IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Special Appeal No. 237 of 2018

Rupesh Bargoti …. Appellant

Versus

Uttarakhand Housing & Urban Development Authority & others …. Respondents

Dated: 28th December, 2020

Coram: Hon'ble Lok Pal Singh, J.
Hon'ble Manoj Kumar Tiwari, J.

Lok Pal Singh, J. (Oral)

Mr. Aditya Singh, Advocate for the appellant.

Mr. Rahul Consul, Advocate for respondent no. 1.

Mr. S.S. Chauhan, Advocate for respondent no. 2.

Mr. B.S. Adhikari, Advocate for respondent no. 3.

This special appeal is directed against the judgment and order dated 16.04.2018, passed by learned Single Judge of this Court in Writ Petition no. 1057 (M/S) of 2018, Rupesh Bargoti Vs Uttarakhand Housing and Urban Development Authority and others, whereby the writ petition filed by the appellant was dismissed in limine.

2) Facts leading to filing of present special appeal are that appellant / writ petitioner is the

owner of a piece of land, being property no. S-490, Shivalik Nagar, Colony, Haridwar (also known as plot nos. 129, 130 and 131, situated at Shivalik Nagar Colony forming part of Khasra no. 394-M, as developed by the U.P. Avas Evam Vikas Parishad. It is averred that Shivalik Nagar Colony situated at SIDCUL was developed by U.P. Avas Evam Vikas Parishad and even after creation of State of Uttarakhand, the said residential colony has not been transferred by U.P. Avas Evam Vikas Parishad and the same is still under its control. After purchasing the said plot, the appellant moved an application before U.P. Avas Evam Vikas Parishad for sanctioning of map for raising joint construction on the property in question in the prescribed format. Thereafter, the appellant was asked by the U.P. Avas Evam Vikas Parishad to submit a layout plan for the colony to its architectural department at Lucknow for the purpose of having a map sanctioned for the construction sought to be raised by the appellant over the property in question. Meanwhile, the Haridwar-Roorkee-Laksar Development Authority issued a notice to the appellant stating therein that he is raising construction over the property in question without having a map sanctioned. On 01.03.2017, the appellant received another letter, this time from U.P. Avas Evam Vikas Parishad, calling upon him to submit a layout plan for sanctioning of map on the property in question. The appellant submitted all documents as required so that his application for sanctioning of map may be processed. It is averred

that since then the matter is stuck between the two agencies. It is alleged that on 09.04.2018 the Haridwar-Roorkee-Laksar Development Authority issued sealing notice to the appellant which notice was assailed by the appellant by way of filing the writ petition before learned Single Judge of this Court.

3) It is contended that at that point of time when the appellant submitted application for sanction of his map it was not clear as to whether U.P. Avas Evam Vikas Parishad is the sanctioning authority of the map or the respondent nos. 1 and 2?

4) Mr. B.S. Adhikari, learned counsel appearing on behalf of respondent no. 3 would submit that prior to 01.09.2019, all the maps were being sanctioned by the U.P. Avas Evam Vikas Parishad. He drew attention of this Court towards a judgment rendered by Division Bench of this Court in Writ Petition no. 01 (M/S) of 2012, U.P. Avas Evam Vikas Parishad Vs State of Uttarakhand & others, along with analogous matters, which came for hearing before the Division Bench on a reference made by the learned Single Judge by his order dated 07.08.2019 passed in Writ Petition (M/S) No. 1030 of 2010 and analogous matters, wherein the learned Single Judge was of the view that the earlier order passed by a Division Bench of this Court, in Writ Petition (PIL) No. 1375 of 2005 dated 21.03.2006 interpreting Sections 43 and 60 of the

Uttar Pradesh Re-organization Act, 2000, necessitated re-consideration. The learned Single Judge was also of the opinion that the other question, which necessitated examination, was whether the dispute was actually between two Parishads or between two States in which event it is only the Supreme Court which can exercise jurisdiction under Article 131 of the Constitution of India.

5) Writ Petition no. 01 (M/S) of 2012 along with analogous matters were disposed of by the Division Bench vide judgment and order dated 05.12.2019. Relevant paragraphs of said judgment are excerpted hereunder:

> **"**8. In the light of the Memorandum of Understanding dated 17.08.2018, as approved by both the U.P. Parishad and the Uttarakhand Parishad, the cause in Writ Petition (M/S) No. 01 of 2012 and Writ Petition (M/S) No. 670 of 2015 no longer survives. It would suffice, therefore, to dispose of both these Writ Petitions recording the submission of Mr. B.S. Adhikari, learned counsel for the U.P. Parishad and Mr. Rahul Consul, learned counsel for the Uttarakhand Parishad, that the issues between both the Parishads shall be amicably resolved in terms of the Memorandum of Understanding dated 17.08.2019.
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> 9. In so far as Writ Petition (M/S) No. 302 of 2008, Writ Petition (M/S) No. 939 of 2008, Writ Petition (M/S) No. 1030 of 2010, Writ Petition (M/S) No. 896 of 2017, Writ Petition (M/S) No. 911 of 2018, filed by some individuals and firms, are concerned, suffice it to direct both the U.P. Parishad and the Uttarakhand Parishad to examine the claim of the petitioners in these Writ Petitions, and take a decision thereupon at the earliest and, in any event, within three months from the date of production of a certified copy of this order. The decision taken jointly, by both the Parishads or by the Commissioners representing them, shall be communicated to the petitioners, in the aforesaid Writ Petitions, within the aforesaid period of three months.
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> 10. In case any action is required to be taken by the State Government on any particular issue, relating to the aforesaid Writ Petitions, the Commissioners representing both the Parishads shall, after a decision is taken by them together, request the Government of Uttarakhand to take necessary action. On such a request being made, the

> Government of Uttarakhand shall examine the matter and take an appropriate decision in accordance with law at the earliest and, in any event, within one month from the date of receipt of a joint request from the Commissioners of both the Parishads.
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> 11. Needless to state that in case the petitioners, in Writ Petition (M/S) No. 302 of 2008, Writ Petition (M/S) No. 939 of 2008, Writ Petition (M/S) No. 1030 of 2010, Writ Petition (M/S) No. 896 of 2017, Writ Petition (M/S) No. 911 of 2018, are still aggrieved either by the decision taken jointly by both the Parishads, or by the State of Uttarakhand thereafter, it is always open to them to avail their judicial remedies in accordance with law.
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> 12. In the light of the circumstances mentioned hereinabove, the questions referred to us are left open for examination, if need be, later in subsequent legal proceedings.
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> 13. All the Writ Petitions are, accordingly, disposed of. No costs."

6) On the strength of said judgment, learned counsel for respondent no. 3 would submit that the U.P. Avas Evam Vikas Parishad as well as Uttarakhand Avas Evam Vikas Parishad has agreed to settle the issues between them in terms of the Memorandum of Understanding dated 17.08.2019. He drew attention of the Court towards the Memorandum of Understanding entered into between Housing Commissioner, U.P. Avas Evam Vikas Parishad and Housing Commissioner, Uttarakhand Avas Evam Vikas Parishad on 17.08.2019. Clause 1(c) of said Memorandum of Understanding stipulates that all the constructions / ongoing schemes / assets of the U.P. Avas Evam Vikas Parishad prior to 01 September 2019 shall be regulated by the Regulatory Authorities of Uttarakhand in accordance with concerned Regulatory Acts / Rules of Uttarakhand.

7) The effect of the settlement entered into between the two Parishads is that U.P. Avas Evam Vikas Parishad has lost control over the assets developed by it after 01.09.2019, whereas prior to that U.P. Avas Evam Vikas Parishad was concerned with all the affairs of the assets developed by it. Since the construction has been raised by the appellant over the property in question before 01.09.2019 and at that point of time the Haridwar-Roorkee-Laksar Development Authority has no jurisdiction to get the map sanctioned, by impugned sealing notice dated 09.04.2018, the Haridwar Roorkee Laksar Development Authority directed for sealing the property of the appellant.

8) After dismissal of the writ petition by the learned Single Judge, this Court passed the following interim order on 17.04.2018 in the special appeal. Operative portion of said order reads as under:

> "Considering the fact that the appellant has already submitted the map for sanction as well as compounding map before the respondent no. 2 and on the assurance given by learned counsel for the appellant that the appellant will make good all the shortcomings, as pointed out by respondent no. 2 within four weeks from today, it is directed that the respondents shall not seal the premises of the appellant pursuant to the order dated 09.04.2018, till the next date of listing.
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> It is further directed that the appellant shall not utilize the property for any commercial or residential purposes without prior permission of this Court and without sanctioning of the map by the authorities concerned. Primarily, in view of this Court, the U.P. Avas Evam Vikas Parishad has got no jurisdiction to sanction the map or to demand development charges from the appellant."

9) On 05.11.2020, we directed the respondents to file their counter affidavits. In the

counter affidavit filed by respondent no. 2, a legal plea has been raised that against the impugned sealing notice dated 09.04.2018, the appellant has a remedy to file an appeal under Section 28A(4) of the U.P. Urban Planning and Development Act, 1973.

10) Having heard learned counsel for the parties and after considering the facts brought on record, we are of the view that on the date of construction, the Haridwar-Roorkee-Laksar Development Authority had no jurisdiction to get the map sanctioned and now at this stage the U.P. Avas Evam Vikas Parishad too has no authority to get the map sanctioned.

11) In view of the peculiar facts and circumstances of the case, the special appeal stands disposed of with the following directions:

i) The respondent no. 2 is directed to take decision on the compounding map submitted by the appellant in accordance with law within one month from the date of production of certified copy of this order.

ii) The appellant shall deposit the requisite fee for sanction of the map and only thereafter the appellant would be permitted to complete the construction. Till decision on the compounding application, the respondent authority shall not put any seal on the property in

question and parties shall maintain *status quo* qua the construction.

iii) In case there are any shortcomings in the compounding map, the respondent no. 2 shall apprise the appellant within 15 days so as to enable the appellant to make good the defects / shortcomings and thereafter shall take a decision within a month.

12) All pending applications also stand disposed of.

(Manoj Kumar Tiwari, J.) **(Lok Pal Singh, J.)**

28.12.2020

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