HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 18627/2024

Chandni Sharma W/o Amar Singh Berwa, aged about 30 Years, Kheldi, Sawai Madhopur, (Raj.)

----Petitioner

Versus

1. Udaipur Development Authority, through Tehsildar Udaipur (Raj.)
2. Department of Urban Development and Housing, through its Commissioner Secretariat, Jaipur (Raj.)

----Respondents

Connected With

S.B. Civil Writ Petition No. 19393/2024

Ramesh Chandra Lakhara S/o Arjun Lal Lakhara, aged about 46 Years, R/o Guru Nanak Public School, Sector 4, Hiran Magri, Udaipur (Raj.).

----Petitioner

Versus

1. Udaipur Development Authority, through Tehsildar Udaipur (Raj.)
2. Department of Urban Development and Housing, through its Commissioner Secretariat, Jaipur (Raj.)

----Respondents

For Petitioner(s)	:	Mr. Palash Wadhwani
For Respondent(s)	:	Mr. Vijay Purohit Mr. Anurag Shukla

HON'BLE MR. JUSTICE MUNNURI LAXMAN

Order

12/02/2025

1. Both the writ petitions have been filed challenging the removal order dated 18.07.2024 and consequential notice dated 11.09.2024 passed by the respondents under Section 32 of the

Udaipur Development Authority Act, 2023 (hereinafter referred to as 'The Act').

2. The grievance of the petitioners are that the petitioners are the owners of the residential plots 58 (S.B. Civil Writ Petition No.18627/2024) and 79 (S.B. Civil Writ Petition No.19393/2024) located at village Umarda, District Udaipur and they claimed that they purchased the said property under the registered agreement of sale.

3. The removal order has been passed under Section 32 of the Act for removing the illegal construction which was made without permission and also construction which was done was not in accordance with the rules with regard to the setback.

4. Consequent to the removal order, a further notice dated 11.09.2024 was issued directing the petitioners to remove such construction. Assailing the same the present writ petitions have been filed.

5. The preliminary grounds raised by the petitioner herein are that the notices were directed against the family members and not against the registered owner. Therefore, such notices and consequential proceedings are without jurisdiction and contrary to the Section 32 of the Act.

6. Learned counsel appearing for the Udaipur Development Authority submits that the Udaipur Development Authority has no details with regard to the ownership of the land and basing on their own information issued notices to the one of the family members of the registered owner and in response to such notices, the family members have filed detailed explanation. In the said explanation they have admitted that construction was done

without any permission however, they claimed that they maintained the setback which according to the Udaipur Development Authority is incorrect. Therefore, he prayed to dismiss the writ petitions.

7. In light of the said submission, it opt to refer to Section 32 of the Act which reads as under: -

> **"32. Power to require removal of unauthorised development**.- (1) Where any development of land has been carried out as indicated in sub-section (1) of section 31, the Authority may, subject to the provisions of this section, within ten years of such development, serve on the owner a notice requiring him within such period, being not exceeding one month, as may be specified therein after the service of the notice, to take such steps as may be specified in the notice-
>
> (a) in cases specified in clause (a) or (c) of sub-section (1) of section 31 to restore the land to its condition existing before the said development took place;
>
> (b) in cases specified in clause (b) or (d) of sub-section (1) of section 31 to secure compliance with the conditions or with the permission as modified:
>
> Provided that where the notice requires the discontinuance of any use of land, the Authority shall serve a notice on the occupier also
>
> (2) In particular, such notice may, for purposes of sub-section (1), require-
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> (i) the demolition or alteration of any building or works;
>
> (ii) the carrying out on land of any building or other operations; or
>
> (iii) the discontinuance of any use of land.
>
> (3) Any person aggrieved by such notice may, within the period specified in the notice and in the manner determined by regulations, apply for permission under section 17 for retention on the land, of any building or works or for the continuance of any use of the land, to which the notice relates and pending the final determination or withdrawal of the application, the mere notice itself shall not affect the retention of buildings or works or the continuance of such use.

(4) The foregoing provisions of this Chapter shall, so far as may be applicable, apply to an application made under sub-section (3).

(5) If the permission applied for is granted, the notice shall stand withdrawn; but if the permission applied for is not granted, the notice shall stand or if such permission is granted for the retention only of some buildings or works or for the continuance of use of only a part of the land, the notice shall stand withdrawn as respects such buildings or works or such part of the land, but shall stand as respects other buildings or works or other parts of the land, as the case may be, and thereupon the owner shall be required to take steps specified in the notice under sub-section (1) as respects such other buildings, works or part of the land.

(6) If within the period specified in the notice or within the same period after the disposal of the application under sub-section (4), the notice or so much of it as stands in not complied with, the Authority may-

(a) prosecute the owner for not complying with the notice and where the notice requires the discontinuance of any use of land, any other person also who uses the land or causes or permits the land to be used in contravention of the notice; and

(b) where the notice requires the demolition or alteration of any building or works or carrying out of any building or other operations, itself cause the restoration of the land to its condition before the development took place and secure compliance with the conditions of the permission or with the permission as modified by taking such steps as the Authority may consider necessary including demolition or alteration of any building or works or carrying out of any building or other operation and recover the amount of any expenses incurred by it in this behalf from the owner as arrears of land revenue.

(7) Any person prosecuted under clause (a) of sub-section (6) shall, on conviction, be punished with fine which may extend to five thousand rupees and in the case of a continuing offence, with a further fine which may extend to five hundred rupees for every day during which such offence continues after conviction for the first commission of the offence."

8. A bare reading of the above provision, it is clear that notice must be issued to the owner and not the family members. Admittedly, the documents before this Court shows that the notices which were addressed were not to the registered owner. Technically, there is non compliance of Section 32 of the Act.

9. However, explanations have been filed not by the registered owner but the family members whom the notices were addressed.

10. In the said circumstance, this Court feels that there is non-compliance of Section 32 of the Act, therefore, order of removal and consequential notice are liable to be quashed and set aside on this ground only without entering into the merits of the case.

11. Learned counsel appearing for Udaipur Development Authority submits that since the real owners are before this Court the notices which were issued to the family members shall be treated as notices to the present petitioner. The said submission is accepted. The notices which were the foundation for the removal order passed in this case shall be treated as notices to the petitioners.

12. He further submits that in the guise of seting aside this order there may be chance of proceeding with the further illegal construction without there being any permission. Therefore, he prayed to restrain the petitioners from raising any kind of construction until the appropriates orders are passed under Section 32 of the Act.

13. This Court finds that such apprehension is well founded.

14. In the result, the writ petitions are allowed and the impugned order of removal dated 18.07.2024 & consequential notices dated 11.09.2024 are quashed and set aside. The notices

which were issued to the family members of the petitioners shall be treated as notices to the petitioners. The petitioners shall submit fresh explanation responding to the notices and the liberty is given to them to raise all the grounds which are available to them under the law. Till, such a final order has been passed under Section 32 of the Act no construction shall be taken up by the petitioners. The petitioners are directed to file explanation to notices within 30 days from today. Upon filing relevant explanation and relevant material by the petitioners, the authority are directed to dispose of the same within two months from such a date.

15. The petitioners are given liberty to make an application for retention under Section 32(3) of the Act. If any such application is filed within 30 days from today the same shall be considered in accordance with law before the final order is passed under Section 32 of the Act.

(MUNNURI LAXMAN),J

194 & 195-Dharmendra Rakhecha/-