

**Court No. - 37****Case :-** PUBLIC INTEREST LITIGATION (PIL) No. - 31229 of 2005**Petitioner :-** Kautilya Society Thru' General Secy. & Another**Respondent :-** State Of U.P. Thru' Principal Secy. & Others**Petitioner Counsel :-** Neeraj Tiwari, Neera Tiwari, Sandeep Chaturvedi, Suneet Kumar, Suneet Tewari, U.N. Sharma, Virendra (In Person), Vrinda Dar**Respondent Counsel :-** C.S.C., A.N. Tewari, Ajay Kumar Singh, Ajit Kumar Singh, S.M.A. Kazmi, Vivek Varma**Hon'ble Ashok Bhushan, J.****Hon'ble Arun Tandon, J.**

Heard Mrs. Vrinda Dar, petitioner no. 2 appearing in person, Mr. Vivek Varma, learned counsel appearing for the Varanasi Development Authority, Mr. C.K. Parekh appearing for the intervenor, Mr. Shyam Dev Roy Choudhary and Mr. Ravindra Jaiswal, two Members of Legislative Assembly of Varanasi has also appeared to assist the Court.

An affidavit of compliance duly sworn by Mr. Satish Chand Mishra, Joint Secretary, Varanasi Development Authority has been filed.

By earlier order dated 3.12.2012, we have directed constitution of a committee headed by Divisional Commissioner, Varanasi. A report has been submitted before us by the said committee referred to as spot inspection report dated 17.1.2013. Copy of the report mentions inspection with regard to fifty-seven items and the committee also finds eight unauthorised constructions which have been noticed in the report. A copy of the report has also been given to Mrs. Vrinda Dar during course of the hearing. Several objections have been raised by Mrs. Vrinda Dar with regard to various findings and observations made in the report. Specific reference has been made to item no. 53 of premises B 6/99 Kedar Ghat, where in the inspection, it was noted that house is old on which only glass have been fitted.

It is submitted that several constructions have been made

unauthorisedly which have not been noticed by the committee, however, time is prayed for to file a reply to the report submitted by the committee.

As prayed, four weeks' time is allowed to file reply to the said affidavit.

Mr. Ashok Mehta, Advocate who has also appeared for the intervenor as well as two Members of Legislative Assembly of Varanasi have pointed out that citizens/residence of the area are suffering hardship since even in genuine cases which require repair of the houses, the Varanasi Development Authority is not permitting the repairs referring to the restrictions imposed by this Court in making new constructions within 200 mts. of the highest flood level in Varanasi. It is submitted that several applications were given to the Varanasi Development Authority for granting permission for repair on which no final decision has been taken and the applicants have been asked to report from Irrigation department, from the Revenue Authority and from other authorities.

Sri Ashok Mehta, Advocate submitted has referred to an application which is said to be filed in August, 2012. He however seeks time to bring all details, correspondence including the nature of repairs which were sought in the particular case. He may file an affidavit bringing on record appropriate application and correspondence with Varanasi Development Authority.

Learned counsel for the Varanasi Development Authority submitted that in the bye-laws of the Varanasi Development Authority being bye-law no. 3.1.9, any permission regarding heritage zone can be granted only with No Objection Certificate from Archaeological Survey of India and there are certain further restrictions in bye-law no. 3.1.10. Mr. Verma however submitted that detailed procedure for considering the application for repairs with necessary requirements in

that context shall be brought on the record by means of an affidavit.

The petitioner appearing in person has expressed apprehension that in guise of repair large number of person shall start making new constructions defeating the very purpose of restriction. Hence, if the Varanasi Development Authority considers any application for repair, there should be a fullproof mechanism to find out cases of genuine repair and to ensure that only repair is carried out and in the guise of repair, no constructions are permitted. Two Members of Legislative Assembly of Varanasi who appeared before us have referred to grievance of the several residents. We are of the view that appropriate clarification/direction, in this context, is necessary, however we will consider the said issue after appropriate affidavits are filed on the next date. In the inspection report which has been brought on the record dated 17.1.2013, there is reference of various interim orders passed by the State Government in Revision. Learned counsel for the Varanasi Development Authority submitted that except three appeals, all the appeals have been decided. He further submitted that the State Government has fixed 21<sup>st</sup> January, 2013 in some matters and 30<sup>th</sup> January, 2013 and the Revisions are also likely to be decided by the next date. The status regarding the orders passed in the appeals as well as Revision as well as action taken report on the decision taken by the appellate authority and the revisional authority be brought on record by means of an affidavit by the Varanasi Development Authority.

Mr. Ranjeet Saxena, Advocate has submitted that an application has been filed on behalf of Mr. Gauri Shanker Pandey in the Registry today, i.e., 24.01.2013. The said application be placed on record.

Mr. C.K.Parekh submitted that by earlier order this Court required instructions on application of Chitrapur Mutt from the Varanasi Development Authority. Sri Varma submitted that the instructions have been obtained. He may file an affidavit by the next

date.

List on 14<sup>th</sup> March, 2013 at 2 P.M.

**Order Date :-** 24.1.2013/A.K.Srivastava