

Court No. - 46

Case :- WRIT - C No. - 39927 of 2023

Petitioner :- Rajani Agrawal

Respondent :- U.P. Avas Evam Vikas Parishad And 4 Others

Counsel for Petitioner :- Rahul Srivastava, Shailendra Kumar Pathak

Counsel for Respondent :- Vivek Saran

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Syed Aftab Husain Rizvi, J.

This petition is directed against a notice dated 26.10.2023 calling upon the petitioner to demolish her constructions. The notice refers to the plot number and the scheme wherein the constructions have been raised. It is specifically stated that the sanctioned map of the plot permits constructions of stilt as well as ground floor and two upper floors. However, the petitioner has raised constructions of basement, ground floor and three upper floors. The notice refers that such constructions have been made contrary to plan which amounts to deviation from the approved map which are required to be demolished. This notice is primarily challenged on the ground that a previous notice of the Parishad had been challenged before this Court by filing Writ Petition No.60195 of 2010, wherein following directions were issued:-

"Heard learned counsel for the petitioners as well as Sri Chandra Shekhar Singh, learned counsel appearing for the respondents and have perused the record.

The case of the petitioners is that they had been allotted a plot in an auction conducted by the U.P. Avas Evam Vikas Parishad. Thereafter, on 11.8.2009 they have got building plan sanctioned. The contention of the petitioners is that the constructions have been made in consonance with the building plan sanctioned by the respondents. However, in the meantime, the Agra Development Authority had issued a notice to the petitioner and challenging the same Writ Petition No. 63401 of 2009 had been filed in which the notice issued by the Agra Development Authority had been stayed on the ground that the action, if any, may be taken against the petitioners by the U.P. Avas Evam Vikas Parishad. Thereafter, the petitioners were issued notices by the U.P. Avas Evam Vikas Parishad, to which the petitioners submitted their reply stating that the constructions have been made strictly in compliance with the sanctioned map and in case if there is any violation, the same may be compounded. Despite having received such reply, the respondents have again and again been sending notices to the petitioners. Challenging such notices

dated 28.5.2010, 20.8.2010 and 8.9.2010, this writ petition has been filed.

Sri Chandra Shekhar Singh, learned counsel for the respondents has stated that in the reply itself the petitioners indirectly admit that there is some violation in the construction and it is thus submitted by him that the said illegal constructions may be removed by the petitioners.

Be that as it may, since the notice has been given to the petitioners to which the petitioners have already submitted their reply, it is for the respondent-U.P. Avas Evam Vikas Parishad to specify as to what are the violations and what illegal constructions have been made by the petitioners. After the same are pointed out to the petitioners by way of a notice or an order, the respondent-U.P. Avas Evam Vikas Parishad shall then proceed against the petitioners only in accordance with law and not otherwise.

With the aforesaid observations/directions, this writ petition is finally disposed of. No order as to costs. "

Learned counsel for the petitioner states that in compliance of the aforesaid directions the petitioner has not been informed as to what exactly are the violations and what constructions are illegal on part of the petitioner. It is submitted that since the action of the respondents is in defiance of the directions issued by this Court, as such impugned notice is liable to be rejected.

Sri Vivek Saran, learned counsel for the Parishad points out that the illegality in the constructions raised by the petitioner has been clearly enumerated in the impugned notice, inasmuch as the petitioner has raised an extra floor. This deviation is contrary to the sanctioned plan. With reference to the averments made in the writ petition, learned counsel for the respondents states that apparently no application for compounding has been moved by the petitioner and, therefore, the notice suffers from no illegality.

We have perused the records and it remains undisputed that the plan originally sanctioned for construction over the plot allows raising of constructions of a stilt floor as well as a ground floor and two upper floors. As against the sanctioned plan, the petitioner has raised constructions of basement, ground floor and three upper floors. There is thus an additional floor constructed by the petitioner. In the writ petition, there is specific denial of the fact that the constructions mentioned in the impugned notice have actually not been raised by the petitioner. The assertions made in para 17 of the petition is relied upon by the petitioner which is extracted hereinafter:-

"17. That the husband of the petitioner specifically stated in his reply dated 28.08.2010 that the construction work being carried out upon the plot is

strictly being undertaken as per the sanctioned map dated 11.08.2009. He further stated that if any minor changes are actually found in respect the said construction, he is even willing and ready to get the same compounded. He again submitted all the documents alongwith said reply for being actively considered by the respondent no.4."

We find the aforesaid assertion to be wholly vague, inasmuch as there is no specific denial of the fact recorded in the impugned notice about raising of additional floor on the plot in question. Merely stating that in case any minor changes are actually found the petitioner is willing to have it compounded is an evasive statement made by the petitioner merely to get over the difficulty faced by her in view of the notice issued.

We are not inclined to accept the argument of the petitioner that the impugned notice is contrary to the directions issued by this Court in Writ Petition No.60195 of 2010. The petitioner has clearly been made aware of the offending constructions made.

It is always open for the petitioner either to apply for compounding or to submit reply on merits which shall be dealt with, as per law.

In the facts of the case, we therefore refuse to interfere with the notice issued to the petitioner on 26.10.2023. The writ petition is, accordingly, dismissed.

Order Date :- 21.11.2023

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