

**Court No. - 40**

**Case :-** WRIT - C No. - 5761 of 2024

**Petitioner :-** Brijmohan Tanwar

**Respondent :-** State Of Up And 4 Others

**Counsel for Petitioner :-** Anil Kant Tripathi, Praveen Kumar

**Counsel for Respondent :-** C.S.C., Pradeep Kumar Tripathi, Ravi Prakash Pandey

**Hon'ble Ashwani Kumar Mishra, J.**

**Hon'ble Syed Qamar Hasan Rizvi, J.**

1. A grievance is raised in the present petition that constructions are being allowed by the development authority contrary to the sanction plan on account of which petitioner's adjoining constructions are getting damaged. Taking note of such contention, we passed following orders on 26.2.2024:-

*"1. Grievance of the petitioner is that private respondents are raising construction contrary to the sanctioned map on account of which petitioner's construction, on the adjoining, is getting damaged.*

*2. Learned counsel for the Development Authority is directed to obtain instructions in the matter.*

*3. Let notices be also issued to fifth respondent by registered speed post for which appropriate steps shall be taken within 24 hours, fixing 13th March, 2024 as the date in the matter.*

*4. List again as fresh on 13.03.2024.*

*5. In the meantime, the Development Authority shall ensure that no constructions contrary to sanctioned map are allowed to be raised."*

2. Sri Pradeep Kumar Tripathi, learned counsel representing development authority states that though constructions are being raised by the private respondents over and above the area for which map has been sanctioned but such constructions are within the compoundable limits. Written instructions are produced as per which the private respondent has been given an opportunity to apply for compounding.

3. Urban areas are required to be developed in accordance with the plan. It is with this object that U.P. Urban Planning and Development Act, 1973 has been enacted. The authorities have also framed building bye-laws which permits constructions on specified area only after getting the plan approved. In the present

case also the private respondent has in fact got a map approved. In case constructions are raised as per it, there can hardly be any objection. In this case also the private respondent has secured sanction of a residential construction and in the event such constructions are undertaken, there can be no objection. However, it transpires that constructions are being raised by the private respondent in excess of construction allowed as per the approved plan. The authority instead of allowing constructions to be raised strictly as per the approved plan is permitting the private respondent to raise additional constructions on the ground that such additional constructions are compoundable.

4. Building bye-laws and plans are supposed to be followed scrupulously so that urban development is allowed in a planned manner. What is, however, disturbing is the practice of allowing constructions in excess of approved plan and thereafter entertaining compounding plans, ostensibly with the purpose of augmenting the financial interest of the development authority. The object of establishment of development authority is planned development and not to allow illegal constructions and thereafter compound illegal constructions by charging huge money. Organized nexus appears to be operating in the development authorities where the builders, in collusion with other elements collude for raising constructions contrary to the building plan.

5. We can appreciate the rationale for allowing compounding where prior sanction is not obtained for various reasons. The authority, however, while compounding the plan must not allow constructions over and above the permissible constructions in the building bye-laws. In the event authority eases the norms of permissible constructions as per the building bye-laws, while compounding the plan, it allows not only curing the illegality but also encourage illegal constructions which would violate the object of planned development. An honest person who gets his building plan approved as per the building bye-laws would be allowed to raise constructions over a lesser area, while the one who violates the law by raising illegal constructions is allowed to raise additional constructions in the garb of compounding, by paying additional money, to the authority. While development authority benefits in the form of additional revenue from compounding the unscrupulous elements operating in the field also benefit. Everyone wins at the cost of planned development.

6. Question arises thus as to whether the development authorities are established to secure planned development or are to facilitate large scale violation of building bye-laws in the name of

compounding. In the facts of the present case also we find from the instructions that though the authority has been made aware that constructions are being raised contrary to the building plan and in excess of the permissible area over which constructions are allowed in the building plan but instead of ensuring that constructions are restricted only in accordance with the approved plan, the authority is facilitating compounding by calling upon the private respondents to get such illegality regularized. This approach of the development authority has to be discouraged.

7. The development authority has been constituted to ensure that constructions are allowed to be raised strictly as per the plan. The foremost endeavor has to be ensure that no constructions contrary to the plan are allowed. The practice of allowing deviations and then facilitating such departures from the norms by getting the maps compounded must stop.

8. In the facts of the present case, we call upon the respondents to ensure that no constructions in excess of the sanction plan is allowed to be raised on the spot. The State Government is also directed to issue immediate directions to all development authorities to ensure that no constructions are allowed to be raised over and above the permissible constructions as per the building bye-laws. We may also specify that the norms for constructions as per the building bye-laws must not be relaxed in cases of compounding, inasmuch as the compounding can only be to facilitate *ex-post facto* approval of plan, but while doing so, the building norms cannot be relaxed. What is not permissible under the building bye-laws should not be allowed by way of compounding. The Principle Secretary of the Department of Housing shall, therefore, file his personal affidavit in compliance of the above directions. The Vice-Chairman shall ensure that no constructions on the plot is allowed to be raised except in accordance with the sanction plan. The authority shall also make an assessment of the damage which apparently has been caused to the petitioner's construction on account of deviations allowed while raising constructions by the private respondents.

9. List as fresh on 8.4.2024.

**Order Date :- 13.3.2024**

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