

(1998) 07 AHC CK 0070

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 20642 of 1989

Sri Noorul Hasan

APPELLANT

Vs

Assistant Sub-Divisional Magistrate Distt.Fatehpur & Anr.

RESPONDENT

Date of Decision : 01-07-1998

Acts Referred:

Uttar Pradesh Road Side Land Control Act, 1945 — Section 13, 5

Citation : (1998) 07 AHC CK 0070

Hon'ble Judges : R.S.Dhavan, J and V.P.Goel, J

Final Decision : Dismissed

Judgement

1. The issues in this writ petition are of certain constructions which have been made by the petitioner on National Highway2, the Grand Trunk Road, in Fatehpur, at K.M. 87 Hectometer 10. The petitioner faced proceedings under the U.P. RoadSide Land Control Act, 1945. The Public Works Department had made a complaint before the Prescribed Authority, the SubDivisional Magistrate, Fatehpur. The allegations against the petitioner were contained in the complaint under Section 5 read with Section 13 of the Act aforesaid. Twelve metres away from the road, the petitioner had started constructing a building. Before the Prescribed Authority the petitioner resisted the complaint on the ground that he had not made any construction but was reconstruction an old house. The petitioner's statement was recorded by the Prescribed Authority as also the statement of other witnesses produced by the department. The evidence which rests on the record was that the petitioner had started making a new building completely with new bricks adjacent to his old construction. In the new construction the petitioner had a Chemist shop mentioned in the impugned order of the Prescribed Authority as "Dwakhana". Next to the shop were the premises where resided the dispenser of the medicines the "Dawakhana Wala" and yet next to these premises resided a man who had made the map for the construction for the benefit of the petitioner. The impugned order records that the construction made by the petitioner had used new bricks. Even the name of the brickkiln, from where the bricks had been purchased, is mentioned in the

impugned order.

2. Before this Court the petitioner contends that the order of the Prescribed Authority directing that the constructions be demolished is arbitrary for reasons that the constructions have been made on the petitioner's property and that the petitioner was reconstructing his house within the parameters of the old house. In so far as the last contention is concerned, the evidence on record has negated the petitioner's contention. The petitioner was constructing afresh with new bricks and materials and had spread towards the national highway. It would have been best if the petitioner had permitted the situation to remain static and not fallen into the temptation to raise buildings next to the national highway. The petitioner has invited the situation upon himself. The petitioner is obstructing and constructing the width of the national highway.

3. This Court has already held that as the nation moves into the next century, two years from now, the national highways will be pressured to take the increased traffic. Highways cannot be disturbed merely because persons like the petitioner will be constructing their buildings irregularly near a road. There is a misunderstanding that if any person's land happens to be next to the highway, he can come right next to it. This is not so. In so far as the highways are concerned, the U.P. Road Side Land Control Act, 1945, notifies the width of the road and also gives warning to any person to keep off the width as no one has a right to come into this area. The width of a road is reserved for the future planning of the highway should the occasion arise to increase the width. Any parameters of width indicated for a road in 1945 is out of date and today the highways will have to meet the needs of the expanding and increased traffic.

4. The Court cannot certify by a writ of certiorari that there is an error in the impugned order of the Prescribed Authority challenged by the petitioner. This is the order in Case No. 1 of 1987; State v, Nurul Hasan, dated 30 May, 1989, appended as Annexure 3 to the writ petition. Time was granted to the petitioner by this order to remove his occupation, which he did not do. Should the petitioner not conform to the order, then the State respondents will be within their rights to cause the obstruction so caused on the National Highway, the Grand Trunk Road to be removed.

5. A copy of this order be sent to the Secretary, Public Works Department and the Secretary Ministry of Surface Transport, Government of India, by the Standing Counsel present and by the Registrar.

6. The petition is misconceived and is dismissed. The interim order of 21/11/1989 is discharged. Petition dismissed.