

(1970) 03 AHC CK 0023

In the Allahabad High Court

Case No : Sp. A. No. 1091 of 1967 connected with Sp. A. No's. 1073, 1090 and 1092 of 1967

Sundar Lal

APPELLANT

Vs

The State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 05-03-1970

Acts Referred:

Uttar Pradesh (Regulation of Building Operations) Act, 1958 — Section 15A

Citation : (1970) 40 AWR 318

Hon'ble Judges : V.G. Oak, C.J;S.N. Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V.G. Oak, C.J.—These four connected special appeals arise out of proceedings under the UP (Regulation of Building Operations) Act, 1958 (UP Act No. XXXIV of 1958 hereafter referred to as the Act). Since the facts of the four cases are similar and the same questions of law are involved, it will be sufficient to refer to the facts of one of the four cases. Special Appeal No. 1091 of 1967 filed by Sunder Lal arises out of Writ No. 4216 of 1966.

2. Sunder Lal purchased a plot of land at Ghaziabad in December 1962. A few months before the purchase of the land he had moved an application to the Prescribed Authority u/s 7 of the Act for sanctioning a plan for construction of a house. A revised plan was submitted on 1-9-1962. On 18-9-1962 the plan submitted by Sunder Lal was rejected. On 28-9-1962 he submitted a revised plan for sanction to the Prescribed Authority. About this time the Prescribed Authority received notice u/s 80 CPC from one Purshottam Chandra, who complained that discrimination was being exercised in sanctioning plans. The Prescribed Authority referred the matter to the Controlling Authority. The Controlling Authority took up this question along with the question of sanctioning plans to Sunder Lal and others in the meeting held on 20-10-1962. The Controlling Authority advised the Prescribed Authority to sanction the plans

submitted by Sunder Lal and others. Accordingly, the Prescribed Authority sanctioned these plans on 26-10-1962.

3. Land acquisition proceedings started in this locality. The plots purchased by Sunder Lal and others were covered by these land acquisition proceeding. The land acquisition proceedings were challenged by filing writ petitions in this Court. Those writ petitions were allowed; and the land acquisition proceedings were quashed.

4. On 3-4-1964 the State Government issued a notice to Sunder Lal to show cause why the sanction of his plans should not be cancelled. He filed an objection. On 14-12-1964 the State Government passed an order to the effect that the advice given by the Controlling Authority to the Prescribed Authority was improper. It was further held by the State Government that the sanction accorded by the Prescribed Authority on 26-10-1962 automatically stood quashed or revoked.

5. Sunder Lal and others filed four separate writ petitions challenging the four orders, dt. 14-12-1964. The four connected writ petitions were disposed of by a Single Judge of this Court by a consolidated order, dated 20-9-1967. He dismissed all the four connected writ petitions. Sunder Lal and others have, therefore, filed the present special appeals against the order, dated 20-9-1967.

6. It will be convenient to examine the relevant provisions of the Act, Section 7 of the Act provides for application for permission. An application for sanctioning a plan may be allowed or rejected by the Prescribed Authority. Section 14 of the Act gives power to State Government to give directions. Section 15 of the Act states:

(1) Any order made Under Sub-section (2) of Section 7 refusing or granting any permission shall, subject to the provisions of Sub-section (2) be final and shall not be questioned in any court.

(2) Any person aggrieved by an order u/s 7 refusing or granting permission may, within thirty days from the date of such order, prefer an appeal to the Controlling Authority and the order of the Controlling Authority shall be final and shall not be called in question in any court." Section 15-A of the Act is important. The section confers revision-al powers on the State Government. Section 15-A states:

The State Government may, at any time either on its own motion or on application made to it in this behalf, call for the record of any case disposed of by the Controlling Authority for the purpose of satisfying itself as to the legality or propriety of any order passed or direction issued and may pass such order or issue such direction in relation thereto as it may think fit....

Annexure I to the writ petition is a copy of the impugned order dated 14-12-1964 passed by the State Government. That order concluded thus:

The direction of the Controlling Authority conveyed through its resolution passed

in respect of item No. 15 of the agenda of the meeting held on 20-10-1962 is, therefore, quashed. The sanction accorded by the Prescribed Authority on 26-10-1962 to the building plan of Sri Sunder Lal in terms of the above direction of the Controlling Authority would automatically stand quashed on or revoked.

7. It will be noticed that the operative part of the order contains two directions. By the first direction, the advice given by the Controlling Authority on 20-10-1962 was quashed. By the second direction, it was held that the sanction accorded by the Prescribed Authority on 26-10-1962 in favour of Sunder Lal automatically stood revoked. It will be convenient to discuss the validity of these two directions separately.

8. Section 15-A of the Act empowers the State Government to intervene in a case disposed of by the Controlling Authority. Mr. S.C. Khare appearing for the Appellants contended before us that in the present case the Controlling Authority did not dispose of any case. The learned Single Judge expressed the view that the Controlling Authority did dispose of a case, when it considered item No. 15 of the agenda. We are inclined to accept this view. The question of the notice u/s 80 CPC was referred by the Prescribed Authority to the Controlling Authority. The Controlling Authority considered it expedient to consider along with that matter the connected question of plans applied for by Sunder Lal and Ors. On 20-10-1962 the Controlling Authority decided to tender advice in favour of the Applicants. In the present case it (is) not necessary to decide whether the reference made by the Prescribed Authority to the Controlling Authority was competent or not. The fact remains that a certain matter was referred by the Prescribed Authority to the Controlling Authority; and the Controlling Authority did decide to tender advice to the Prescribed Authority. So, for purposes of Section 15-A, there was a case disposed of by the Controlling Authority. The State Government could, therefore, intervene so far as the advice by the Controlling Authority is concerned. The first direction contained in the impugned order may stand.

9. Now we have to consider whether the State Government was competent to cancel the plan sanctioned by the Prescribed Authority. We note that Section 15-A refers to the Controlling Authority. It makes no mention of the Prescribed Authority. Mr. B.D. Agarwal appearing for the Respondents urged before us that whenever the Controlling Authority decides a matter, the whole question remains open before the State Government. Considering that Section 15-A specifically refers to the Controlling Authority and does not refer to the Prescribed Authority, it is not reasonable to suppose that the State Government can intervene in a matter where the Controlling Authority took no part at all. If the State Government cannot interfere in a matter where the Prescribed Authority sanctioned a plan and the matter did not reach the Controlling Authority, it is difficult to see how the State Government can interfere where the Controlling Authority agrees that the plan should be sanctioned. It is true that Section 15-A does not clearly indicate whose order may be revised. But the expression "order

passed or direction issued" appearing in the latter part of Section 15-A must be read in the light of the first part of Section 15-A. The State Government may call the record of a case disposed of by the Controlling Authority. It is, therefore, reasonable to suppose that the State Government can interfere with an order passed by the Controlling Authority only. The State Government cannot directly interfere with a decision of the Prescribed Authority.

10. In the instant case the main case of sanctioning the plan was before the Prescribed Authority, A subsidiary case of advice was before the Controlling Authority. The subsidiary case was disposed of by the Controlling Authority. Advice having been tendered, the main case went back to the Prescribed Authority. It was then that the Prescribed Authority decided to sanction the plan. This decision of the Prescribed Authority could not be interfered with by the State Government under its revisional powers u/s 15-A; of the Act.

11. Mr. B.D. Agarwal also relied upon direction No. 25 issued by the State Government u/s 14 of the Act. Direction No. 25 is in these words:

The State Government may examine suo motu or otherwise, any order passed by the Prescribed Authority or the Controlling Authority under any of the foregoing directions with a view to satisfy itself (as to the correctness, legality or propriety thereof and may pass such orders as it may deem fit.

It is true that direction No. 25 does mention orders passed by the Prescribed Authority. But it will be seen that to that extent direction No. 25 goes beyond the scope of Section 15-A of the Act.

12. These directions have been issued by the State Government u/s 14 of the Act. Section 14 states:

The State Government may by notification in the official Gazette give directions on all or any of the matters referred to in Section 5 for any regulated area or all regulated areas in general.

It will be seen that Section 14 empowers State Government to give directions with respect to matters mentioned in Section 5. On examining Section 5 of the Act, it appears that the directions contemplated by Section 14 of the Act are instructions of a general nature. Section 14 does not contemplate a specific order cancelling a particular plan. Sections 14, 15 and 15A must be read together. Sub-section (1) of Section 15 lays that any order granting permission shall be final subject to the provisions of Sub-section (2) providing for appeals. It means that, subject to the decision of an appeal under Sub-section (2) of Section 15 or a revision u/s 15A, an order granting permission becomes final. It is common ground that in the present case no appeal was filed Under Sub-section (2) of Section 15 of the Act. We have shown that the State Government could not interfere with the order dated 26-10-1962 under its revisional powers u/s 15-A Direction No. 25 appears to be unauthorised in so far as it empowers the State Government to interfere directly with orders passed by the Prescribed Authority

in specific cases.

13. It was urged for the Respondents that, in view of the land acquisition proceedings, these writ petitions have become infructuous. We have seen that the former land acquisition proceedings were quashed by this Court. But it has been urged for the Respondents that those proceedings have been validated by an ordinance and a validating Act passed by Parliament recently. This position has been disputed by Mr. S.C. Khare appearing for the Appellants. For purposes of the present special appeals, it is not necessary to investigate the effect of the ordinance and the validating Act on the land acquisition proceedings. Since the validity of the land acquisition proceedings is open to doubt, we do not think that those proceedings can be considered a bar to the present proceedings.

14. The State Government remarked in its order dated 14-12-1964 that the sanction accorded by the Prescribed Authority on 26-10-1962 automatically stood quashed, because the order 20-10-1962 passed by the Controlling Authority was being cancelled. This reasoning is not correct. Although the Prescribed Authority did apply to the Controlling Authority for advice, the Prescribed Authority was entitled to decide the matter for itself u/s 7 of the Act. Even if the advice given by the Controlling Authority is cancelled, the subsequent order dated 26-10-1962 passed by the Prescribed Authority cannot be said to be revoked automatically.

15. As explained above, it is not correct to suppose that the sanction dated 26-10-1962 stood revoked automatically. Further, the State Government had no such power either u/s 15-A of the Act or under direction No. 25. This direction given by the State Government should be quashed.

16. The four connected writ petitions and the four connected special appeals are partly allowed. In each case the last sentence "the sanction accorded by the Prescribed Authority on 26-10-1962 to the building plan of...in terms of the above direction of the Controlling Authority would automatically stand quashed on or revoked" appearing in the order of the State Government dated 14-12-1964 (Annexure I to the writ petition) is quashed. Parties shall bear their own costs throughout. Petitions and Appeals partly allowed.