plea of discrimination raised by the Petitioner was rejected by the Division Bench of the High Court in the following words:

The sole argument raised by learned Counsel for the Appellant in the present appeal is that the Corporation has dealt the constructions raised by the Appellant in a discriminatory manner, than the construction raised by Shri Satish Parnami in identical situation. The Appellant relies upon notices dated 08.11.1995 (Annexure P-14), 04.04.1996 (Annexure P13) and the communication dated 13.02.1997 (Annexure P-9) served upon Shri Parnami.

The conduct of the Appellant is far from fair and reasonable. Once the challenge to the demand, calling upon the predecessor-in-interest of the Appellant to deposit Rs. 39,49,920/- has remained unsuccessful before the Civil Court, the Appellant could not approach the authorities under the Act for modification of the demand raised. Notices, which the Appellant now relies upon, were available even when the civil suit was pending. But the Appellant had not raised any grievance in respect of such notices issued to Shri Parnami, at that time. Even if, illegality has been committed in respect of one person, the Appellant cannot claim same illegality to be committed in respect of him. The Appellant having remained unsuccessful before the Civil Court, interference sought from this Court in exercise of its writ jurisdiction is clearly an abuse of process of law and is unwarranted.

9. The concluding portion of the order passed by the Division Bench is extracted below:

The Appellant has raised unauthorised construction way back in 1996 and has been successful in delay of the action by the Municipal Corporation, Faridabad,

for the last 15 years. The Municipal Corporation, Faridabad, is directed to take immediate action for removal of unauthorised constructions and submit its report to this Court within three months.

10. We have heard Shri Manoj Swarup, learned Counsel appearing for the Petitioner at some length and carefully perused the record. In our view, the reasons assigned by the learned Single Judge and the Division Bench for refusing to entertain the Petitioner's prayer quashing the demand notice and order dated 7.12.2004 passed by the Commissioner and Secretary, Urban Development Department are legally correct and there is no valid ground, much less justification, for exercise of power by this Court under Article 136 of the Constitution to restrain the Respondents from demolishing the construction raised by the predecessor of the Petitioner. The approach adopted by the High Court is consistent with the observations made by this Court in *Shanti Sports Club and Another Vs. Union of India (UOI) and Others*, paragraphs 73, 74 and 75 of which are extracted below:

73. Before concluding, we consider it necessary to enter a caveat. In all developed countries, great emphasis has been laid on the planned development of cities and urban areas. The object of planned development has been achieved by rigorous enforcement of master plans prepared after careful study of complex issues, scientific research and rationalisation of laws. The people of those countries have greatly contributed to the concept of planned development of cities by strictly adhering to the planning laws, the master plan, etc. They respect the laws enacted by the legislature for regulating planned development of the cities and seldom there is a complaint of violation of master plan, etc. in the construction of buildings, residential, institutional or commercial. In contrast, scenario in the developing countries like ours is substantially different. Though, the competent legislatures have, from time to time, enacted laws for ensuring planned development of the cities and urban areas, enforcement thereof has been extremely poor and the people have violated the master plans, zoning plans and building regulations and bye-laws with impunity.

74. In the last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorised constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls, etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorised constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan, etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of

their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realise that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan, etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage, etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the Government has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorised constructions. This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc.-- K. Ramadas Shenoy v. Town Municipal Council, Udipi, G.N. Khajuria (Dr.) v. DDA, M.I. Builders (P) Ltd. v. Radhey Shyam Sahu, Friends Colony Development Committee v. State of Orissa, M.C. Mehta v. Union of India and S.N. Chandrashekar v. State of Karnataka.

75. Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus. As and when the Courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions.

11. The SLP is, accordingly, dismissed. Commissioner, Municipal Corporation,

Faridabad is ordained to implement the direction given by the Division Bench of the High Court within a period of 15 days of the receipt of copy of this order and submit a report to the High Court within next one week. The Registry of the High Court shall list the case before the Bench which had decided L.P.A. No. 523/2009. If the concerned Bench of the High Court finds that the authorities of the Corporation have failed to implement the direction contained in order dated 27.4.2011, then it shall initiate proceedings against the erring officers under the Contempt of Courts Act, 1971.

12. The Registry is directed to send copies of this order to Registrar (Judicial) of the Punjab and Haryana High Court, Chandigarh and Commissioner, Municipal Corporation, Faridabad by fax.