

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

Hon'ble Ashok Bhushan, J.

Hon'ble Arun Tandon, J.

Heard Mrs. Vrinda Dar appearing in person, Mr. Vivek Verma learned counsel appearing for the Varanasi Development Authority, Mr. S.P. Kesarwani, Additional Chief Standing Counsel and Mr. C.K. Parekh appearing for the intervenor.

An affidavit has been filed by Mr. Vivek Verma sworn by Mr. Satish Chand Mishra, Joint Secretary, Varanasi Development Authority, Varanasi. By Annexure SCA-1 to the affidavit a detail report with regard to action taken on 57 buildings has been brought on the record. Annexure SCA-I to the affidavit contains the details of those buildings with regard to which demolition order has already been passed by the Varanasi Development Authority. A perusal of the said report indicates that in large number of matters it has been mentioned that interim order has been passed by the State Government in revision filed by the persons against whom demolition order has been passed. With regard to some matters, it has been mentioned that appeals have been heard and judgments are awaited. It has further been mentioned that in some cases house owners themselves have demolished their unauthorised constructions. In certain matters it has been mentioned that due to public agitation the demolition drive was adjourned. Mr. Vivek Verma has also submitted that on several occasions ample police force was not provided by the district administration to carry out the drive.

Mrs. Vrinda Dar appearing for the petitioner, has submitted that there has been actually no demolition and several orders passed for demolition have not yet been implemented either due to some interim orders obtained by the owners or due to slackness on the part of the Varanasi Development Authority. It has further been

submitted that no detail of unauthorised constructions and demolition drive have been indicated clearly by photographs and pictures. It has further been submitted that certain new constructions on both the banks of river within 200 metres radius from highest flood level are coming which are not being stopped by the Varanasi Development Authority. The said statement is opposed by Mr. Vivek Verma and it is submitted that Authority is taking ample action for stopping of new construction within 200 metres radius of highest flood level.

The affidavits filed and materials brought on the record do not substantially explain the details of unauthorised constructions, the action taken for demolition and the actions to be taken for demolition. Mr. Vivek Verma submits that earlier this Court appointed a retired District Judge who has made certain inspection and submitted a report. We are of the view that for appropriately monitoring and obtaining details a committee headed by Divisional Commissioner, Varanasi is necessary to be constituted. We, for the aforesaid purpose, constitute a committee headed by Divisional Commissioner consisting of Chief Engineer, Varanasi Development Authority, Chief Engineer, Nagar Nigam, Varanasi and two other technicals officers nominated by the Commissioner to assist the Committee in measurement and photographing the unauthorised constructions. The Committee apart from unauthorised constructions already identified, shall also identify new unauthorised constructions which have been unnoticed or have come subsequently and submit a report to this Court and also forward the said report to the Varanasi Development Authority for taking appropriate action. Apart from physical verification, the Committee shall also take photographs of unauthorised building so that further action be taken accordingly.

Inssofar as the revisions pending under Section 41 of the U.P. Urban Planning and Development Act, 1973 before the State Government, we direct the Principal Secretary, Urban Development, Government of U.P. to ensure that appropriate authority is functioning to dispose of the stay applications in the revisions particularly relating to the buildings situate on the banks of river Ganga at Varanasi. The State Government shall also ensure that stay application in all pending revisions are decided within four weeks. The appellate authority shall also ensure that appeals filed under the U.P. Urban Planning and Development Act, 1973 are decided with regard to buildings situate at the banks of river Ganga at Varanasi.

An application has also been filed by Sri Chitrapur Math

Charitable Trust claiming a direction to the Varanasi Development Authority to grant permission/sanction of map submitted by the Trust on 13.7.2012/30.7.2012. Mr. Vivek Verma, learned counsel for the Varanasi Development Authority may obtain instructions on the said application.

It has been stated by the petitioner that there should be ban of polythene in the districts which are at the banks of river Ganga.

Mr. S.P. Kesarwani, learned Additional Chief Standing Counsel submits that ban of polythene is already being considered by this Court in Public Interest Litigation (PIL) No. - 4003 of 2006 (Re: Ganga Pollution) and the State Government has already issued notification banning use of polythene of less than 40 micron and the said issue is also under consideration before the State Government.

We are of the view that State Government may also consider ban of polythene in the districts which are at the banks of river Ganga. Mr. S.P. Kesarwani, Additional Chief Standing Counsel may obtain instructions in this regard and inform the Court as and when Public Interest Litigation (PIL) No. - 4003 of 2006 (Re: Ganga Pollution) is listed.

List this case on 24th January, 2013 at 2.00 P.M.

Let certified copies of this order be furnished to Mr. Vivek Verma and Mr. S.P. Kesarwani for communication to the authorities concerned.

Order Date :- 3.12.2012

Rakesh