

(1995) 08 AHC CK 0017
In the Allahabad High Court
Case No : C.M.W.P. No. 15637 of 1987

Smt. Rani Devi Gupta

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-08-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439

Urban Land (Ceiling and Regulation) Act, 1976 — Section 12, 30, 31, 33, 34

Citation : (1995) 08 AHC CK 0017

Hon'ble Judges : N.L. Ganguly, J

Bench : Single Bench

Advocate : Satya Pool Mehrotra, for the Appellant;

Final Decision : Allowed

Judgement

N.L. Ganguly, J.—The Petitioner has challenged the order of the State Government passed u/s 34 of the Urban Land (Ceiling and Regulation) Act, 1976 by which it was directed that fresh notice be issued to the Petitioner, u/s 8(3) of the Act. It is apparent from the records that the competent authority Under Urban Land (Ceiling and Regulation) Act by order dated 30.4.77 found that the Petitioner is not possessed of excess land, no action is there fore required. The Petitioner in paragraphs 8 and 9 of the writ petition specially stated that in 1987 the Petitioner got the plan sanctioned from the Kanpur Development Authority for construction of hotel building in the land in question in pursuance of the said sanction. The Petitioner constructed a hotel building after spending Rs. 15 lacs approximately and the said hotel is running since 1983 and the State Government granted licence for running the same. The hotel building has been assessed tax by the Kanpur Nagar Mahapallika and corporation tax are being paid regularly.

2. By the order dated 5.6.87, the State Government exercising the revislonal powers cancelled the order passed by the competent authority and directed to Initiate fresh proceeding after serving the notice u/s 8(3) of the said Act.

3. The learned Counsel for the Petitioner states that in pursuance of the order, the Petitioner received notice from the competent authority for appearing and filing objection. It is specifically stated that the original order declared no excess vacant land with the Petitioner vide order dated 30.4.77. The State Government passed the order (annexure 4 to the writ petition) after 10 years. A perusal of the order of the State Government shows that notice was issued to the Petitioner but it could not be served upon the Petitioner because his address was not available. Notice could not be served to him and as such the order was passed after perusing the records. It is strange that the State Government could not get the address of the landholder/Petitioner. The Petitioner was served with the notice for fresh proceeding before competent authority. The question that the proceeding In revision before the State Government was without notice to the Petitioner Is abundantly clear and is not disputed.

4. Counter-affidavit has been filed by the learned standing counsel. It is nowhere stated that after the original order dated 30.4.77 passed by the competent authority, any action was taken by the calling authority or the State to get the matter reviewed. It is strange that after the lapse of about 10 years from the original order, the State Government passed the order for fresh proceeding u/s 8(3) of the Act. The learned Counsel for the Petitioner submitted that there was no justification for proceeding afresh after such a long delay. No doubt, there Is no time-limit or limitation prescribed u/s 34 of of the Act. Similar controversy was considered by the learned single Judge of this Court reported in Smt. Laxmi Devi Ghorpade and Ors. v. State of Uttar Pradesh AIR 1993 474. The learned single Judge considered this aspect in the said judgment and details in paras 19, 20 and 21 which are reproduced as Under:

19. Reverting to the next point, whether impugned order in revision was passed In violation of proviso to Section 31 and In violation of the principles of natural Justice. The legislature in Its collective wisdom was conscious in appending a proviso, ex-abundant catela and the provision of Section 34, Including proviso is set out: Section 34-Revision by State Government.

The State Government may, on its own motion, call for and examine the records of any order passed or proceeding taken Under the provisions of this Act and against which no appeal has been preferred u/s 12 or Section 30 or Section 33 for the purpose of satisfying Itself as to the legality or propriety of such order or as to the regularity of such procedure and pass such order with respect thereto as It may think fit:

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter.

20. A bare reading of the aforesaid provision of Section 34 of the Act would Indicate that the proviso was added to obviate that no order in revision can be passed on merit except after giving the person affected a reasonable opportunity of being heard In the matter. In fact, function of the proviso is to carve an

exception to main enactment or qualify something enacted therein. In the words of Lord MacNaghten in *Local Government Board v. South Stone Union*, the proviso is classification of the preceding enactment which is expressed in terms of too general to be quite accurate, however, proviso normally is not so interpreted as to set at naught the result of the main enactment (See *A.N. Sehgal v. R.R. Shiv Ram*).

21. In the present case, it has been provided in the proviso that no order u/s 34 can be passed without giving the person affected an opportunity of being heard. In fact, the word "heard", has been used deliberately by the legislature, otherwise the word "making representation" or some similar expression could have been used. The word "heard" according to grammar, "is verb transitive". The word "heard" or "hear" means, in common parlance, to listen, to be informed, to listen with ear, to be made aware of by the ear, to have cognizance by means of the ear. What is, therefore, required is that the aggrieved person, Petitioners in the present case, must have been given audience to, and listened to, in opposition to the revision by the revisional authority. The object of the legislature was not just informing them that the revision has been filed. Nothing less than the opportunity of actual hearing would satisfy the legislative requirements. The revisional authority, in exercise of the power u/s 34 of the Act, was not justified in just stating in para 2 of the impugned order (Annexure No. 5, page 47 to 48 of the writ petition) that Sri Nirmal Kumar Chaturvedi, after filing VakaJatnama did not ask for any opportunity of hearing on the next fixed date. Consequently, no information was sent to the Petitioners or their counsel and the revision was decided without informing actually the date of hearing and without hearing the learned Counsel for the Petitioners. This was, in fact, utterly an order passed without affording opportunity of actual hearing to the Petitioners and their counsel, and was in violation of legislative mandate. The revisional authority agreed in holding otherwise (in para-2 of the impugned order).

5. The learned single Judge in the judgment supra considered the question of limitation under section 35 of the Act itself and it was said that a revision entertained after 4 years although no limitation is prescribed, was bad in law. The revision should have been filed within a reasonable period of 90 days. This observation was made relying on decision reported in *Sher Ali v. S. K. Masud* AIR 1959 Cal 458. Where the question of limitation of filing revision u/s 439, Code of Criminal Procedure was considered. At that time there was no prescribed period of limitation and it was held that a revision should have been filed within a reasonable time. The writ petition deserves to be allowed on both the grounds as the order of the State Government was bad in law passed without notice to the Petitioner and also on the ground that it was passed after great delay of about 10 years from the date of the original order, without any justification or explanation for the delay. The writ petition is allowed. The order dated 5th July, 1987 (Annexure 4 to the writ petition) is quashed. Parties shall bear their own costs.