Court No. - 3

Case :- WRIT - C No. - 65049 of 2009

Petitioner :- Jai Maa Savitri Educational Society
Respondent :- State of U.P. and Others
Counsel for Petitioner :- Namit Srivastava
Counsel for Respondent :- C.S.C.,A.K. Mishra,Krishna Mohan Ojha,Mahesh Narain Singh

Hon'ble Siddhartha Varma,J.
Hon'ble Shekhar B. Saraf,J.

1. Heard Sri Santosh Kumar Singh, learned counsel for the petitioner, Sri Krishna Mohan Ojha, learned counsel for the respondents and the learned counsel for the State.

2. Through present writ petition, the petitioner has challenged the demand notice dated 08.07.2009 which was issued to him by Hapur Pilkhuwa Development Authority at the time of sanctioning the map submitted by the petitioner.

3. The aforesaid demand notice issued by the Hapur Pilkhuwa Development Authority, demanded permit fee, water charge, stacking fee, sub-division charge, development charge, inspection fee and open area penalty.

4. Learned counsel for the petitioner has challenged the aforesaid demand notice on the ground that only those charges/fees can be demanded by the Development Authority which are referable to Section 15(2-A) of the U.P. Urban Planning and Development Act, 1973 (hereinafter referred to as "Act, 1973"). Learned counsel for the petitioner, therefore, submits that only those charges/fees can be levied at the time of sanctioning the map by the Development Authority for which the Act, 1973 authorises the Development Authority and the State Government in exercise of power u/s 41 of

the Act, 1973 cannot authorise/permit the Development Authority to levy charges/fees which are not mentioned in the Act, 1973. Section 15(2-A) of the Act, 1973 is being quoted as below:-

*"**15(2-A).** The Authority shall be entitled to levy **development fees, mutation charges, stacking fees** and **water fees** in such manner and at such rates as may be prescribed:*

Provided that the amount of stacking fees levied in respect of an area which is not being developed or has not been developed, by the Authority, shall be transferred to the local authority within whose local limits such area is situated."

5. In support of his contention, learned counsel for the petitioner relied upon the judgement of Hon'ble Supreme Court in ***Mathura Vrindavan Development Authority & Anr. vs. Rajesh Sharma & Ors. 2023 SCC OnLine SC 530*** in which the Apex Court held that except the charges mentioned in the Section 15(2-A) of the Act, 1973, namely, development fees/charges, mutation charges, stacking fees and water charges, no other charge can be levied by the Development Authority.

6. We have perused the demand notice and the judgments referred by the counsel for the petitioner and find force in the contention of the counsel for the petitioner that the Development Authority has no jurisdiction to demand charges, other than external development fees, stacking fees and water fees. Section 15(2-A) of the Act, 1973 very clearly prescribes the charges which can be levied by the Development Authority like development fees, mutation charges, stacking fees and water fees, therefore, even the State Government u/s 41 of the Act, 1973 cannot issue direction or permission to the Development Authority to levy the charges which are not mentioned in Section 15(2-A) of the Act, 1973. Hon'ble Supreme Court also in the judgement of ***Mathura Vrindavan Development Authority (Supra)*** in paragraph Nos. 23,

24 and 25 observed as under: -

"23. Under the circumstances, in exercise of powers under Section 41 of the Act, 1973, the State could not have issued the orders permitting/allowing the Development Authorities to levy the charges/fees other than provided under Section 15(2-A) of the Act, 1973. At this stage, it is required to be noted that the levy of fees/charges provided under Section 15(2-A), all of them have been specifically defined under Section 2 of the Act, 1973. Therefore, the intention of the Act is to levy only those charges/fees provided/mentioned under Section 15(2-A) of the Act, 1973, otherwise the other charges also would have been defined under the Act, 1973. Levy of such other charges can be said to be hit by Article 265 of the Constitution of India. As per Article 265 of the Constitution of India, there shall not be any levy of tax/fees/charges except in accordance with law and/or as provided under the statute. Under the circumstances and in view of the above, the High Court has rightly set aside the various demand notices by way of levy of inspection fee/supervision fee while granting of sanction lay out plan, sub-division charges, impact fee etc.

24. In view of the above and for the reasons stated above, the levy of development charges/fees by the various Development Authorities of the State of U.P. is hereby confirmed. The decision of the High Court in the case of Rekha Rani (supra) (Civil Appeal No. 4489/2014) quashing and setting aside the levy of development charges/fees is hereby quashed and set aside to that extent. The impugned judgments and orders passed by the High Court quashing and setting aside the demand notices/levy of other charges/fees, namely, inspection fee/supervision fee while granting of sanction layout plan, sub-division charges, impact fee etc. (other than development charges/fees) are hereby confirmed.

25. It is observed and directed that any amount already paid by the respective original writ petitioners other than the development charges/fees and the charges provided under Section 15(2-A), now be refunded to the respective original writ petitioners with 6% interest per annum, within a period of twelve months from today, of course after adjusting development charges/fees. *It is made clear that we have not expressed anything on the levy of betterment charges, which, as such, is otherwise permissible under section 35 of the Act, 1973. It is also made clear that the order of refund shall be*

applicable only with respect to those original writ petitioners/persons who have challenged the demand notices and who were before the High Court. It is also observed and it is made clear that if any individual/original writ petitioner has any other grievances, it will be open for them to approach the High Court by way of independent proceedings."

(emphasis added)

7. This Court in the judgement of ***Sri Krishna Kant Verma and Anr. Vs. State of U.P. Thru. Secy. Nagar Vikas and Ors. (Writ C No. 9617 of 2010) decided on 24.05.2023*** as well as in the judgement of ***Ravi Agrawal vs. State of U.P. Thru Secy. and 4 others (Writ C No. 36358 of 2013) decided on 4.7.2023*** quashed similar demand notices relying upon the judgement of ***Mathura Vrindavan Development Authority (Supra).***

8. This Court is of the considered view that levy of other charges which are not mentioned u/s 15(2-A) of the Act, 1973 are hit by Article 265 of the Constitution of India because Article 265 clearly prohibits levy of tax/fees/charges except in accordance with law and/or as provided under the statute. Therefore, the Development Authority can demand only external development fees, stacking fees and water fees at the time of sanctioning the map and no other fees/charges can be demanded by the Development Authority.

9. In view of the above, the demand notice dated 08.07.2009, issued by the Hapur Pilkhuwa Development Authority so far as it asks the petitioner to deposit fees and charges other than external development fees, stacking fees and water fees, is hereby quashed and the notice, so far as it demands external development fees, stacking fees and water fees, is valid and the petitioner is liable to pay the same.

10. Any deposit made by the petitioner, under the heads for which the demand notice is quashed by this Court, shall be returned to the

petitioner by the Hapur Pilkhuwa Development Authority with 6% simple interest per annum within a period of three months from today.

11. With the aforesaid observations, the writ petition is **allowed**.

Order Date :- 30.11.2023
vkj

Digitally signed by :-
VIJAY KRISHNA JAISWAL
High Court of Judicature at Allahabad