

Allahabad High Court Stays Demolition Order Against UP Hospital Accused Of Transfusing Fruit Juice To A Dengue Patient

HIGH COURT OF JUDICATURE AT ALLAHABAD
SURYA PRAKASH KESARWANI; J., VIKAS BUDHWAR; J.

WRIT C No. 32813 of 2022; 28.10.2022

Malati Devi versus State of U.P. and 3 Others

Counsel for Petitioner:- Ashutosh Mishra, Abhay Nath Srivastava

Counsel for Respondent :- C.S.C., Ishan Deo Giri

Heard Sri Ashutosh Mishra, learned counsel for the petitioner, Sri Dilip Kumar Kesarwani, learned Additional Chief Standing counsel for the respondent No.1 and Sri Ishan Deo Giri, learned counsel for the respondent Nos.2, 3 and 4.

This writ petition has been filed praying for the following relief:

"I. issue writ, order or direction in the nature of certiorari quashing the impugned order dated 19.10.2022 (ANNEXURE-4) passed by Respondent 4.

I. issue a writ, order or direction in the nature of MANDAMUS directing the respondent Nos.2 to 4 to not seal the property of the petitioner."

According to the petitioner, she purchased part of Plot No.517 measuring 179.2 square meters situate in Village Saha @ Pipalgaon, Tehsil Sadar, District Prayagraj by a registered sale deed dated 14.10.2009. She constructed a house over it. In paragraph-6 of the writ petition, it has been stated that under a rent agreement dated 10.02.2021, the petitioner has let out 18 rooms along with two shops to one Mr. Shyam Narayan at the rent of Rs.50,000/- per month for ten years, who is operating a hospital under the name and style of "Global Hospital". In paragraphs-8 and 9 of the writ petition, it has been stated that on account of certain lapses by the aforesaid tenant, his hospital has been sealed by the Chief Medical Officer, Prayagraj. In paragraphs 12 and 13 of the writ petition, it has been stated that for the first time, the petitioner has received a notice dated 19.10.2022 on 21.10.2022 from the Zonal Officer, Prayagraj Development Authority (PDA) in which it is mentioned that an order for demolition of the house in question was passed by the respondent No.2 on 11.01.2022, whereas neither any notice nor any order of demolition has been received by her. It has also been stated in paragraph-8 of the writ petition that the petitioner is residing in the floor above the hospital. In paragraph-20 of the writ petition, it has been stated that the construction over the land in question was made by the petitioner at the time when the area in question was not within the limits of the Prayagraj Development Authority and as such, there was no sanctioned map of the aforesaid property. In paragraph-22, the petitioner has stated that the petitioner is ready and willing for compounding illegal structure, if any, as per Section 32 of the U.P. Urban Planning and Development Act, 1973 provided a reasonable opportunity is given to her.

Learned counsel for the petitioner submits that the petitioner is willing to submit objection to the ex parte notice/ demolition order dated 11.01.2022 and shall also submit a map of the house in question before the respondent No.2 which may be examined by the respondent No.2 or the competent authority and if any construction of the house in question is found illegal or contrary to the bye-laws of the PDA, then the petitioner may be afforded an opportunity for compounding and if any portion is found not compoundable, then action may be taken by the PDA in accordance with law.

Learned counsel for the respondent Nos.2, 3 and 4 states on instructions that the petitioner may submit objections raising all her grievances as may be available to her under law, along with a map of the house in question which shall be examined by the PDA and an appropriate order in accordance with law shall be passed.

In view of the statement made by the learned counsel for the respondent Nos.2, 3 and 4, we do not find any good reason to keep the writ petition pending and to call for counter affidavit.

For all the reasons aforesaid, **this writ petition is disposed of** giving liberty to the petitioner to file an objection within two weeks before the respondent No.2 raising all her grievances, along with a map of the house in question. In the event, such an objection along with map of the house in question is filed by the petitioner within the stipulated period then the respondent No.2 shall get it verified in terms of the bye-laws of the PDA and shall examine the objection of the petitioner and pass an appropriate order in accordance with law within next four weeks, after affording reasonable opportunity of hearing to the petitioner including opportunity to file a compounding application in the event the construction is found compoundable in accordance with law. It is clarified that if any portion of the construction is found not compoundable, then the respondent No.2 shall be at liberty to proceed in accordance with law.

For a period of six weeks or till the order as aforesaid is passed by the respondent No.2, whichever is earlier, no coercive action shall be taken by the respondents against the petitioner either pursuant to the demolition notice/ order dated 11.01.2022 or pursuant to the impugned sealing notice dated 19.10.2022.

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