

Court No. - 21

Case :- WRIT - C No. - 41012 of 2023

Petitioner :- Dilip Kumar Yadav

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ankit Kumar Rai

Counsel for Respondent :- C.S.C., Dharmendra Singh Chauhan

Hon'ble Manoj Kumar Gupta, Acting Chief Justice

Hon'ble Donadi Ramesh, J.

1. Heard Shri Ankit Kumar Rai, learned counsel for the petitioner, learned Additional Chief Standing Counsel appearing on behalf of respondent No. 1 and Shri Abhimanyu Singh Chauhan, learned counsel holding brief of Shri Dharmendra Singh Chauhan, learned counsel appearing on behalf of respondent Nos. 2 and 3.

2. The petitioner has prayed for a writ of mandamus commanding respondent-Mathura Vrindavan Development Authority to refund a sum of Rs.1,72,579/- deposited by the petitioner on 27.02.2013 towards supervision charges in respect of sanction of Map No. 433/M/10-11 along with interest @ 6% per annum.

3. The facts in brief are that the petitioners submitted an application for sanction of map before the Mathura Vrindavan Development Authority. The Mathura Vrindavan Development Authority issued a demand notice requiring the petitioners to deposit Rs. 6,67,006/- as external development charges, Rs. 24,475/- as compound charges and Rs. 1,72,579/- as supervision charges for sanction of aforesaid map.

4. Indisputably, the petitioners did not raise any protest when the aforesaid demand notice was issued but chose to deposit the same on 27.02.2013 and consequent whereupon, a sanction letter was issued by the Mathura Vrindavan Development Authority on 06.03.2013. Even at the said stage, the petitioners did not advance any challenge to the aforesaid charges. However, now the instant petition has been filed for the reliefs noted above on the strength of the judgment of the Supreme Court in ***Mathura Vrindavan Development Authority and another vs. Rajesh Sharma and others, 2023 SCC OnLine SC 530***, wherein, the Supreme Court has held that under Section 41 of the U.P. Urban Planning and Development 1973, the State could not have issued orders permitting/allowing the Development Authorities to levy the charges/fees other than those provided under Section 15(2-A) of the Act, 1973. Accordingly, the demands in respect of inspection fee/supervision fee, sub-division charges and impact fee etc. have been held to be beyond the ambit of Section 15(2-A) of the Act. The relevant observations in this behalf in para 23 & 24 of the Law Report are quoted below:-

"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."

5. It is noteworthy that while holding so, the Supreme Court also observed in para-25 of the Law Report that the benefit of refund of the charges/fees held to be illegal and beyond the purview of Section 15(2-A) of the Act, 1973 would remain confined to original writ petitioners/persons who have challenged the demand notices and who were before the High Court. Meaning thereby that the persons who have deposited the amount without any protest would not be entitled to refund on the strength of the law laid down in the said judgment. In this regard, the observations made in para-25 of the Law Report is quoted below :-

"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 supplied)

6. Since in the instant case, it is an admitted fact that the petitioners did not challenge the demand notice but choose to deposit the entire amount without any protest, therefore, they would not be entitled to refund.
7. The petition lacks merit and is accordingly **dismissed**.

(Donadi Ramesh, J.) (Manoj Kumar Gupta, A.C.J.)

Order Date :- 29.11.2023
Mukesh Pal