



HIGH COURT OF UTTARAKHAND AT NAINITAL
HON'BLE SRI JUSTICE MANOJ KUMAR TIWARI

Writ Petition No. 3631 of 2023 (MS)

Pinnacle Residency Apartments Owners
Association Dehradun --Petitioner

Versus

District Magistrate Dehradun and others -Respondents

Advocates:
Mr. Abhijay Negi, Mr. Sarang Godbole and Mr. Priyansh Mittal, Advocates for the petitioner.
Mr. V.D. Bisen, Additional CSC for the State/respondent Nos. 1, 3 and 4.
Mr. Brij Mohan, Advocate holding brief of Mr. Rahul Consul, Advocate for respondent No. 2
Mr. Arvind Vashisth, Senior Advocate assisted by Mr. T.S. Bindra, Advocate through video conferencing and Mr. Siddhant Tiwari, Advocate for respondent No. 5.

JUDGMENT

1. This writ petition is filed by association of residents of a Group Housing Complex known as Pinnacle Residency, situate at Jakhen, Dehradun. According to petitioner, there are 86 residential apartments in the aforesaid group housing complex in the format of 3BHK, 4BHK, 3BHK-PH, 4BHK-PH and Studio apartments which were built by Dehradun based builder, namely, M/s Disha Hospitality Pvt. Limited (respondent No. 5). According to petitioner, the group housing complex consists of high rise buildings with height of about 30 meters.
2. Petitioners have challenged the order passed by District Magistrate, Dehradun on 18.01.2023, whereby the appeal filed by respondent No. 5 against a notice, issued by Chief Fire Officer, was allowed and the Chief Fire Officer was directed to issue No Objection Certificate (NOC) to respondent No. 5. In the notice appealed against, Chief Fire Officer had pointed out certain



defects/deficiencies in the group housing complex from fire safety perspective.

3. It transpires that residents of Pinnacle Residency, earlier filed Writ Petition No. 1632 of 2021 (MS) with the contention that some structures were raised by the builder (respondent No. 5 herein) in violation of building plan sanctioned by Mussoorie Dehradun Development Authority (in short, "MDDA") and further that the norms for fire safety laid down under Uttarakhand Fire & Emergency Service, Fire Prevention and Fire Safety Act, 2016 (In short, "Fire Safety Act") are not satisfied. The said writ petition was disposed of by co-ordinate bench with direction to authorities of MDDA to act upon the recommendation made by Chief Fire Officer vide letter dated 19.06.2021 and to take appropriate action by issuing necessary direction to the Builder for installing the requisite fire fighting facilities, as per provisions of Fire safety Act. The relevant extract of said order is reproduced below:

"The petitioner submits that the respondent No.4, has already referred the matter for an appropriate decision, an action on 19.06.2021, in order to ensure to provide the fire fighting facilities, to the respondent Nos. 1 and 2, but the respondent Nos. 1 and 2 have not taken any action on the recommendation, which has been made by respondent No.4 on 19th June, 2021.

In that eventuality, looking to the wider interest of the residents of the colony, who have been allotted with their respective flats, and studio apartments, this Writ Petition would stand disposed of directing the respondent Nos. 1 and 2, to forthwith act upon the recommendation made by respondent No.4 on 19th June, 2021 and take all and an appropriate action and measures within a period of eight weeks by issuing necessary directions



to the respondent No. 5, for installing the requisite fire fighting facilities, which is mandated under the Act of 2016.

The decision would be taken in that regard within a period of two months from today.

Subject to the above observations, the Writ Petition stands disposed of.”

4. The aforesaid order was challenged by the builder, (respondent No. 5 in this writ petition), in Special Appeal No. 439 of 2021, and Division Bench of this Court disposed of the Appeal vide order dated 28.12.2021 by providing that appellant shall be given reasonable opportunity of hearing by Vice Chairman/Secretary, MDDA before taking any decision on the recommendations made by Chief Fire Officer and Department of Fire and Emergency Services and it was further provided that representation made by the appellant shall be considered and disposed of by the Vice Chairman/Secretary, MDDA by passing a reasoned and speaking order.

5. The application filed by respondent No. 5 for compounding of RCC slab constructed over RCC pillars near northern entry gate of the group housing complex was rejected by Secretary, MDDA vide order dated 28.02.2022 by relying upon report of the fire mock drill conducted by Chief Fire Officer pursuant to order dated 24.02.2022 passed by Secretary, MDDA. Report of fire mock drill indicated that RCC slab constructed on the northern side obstructed the entry of fire tenders into the group housing complex.

6. Appeal filed by builder (respondent No. 5) against the order dated 28.02.2022, passed by Secretary, MDDA was dismissed by Chairman, MDDA/Commissioner,



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Garhwal Division vide order dated 16.03.2022. Respondent No. 5 thereafter filed revision under Section 7-B(4) of Uttarakhand Urban and Country Planning and Development Act, 1973, challenging order dated 16.03.2022 before Chief Administrator, Uttarakhand Awas evam Nagar Vikas Pradhikaran, Dehradun.

7. The Revisional authority, vide order dated 03.12.2022 decided the revision by requesting the District Magistrate to decide the appeal filed by builder under Section 20 of Fire Safety Act within 60 days and the demolition order passed by Secretary, MDDA was kept in abeyance for 60 days.

8. The appeal which was directed to be decided within 60 days was filed by the builder (respondent No. 5) against notice dated 15.11.2021 issued by Chief Fire Officer, Dehradun in which it was pointed out that during the course of fire mock drill of the group housing complex conducted on 29.10.2021, in the presence of senior officers of fire safety department and representative of the builder, it was found that fire tender were not able to reach the front portion of 'A' block of the group housing complex due to excessive slope on the ramp and conversion of open space to garden on the front side of the complex. It was further pointed out that fire tender could not be taken from back side of block 'C' to back side of block 'B', due to excessive slope and availability of little space in the setback area. It was further indicated that in the setback area on backside of block 'C', garden planters are placed which has reduced width of the passage. It was further pointed out that hydraulic platform could not



enter the gate of Pinnacle Residency Complex due to electricity line hanging at the height of 3.70 meters.

9. Certain other deficiencies were pointed out by Chief Fire Officer in his notice dated 15.11.2021, and respondent No. 5 was asked to remove them and inform the office of Chief Fire Officer about removal of deficiencies. Another letter was issued by Chief Fire Officer to respondent No. 5 on 17.11.2021, pointing out other deficiencies in the Group Housing Complex.

10. The report of fire mock drill dated 26.02.2022, submitted by Fire Officer and Chief Fire Officer in terms of order of Secretary, MDDA was also challenged by respondent No. 5 in his appeal before District Magistrate under Section 20 of Fire Safety Act.

11. District Magistrate allowed the appeal vide order dated 18.01.2023. Perusal of said order reveals that although the contentions raised by the parties are considered in detail; however, the reasoning for allowing the appeal is contained in the penultimate paragraph of the order dated 18.01.2023. Learned District Magistrate has relied upon the NOC issued by authorities of Fire safety Department earlier by overlooking the fact that NOCs dated 15.03.2018 and 29.09.2018 were issued when the project was in drawing board stage and construction had not begun. The unauthorized structure, if any, raised by the builder while executing the project or upon completion of project, cannot be saved by the NOC issued by Fire Safety Department, based on declaration/undertaking given by the builder before



embarking upon the project stating that he will follow the fire safety norms prescribed by concerned Statutory Authorities.

12. Learned counsel for Development Authority points out that building plan submitted by respondent No. 5 was approved by Vice Chairman, MDDA vide order dated 26.04.2018.

13. As per the reports submitted by Chief Fire Officer based on fire mock drills held from time to time, a RCC slab was found constructed over pillars near entry point of the group housing complex, which is said to be obstructing the passage of fire tenders and fire-fighting equipment are facing difficulty in reaching the residential complex. The appellate authority/District Magistrate, however, has not considered whether the RCC slab in question was part of the building plan as approved by the competent authority in MDDA, or it was built later without approval from MDDA.

14. Learned counsel for the petitioner contends that NOC dated 15.03.2018 and 29.09.2018 were issued by Fire Safety Department based on drawings and undertaking given by the builder, as the construction work had not begun, therefore if some structure is raised later in violation of approved building plan, which obstructs the passage of fire tenders and other heavy machinery, then Fire Safety Officer cannot be directed to issue NOC to the builder for getting the illegal structure compounded, by ignoring the unauthorized construction, which has the



effect of endangering the life of persons residing in the complex.

15. This Court finds substance in the contention raised on behalf of the petitioner.

16. Since Fire Safety Officer is a statutory authority, tasked with the responsibility of taking all necessary steps to ensure that in case of a fire outbreak in a complex, fire tenders and other fire-fighting equipments are able to reach the strategic points to protect life and property of persons residing in the complex, His opinion therefore cannot be cursorily brushed aside without dealing with the deficiencies pointed out by him. District Magistrate, acting as appellate authority, however has not appropriately dealt with the issues raised by Chief Fire Officer, while directing him to issue NOC to respondent No. 5.

17. The District Magistrate has referred to a video produced by the builder in support of his contention that a dumper with particular dimension was able to enter the group housing complex. That video in itself cannot lead to the irresistible conclusion that a fire tender mounted on a chassis of same dimension can enter the complex whenever there is emergency due to outbreak of fire. Whether necessary protocols, which are to be followed in case of outbreak of fire, were followed at the time when the said video was shot is not discernible from the impugned order.

18. Moreover, video shot by an interested person cannot be the sole basis for deciding appeal in his favour. Fire



safety audit of a Group Housing Complex has to be done by domain experts, be it the authorities of Fire Safety Department or experts from other independent agency dealing with the subject. Even otherwise also, before relying upon such video, its authenticity has to be ascertained and it is to be ensured that it is not doctored or manipulated. No person who witnessed the mock drill, alleged to be conducted by respondent No. 5, was examined by the District Magistrate before deciding the appeal.

19. In the impugned order, District Magistrate has observed that the extent to which RCC slab in question has to be corrected/adjusted is not indicated in the notice given by Fire Safety Department, therefore appeal deserves to be allowed. Fire Safety Department has flagged the issue of obstruction of the passage due to unauthorized construction raised by the builder, therefore, it is for the builder to address the issue raised by Fire Safety Department either by removing the RCC slab or by reducing its size and changing the design, so that the RCC slab do not cause any hindrance in ingress and egress of fire tenders and other fire-fighting machinery within the group housing complex.

20. There is nothing to indicate in the impugned order that District Magistrate visited the site or called report from authorities of Fire Safety Department or MDDA or Revenue Department, before directing Chief Fire Officer to issue NOC. Since the notice, appealed against is based on report of fire mock drill conducted by experts in the field of fire safety, therefore, it was incumbent upon the



Appellate Authority to arrive at the satisfaction objectively that the RCC slab and other constructions raised by respondent No. 5 meet the fire safety standards prescribed in National Building Code of India and Rules/regulations/Bye-laws framed on the subject. Such satisfaction can be arrived at based on some material, however reading of the impugned order indicates that there was no material available before the appellate authority, except the video produced by the builder, which cannot be the sole basis for allowing the appeal.

21. Perusal of the impugned order reveals that District Magistrate was alive to existence of RCC slab which could not have been overlooked by Fire Safety Department, while granting NOC, yet Chief Fire Officer was directed to issue NOC by holding that MDDA is aware about the rules/bye-laws applicable for compounding of unauthorized structure raised by respondent No. 5.

22. For the reasons aforesaid, the impugned order dated 18.01.2023 passed by District Magistrate, Dehradun cannot be sustained in the eyes of law and the same is liable to be set aside and is hereby set aside.

23. Accordingly, the writ petition is allowed.

24. The matter is remitted back to the District Magistrate, Dehradun to decide the appeal filed by respondent No. 5, afresh, as per law after hearing all necessary parties.

MANOJ KUMAR TIWARI, J.

Dt: 01.07.2026
Mahinder