

Chief Justice's Court

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, Sanjay Kumar Om, Shambhu Chopra, Vivek Varma

Hon'ble Dr. Dhananjaya Yeshwant Chandrachud, Chief Justice
Hon'ble Dilip Gupta, J.

A joint survey of the buildings was conducted by the District Magistrate, Varanasi and the Vice-Chairperson of Varanasi Development Authority¹ in which the Amicus Curiae and the petitioner were also associated.

The Amicus Curiae has filed a report in pursuance of the survey. In the affidavit that was filed before this Court on 9 September 2014 by the Vice-Chairperson of VDA, there was a statement to the effect that proceedings had been initiated under sections 27 and 28(1) of the U.P. Urban Planning and Development Act, 1973² against 57 buildings. A ward-wise list of these 57 buildings was set out in the affidavit together with details of action taken for the demolition of these buildings. The affidavit also listed out as many as 16 fresh constructions which, it was stated, had been demolished on 30 August 2014 and 3, 4 and 6 September 2014 respectively. The Chief Standing Counsel

¹ VDA

² the Act

has, on instructions, informed the Court that out of the 57 unauthorised constructions, 34 had been earlier demolished, 12 have since been demolished fully while 11 still remain. In the case of 9 unauthorised constructions, it is stated before the Court that there are orders of stay; two passed by this Court in writ proceedings; one by the Civil Court; one by the Commissioner of the Division and five in revision proceedings which are pending under section 41 of the Act before the Principal Secretary (Awas).

We are of the view that those matters where stay are operating, should be pursued by the VDA and the other competent statutory authorities on a pro-active basis so that the proceedings are resolved one way or the other in accordance with law expeditiously. We direct that the Commissioner and the revisional authority in the State Government shall conclude the pending proceedings and pass final orders no later than within a period of two months from today. A copy of this order shall be placed on the record of the Commissioner as well as the revisional authority whose attention shall specifically be drawn to these directions. Similarly, the Civil Court shall be duly apprised of the present order and it shall endeavour to dispose of the pending proceedings or in any event the application for grant of injunction no later than within a period of two months from today.

Learned Chief Standing Counsel appearing on behalf of the State shall furnish to the Joint Registrar (Listing) numbers of the

two writ petitions in which interim orders have been passed so that those proceedings can be listed together with the present proceedings on the next date of listing.

We find substance in the report submitted by the learned Amicus Curiae that a Ghat-wise survey must be made of all the structures in a systematic and organised manner so as to ensure that the status of each construction, whether authorised or unauthorised, is duly determined in accordance with law. The Amicus Curiae has, together with his report annexed as Annexure-1 a proforma in which relevant information should be compiled by the VDA. This information in relation to each structures qua each of the Ghats shall be separately compiled by VDA within a period of three weeks from today and shall be duly uploaded on the website of the VDA. Thereafter the VDA shall issue a public notice in the local newspapers so that any objection to the information which has been compiled, can be raised to enable the concerned owners/occupants to produce such documentary material as may be in their possession while objecting to the status of the structure as reflected in the record prepared by the VDA. The VDA shall thereafter proceed to issue notices under sections 27 and 28 of the Act no later than within a period of two weeks from the date of the publication in the newspapers in respect of those structures which have been found to be unauthorised.

In the meantime and by the next date of listing, we direct that an affidavit be filed by the VDA setting out:

- (i) a list of the 34 structures which, as stated before the Court, have been actually demolished;
- (ii) a list of 12 structures which have been demolished subsequently; and
- (iii) a list of 9 structures which are covered by orders of stay.

The Court has been apprised of the fact that the work of laying out pipelines under the JNNURM at an outlay of approximately Rs.407 crores has been completed. However, the construction of a Sewage Treatment Plant (STP) has not been able to come up as a result of an interim order which is stated to have been passed in a pending writ petition (Writ Petition No. 60110 of 2013, Kashi Jeevdaya Vistarini Goshala Evam Pashushala, Varanasi vs. State of U.P. and three others).

In order to ensure that the issue is resolved at the earliest, one way or the other, we are of the view that the ends of justice would be met if the said writ petition is directed to be heard together with the present proceeding by this Bench which is monitoring issues pertaining to Ganga pollution, particularly at Varanasi. The Court deems it fit and proper to issue appropriate directions since it has been apprised by the learned Chief Standing Counsel that the funds which have been sanctioned by the Union Government for the completion of the project are likely

to lapse and that as a result of long pendency of the proceeding, an important public project has been held up.

The office shall list the said writ petition bearing No.60110 of 2013 before this Court at 10:00 a.m. on 3 February 2015 with the Public Interest Litigation. The learned Chief Standing Counsel shall give due notice to the learned counsel appearing on behalf of the petitioner in those proceedings.

A detailed order was passed by this Court on 11 September 2014 in which the Court expressed the view that it would be appropriate for both the Union and the State Governments to take a joint and coordinated action in order to apprise the Court of the steps which are being taken to preserve the intrinsic character and heritage importance of Varanasi. The Court had observed that it would be appropriate if a comprehensive analysis and plan is entrusted to a team of experts consisting of eminent persons drawn from diverse branches, including conservation architecture, ecology, hydro-geology, civil engineering and urban planning. Though the order was passed well over three months back, we find that there has been no concrete action either by the Union Government or by the State Government.

We direct the learned Assistant Solicitor General of India and the learned Chief Standing Counsel to take instructions at the appropriate level of their respective governments so that the Court can be apprised of the views of the Union and the State Governments in the matter by the next date of listing.

An important issue which needs to be considered by the Court at an appropriate stage is the need for framing appropriate guidelines for dealing with cases of repair, restoration and rehabilitation. Since this issue has been raised during the course of hearing today, we are of the view that it would be appropriate if a comprehensive perspective of the matter is formed having due regard to the Master Development Plan and all other applicable statutory requirements. This aspect may be considered by the Amicus Curiae so as to assist the Court by the next date of listing. Based on this, it would be necessary for the VDA to frame bye-laws and guidelines to cover cases of restoration, repair and rehabilitation which would be consistent with the overall nature and character of the Ghats.

Leave is granted to implead the Nagar Nigam, Varanasi as a respondent. The learned Amicus Curiae agrees to inform the learned Standing Counsel for the Nagar Nigam so that he may remain present on the next date of listing.

We direct that the proceeding be now listed before the Court on 3 February 2015 and then on 26 February 2015 for further monitoring.

Order Date :- 29.01.2015
RK/GS

(Dr. D.Y. Chandrachud, CJ.)

(Dilip Gupta, J.)