

Court No. - 32

1. **Case :-** WRIT - C No. - 16357 of 2020

Petitioner :- Abbas Ansari And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Ravindra Kumar

Tripathi, Priyavrat Tripathi, Udai Karan Saxena (Senior Adv.)

Counsel for Respondent :- C.S.C.

2. **Case :-** WRIT - C No. - 16298 of 2020

Petitioner :- Jameshed Raza

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Ravindra Kumar

Tripathi, Priyavrat Tripathi, Udai Karan Saxena (Senior Adv.)

Counsel for Respondent :- C.S.C.

Hon'ble Shashi Kant Gupta, J.

Hon'ble Pankaj Bhatia, J.

Heard Sri Udai Karan Saxena, Senior Advocate, assisted by Sri Ravindra Kumar Tripathi, counsel for the petitioners and Sri M.C. Chaturvedi, Additional Advocate General, assisted by Sri Vineet Pandey, Sri Mata Prasad, Sri B.P. Singh Kachhawah and Sri Brij Bhushan Mishra, learned Standing Counsel, for the State.

Since the controversy and facts involved in the aforesaid writ petitions are the same, therefore, they are being heard together by a common order with the consent of the parties.

The present petitions have been filed alleging that the petitioners are in occupation of properties purchased vide sale deeds dated 29.9.2000 in the name of the mother of the petitioners from the recorded tenure holder and since then they are in peaceful possession of the land

in question.

The petitioners claim to have applied for sanction of map for raising constructions for commercial purposes which was approved on 05.12.2000, subsequently, on account of certain variations of the map, a compounding was applied which was duly approved on 31.12.2002.

The present petitions alleges that the prescribed authority initiated proceedings under section 7-A of Uttar Pradesh (Regulation of Building Operations) Act, 1958 to which the petitioners filed their objections. An order was passed on 15.9.2020 by the respondent no. 4 whereby the approval order pertaining to the compounding of constructions was cancelled. On 16.9.2020 notice was issued under section 10 of 1958 Act proposing to demolish the buildings to which a reply was filed, thereafter an order dated 08.10.2020 was passed directing the demolition of the buildings and the petitioners were granted seven days for removal of the possession. The said orders dated 15.9.2020 and 8.10.2020 are under challenge.

The respondents have raised a preliminary objection that against the order of demolition as well as against order passed under Section 7A, an appeal is maintainable under section 15(2) of U.P. (Regulation of Building Operations) Act, 1958. A perusal of the said section shows that the appeal is indeed maintainable against the order of demolition passed under section 7-A and section 10 of the Act and the same is required to be filed within 30 days.

The counsel for the petitioners argues that only

seven days period was granted for removal of the effects from the property and in a fact a part of the property has already been demolished thus on their own showing the remedy of appeal, as argued by the counsel for the respondents, was not an efficacious remedy in the present case.

It is true that against the order of cancelling the map as well as demolition order an appeal is maintainable and 30 days period is prescribed for filing the appeal and it is also well settled that even if the statutes are silent the appellate authorities have inherent power to grant an interim protection during the pendency of appeal. Similar provisions with regard to the appeal are also provided under the provisions of U.P. Urban Planning and Development Act, 1973 wherein the period prescribed preferring an appeal is also 30 days.

It was also argued at the Bar that in almost similar circumstances this Court in Writ-C No. 13722 of 2020 (Dr. Tazeen Fatima vs. State of U.P. and 2 others) and Writ-C No. 16393 of 2020 (C/M Sham-E-Husaini Institute of Nursing And Paramedical College And Hospital And Another vs.State of U.P. And 2 Others) have passed an order relegating the petitioners therein to file an appeal before the appellate court and interim protection was granted to the petitioners therein,as such the present petitions may also be disposed off on same terms .

Following the above referred orders, the present petitions are **disposed off** with liberty to the petitioners to file an appeal challenging both the impugned orders

within a period of ten days from today and alongwith interim application, if so advised. If the appeal and the interim applications are filed as directed above and within the time granted above, the appellate authority shall endeavour to decide the interim application within a period of two weeks after hearing the parties, in accordance with law. Till the decision, on the interim application or for a period of four weeks, whichever is earlier, no steps shall be taken in pursuance of the demolition orders passed under section 10 of the Act. Both the parties have agreed that if the appeal is so filed, all endeavour shall be made by the appellate authority to decide the same expeditiously after affording opportunity of hearing to the petitioners.

It is clarified that if the appeal is not preferred within the time granted by this Court the benefit of this order shall not be available to the petitioners. The Petitions are disposed off with the said observations and directions.

However, before parting with the case ,we have noticed that before this court a large number of cases are being filed before this Court (burdening the dockets of this already overburdened court), complaining of demolitions being carried out even before the expiry of prescribed period for filing of an appeal, coupled with the fact that the statutes namely the U.P. Urban Planning and Development Act, 1973 as well as U.P. (Regulation of Building Operations) Act, 1958, provide for an alternative remedy of an appeal within 30 days, we deem it appropriate to issue general mandamus in respect of

actions being taken under the two statutes in the entire State. We are doing so in view of the categorical pronouncement of the Supreme Court in the case of **Chairman Indore Vikas Pradhikaran vs Pure Industrial Coke & Chemicals Limited and Others, (2007) 8 SCC 705** wherein the Supreme Court considered the nature of the town planning statutes viz-a-viz the rights of the citizens to live, the Supreme Court held that the Town Planning Statutes are basically in the nature of **expropriatory legislation** and must be given strict construction, the Act being regulatory in nature restrict the right of a owner of a property to use and develop the same, and any omission by the regulatory authority entitles the owner of the property to use the same for any purpose unless there exists a certain regulation to the contrary, the Supreme Court as observed as under:

"46. Where, however, a scheme comes into force, although it may cause hardship to the individual owners as they may be prevented from making the most profitable use of their rights over property, having regard to the drastic consequences envisaged thereunder, the statute should be considered in such a manner as a result whereof greater hardship is not caused to the citizens than actually contemplated thereby. Whereas an attempt should be made to prevent unplanned and haphazard development but the same would not mean that the court would close its eyes to the blatant illegalities committed by the State and/or the statutory authorities in implementation thereof. Implementation of such land development as also building laws should be in consonance with public welfare and convenience. In United States of America zoning ordinances are enacted pursuant to the police power delegated by the State. Although in India the source of such power is not police

power but if a zoning classification imposes unreasonable restrictions, it cannot be sustained. The public authority may have general considerations, safety or general welfare in mind, but the same would become irrelevant, as thereby statutory rights of a party cannot be taken away. The courts must make an endeavour to strike a balance between public interest on the one hand and protection of a constitutional right to hold property, on the other.

47. For the aforementioned purpose, an endeavour should be made to find out as to whether the statute takes care of public interest in the matter vis-à-vis the private interest, on the one hand, and the effect of lapse and/ or positive inaction on the part of the State and other planning authorities, on the other.

48. The courts cannot also be oblivious of the fact that the owners who are subject to the embargos placed under the statute are deprived of their valuable rightful use of the property for a long time. **Although ordinarily when a public authority is asked to perform statutory duties within the time stipulated it is directory in nature but when it involves valuable rights of the citizens and provides for the consequences therefor it would be construed to be mandatory in character.**

52. The courts should, therefore, strive to find a balance of the competing interests.

57. The Act being regulatory in nature as by reason thereof the right of an owner of property to use and develop stands restricted, requires strict construction. An owner of land ordinarily would be entitled to use or develop the same for any purpose unless there exists certain regulation in a statute or a statutory rules. Regulations contained in such statute must be interpreted in such a manner so as to least interfere with the right of property of the owner of such land. Restrictions are made in larger public interest. Such restrictions, indisputably must be reasonable one. [See Balram Kumwat v. Union of India & Ors. (2003) 7 SCC 628; Krishi Utpadan Mandi Samiti & Ors. v. Pilibhit Pantnagar Beej Ltd. & Anr. (2004) 1 SCC 391; and Union of India & Ors. v. West Coast Paper Mills Ltd.

& Anr. (2004) 2 SCC 747]. The statutory scheme contemplates that a person and owner of land should not ordinarily be deprived from the user thereof by way of reservation or designation.

58. Expropriatory legislation, as is well-known, must be given a strict construction".

As already recorded above that a large number of cases are being filed alleging that before the period prescribed for filing an appeal, steps are being taken by the authorities for carrying out demolition, and considering the fact that statute being silent on this aspect, we deem it appropriate to pass the following directions in respect of the demolition orders that are passed by the authorities in the State of Uttar Pradesh under the 1958 Act as well as 1973 Act, keeping in view the fact that the statutes are held to be ***ex-proprietary in nature and should be construed strictly as they purport to take away the valuable constitutional rights of the citizens.***

Accordingly, we direct that:

1. The State authorities, where ever demolition orders are passed in respect of constructions raised on the private properties under the two acts, should wait from taking any action for actual demolition till the statutory period of appeal comes to an end.

2. The Appellate authority empowered the two Acts should endeavour to decide the interim applications filed along with the appeals, if any ,expeditiously preferably within a period of two weeks from the date of filing of the interim application.

3. Till the disposal of the interim application filed in

the statutory appeals the authorities should not take any steps for executing the demolition orders.

4. Copies of the demolition orders, passed under the acts should be properly served upon the persons against whom the orders are passed.

5. The orders of demolition proposed should be passed after giving an opportunity of hearing to the persons against whom the orders are proposed to be passed.

The Registrar General of this Court is directed to forward a copy of this order to the Chief Secretary, Government of Uttar Pradesh, Lucknow for ensuring the compliance by all the Vice-Chairmen of all the Development Authorities and the District Magistrates throughout the State of Uttar Pradesh. The Registrar General shall also send a copy of this order for its compliance to all the Vice-Chairmen of the Development Authorities in the State of Uttar Pradesh as well as to all the District Magistrates for its compliance in terms of the mandate given in the order.

The writ petitions are disposed off in terms of the said order and the general Mandamus as directed above.

Order Date :- 15.10.2020
Puspendra