Chief Justice's Court

Case :- WRIT - C No. - 35557 of 2023

Petitioner :- Kamal Kishor Mishra
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- S.P.K. Tripathi
Counsel for Respondent :- C.S.C.,Pramod Kumar Singh

Hon'ble Pritinker Diwaker,Chief Justice
Hon'ble Ashutosh Srivastava,J.

1. Heard learned counsel for the petitioner, learned Standing Counsel for the State and Shri Pramod Kumar Singh, learned counsel for respondent nos. 2 & 3.

2. Though the writ petition has been filed for quashing the demand notice dated 5.10.2023 which relates to the sub-division charge as well as other charges, but learned counsel for the petitioner has confined the prayer only to the levy of sub division charges demanded under the impugned notice dated 5.10.2023 in respect of building plan submitted by the petitioner for approval before the Development Authority.

3. At the outset, learned counsel for parties have stated that the controversy involved in the present proceedings has been adjudicated by the Supreme Court vide its final order dated 28.4.2023 passed in ***Civil Appeal No. 5645 of 2015 (Mathura Vrindavan Development Authority and Another Vs. Rajesh Sharma and Others)*** and connected appeals in that batch of petitions. Specifically, it has been stated, the above decision has been passed, amongst others, in Civil Appeal No. 4489 of 2014 to which ***Special Leave Petition (Civil) No. 20258 of 2018 (Sri Ram Educational And Charitable Trust Vs. Vice Chairman Muzaffarnagar Development Authority)*** had been tagged.

4. Thus, in short, it has been submitted that the matter is no longer res integra and the controversy is covered by the above described decision of the Supreme Court, specifically paragraphs 12-15 thereof. For ready reference, the decision of the Supreme Court (paragraph 12-15) is quoted below:-

"12. 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.

13. 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.

14. 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.

15. The present appeals stand disposed of in terms of the above. In the facts and circumstances of the case, there shall be no order as to costs."

5. In view of such facts and in light of the statement made at the bar, the present petition is also disposed of in terms of the decision of the Supreme Court noted above.

Order Date :- 1.11.2023
Ravi Prakash

(Ashutosh Srivastava, J.) (Pritinker Diwaker, CJ)

Digitally signed by :-
RAVI PRAKASH
High Court of Judicature at Allahabad