

(1995) 12 AHC CK 0020
In the Allahabad High Court
Case No : C.M.W.P. No. 543 of 1992

Sita Mishra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-12-1995

Acts Referred:

Uttar Pradesh Urban Planning and Development Act, 1973 — Section 33, 33(2), 33(3)

Citation : (1996) AWC 553 Supp : (1996) 2 UPLBEC 940

Hon'ble Judges : R. Dayal, J;Birendra Dikshit, J

Bench : Division Bench

Advocate : H.S. Tripathi, for the Appellant; U.N. Sharma and S.C., for the Respondent

Final Decision : Allowed

Judgement

R. Dayal, J.—The Petitioner submitted a building plan No. 1018/91 dated 11.11.1991 before Respondent No. 2, the Gorakhpur Development Authority, for sanction. Respondent No. 2 through Respondent No. 3 issued a demand notice dated 4.1.1992 requiring the Petitioner to pay Rs. 8,093.65 p. as development fees. Rs. 10,584 as sub division fees and Rs. 2,646 as composition fees, so that the plan could be sanctioned. The Petitioner has challenged all these demands on the ground that the Respondents have no authority under the law to make such demands.

2. We have heard Sri H. S. N. Tripathi, learned Counsel for the Petitioner and Sri U. N. Sharma, learned Counsel for Respondents 2 and 3.

3. So far as the question regarding development fees is concerned, the matter stands decided in Smt. Malti Kaul and another Vs. Allahabad Development Authority and another, , where it was held that a Development Authority has no authority to impose development fee.

4. As regards the question of sub-division fees, the learned Counsel for the Respondents 2 and 3 Sri U. N. Sharma, submits that the Development Authority

has the power to make the demand u/s 33 of the U.P. Urban Planning and Development Act, 1973 (hereinafter referred to as the Act). Section 33 in its material portion reads as under:

33. Power of the Authority to provide amenity or carry out development at cost of owner in the event of his default and to levy cess in certain cases.--

(1) 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 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 or under any law in force before the coming into force of this Act has 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.

(2) 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 this sub-section, 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.

(3) 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, and no suit shall lie in the Civil Court for recovery of such expenses.

A bare perusal of Section 33 would show that It provides for two types of cases : one, where the Development Authority is satisfied that any amenity in relation to any land in a development area has not been provided, but in the opinion of the Authority It ought to have been or ought to be provided; and second, where any development of the land for which permission, approval or sanction had been obtained under the Act or under any law in force before coming Into force of the Act has not been carried out. In either of these cases, the Authority 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. If the 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. But before doing this again, an opportunity to show cause has to be provided as required by the proviso to Sub-section (2). All expenses Incurred by the Authority or the agency may be recovered in the manner provided in Sub-section (3). Thus, Section 33 only authorises the Authority to recover the charges which have been incurred in carrying out the work which the person concerned failed to carry out without any satisfactory cause. This does not make any provision for levy of any fees on some uniform basis which does not have any relation to any expenses which may or may not have been incurred by the authority on account of sub-division of any plot. We. therefore, hold that Section 33 does not authorise the demand of subdivision fees as required by the impugned demand notice.

5. Learned Counsel for the Respondents 2 and 3 submits that bye-laws promulgated by the authority authorise levy of sub-division fees and external fees. At the moment, such bye-laws are not available and we do not consider it necessary to wait for them. Even if the bye-laws provide for the same, they cannot be the basis of levy of such fees in the absence of any statutory provision to authorise the levy.

6. As regards composition fees, learned Counsel for the Petitioner submits that the Petitioner will seek appropriate relief in this regard before the appropriate authority. By virtue of the Interim order dated 31.1.1992. the Petitioner has already got the sanctioned plan.

7. In the result, the writ petition is allowed in part. The demand made by the impugned notice dated 4.1.1992 regarding development fees and sub-division fees is quashed. No order as to costs.