

(2003) 07 AHC CK 0258
In the Allahabad High Court
Case No : C.M.W.P. No. 26924 of 2001

Smt. Benu Agrawal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-07-2003

Acts Referred:

Uttar Pradesh (Regulation of Building Operations) Regulations, 1960 — Regulation 5, 5(1), 5(2)

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

Citation : (2003) 5 AWC 4454

Hon'ble Judges : R.S. Tripathi, J; M. Katju, J

Bench : Division Bench

Advocate : G.K. Singh, for the Appellant; V.K. Awasthi, U.K. Uniyal, B.B. Paul and S.C., for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—By means of this writ petition the Petitioner has challenged the impugned demand notice dated 4.7.2001, Annexure-10 to the writ petition.

2. We have heard the learned Counsel for the parties.

3. Several demands made in the impugned notice are illegal as held by this Court in Civil Misc. Writ Petition No. 47222 of 2002, Shaukat Ali v. Allahabad Development Authority, decided on 1.7.2003. Hence, following the aforesaid decision, those demands are all quashed.

4. However, there is one demand, namely, storm water drain charge which is not mentioned in Shaukat Ali's case (supra) and hence, we have to adjudicate whether this charge is valid.

5. It may be mentioned that there is no statutory provision for levying storm water drain charge. As held in Shaukat Ali's case (supra), unless there is a statutory provision, no charge can be levied by the Development Authority. u/s 15(2A) the charges which the Development Authority can levy are only

development fees, mutation charges, stacking fees and water charges.

6. Section 15(2A) states :

The authority shall be entitled to levy development fees, mutation charges, stacking fees and water fees in such manner and at such rates as may be prescribed :

Provided that the amount of stacking fees levied in respect of an area which is not being developed or has not been developed, by authority, shall be transferred to the local authority within whose local limits such area is situated.

7. Storm water drain charges are not one of the charges mentioned in Section 15A, nor in any other provision of the aforesaid Act nor any other enactment. As held by the Division Bench of this Court in Shaukat Ali's case (supra) since there is no statutory provision no levy of storm water drain charge can be imposed on the citizens.

8. However, it has been stated in paragraph 11 of the supplementary counter-affidavit filed by the A.D.A. that the A.D.A. constructed storm water drainage in the residential colony on the undertaking of the occupants of the said colony to jointly pay cost of said storm water drainage in view of the proviso to Regulation 5 (1) (ii) (a) of the U.P. (Regulation of Building Operation) Regulations, 1960.

9. In the supplementary rejoinder-affidavit filed by the Petitioner in reply to the aforesaid counter-affidavit it has been stated in paragraph 8 that there was no drainage and sewerage constructed by the development authority over the plot nor any kind of development done by it nor any penny has been spent by them.

10. Since the Respondents have relied on Regulation 5 of the U.P. (Regulation of Building Operation) Regulation, 1960, we may quote the relevant provisions of the same.

Regulation 5 (1) states :

The prescribed authority while granting or refusing permission for development and construction within the regulated areas shall, as far as may be, be guided by following principles:

Where an application is made by an individual owner of land for construction of a building on a plot of land not included within a colony :

(i) in areas which have been surveyed and of which a layout accepted by the Prescribed Authority has been prepared and/or where in the opinion of the controlling authority there is otherwise, no objection to the grant of permission, for erecting a building may be granted subject to the condition :

(a) that it shall follow the architectural standard, if any, fixed for the purpose;

(b) that the building plans are passed as required by the appropriate local authority having jurisdiction over that under its building by laws; and (c) that the

building to be constructed shall be used for specific purpose for which the permission is granted;

(ii) (a) when an application as aforesaid is for construction of a building on a plot of land included within a colony no permission shall be granted to erect a building unless the colonizer has executed an agreement referred to in Clause (i) of sub-regulation (2) for the internal development of the land and also for the external development in connection therewith :

Provided that in cases where the colonizer has not executed the agreement, permission to erect buildings within the colony may be granted to individual owners of plots on the condition that they deposit with the controlling authority such amount as may be specified by the controlling authority to cover the proportionate cost of internal development of the land within the colony and proportionate costs of external development in connection therewith.

11. Regulation 5 (2) states :

An application for permission to develop an area of land as a colony may be granted subject, as may be, to the following conditions.

(i) he enters into an agreement with the local body concerned for such internal development of the land and external development in connection therewith to the satisfaction of the prescribed authority as the controlling authority may require.

Explanation 1.-The internal development of the land includes :

- (a) leveling of land;
- (b) roads;
- (c) stream water drains;
- (d) street lighting;
- (e) water supply;
- (f) provision of open spaces for parks, playgrounds and the like;
- (g) Sewerage;
- (h) Earmarking and leaving out open site for schools, dispensaries, community centres and other public utility services.

12. From a perusal of the above Regulation, it appears that there is no power conferred by that Regulation to levy storm water drainage charge.

13. As regards the proviso to Regulation 5 (1) (ii) (a), no doubt it permits levy of the proportionate cost of development of the land. However, in our opinion, this provision has become redundant because now development charges are specifically provided for in Section 15(2A) of the U.P. Urban Planning and

Development Act, 1973. We have already held in Shaukat Ali's case (supra) that the development charges can only be levied by the development authority for some development activity done by it, and this must have some co-relation with the cost incurred by the A.D.A., and Section 33 of the Act must be followed.

14. The Petitioner in paragraph 8 of the supplementary rejoinder-affidavit has denied that any drainage or sewerage has been constructed by the A.D.A. or that any kind of development has been done by the A.D.A. or a penny spent for the same.

15. In paragraph 11 of the supplementary counter-affidavit the A.D.A. has stated that it constructed storm water drainage in the residential colony on the undertaking of the occupants of the colony to jointly pay cost of storm water drainage. However, no such undertaking has been annexed to the supplementary counter-affidavit, and the A.D.A. has not stated how much it has spent in this connection.

16. In the circumstances, we direct that if there is any written undertaking given by the Petitioner to jointly pay the cost of the storm water drainage, then he has to abide by that undertaking, but if there is no written undertaking, the demand of storm water drainage charge from the Petitioner is illegal and is quashed.

17. A perusal of paragraph 12 of the supplementary counter-affidavit shows that the A.D.A. has demanded Rs. 5,587 towards storm water drainage charge which is in addition to the development charges. In our opinion, this is wholly unwarranted and unauthorized for the reasons already mentioned above.

18. A perusal of Annexure-S.C.A. 2 to the supplementary counter-affidavit shows that the occupants of the colony have given a letter dated 8.6.2001 stating that they will do internal development themselves, and hence no amount should be realized in this connection.

19. It may be further mentioned that regarding water and sewerage, there is a separate authority constituted under the U.P. Water Supply and Sewerage Act, 1975, known as the Jal Sansthan which supplies water and maintains the sewers and the street is maintained by the P.W.D. It is evident that the A.D.A. has not spent any money in this connection and is illegally demanding this amount.

20. With these observations, and following the decision in Shaukat Ali's case (supra), the petition is allowed and the impugned demand is quashed. If any amount has been realised from the Petitioner, the same shall be refunded within a month.