

Court No. - 6

Case :- WRIT - C No. - 42393 of 2023

Petitioner :- M/S Nutema Helth Care Pvt.Ltd.

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Abhinav Gaur,Sr. Advocate,Vibhu Rai

Counsel for Respondent :- C.S.C.,Shiv Prakash Gupta

Hon'ble Mrs. Manju Rani Chauhan,J.

1. Heard Mr. Anoop Trivedi, learned Senior Advocate assisted by Mr. Vibhu Rai, learned counsel for the petitioner, learned Standing Counsel for the State-respondent and Mr. J.N. Maurya, learned counsel for respondent.

2. The present writ petition has been filed with a prayer to quash the order dated 18.11.2022 passed by Chairman, Meerut Development Authority in a proceeding under Section 28(A)(4) of U.P. Urban Planning and Development Act, 1973 (for short, the Act, 1973) to the extent it imposes a precondition of removal of 40% of the construction/partition within a month as well as order dated 14.11.2023 passed by respondent no. 5 and further prayed to direct the respondent Development Authority not to take any coercive measure against the petitioner and decide the compounding application of the petitioner pending since 2017.

3. Brief facts of the case are that a hospital namely M/S Nutema Health Care Pvt.Ltd. became operational from 06.04.2017 after completion of construction in accordance with map as sanctioned by the Meerut Development Authority (for short, the Authority). It is one of the leading health care providers of the Meerut District having multi-specialty care. A dispute with regard to the parking space in the hospital arose, therefore, an adjoining land was

purchased by the petitioner placing an application for compounding map before the Development Authority in the year 2017 requesting for construction of multi level parking at the adjoining land, so purchased. During pendency of the aforesaid application, surprisingly an order dated 20.10.2021 has been passed in a proceeding initiated under section 28(A)1 of 1973 Act, arbitrarily ceiling the premises of the petitioner on the pretext of parking place being used for Lab, Operation Theater and Blood Bank. The petitioner preferred an appeal against the aforesaid order which was decided by order dated 18.11.2022, whereby the Chairman at one place admits that the compounding map of the petitioner is pending consideration before the Authority however, it directs for removal of 40% of the partitioned area within a month. It was further directed that in case the pending application is placed before the Authority, it shall be decided within a month. Pursuant to the aforesaid order, the petitioner represented before the Chief Town Planner and the Zonal Officer with regard to the consideration of compounding map after depositing the amount of Rs. 1,25,00,000/-, but the same is pending consideration. The authorities ignoring the aforesaid application, suddenly passed an order dated 14.11.2023 whereby it has been directed that 40% of the partitioned area in the property in question may be removed within 21 days and accordingly the compounding map may be submitted or else after the lapse of the said period coercive action would be taken under the provisions of the Act, 1973. Hence this petition.

4. Placing reliance upon a judgement passed in Writ-C No. 48660 of 2015 (M/s Gaursons India Ltd. Vs. State of U.P. and 3 others), learned counsel for the petitioner submits that the initial order dated 20.10.2021, as passed in the proceedings under Section

28A(1) of 1973 Act, is without jurisdiction. As the per-requisite condition for passing an order under Section 28-A of the Act, 1973 is that a notice under sections 27 or 28 of the Act, 1973 should have been issued earlier. He further submits that under Section 28-A of the Act, 1973 provides power to seal unauthorized development which says that Vice Chairman or an officer empowered by him at any time before or after making an order for the removal or discontinuance of any development under Section 27 or Section 28 to make any order directing the sealing of such development in a development area in such manner as may be prescribed for the purposes of carrying out the provisions of this Act. Thus the proceedings under Section 28-A of the Act 1973, it could have been initiated in the matters where development work is being carried out as against the sanctioned map however in case where the property or area in question is being used for a different purpose for which it is sanctioned, the proceeding under section 26(2) would lie. In the order dated 20.10.2021, it has been specifically mentioned that the parking space is being used for some other purposes, therefore, the order dated 20.10.2021 is without jurisdiction. He further submits that when once the initial proceedings are without jurisdiction thus the consequential proceeding of sealing the premises by order dated 14.11.2023 whereby it directs to remove 40% of partitioned area in the property in question within 21 days and place the compounding map, cannot be sustained. Learned counsel for the petitioner lastly submits that once an application for compounding map has been placed alongwith Rs. 1,25,00,000/-, it was duty of the authorities to decide the same prior to passing any order.

5. The counsel for the Development Authority as well as learned Standing Counsel for the State-respondents could not dispute the

aforesaid fact that the orders dated 18.11.2022 and 20.10.2021 are without jurisdiction however, submits that they are not going to sealing the premises pursuant to order dated 14.11.2023 and shall decide the application for compounding map as placed before the Authority within stipulated period as directed by the Court.

6. Heard counsel for the parties.

7. Reading of Section 28-A of the 1973 Act would indicate that the Vice-Chairman of the Development Authority can at any time, before or after making an order for the removal or discontinuance of any development under Section 27 or Section 28, make any order directing the sealing of such development in a development area. This clearly indicates that if any order is to be passed under Section 28-A of the Act, 1973 it is imperative that proceedings under Sections 27 or 28 of the Act, 1973 should have been initiated and it is only in that event that an order can be made under Section 28-A of the Act, 1973 either before or after making an order under Section 27 or 28 of the Act. Perusal of Section 27 of the Act, 1973 shows that the same deals with the order of demolition of building where any development has been commenced or is being carried on or has been completed in contravention of the sanctioned plan. Section 28 of the Act deals with the power to stop such development, if the same is being carried out in contravention of the sanctioned plan or without the permission, approval or sanction.

8. It is a settled legal proposition that if an initial action is not in consonance with law, all subsequent and consequential proceedings would be vitiated. The Apex Court in the case of **State of Punjab vs. Davinder Pal Singh Bhullar (2011) 14 SCC 771**, has held that if initial action itself is illegal, all subsequent actions

emanating from that act are also a nullity.

9. In **Badrinath v. State of Tamil Nadu & others**, AIR 2000 SC 3243 and **State of Kerala v. Puthenkavu N.S.S. Karayogam & Anr**, (2001) 10 SCC 191, the Apex Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, quasi-judicial and administrative proceedings equally.

10. Similarly in **Mangal Prasad Tamoli (dead) by Lrs. v. Narvadeshwar Mishra (dead) by Lrs. & Ors.**, (2005) 3 SCC 422, the Apex Court has held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be non est and have to be necessarily set aside.

11. In the present case, the order dated 20.10.2021 has been passed arbitrarily under the pretext that the parking space is being used for some other purposes i.e. there is wrongful use of the parking space. Thus, the proceedings initiated under section 28-A (4) of the Act, 1973 and the orders passed therein are without jurisdiction and are liable to be set aside.

12. In view of the above, the impugned orders dated 18.11.2022 and 20.10.2021 are hereby quashed. However, the respondent no. 3 is directed to pass an appropriate order in the application for compounding pending before him within a period of one month from today. With respect to the statement given by learned counsel for the Development Authority that the order dated 14.11.2023 is not being implemented, it is provided that same shall abide by final orders to be passed in the application for compounding. Until the final order is passed in the said application, no coercive action shall be taken against the petitioner.

13. With the aforesaid observations and directions, the writ petition is allowed.

14. No order as to costs.

Order Date :- 6.12.2023

Arti