

प्रेषक,

माला श्रीवास्तव
विशेष सचिव,
उ0प्र0शासन।

सेवा में,

1. आवास आयुक्त,
उ.प्र. आवास एवं विकास परिषद,
लखनऊ।
2. उपाध्यक्ष,
समस्त विकास प्राधिकरण,
उत्तर प्रदेश।
3. जिलाधिकारी/अध्यक्ष,
समस्त विशेष क्षेत्र विकास प्राधिकरण,
उत्तर प्रदेश।
4. जिलाधिकारी/नियंत्रक प्राधिकारी
समस्त विनियमित क्षेत्र,
उत्तर प्रदेश।

आवास एवं शहरी नियोजन अनुभाग-3

लखनऊ : दिनांक : 09 अक्टूबर, 2020

विषय :- रिट याचिका संख्या-(सी)15757/2020 में मा0 उच्च न्यायालय द्वारा पारित आदेश दिनांक 07.10.2020 के अनुपालन में शमन योजना-2020 का क्रियान्वयन स्थगित किये जाने के संबंध में।

महोदय,

शमन योजना-2020 लागू किये जाने विषयक शासनादेश संख्या-एम0एस0-09/आठ-3-20-234 विविध/2017 दिनांक 15.07.2020 तथा रिट याचिका संख्या-(सी)15757/2020 मो0 मेहरबान अन्सारी बनाम उत्तर प्रदेश राज्य एवं अन्य में मा0 उच्च न्यायालय, इलाहाबाद द्वारा पारित आदेश दिनांक 07.10.2020 (छायाप्रति संलग्न) का कृपया संदर्भ ग्रहण करने का कष्ट करें।

2- रिट याचिका संख्या-(सी)15757/2020 मो0 मेहरबान अन्सारी बनाम उत्तर प्रदेश राज्य एवं अन्य में मा0 उच्च न्यायालय द्वारा पारित आदेश दिनांक 07.10.2020 के मुख्य अंश निम्नवत् हैं :-

".....14. A prima facie perusal of the compounding scheme, 2020 would go to show that the illegalities committed by violating the provisions of the Act of 1973 by raising illegal constructions are sought to be regularized upon payment of huge composition fee. The authorities of the State Government are expected to act in furtherance of the object of the Act, so as to stop illegal constructions and not to encourage such illegal constructions upon payment of hefty amount. This would clearly discourage the honest citizens who ensure compliance of laws by obtaining prior permission as per the Act of 1973, inasmuch as they are subjected to stricter norms provided in the building bye-laws, while those who violate the law are allowed to raise much larger constructions, which is not even permissible in the building bye-laws. The compounding scheme, 2020, otherwise appears to be wholly beyond the scope of the Act of 1973 including Section 32. Section 32 only permits composition of offences and not permits raising of constructions contrary to the building plan. The compounding of development undertaken contrary to the Act of 1973 is therefore, prima facie, found to be clearly contrary to the aims, objectives and the provisions of the Act of 1973.

15. The Additional Chief Secretary of the department concerned shall file his personal affidavit justifying the Compounding Scheme, 2020, in light of the above observations. Put up this matter in the additional cause list, once again, on 20.10.2020.

16. As substantial damage to the aim and objectives of planned development is likely to occur if the compounding scheme, 2020 is given effect to, therefore, the State Government as also all development authorities within the State of Uttar Pradesh are restrained from compounding any illegal constructions pursuant to the compounding scheme, 2020, notified by the State Government on 15.7.2020. Till the next date of listing the petitioner's constructions shall also not be demolished and he shall be restrained from raising any further constructions. The State Government is further directed to communicate this order to all the development authorities in the State for necessary compliance."

3- इस संबंध में मुझे कहने का निदेश हुआ है कि कृपया शमन योजना, 2020 के संबंध में मा0 उच्च न्यायालय द्वारा पारित उक्त आदेश दिनांक 07.10.2020 का तत्काल कड़ाई से अनुपालन सुनिश्चित करने का कष्ट करें। मा0 उच्च न्यायालय के आदेशों के अनुपालन में उक्त शमन योजना, 2020 लागू किये जाने संबंधी शासनादेश संख्या-एम0एस0-09 /आठ-3-20-234 विविध/2017 दिनांक 15.07.2020 का क्रियान्वयन तात्कालिक प्रभाव से अग्रिम आदेशों तक स्थगित किया जाता है।

संलग्नक: यथोक्त।

भुवदीया
09/10/2020
(माला श्रीवास्तव)
विशेष सचिव

संख्या-डब्ल्यू-87(1)/आठ-3-20-234 विविध/2017-तद्दिनांक

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:-

1. निजी सचिव, मा0 राज्य मंत्री, आवास एवं शहरी नियोजन विभाग।
2. निजी सचिव, अपर मुख्य सचिव, मा0 मुख्यमंत्री, उ0प्र0।
3. मुख्य स्टाफ आफिसर, मुख्य सचिव, उ0प्र0 शासन।
4. मुख्य स्थायी अधिवक्ता, मा0 उच्च न्यायालय, इलाहाबाद को उनके पत्र संख्या- /पी.एस. सी.एस.सी.-4 / हाईकोर्ट-इलाहाबाद दिनांक 08.10.2020 के संदर्भ में।
5. अध्यक्ष, समस्त विकास प्राधिकरण, उत्तर प्रदेश।।
6. निदेशक, आवास बन्धु, उ0प्र0, लखनऊ को इस निर्देश के साथ कि पत्र की प्रति समस्त संबंधित को आज ही तामील कराने का कष्ट करें व विभाग की वेबसाइट पर भी अपलोड करायें।
7. मुख्य नगर एवं ग्राम नियोजक, नगर एवं ग्राम नियोजन विभाग, उ0प्र0, लखनऊ।
8. गार्ड फाइल।

आज्ञा से,

(संजय कुमार सिंह)
उप सचिव

Court No. - 39

Case :- WRIT - C No. - 15757 of 2020

Petitioner :- Mohd. Meherban Ansari

Respondent :- State Of U P And 3 Others

Counsel for Petitioner :- Madhusudan Dikshit

Counsel for Respondent :- C.S.C., Satyam Singh

Hon'ble Ashwani Kumar Mishra, J.

1. Petitioner is accused of having raised constructions without obtaining prior sanction from the Vice Chairman in terms of Section 14 and 15 of the U.P. Urban Planning and Development Act, 1973, and consequently an order sealing the premises has been passed against him, which has also been affirmed in appeal. Aggrieved by these two orders petitioner is before this Court.
2. Learned counsel for the petitioner states that the State Government has issued a new Compounding Scheme, 2020, as per which various constructions otherwise not permissible in the building bye-laws have also been made compoundable. It is submitted that petitioner intends to avail of benefit under the compounding scheme, and therefore the authorities be directed to examine his claim with reference to such scheme and till then no further proceedings be undertaken.
3. Learned Standing Counsel has been heard for the State Authorities while Sri Satyam Singh, Advocate, has been heard for the Saharanpur Development Authority (hereinafter referred to as 'the authority'). I have perused the materials placed on record and have also perused the Compounding Scheme, 2020, notified on 15th July, 2020. This scheme is apparently enforced for a period of six months.
4. Records brought before this Court in the present writ

petition raise serious concern for planned urban development in the State of Uttar Pradesh, and therefore, the Court is constrained to call upon the State Government upon the issues noticed hereinafter.

5. The U.P. Urban Planning and Development Act, 1973 (hereinafter referred to as the 'Act of 1973') has been enacted with the object of ensuring development of certain areas of Uttar Pradesh according to plan and for matters ancillary thereto. Chapter- III of the Act of 1973 provides for hierarchy of plans i.e. Master plan, Zonal Development plan, Building Bye-laws and lay-out plan etc. All development in the notified area of the authority is required to be carried out strictly in accordance with such plan(s). Section 14 of the Act of 1973 clearly mandates that no development within the development area of the authority can be allowed without prior approval of the Vice Chairman of the authority. Section 14(1) and (2) reads as under:-

"14. Development of land In the developed area.-

(1) After the declaration of any area as development area under Section 3, no development of -land shall be undertaken or carried out or continued in that area by any person or body (including a department of Government)- unless permission for such development has been obtained in writing from the [Vice-Chairman) in accordance with the provision of this Act.

(2) After the coming into operation of any of the plans in any development area no development shall be undertaken or carried out or continued in that area unless such- development is also in accordance with such plans."

6. Section 15 of the Act of 1973 specifies the manner of obtaining such permission. A co-joint reading of Section 14 and 15 of the Act leaves an inescapable conclusion that no development, defined in Section 2(e) to include with its

grammatical variations carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in any building or land, and includes re-development, can be undertaken without the prior approval of the Vice-Chairman.

7. The Vice-Chairman can also permit development only in accordance with the plans referred to in Part III, III-A & IV of the Act of 1973 and the building bye-laws framed thereunder. This scheme under the Act is explicitly warranted for ensuring planned development of the area notified for the respective authority. Section 16 of the Act of 1973 prohibits any development contrary to the plan.

8. The Act of 1973 also provides for the consequences that arise in the event development is undertaken contrary to Section 14 of the Act of 1973. Various measures including penalty, demolition, sealing etc. have been provided for in Chapter-VIII of the Act of 1973. Some of such violations also constitute offence under the Act for which proceedings can be drawn as per the Act of 1973. Section 32 of the Act of 1973 provides for composition of offences. This provision apparently has been invoked for framing the Compounding Scheme, 2020, and is therefore reproduced hereinafter:-

"32. Composition of Offences.-

(1) Any offence made punishable by or under this Act may either before or after the institution of proceedings, be compounded-by the [Vice-Chairman (or any officer authorised by him in that behalf by General or Special order)] on such terms, including any term as regards payment of a composition fee, as the [Vice-Chairman) (or such officer) may think fit.

(2) Where an offence has been compounded, the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of the offence compounded."

Power to frame bye-laws is otherwise conferred upon the authority under Section 57 of the Act of 1973 which can only be in furtherance of the provisions contained in the Act of 1973.

9. The Compounding Scheme, 2020, which is relied upon by the petitioner and is Annexure-4 to the writ petition outlines its necessity and objectives. Clause 1.1 states that private capital has been invested in illegal constructions undertaken in urban areas of which demolition is neither practicable nor is desirable from human considerations. Clause 1.2 states that most of such illegal constructions are not compoundable as per the compounding bye-laws of the authority and therefore there is a need to regularize such illegal constructions under a special compounding scheme. Clause 4 provides for compounding of illegal constructions made till the issuance of the scheme. 20% additional construction has been made permissible over and above what is permissible in the building bye-laws in plots measuring upto 300 Sq. metres, covering entire constructions in the side and rear and 50% of the front set-back. 15% additional constructions in Group Housing, Commercial, Institutional and Multi-storied buildings is also made permissible/compoundable over and above the building bye-laws. Additional floor area ratio (FAR) has also been allowed while compounding the illegal constructions. Various other impermissible developments (constructions) in the building bye-laws have also been made compoundable in the scheme.

10. Clause 5 specifies the amount payable for compounding the developments/constructions made contrary to the Act of 1973. Huge amounts upto the extent of 100% of the land cost needs to be paid for compounding constructions which are

otherwise wholly impermissible in law.

11. What is being made permissible in the compounding scheme, 2020, prima facie, shows that the aims and objectives underlying the Act of 1973 have been given up by the State and activities prohibited by law is being permitted upon payment of huge sums to the authority/State.

12. Merely because large number of persons have invested private capital for raising constructions contrary to the Act cannot be a ground to surrender the interest of planned development for which the Act of 1973 itself has been enacted. The authorities of State cannot frame scheme which is in teeth of express provisions of the Act and goes wholly contrary to the objects enumerated of planned development of urban areas. Substantial public interest is involved in securing planned development of urban areas in accordance with the Act of 1973 which cannot be sacrificed by a statutory scheme which is otherwise not referable to any provision contained in law.

13. Another aspect that arises for consideration is the ambit and scope of powers under Section 32 of the Act of 1973. Prima facie, it only permits compounding of offences under the Act of 1973 and cannot be stretched to permit legalizing such constructions which are in teeth of the Act of 1973. The permissible norms of construction in the building bye-laws also cannot be relaxed while framing a scheme for compounding by the State. No express provision under the Act of 1973 has otherwise been enumerated in the compounding scheme, 2020, whereunder it is formulated.

14. A prima facie perusal of the compounding scheme, 2020

would go to show that the illegalities committed by violating the provisions of the Act of 1973 by raising illegal constructions are sought to be regularized upon payment of huge composition fee. The authorities of the State Government are expected to act in furtherance of the object of the Act, so as to stop illegal constructions and not to encourage such illegal constructions upon payment of hefty amount. This would clearly discourage the honest citizens who ensure compliance of laws by obtaining prior permission as per the Act of 1973, inasmuch as they are subjected to stricter norms provided in the building bye-laws, while those who violate the law are allowed to raise much larger constructions, which is not even permissible in the building bye-laws. The compounding scheme, 2020, otherwise appears to be wholly beyond the scope of the Act of 1973 including Section 32. Section 32 only permits composition of offences and not permits raising of constructions contrary to the building plan. The compounding of development undertaken contrary to the Act of 1973 is therefore, prima facie, found to be clearly contrary to the aims, objectives and the provisions of the Act of 1973.

15. The Additional Chief Secretary of the department concerned shall file his personal affidavit justifying the Compounding Scheme, 2020, in light of the above observations. Put up this matter in the additional cause list, once again, on 20.10.2020.

16. As substantial damage to the aim and objectives of planned development is likely to occur if the compounding scheme, 2020 is given effect to, therefore, the State Government as also all development authorities within the

State of Uttar Pradesh are restrained from compounding any illegal constructions pursuant to the compounding scheme, 2020, notified by the State Government on 15.7.2020. Till the next date of listing the petitioner's constructions shall also not be demolished and he shall be restrained from raising any further constructions. The State Government is further directed to communicate this order to all the development authorities in the State for necessary compliance.

Order Date :- 7.10.2020

Anil

(Ashwani Kumar Mishra, J.)