

Court No. - 9

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 appearing in person on behalf of the petitioner, Mr. Vivek Verma, learned counsel appearing for respondents No.3, 4 and 5 and Mr. B.D. Mandhyan, Senior Advocate appearing on behalf of respondents No.6 to 8.

In this public interest litigation there has been consistent pleas raised by Mrs. Vrinda Dar that on the Ghats in the city of Varanasi there has been unabated unauthorised constructions which were neither checked nor demolished by the Varanasi Development Authority and other authorities who are entrusted with regulating the buildings and Ghats. It is submitted that although several orders have been passed for demolition of the buildings, yet orders have not been implemented and in some cases only partially implemented. Serious allegations have been made against the officials of the Varanasi Development Authority stating that in spite of buildings being pointed out and noticed, unauthorised constructions were not removed.

We, by our order dated 3rd December, 2012, have constituted a committee headed by Divisional Commissioner, Varanasi consisting of Chief Engineer, Varanasi Development Authority, Chief Engineer,

Nagar Nigam, Varanasi and two other technicals officers nominated by the Commissioner. Following was the order passed by this Court on 3rd December, 2012:-

"..... 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 technical 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....."

The committee is said to have made inspections and submitted a report on 17th January, 2013 which has been filed along with the affidavit dated 24th January, 2013. The petitioner was allowed time to file reply to the affidavit. After the spot inspection, report has been given with regard to 57 buildings and 8 new unauthorised constructions. Today an application along with affidavit has been filed by Mrs. Vrinda Dar making specific allegations regarding several buildings which were dealt with in the report dated 24th January, 2013 by the committee. Mrs. Vrinda Dar drew the attention of the Court towards certain buildings which have been extensively dealt with in the affidavit filed by her today. The photographs of Bhuma Niketan, Kedarghat have been filed from

Page 71 to 75. The said photographs depict the complete view of the building from its original stage to present stage, last photograph being of March, 2013. The photographs from Page 71 to 75 clearly indicate the unauthorised constructions made in the building which are apparent even by naked eyes. In the report dated 24th January, 2013 submitted by the committee, the said building has been dealt with at Serial No.53. The only report with regard to said building, which is referred as Satyapan Report, is as under:-

“निरीक्षण में पाया गया कि भवन पुराना है जिसपर केवल शीशा लगाया गया है।”

The Court constituted the committee with fond hope that the committee shall identify unauthorised constructions and check those unauthorised constructions which have not yet been demolished and which are coming on very Ghats of Varanasi city for which this public interest litigation has been filed. We are dismay to note that the committee has not done its job and the photographs which have been brought today before us clearly indicate that unauthorised constructions have been ignored and the inspection has ignored several material facts. We are of the view that members of the committee who carried on the inspection, not carried the same with responsibility and the casual manner in which the unauthorised constructions are being ignored is nothing but an act to protect the illegal constructions. Several other photographs and details have been pointed out in the affidavit filed on behalf of the petitioner today which reinforces our view that Varanasi Development Authority, its Vice Chairman and other authorities are not discharging their duties and not carrying out the object and purpose for which the U.P. Urban Planning and Development Act, 1973 has been enacted and the duties which are entrusted on them. In spite of

unauthorised constructions being pointed out, nothing is being done. The sufferers obviously is the public in general who has to use the Ghats and also the heritage buildings and other protected buildings due to laxity of the authorities. With regard to building 'Darbhanga Palace' also it has been pointed out that constructions have been made in the back portion which were contrary to the sanctioned plan of the Varanasi Development Authority and the said fact having been pointed out to the Varanasi Development Authority, nothing has been done in the matter.

Mr. Vivek Verma has referred to the order of this Court dated 18th January, 2008 in Writ Petition No.71449 of 2005.

Mr. B.D. Mandhyan, learned Senior Advocate, appearing for respondents No.6 to 8 has submitted that remodeling and restructure of the house has been made in accordance with the sanction of the Varanasi Development Authority.

It is pointed out that in large number of cases compounding has been done in the area where compounding is not permissible. It is submitted that compounding the building and areas which are not compoundable is nothing but an abuse of the power by the Varanasi Development Authority. We direct the Varanasi Development Authority to submit the list of cases of compounding done in the last 10 years of the area within 200 meters from the bank of river Ganga at Varanasi along with order of compounding with relevant maps.

The Court had appointed the Divisional Commissioner/ Chairman of the Varanasi Development Authority to oversee and locate the unauthorised constructions which are not being removed in spite of the orders of the Court. The affidavit filed on behalf of the

petitioner today clearly reveals that neither the relevant facts nor complete photographs have been brought before the Court and more has been concealed than revealed by the Varanasi Development Authority. Let an affidavit by the Secretary of the Varanasi Development Authority in reply to the affidavit filed on behalf of the petitioner today be filed by the next date along with complete photographs and other details of the buildings which have been specifically pointed out in the affidavit filed on behalf of the petitioner. To assist the Court we also require that the Chairman of the Varanasi Development Authority may appear on the next date so that effective steps be taken by the Court for demolition of unauthorised constructions on the Ghats of Varanasi city and action for implementing the orders of demolition passed by this Court earlier be taken.

Mr. B.D. Mandhyan, Senior Advocate, appearing for respondents No.6 to 8 may also file reply to the affidavit filed on behalf of the petitioner today in so far as it relates to Darbhanga Palace.

Mr. C.K. Parekh, referring to the supplementary counter affidavit filed on behalf of Sri Chitrapur Math Charitable Trust, has submitted that an application has already been filed by the Trust by which permission was sought from the Varanasi Development Authority for carrying out restructuring/restoration.

An application on behalf of the building 'Ganga Mahal' has also been filed today stating that the building is in very dilapidated condition and unless restoration is permitted huge loss shall be suffered.

Mr. Vivek Verma has filed an affidavit of the Joint Secretary of the Varanasi Development Authority referring to Building Construction and Development Bye-Laws specifically 3.19, 3.1.10 and 3.1.11. We, in our earlier order, have noted that unless a foolproof mechanism is provided by the Varanasi Development Authority to find out the genuine cases of repair to ensure that only repair is carried and no construction is permitted in the guise of repair, no object shall be served. The Varanasi Development Authority having already relevant building bye-laws permitting such repairs and reconstruction, we are of the view that Varanasi Development Authority shall consider taking of appropriate decision laying down guidelines for implementing and scrutiny of the scheme and overseeing the applications which are submitted for repairing and restoration of the buildings. The said mechanism should make compulsory submission of photographs as existing on the date of application and different stages for verification of repair on day to day basis. Let Varanasi Development Authority take appropriate decision in this regard and the applications submitted for repairing and restoration shall be considered accordingly. We make it clear that in those cases where permission of Archaeological Survey of India is required, the Varanasi Development Authority shall not proceed unless such permission is granted. In appropriate cases it shall be open for the Varanasi Development Authority to consult experts including the INTACH for considering the application of repair and restoration.

An intervention application has been filed by Mr. Ranjit Saxena on behalf of Mr. Gauri Shankar Pandey bringing into notice of the Court that Varanasi Development Authority is going to construct Multi Storey Toilets at various Ghats in Varanasi through Sulabh International. Mr. Vivek Verma, learned counsel for the Varanasi

Development Authority has contended that Varanasi Development Authority has not granted any such permission. Let a copy of the application filed by Mr. Gauri Shanker Pandey be served to the counsel appearing for Nagar Nigam, Varanasi. Reply of the said affidavit be filed by the Varanasi Development Authority and Nagar Nigam by the next date.

List on 19th April, 2013 at 2.00 P.M.

Order Date :- 14.3.2013

Rakesh