

**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

**Counsel for Petitioner :-** Neeraj Tiwari, Neera

Tiwari, Sandeep Chaturvedi, Suneet Kumar, Suneet

Tewari, U.N. Sharma, Virendra (In Person), Vrinda Dar

**Counsel for Respondent :-** C.S.C., A.N. Tewari, Ajay Kumar

Singh, Ajit Kumar Singh, C.K. Parekh, Q.H. Siddiqui, Raunak

Parekh, S.M.A. Kazmi, Vivek Varma

**Hon'ble Ashok Bhushan, J.**

**Hon'ble Arun Tandon, J.**

Heard Ms. Vrinda Dar in person for the petitioner, Sri R.B. Singhal, learned Assistant Solicitor General of India assisted by Sri Sanjay Kumar Om, Advocate on behalf of the Union of India, Sri M.C. Tripathi, learned Additional Chief Standing Counsel for the State, Sri Vivek Verma, learned counsel for the Varanasi Development Authority, Sri Rakesh Pandey, learned counsel for the Project Manager, Construction and Design Services Unit-24, Jal Nigam and Sri Jagdish Pathak, learned counsel for the applicant Amalendu Narayan Munsri.

It is submitted by Sri R.B. Singhal, learned Assistant Solicitor General of India that Union of India has already granted financial sanction to the project "Development of Area around Assi Ghat at Varanasi, Uttar Pradesh". The project details are prepared by the State Government and are submitted to the Central Government for financial sanction. It is further submitted that it is for the State Government to take care of the orders of the Court, while preparing the

project, as well as of other statutory requirements. He however, contends that if the State submits a modified plan with regard to the project for which financial sanction has already been granted, the Central Government shall consider the same and shall grant ex post facto approval to the modified plan of the project, in accordance with law.

Sri Rakesh Pandey, learned counsel for the Project Manager, Construction and Design Services Unit-24 submits that the U.P. Jal Nigam is only the implementing agency for the project and the plan of the project was prepared by the Urban Development Department of the State of Uttar Pradesh.

Sri Vivek Verma, learned counsel for the Varanasi Development Authority submits that so far as the project "Development of Area around Assi Ghat at Varanasi, Uttar Pradesh" is concerned, no permission has yet been obtained from the Varanasi Development Authority.

Ms. Vrinda Dar in person for the petitioner submits that respondent-authorities before carrying out constructions under the project, have to take into consideration the recent affect of the floods, which submerged large areas of the Ghats at Varanasi. It is submitted that no technical/ scientific reports qua the feasibility of constructions on the Ghats and its affects on flow of river, has been done before preparing the plan of the project. Such scientific/technical reports must be obtained, so that no further complications arise at the time, the projects are implemented.

We find that the project was prepared and submitted, at a time, when the restrain order passed in this Public Interest Litigation, that no new permanent constructions shall be made within 200 meters from the highest flood level, was in operation. The project was prepared without taking note of

such restrictions. Hence in the modified project to be submitted, it is appropriate that the Urban Development Department of the State of Uttar Pradesh must ensure compliance of the restrain order. The Urban Development Department of the State may also obtain clearance report from the Varanasi Development Authority, U.P. Jal Nigam and other concerned authorities, so that a holistic view of the project is taken, so as to avoid any difficulty, at the time of implementation of the project.

Sri N.C. Tripathi, learned Additional Chief Standing Counsel for the State submits that the State shall look into the matter and submit an appropriate modified plan of the project keeping in view the restrictions imposed by this Court in respect of constructions within 200 meters from the highest flood level at Varanasi. The modified plan of the project shall be submitted at an early date preferably within four weeks from today to the Central Government for grant of fresh financial sanction with reference to the earlier financial sanction granted by the Central Government. The modified plan of the project may also be placed before us by means of an affidavit by the next date fixed.

The application made by the State of U.P. as well as U.P. Jal Nigam Department for modification of our earlier order shall be considered after modified plan of project of Development of Area around Assi Ghat at Varanasi, Uttar Pradesh is brought on record before this Court.

The State of U.P. may also take into consideration the restriction imposed by this Court, which is in operating today and looking to the recent affects of floods with regard to the other projects which have already been prepared and submitted by the State Government for financial sanction to the Central Government.

With regard to the construction/rehabilitation of Darbhanga Palace, located within the Heritage Zone, the matter shall be considered on 24th September, 2013 at 02:00 p.m.

Rejoinder affidavit filed on behalf of the petitioner dated 2nd September, 2013, is taken record.

Affidavit of compliance filed today on behalf of respondent nos. 3 and 4 by Sri Vivek Verma, Advocate is taken on record.

Sri C.K. Parekh, learned counsel for Chitrapur Math Charitable Trust and Sindhiya Devasthan Trust seeks time to file reply to the affidavit of compliance filed today. He may do so within two weeks.

Ms. Vrinda Dar, the petitioner points out that by means of affidavit dated 29th May, 2013, details of rules/circular of other States regarding restoration of Heritage Buildings have been brought on record. It is submitted that the Varanasi Development Authority does not have any mechanics to supervise the restoration of Heritage buildings. A Committee consisting of experts on the subject is required to be constituted by the Varanasi Development Authority but it has failed to do so, despite repeated request being made to it.

Sri Vivek Verma, learned counsel for the Varanasi Development Authority, in reply, submits that the Varanasi Development Authority shall look into the matter and shall come up with a concrete plan/proposal regarding constitution of Committee comprising of experts available on the subject, for restoration of Heritage buildings.

Sri Vivek Verma, learned counsel for the Varanasi Development Authority further submits that although several unauthorised constructions have been punctured and sealed but demolition could not be effected for the reasons as

disclosed in the affidavit of compliance filed today. He submits that after the floods are over, appropriate steps shall be taken in that regard.

Difficulties as mentioned in Annexure-8 to the affidavit of compliance filed today on behalf of the Varanasi Development Authority shall be considered and appropriate decision shall be taken after hearing the learned counsel for the parties.

In support of his case, Sri C.K. Parekh, learned counsel for Chitrapur Math Charitable Trust and Sindhiya Devasthan Trust refers to the National Building Board of India-2005.

Sri Vivek Verma shall examine the said Code and take appropriate decision by the next date.

With regard to the application made by Amalendu Narayan Munsu, it has been stated on behalf of the Varanasi Development Authority at page 10 of the affidavit of compliance filed today, that no constructions can be permitted within 200 meters of the highest flood level of the river Ganges at Varanasi. Since the building of the applicant, Amalendu Narayan Munsu is situated within 200 meters, his prayer for reconstruction of the building cannot be granted.

In reply, Sri Jagdish Pathak, learned counsel for Amalendu Narayan Munsu submits that fresh appropriate application for carrying out the extensive repairs by the petitioner shall be submitted, which may be directed to be considered by the Varanasi Development Authority.

In view of the restrictions as noticed above, no new construction can be permitted within the restricted zone. However, it shall be open for the applicant to submit an application giving detail proposal of extensive repairs to be carried out for restoration of the house, which application

shall be considered by the Varanasi Development Authority in accordance with law.

Ms. Vrinda Dar in person for the petitioner has pointed out that in the recent flood in the Month of July and August, 2013, several areas of Varanasi have been submerged. Learned counsel for the Varanasi Development Authority may take steps for demarcation of the areas, which the river water had submerged in different location with the help of Irrigation Department/Revenue Authorities. The highest level upto which the river water has arisen must also be recorded and produced before us on the next date.

List this matter on 10th October, 2013 at 02:00 p.m.

(Ashok Bhushan, J.)

(Arun Tandon, J.)

**Order Date :- 2.9.2013**

Sushil/-