

Court No. - 74

Case :- APPLICATION U/S 528 BNSS No. - 19200 of 2025

Applicant :- Neeraj Agarwal

Opposite Party :- State Of U.P. And 6 Others

Counsel for Applicant :- Nikhil Pandey

Counsel for Opposite Party :- G.A.,Manoj Kumar Singh,Vibhu Rai

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Nikhil Pandey, learned counsel for applicant, Sri Vibhu Rai for Prayagraj Development Authority, Sri Manoj Kumar Singh, learned counsel for Municipal Corporation Prayagraj, Sri Abhishek Tandon, learned counsel for opposite party no. 7 and learned AGA for opposite party nos. 1, 3 & 6.

2. So far as regarding opposite party no. 5 is concerned who has been arrayed in personal capacity, process of notice is hereby dispensed with since opposite party no. 3 is well represented by learned AGA and opposite party no. 5 is the authority under opposite party no. 3 and opposite party no. 5 only proceeded in pursuance to direction issued by opposite party no. 3 while passing orders dated 07.02.2025 over complaint dated 07.02.2025.

3. On previous occasion, time was granted in favour of all the learned counsels appearing on behalf of opposite parties to seek detailed instructions from their respective parties, today when the instant matter has been taken up although instructions have been received by learned counsels for opposite parties nos. 1, 2, 4 & 7 but no instructions were available at the behest of opposite party no. 3.

4. Learned counsel for applicant prayed to decide the matter on the basis of the pleadings available with the affidavit filed in support of Application on behalf of the applicant and all the learned counsels showed their agreement with prayer to submit on the basis of instructions so received by them.

5. It is the case of the applicant that although Bungalow no. 13, Bank Road, Prayagraj is having entry in the record of opposite party no. 4 with plot nos. 494, 495 & 496 against name of his father and opposite party no. 7. Record of possession issued by opposite party no. 4 wherein plot nos. 494, 495 & 496 is also mentioned is appended as Annexure no. 4 at page no. 55 of the Affidavit in support of the instant application.

6. Certain disputes arises between opposite party no. 7 and 1 which rises cause of action in favour of opposite party no. 7 for challenging orders through which certain original entries were changed without adopting due process of Law culminated into declaration of plot nos. 494, 495 & 496 as Non-ZA land and recorded as "*Bunjar*" and the same has been challenged by opposite party no. 7 through Civil Miscellaneous Writ Petition No. 41338 of 2019 (Dhruv Agarwal & 8 others vs. State of U.P. & 7 others), wherein interim protection in shape of status quo has been granted and the same was extended from time to time and above mentioned writ petition is still pending to be adjudicated finally by Division Bench of this Court.

7. It is submitted by learned counsel for the applicant that total area of plot nos. 494, 495, 496 was near about 1900 sq.m and just because of illegal entry made by revenue authorities more than 11,000 sq.m has already been illegally encroached and the same has been legalized by opposite party nos. 2 and 4 by way of permitting illegal constructions and providing full facility of sewage drainage and water supply and the left out un-encroached land was decided to be covered with boundary wall which was initiated by opposite party no. 7. The action taken up by opposite party no. 7 has been objected by the subordinate officers available at District Prayagraj such as Additional District Magistrate (Nazul) with connivance of opposite party no. 2 who issued notice dated 05.02.2025 against opposite party no. 7, father of applicant as well as applicant also.

8. Learned counsel for the applicant also submitted that by bare perusal of the notice dated 05.02.2025 there is no specific plot number or house number mentioned by opposite party no. 2 and notice under Section 28(1) of U.P.Urban Planning Development Act, 1973 was without having any physical inspection of the plot which is solely owned by opposite party no. 7 as well as father of the applicant and the same has been replied vide letter dated 07.02.2025. One more incidence in connection to the same dispute has also been apprised by learned counsel for applicant that an anonymous complaint has been made before opposite party no. 3 by a person whose identity is also not clear and disclosed but under the instructions of opposite party no. 3, it is opposite party no. 6 who initiated prompt action on the same date i.e. on 07.02.2025 by way of directing the local authorities of District Prayagraj for taking action against the applicant and his family members for alleged illegal construction carried out by them, although detailed letter has been preferred at the behest of opposite party no. 7 addressed to opposite party no. 3 on dated 18.02.2025 through which certain questions have been put before opposite party no. 3

that under which circumstances letter dated 07.02.2025 has been issued under the instructions of opposite party no. 3 on the same date over an anonymous application which has been received and without verifying the facts, the action of opposite party no. 3 has been put to question. In continuation to notice dated 05.02.2025 under Section 27(1) and 28(1) of U.P.Urban Planning and Development Act, 1973, opposite party no. 2 passed order dated 20.02.2025 under Section 28(a) of U.P.Urban Planning and Development Act, 1973 through which certain construction has been sealed but at the same time, it is also submitted by learned counsel for the applicant that order dated 20.02.2025 was not referring any reply as submitted by opposite party no. 7 on dated 07.02.2025 and at the time of passing order dated 20.02.2025 opposite party no. 2 referred the illegal constructions carried out at SDM, Girls Hostel, Bank Road, PS-Colonelganj, District Prayagraj on its ground floor whereas neither the applicant, nor the opposite party no. 7 was having any relation to SDM, Girls Hostel, Bank Road, Prayagraj. After receiving order dated 20.02.2025, opposite party no. 7 immediately prayed to recall the order dated 20.02.2025 issued by opposite party no. 2 through letter dated 21.02.2025 but without responding any of the intimation/application/letters preferred at the behest of opposite party no. 7, a fresh order has been issued on dated 03.03.2025 by opposite party no. 2 for demolition of the construction of the boundary which was being carried out just for safe-guarding the interest over the plot in question wherein Bungalow no. 13 is situated with open land.

9. Learned counsel for the applicant further submitted that in continuation to the un-responded notices and the order, again opposite party no. 2 issued notice dated 01.04.2025 under Section 26A(4) of U.P.Urban Planning and Development Act, 1973 for intimating opposite party no. 7 for institution of criminal proceedings and again opposite party and first time opposite party no. 2 mentioned that illegal construction has been initiated near SDM, Girls Hostel, Bank Road, Prayagraj and without mentioning any specific property in shape of plot number/house number it was apprised as property pertains to State land and the same has been replied vide letter dated 11.04.2025 by opposite party no. 7 specifically regarding nature of land which solely belongs to opposite party no. 7 as well as family members of the opposite party no. 7.

10. Learned counsel for the applicant also submitted that applicant being advocate by his profession has been chosen to proceed against him irrespective of any direct involvement of him in any manner whatsoever in respect of allegation whatsoever has been put forward through FIR

dated 06.02.2025 registered at Case Crime no. 49 of 2025 against the applicant. Having been aggrieved with the unwarranted criminal proceedings initiated against the applicant who was having no criminal history before registration of Case Crime no. 49 of 2025, the same was challenged before this Court by way of filing Criminal Misc. Writ Petition no. 4926 of 2025 (Neeraj Agrawal vs. State of U.P. and 4 others), wherein Division Bench of this Court extended protection after due consideration of the facts vide order dated 17.04.2025 through which it was directed that till next date of listing or till cognizance is taken by Court over police report submitted under Section 173(2) Cr.P.C. whichever is earlier respondents are restrained from arresting the applicant, pursuant to the First Information Report dated 06.02.2025 registered at Case Crime no. 49 of 2025 under Section 329(1), 329(3) of BNS and Section 3/5 of Prevention of Damage to Public Property Act, 1984 and under Section 12 of Contempt of Courts Act, 1971, PS- Colonalganj, District Prayagraj subject to cooperation in ongoing investigation.

11. It is the case of the applicant that he fully cooperated with the investigation conducted by concerned Investigating Officer but unfortunately charge sheet has been submitted against the applicant for no cause of action on dated 09.05.2025 and learned Special Chief Judicial Magistrate, Prayagraj took cognizance of offence in pursuance to Section 329(1), 329(3) BNS and 3/5 of Prevention of Damages to Public Property Act, 1984 by way of summoning the applicant vide order dated 20.05.2025 in Case no. 196 of 2025 which rises cause of action in favour of applicant for preferring instant application for challenging entire proceeding along with charge-sheet dated 09.05.2025 and the summoning order dated 20.05.2025 issued by learned concerned court.

12. While raising argument for challenging charge-sheet, cognizance order dated 20.05.2025 passed by learned concerned court along with entire proceeding instituted against the applicant, it is submitted that applicant has been chosen by the responding and official authorities because the applicant is an advocate by profession who might be in helping state to the opposite party no. 7 or his family members in strict parameter of law, otherwise, once the entire notices have been issued against opposite party no. 7 under which circumstances, FIR has not been instituted against him.

13. In connection to the proceedings initiated at the behest of opposite party no. 2, learned counsel for the applicant submitted that even at the time of issuing notices, no specific plot number or house number has been mentioned at any point of time but after the gap of 2 months, once the

authorities of respondent no. 1 colluded with respondent no. 2, issued reminder notice dated 01.04.2025 and at the first time it has been mentioned by opposite party no. 2 that alleged illegal construction has been carried out by opposite party no. 7 over the State land which is not substantiated with any documents which would go to show that under which proceedings it has been determined by opposite party no. 2 that the property which pertains to opposite party no. 7 and father of applicant has been declared as State land and through which specific order, local administrative/revenue authorities of District Prayagraj directed opposite party no. 2 for initiating the matter.

14. On the basis of above mentioned averments of arguments raised by learned counsel for the applicant by way of attracting the attention of the Court over different annexures along with affidavit in support of instant application it has been finally prayed to quash the entire illegal proceedings initiated against the applicant.

15. Although time was extended in favour of learned counsels appearing on behalf of opposite party nos. 2 and 4 but except the complete Case Diary, nothing more has been substantiated or rebutted by learned counsels appearing for opposite party nos. 2 and 4 in shape of rebutting the stand taken up by learned counsel for the applicant and no specific denial has been made in respect of different letter/reply submitted at the behest of opposite party no. 7, moreover no instructions were available with learned AGA specifically from opposite party no. 3 who has been alleged for misusing prestigious office, post and power which has been utilized over application dated 07.02.2025 and initiating prompt action on the same date by way of issuing order dated 07.02.2025 against the applicant and his father along with opposite party no. 7 which has been argued in detail by learned counsel for applicant.

16. Per contra, learned AGA vehemently opposed the prayer as made in the application and rebutted the stand taken up by learned counsel for the applicant on the ground of illegal constructions whatsoever has been initiated over the public property attracting Section 329(3), 329(1) of BNS and 3/5 of Prevention of Damages to Public Property Act, 1984 and it is submitted that proceedings initiated against the applicant in shape of FIR registered at Case Crime no. 49 of 2025 and thereafter charge sheet dated 09.05.2025 and cognizance order dated 20.05.2025 is highly justified.

17. Sri Abhishek Tandon, learned counsel appearing on behalf of opposite party no. 7 submitted that all the official respondents colluded with each other just to grab the property of the opposite party no. 7 which is crystal

clear from the permitted encroachment over major section of the property in shape of plot nos. 494, 495 and 496 which was already permitted to be encroached by illegal occupant with the implied consent of opposite party nos. 1, 2 and 4. So far as opposite party no. 3 is concerned, the intervention was unwarranted and somehow indicates personal interest which is apparent on face of record that after receiving complaint on dated 07.02.2025 on the same date, opposite party no. 3 directed to opposite party no. 5 to issue order dated 07.02.2025 and registration of complaint over IGRS portal by opposite party no. 3 itself is a gross violation of the procedure mandated as per the statute. It is also informed by learned counsel appearing on behalf of opposite party no. 7 that Bungalow no. 13 is still situated at Bank Road having un-encroached land which is measuring about 8000 sq.m and just to save the small piece of land having area near about 21 sq. m, a gated boundary has been initiated and the same has been demolished in the most illegal manner by opposite party no. 2 without responding a single reply submitted at the behest of opposite party no. 7.

18. It is also submitted by Sri Abhishek Tandon, learned counsel appearing on behalf of opposite party no. 7 that in this proceeding itself by using the inherent power available under Section 528 of BNSS, an award for compensation to the tune of Rs.50 lakh may be directed to be recovered from opposite party no. 2 and 3 who are in collusion with respondent no. 1 for initiating illegal action against the opposite party no. 7 as well as applicant.

19. After hearing the rival submissions extended by learned counsels for the parties, the action taken up by opposite party nos. 2, 3, 4, 5 and 6 has to be carefully examined which is material in adjudicating the controversy as raised by the applicant for seeking quashing of the entire proceeding arising out of Case Crime no. 49 of 2025 instituted as Case no. 196 of 2025 pending before learned court of Special Chief Judicial Magistrate, Prayagraj.

20. First of all, action of opposite party no. 2 who initiated proceeding by way of issuing notice dated 05.02.2025 wherein, no specific plot number/house number has been mentioned and the notice has been issued under Section 28(1) of U.P.Urban Planning and Development Act, 1973 under the signatures of Competent Authority/Prayagraj Development Authority. It is mentioned that illegal construction has been initiated at plot situated at Bank Road, PS- Colonalganj, which is a vague address for which the notice has been issued and subsequently another order dated 20.02.2025 issued by Zonal Officer, Prayagraj Development Authority mentioned

Bank Road, SDM Girls Hostel, PS- Colonalganj, District Prayagraj and the same was sealed under Section 28(A) of U.P.Urban Planning and Development Act, thereafter vide order dated 03.03.2025 again Zonal Officer, Prayagraj Development Authority mentioned property near SDM, Girls Hostel, Bank Road, and at the same time no specific plot number or house number has been mentioned. Finally while issuing notice dated 01.04.2025, Zonal Officer, Prayagraj Development Authority, *suo motu* declared unnamed property as State land and informed opposite party no. 2 as well as applicant for initiating demolition proceeding and all the notices and the orders issued at the behest of opposite party no. 2 has been replied well within shortest span of time by opposite party no. 7 who is the family member of the applicant and the same were un-responded and no specific denial or instructions has been submitted by learned counsel appearing for opposite party no. 2 that under which circumstances when the plot number/house number is not clear and mentioned in any of the communication whatsoever has been initiated at the behest of opposite party no. 2 against applicant, the entire proceeding has been initiated which culminated into registering FIR in pursuance to notice dated 01.04.2025 which culminated into preferring charge-sheet and order issued by learned Special Chief Judicial Magistrate for taking cognizance of offence.

21. The action of opposite party no. 3 is somehow initiated for substantiating the illegal action carried out by opposite party no. 2 as well as opposite party no. 6 who is the informant and at no point of time, it has ever been argued by learned AGA that who directed concerned Lekhpal i.e. opposite party no. 6 for lodging FIR since for initiating action against any accused where the public property is being damaged, suitable direction must be obtained with the authority for institution of any criminal proceedings. In the instant matter, it is the Lekhpal who initiated without having any specific orders either mentioned through instructions received by learned AGA or at the time of preferring charge sheet there is hardly any mention of authority who directed or issued any specific order in favour of opposite party no. 6 for lodging FIR which has already been registered at Case Crime no. 49 of 2025.

21. Relevant record of possession is appended as Annexure no. 4 and available at page no. 55 has not been disputed by learned counsel appearing for opposite party no. 4 which clearly shows that Bungalow no. 13 having plot nos. 494, 495, 496 situated at Bank Road, which is having clear cut title in favour of opposite party no. 7 as well as father of applicant and the same has never been dealt at the time of declaring

property as State land by opposite party no. 2 while issuing notice dated 01.04.2025 and before that no specific address or plot number has been mentioned in any of the notice or order issued by opposite party no. 2.

22. Culmination of preferring charge-sheet by concerned Investigating Officer is also lacking, the detailed investigation and in most illegal manner FIR has been lodged under sections 329(1), 329(3) BNS, under Section 12 of Contempt of Courts Act, 1971 along with Section 3/5 of Prevention of Damages to Public Property, 1984. It is highly surprising that FIR has been registered in pursuance to section 12 of Contempt of Courts Act, which is not the domain for investigation and preferring a report under Section 173 of Cr.P.C. by concerned Investigating Officer although, the same has been elapsed at the time of preferring charge-sheet but it is quite possible, once the FIR has been registered without having any authority by concerned Lekhpal who might not have any knowledge in respect of Section 12 of the Contempt of Courts Act, 1971 would it have been approved by Competent Authority of the Administration, at least Section 12 of Contempt of Court Act would not be mentioned at the time of lodging FIR against applicant which was later on challenged and the interim protection has been granted by Division Bench of this Court vide order dated 17.04.2025 passed in Criminal Misc. Writ Petition no. 4926 of 2025.

23. It is also not clear from the records that under which circumstances applicant being the advocate by profession has been subjected in shape of dragging him into unwarranted criminal proceeding when neither his name is available in the records nor there is direct involvement in respect of allegation whatsoever has been put forward against the owner of the plots/Bungalow no. 13 situated at Bank Road, Prayagraj.

24. It is also strange that no proceedings has been initiated in shape of lodging FIR against opposite party no. 7 when the entire allegation has been put forward by opposite party no. 2 against opposite party no. 7 as well as father of the applicant. It is apparent from the different notices/orders issued by opposite party no. 2 as well as opposite party no. 3. The name of the applicant has been inserted without having any specific allegation whereas his name is not available either in the revenue record or in any proceeding pending before this Court in shape of Civil Misc. Writ Petition no. 41338 of 2019 (Dhruv Agrawal and 8 others vs. State of U.P. and 7 others). The core issue, wherein the illegal action carried out by the State authorities have been put under challenge and the same is still pending to be adjudicated finally, determination drawn at the behest of opposite party nos. 1, 2, 3 and 4 that plot nos. 494, 495 and 496

which includes Bungalow no. 13 pertains to State land is also highly illegal.

25. It is also been argued by learned counsel for the applicant that the entries later on inserted has been put under challenge wherein the interim protection has already been granted by Division Bench of this Court and as such no proceeding can be initiated only on the presumption that Bungalow and plots are the State property, moreover perhaps it is the other way adopted by State authorities for seeking declaration in their favour by their own way in respect of getting the matter adjudicated by this Court which is pending before Division Bench. It is a trite law that no person can be judge for his own cause irrespective of any individual or the State. In the instant matter, all the official opposite parties in shape of opposite party nos. 1, 2, 3 and 4 acted in most arbitrary manner by way of initiating criminal proceedings for the same property which is still to be adjudicated by Division Bench of this Court in Civil Misc. Writ Petition no. 41338 of 2019.

26. So far as construction of boundaries are concerned, no specific instructions have been received from learned counsel appearing on behalf of opposite party no. 2 that construction of boundary is amenable to be approved or sanctioned by the Development Authority under the strict provisions of U.P. Urban Planning and Development Act, 1973 which has been indicated by learned counsel for the applicant as replied vide letter dated 11.04.2025 in which it has been mentioned under para 16 and 17 whereupon, no reply has ever been served upon opposite party no. 7 and as such every owner of the property is having right to secure his/her property by way of raising boundary wall once it is already demonstrated by learned counsel for the applicant that majority of portion of property in shape of 11,000 sq.m have already been encroached and no action has ever been taken either by opposite party no. 1 or opposite party no. 2. Although name of the applicant is not reflected in the record of possession as appended through the instant application but name of the father of applicant is available in the same, perhaps being an advocate, he has been chosen by official respondents to proceed against him by way of lodging FIR at Case Crime no. 49 of 2025 which is highly illegal. Construction of boundary is the right available with the applicant as well as opposite party no. 7 which cannot be stopped. Prayer made by learned counsel for the opposite party no. 7 for seeking compensation is related to alternate remedy available with him which is not amenable under the jurisdiction specifically mentioned under section 528 of BNSS but at the same time, securing the property cannot be stopped by opposite party no. 2 in shape

of construction of boundary, maintenance of Bungalow no. 13 or any new construction shall be subject to provisions available under U.P.Urban Planning and Development Act, 1973.

27. In respect of proceeding initiated against applicant, under Section 329(1)(3) of BNS is not at all attracted since there is hardly any compliance of Section 441 of IPC which is a corresponding law wherein U.P.State Amendment is mandatory to be followed which ensure legal notice upon applicant, moreover there is hardly any case of criminal trespass and house trespass by the applicant since he is nowhere concerned with the property, moreover the ownership of the property is reflected through the records of possession issued by opposite party no. 4 which is having the name of father of applicant and the same is not disputed by learned counsel appearing on behalf of opposite party no. 4. So far as regarding Section 3 and 5 of Prevention of Damages to Public Property Act, 1984 is concerned, the same is not at all attracted since there is hardly any declaration of the said property as the public one and no damages caused to be public at large.

28. In view of aforementioned facts and circumstances and in the light of the available documents, it is crystal clear that the proceedings initiated against the applicant in shape of Criminal Case no. 196 of 2025 arising out of Case Crime no. 49 of 2025 in pursuance to Section 329(1)(3) BNS, Section 3 and 5 of Prevention of Damages to Public Property Act, 1984 is not at all maintainable and as such proceeding arising out of Case Crime no. 49 of 2025 which includes charge-sheet dated 09.05.2025, order passed by learned Special Chief Judicial Magistrate dated 20.05.2025 are hereby quashed and set aside.

29. At the same time, Chairman Board of Revenue, U.P. is hereby directed to personally look into the matter specifically in respect of role of opposite party nos. 3 and 6 which is broadly indicated by learned counsel for the applicant that without having any authority and by way of misusing the prestigious office, the same has been utilized for their vested personal interest by way of issuing order dated 07.02.2025 over an anonymous application dated 07.02.2025 itself through seeking proper explanation by them. In the light of letter dated 18.02.2025 submitted by opposite party no. 7 by way of seeking proper explanation, if found something adverse the same may be recorded in their service record. So far as authority for lodging FIR by opposite party no. 6 at their own without having any specific instructions from his superior authorities is concerned, the same be also taken into note by District Magistrate, Prayagraj through seeking proper explanation, if required, by way of

initiating proper disciplinary proceeding against him. Both the action and outcome of Chairman, Board of Revenue, U.P. and District Magistrate, Prayagraj be apprised to Registrar (Compliance), High Court, Allahabad and the same may be kept in record of this case.

30. Registrar (Compliance) of this Court is hereby directed to ensure service of copy of this order for necessary compliance upon opposite party no. 1 and District Magistrate, Prayagraj.

31. The instant application stands **allowed** accordingly.

Order Date :- 26.5.2025

Shaswat