

(1999) 05 AHC CK 0155

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8038 of 1969

Subhash Chandra Srivastava

APPELLANT

Vs

Gorakhpur Development Authority Gorakhpur

RESPONDENT

Date of Decision : 27-05-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 05 AHC CK 0155

Hon'ble Judges : Binod Kumar Roy, J and P.K.Jain, J

Final Decision : Partly Allowed

Judgement

P K. Jain, J.—The petitioner has come up with following prayers:

(i) To command the Respondent not to charge subdivision charges stated in the notice dated 51188 as contained in Annexure3.

(ii) To direct the respondent to hear him in regard to development, penalty and subcharges.

(iii) To command the respondent to release the approved map of his house.

2. His case is to this effect:

(i) He was a joint tenureholder of plot Nos. 551/1 and 552/1 situated in village Mohaddipur, Tahsil Sadar, district Gorakhpur alongwith his brother Sudishta Naram Lal which was their ancestral property which stands recorded in their names in the revenue records.

(ii) Some time in the year 1987 the lands were divided between them.

(iii) The petitioner's brother Sudishta Narain Lal constructed a house on his share of land in the year 1987 after getting construction plan approved by the Respondent, the Gorakhpur Development Authority, Gorakhpur.

(iv) The petitioner also submitted map for construction of his house on 12888. By letter dated 51188 (as contained in Annexure3) the respondent informed the

petitioner that his map is technically correct but at the same time demanded Rs. 10,236.40 as development charges, Rs. 21,780.00 as Subdivision charges, Rs. 500/as penalty charges and Rs. 2420.00 as compounding fee.

(v) This demand is arbitrary, excessive and illegal. As the land was ancestral no subdivision charges could have been levied by the respondent. When his brother had constructed house after getting plan sanctioned no subdivision charges were levied. The development charges can also not be levied as the petitioner has already given his land for road.

(vi) A representation was made by the petitioner on 171188 but the respondent has not taken any step to dispose of the said representation or to sanction the map submitted by the petitioner.

3. The respondent has filed a counteraffidavit sworn by Sri Manoj Kumar Joshi, a Junior Engineer stating inter alia, that the notice of demand is according to the Government Order for realization of the development charges and subdivision charges ; it was incorrect to say that subdivision charges were not demanded from the brother of the petitioner in the year 1987; the demand is neither illegal nor arbitrary, as the development programme for widening the road, street lights and sewer work is going on in the area and as such the respondent is justified in demanding the development charges; the petitioner himself has written a letter to the ViceChairman of the Gorkahpur Development Authority, Gorakhpur for payment of the development charges and for exempting from payment of subdivision charges; the map submitted by the petitioner is technically correct but it could not be sanctioned because of nonpayment of the development charges and subdivision charges; the petitioner has an alternative remedy by way of filing an appeal before the Commissioner Gorakhpur Division and this petition is premature.

4. In his rejoinderaffidavit the petitioner has stated inter alia, that he requested the respondent to give him copy of the alleged Government Order but it has not been supplied to him; the brother of the petitioner had deposited Rs. 4,629 as development charges and thereafter the Respondent sanctioned the map of the brother of the petitioner; it was incorrect to state that the development programme for widening of the road, street lights and sewer work was going on; no development has been done in that area; the petitioner is, however, ready to pay genuine and reasonable amount as development charges but the demand of Rs. 10,000 and odd as development charges is highly excessive, arbitrary and unreasonable.

The Submissions:

5. Shri U.N. Sharma, the learned Counsel for j the Respondent contended that the petitioner in his representation dated 171188 as contained in Annexure4 of course, did not make a mention that the amount 6f penalty and compounding charges was i not being demanded in accordance with any provisions of law or statutory Rules and after affording proper opportunity of being heard to the

petitioner On our query as to where are the G.O. or how the charges are being demanded a request was made before us by Sri U.N. Sharma, the learned Counsel for the Respondent to bring on the record copy of the relevant G.O., statutory provisions and resolution, if any.

Our Findings:

6. Despite grant of sufficient opportunity the respondent has not produced any G.O. or any statutory provision and resolution according to which the demand of Subdivision charges, compounding charges and penalty charges are being demanded by the Respondent.

7. There is no denial of the fact that while sanctioning the map submitted by Sri Sudishta Narain Lal, brother of the petitioner, only a year prior to the submission of the map for construction by the petitioner, only a sum of Rs. 4,629 was charged as development charges. The respondent has failed to show by producing documentary evidence that while sanctioning construction plan submitted by Sri Sudishta Narain Lai any Subdivision charges, penalty or compounding charges were directed to be paid and or actually paid by Sri Sudishta Narain Lal.

8. The claim that the land in question belongs to the petitioner, which he got by partition between him and his brother Sudishta Narain Lal was not disputed.

9. As the respondent has failed to produce the G.O. under which it claims to be entitled to charge Subdivision charges, we hold that it has no authority or legal sanction to make demand of Rs. 21,780 as Subdivision charges from the petitioner.

10. Penalty and compounding charges could be imposed only when there is any violation of the provisions of any Act or statutory Rules and in accordance with law only after affording a reasonable opportunity of being heard. The petitioner in his representation dated 171188 as contained in Annexure4 of course, did not make a mention that the amount of penalty and compounding charges was not being demanded in accordance with any provisions of law or statutory Rules and after affording proper opportunity of being heard to the petitioner.

11. There are allegations in the Writ Petition that such demand is illegal and arbitrary. The respondent has not been able to show or even to point out as to how penalty and compounding charges are leviable. Therefore, the demand of compounding charges amounting to Rs. 500 and Rs. 2,420 as penalty cannot be sustained.

12. As regards development charges the petitioner in his representation as contained in Annexure4 has almost admitted that he is ready to pay the development charges and his prayer was that he may be exempted from payment of Subdivision charges. In the said representation there was no grievance against the development charges demanded by the respondent.

Our Conclusions:

13. In view of the discussions as made ; above we hold the demand of the respondent amounting to Rs. 21,780 as Subdivision charges and Rs. 500 as compounding charges and Rs. 2,420 as penalty are illegal.

The Result:

14. We allow this Writ Petition in part. The demand of the Respondent on account of Subdivision charges compounding charges and penalty are quashed. The petitioner shall have to pay development charges as demanded by the Respondent within 3 months from today and will complete other formalities as stated in the letter dated 51188 as contained in Annexure3 to this Writ Petition within the said period. Within two weeks of compliance of this direction by the petitioner, the Respondent, Gorakhpur Development Authority, Gorakhpur shall sanction the construction plan.

15. The petitioner is entitled to cost of Rs. 1,000 which may be adjusted towards the realization of the amount of development charges to be paid by the petitioner.

16. The office is directed to serve a copy of this order within one week on Sri U.N. Sharma, the learned Counsel for the Respondent for a follow up action.