

Civil Misc, Writ Petition No. 47222 of 2002  
Shaukat Ali Versus Allahabad Development Authority

Connected with

Civil Misc. Writ Petition No. 23281 of 2001  
Smt. Sabia Khan and another .... Petitioners

Versus

Allahabad Development Authority & another .... Respondents

Hon'ble M.Katju, J.

Hon'ble R.S. Tripathi, J

(Delivered by Hon'ble M.Katju, J)

These two writ petitions are being disposed off by a common judgement.

Heard learned counsel for the parties.

These two writ petitions as well as several similar writ petitions listed today before us disclose how the local authorities in the State are demanding and realizing illegal amounts from the citizens causing immense harassment and hardship to the common man.

What is happening in Allahabad and other cities of the State is that whenever a citizen wants to make a building on his own land he has to apply for sanction of a map under Section 15 of the U.P. Urban Planning and Development Act, 1973 (hereinafter referred to as the Act), and whenever such application for sanction of a map is made the Allahabad Development Authority immediately sends a bill to the applicant demanding exorbitant amounts before sanction of the map. These bills have been challenged in these two writ petitions and in several others connected writ petitions and a perusal of the same shows that almost all these demands are illegal (as will be presently demonstrated). However unless these amounts are paid the map is not sanctioned or released, causing great harassment to the applicant. The Allahabad Development Authority, as well as other Development Authorities in the state, which have been constituted under the Act have become agencies of harassment to the public instead of being agencies of service to the people.

In Writ Petition No. 47222 to 2002 the petitioner Shaudat Ali has challenged the impugned demand notice dated 23.10.2002 issued by the Allahabad Development Authority (here-in-after referred to as A.D.A.) copies of which are annexure 7 and 8 the writ petition.

A perusal of Annexure 7 to the writ petition shows that the A.D.A. has demanded from the petitioner the following amounts permit fee, water fee, stacking fee, division fee, development charges, inspection fee, open area penalty etc. The total amount comes to Rs. 1.03.281/1.

Approximately the same amount has also been demanded by the notice copy of which is Annexure

8. The facts in Writ Petition No. 47222 of 2002 are that the petitioner had acquired a portion of property no. 24/30 Thom hill Road, Allahabad from the recorded owner vide sale deed Annexure 1 to 4, to the petition. On 24.9.2002 and 23.10.2002 the petitioner had submitted two separate applications with maps of the construction the wanted to make on this property. Copies of the receipts of deposit of permit fees are Annexure 5

and 6. In response to these applications, the A.D.A has issued the impugned demand notices Annexure 7 and 8.

As regards the demand for permit fees it is stated in Para 7 to the petition that the petitioner has already deposited the permit fees vide receipts Annexure 5 and 6 to the petition. Hence further demand of permit fee is clearly illegal.

It is stated in Para 8 of the petition that the A.D.A itself does not supply any water for construction of the building. Water supply is done by the Jal Sansthan. Hence the demand of water fee/charges by A.D.A. is also illegal.

As to the demand of stacking fee (Malwa charge), it is alleged in Para 9 of the petition that the A.D.A. has not rendered any assistance to the petitioner for raising the constructions. Hence the demand is illegal.

Incorrect and deemed true facts have already been stated.

Further reply if necessary shall be given subsequently.

A perusal of Para 27 of the counter affidavit moderates that the factual allegation in Para 25 of the writ petition has not been deemed by the respondents and they have only stated that they have power to levy sub division charge and open space charge. They have not denied that no park of open space has been provided to the petitioners or in their viewly. Hence in out opinion the demand of park fee, sub-division fee or open space charge is clearly illegal. Mover over, these charges are not relatable to any statutory provision under the Act. A.G.O. is not a statute and hence it cannot justify such a levy. A bare perusal of Section 5 and Section (2-A) of the U.P. Regulation of Building Operations Act, 1958 on which the respondents rely, shows that these provisions do not authorize the concerned authority to impose the aforesaid charges.

It is well settled that no tax or fee can be levied or realized without a statutory provision, vide Ahmedabad (Urban Development Authority Sharad Kumar. AIR 1992 S.C. 2038 (Para 6). Since these is no statutory provision for imposing (part fee open spade charge sub-division charge inspection fee) or permit fee obviously the demands for the same are. Illegal and they are quashed. Moreover, the petitioner in writ petition no. 47222 of 2002 has already paid permit fee as stated in Para 4 of his with petition, and we fail to understand how it can be demanded again.

In view of the above discussion, the writ petitions are allowed. The impugned demand notices in both these petitions are quashed. If any amounts mentioned in the impugned notices have been realized from the petitioners they shall be refunded to them forthwith. If the refund is not made by the A.D.A. within one month from the date of this judgment then it will have to pay interest at 12% per annum from the date of rehization to the date of refund to the petitioners.

Before parting with these cases we are constrained to observe the alarming state of affairs has been prevailing in this State regarding the manner in which the local Coates in general and the development authorities to the petitioners.

Before parting with these eases we are constrained to observe that an alarming state of affairs has been prevailing in this State regarding the manner in which the local cares in general and the development authorities in particular operate, so much so that the count can take judicial cognizance of this fact. Instead of serving as instruments of looking after the welfare of the citizens, those in charge of operating such authorities have made them a tool of extracting money illegally from citizens by fair means or foul. We have just seen how a provision which was designed only to enable the development authority to recompense itself for any expense which in might have incurred on the fault of the private individual has been used, or rather misused, and huge demands utterly illegally have been made against the common people, for whose welfare these authorities were supposed to function. We can take judicial notice of these facts. We are reminded of

the observation made by the celebrated justice Brandeis of the U.S. Supreme Court who remarked" A Judge is surely expected to know what everyone in society knows" (see The Legacy of Holmes and Brandeis' by Samuel Konefsky.)

It is well known that in U.P., and perhaps in many other states, whenever a person applies for sanction of a map for constructing a building or room the authorities demand a bribe, otherwise the map will not be sanctioned and all kinds of hyper technical objections are raised. It is common knowledge that almost every Municipality or local authority in the country has fixed a rate of this bribe for sanctioning a map. One has to pay a hefty sum of money to the Municipality or Development authority officials if one wishes to get a map sanctioned for constructing a building or room, and if one does not pay this amount the map will not be sanctioned come what may. How long the citizens of this country will tolerate this scandalous state of affairs is anyone's guess. The time has now come when it has become the duty of the Court to intervene in this disgraceful state of affairs and voice its protest. The judiciary has to speak out on behalf of the people in such matters and bring them out to the notice of the people at the helm of the affairs.

We are also informed that more often than not when a person applies under Section 15 of the Act for sanction of a plan unless he gives some extraneous consideration to the concerned officials the application is kept pending for a long time giving rise to unnecessary hardship to the applicant. This is highly objectionable. The application should, in our opinion, be decided not later than three months of applying for the same and it should be allowed or rejected on certain objective criteria (mentioned in the relevant rules) and not arbitrarily or on extraneous considerations. If the application complies with the objective criteria mentioned in the relevant rules it should be allowed and it should not be rejected. If there is a defect in the application or map the application should not be straight away rejected but the applicant should be informed in writing about the defect and the relevant rule which the application or map allegedly violates, and he should be called upon to remove the defect. If the applicant satisfies the concerned authority that in fact there is no defect in the application or map then sanction should be granted. If however, the applicant cannot satisfy the concerned authority, and does not remove the defect within a reasonable period, then, after giving the applicant a personal hearing (if he so desires), the concerned authority can reject the application, but in the rejection order he must give reasons and must refer to the relevant rule which will be violated if the map is sanctioned. This procedure will obviate any misgivings or misapprehensions in this connection, and will be conducive to transparency in administration.

Let the Registrar General of this Court send copy of this judgment forthwith to the Chief Secretary and the Urban Development Secretary, U.P. Government, who will communicate it to the Chairman and Vice-Chairman of all Development Authorities as well as other concerned local bodies and authorities in U.P., with the direction that this judgment should be strictly complied with.

Dt. : 1.7.2003