

IN THE SUPREME COURT OF INDIA Corrected Copy

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3138 OF 2009

HARIDWAR DEVELOPMENT AUTHORITY, HARIDWAR ... Appellant

VERSUS

MAHANT DAYAL DAS CHELA LATE MAHANT
DOOJ DASS AND ANR ... Respondents

WITH

CIVIL APPEAL NO. 3284 of 2009

O R D E R

The Master Plan and Zonal Development Plan of Haridwar (1985-2001) were prepared and notified after following the procedure prescribed under Sections 8 to 12 of the Uttar Pradesh Urban Planning and Development Act, 1973 (for short, 'the Act'). The relevant portion of the Master Plan is extracted below:

"Use Zone P-1: Park and open Space.

(A) Permitted land use:- ordinary entertainment facilities like play ground, swimming pool, Gymnasium, Stadium, Covered play ground, Camping area, Picnic area, Fruits garden, Golf Course, Geological and botanical garden, Cycle, Scooter, Taxi, Tanga and Bus Stand, temporary recreations like Circus, Exhibition, Mela, Ramleela etc. residences of Watchman and Gatekeeper, Gardens and Laboratory.

(B) Forbidden Use: any building or hut which is not necessary for entertainment in open air.

Use Zone P-3: Kumbh Mela Area- (A) Permitted land use: Residential facilities like Tent prepared by temporary build-up material, etc., barricading, parking of heavy and light vehicles, Government or Semi-Government offices prepared by temporary build-up material, police post, post-office, Hospital, visitors room, enquiry office, free water supply and space for retention, latrines, urinals and bathroom, Niyam Kaksh, press reported room, with residential facility.

(B) Approved use land in special circumstances by the Board of Development Authority: facilities related to entertainment, shops prepared by temporary build-up matter, Helipad, Stands for parking of Vehicles (on rent), floating corporative use of temporary nature like - cinematography room, circus etc., restaurant, exhibition area, N.C.C. Camp.

(C) Forbidden use: all land use except above said."

After formation of the State of Uttarakhand, the Government of the new State issued order dated 4.5.2001 and declared that the Master Plan shall remain in force till the new Master Plan is prepared and enforced.

Respondent No.1 - Mahant Dayal Das submitted an application for sanction of the building plan in respect of the land comprised in Khasra Nos. 4/27, 4/28 and 48/28M situated at Bhopatwali, Haridwar. His application was rejected by the competent authority vide order dated 21.8.2008 on the ground that as per the Master Plan of Haridwar, Khasra Nos.4/27 and 4/28 were shown in "Use Zone P-3": Kumbh Mela Area and Khasra No. 48/28M was shown in "Use Zone P-1": Park and Open Space.

Respondent No.1 could have challenged the rejection of the building plan by filing an appeal under Section 15 (5) of the Act, as applicable to the State of Uttarakhand but instead of doing so, he filed writ petition under Article 226 of the Constitution by asserting that the reasons assigned for not approving his building plan were irrelevant and extraneous and the decision of the competent authority was violative of his right to property.

In the counter affidavit filed on behalf of Haridwar Development Authority (appellant in Civil Appeal No.3138/2009), an objection was taken to the maintainability of the writ petition on the ground that an effective alternative remedy was available to the writ petitioner which he had failed to avail.

The learned Single Judge did not advert to the plea of the appellants that an effective alternative remedy was available to the writ petitioner and quashed order dated 21.8.2008 by observing that non-sanction of the building plan amounted to violation of Article 300-A of the Constitution.

We have heard learned counsel for the parties and carefully perused the record. Sections 14 (1) and (2) and 15 (1), (2), (3), (4) and (5) which provide for development of land in the developed area and remedy against refusal of the competent authority to grant permission for development read as under:

"14. Development of land in the developed area.-(1) After the declaration of any area as development area under Section 3, no development of land shall be undertaken or carried out or continued in that area by any person or body (including a department of Government) unless permission for such development has been obtained in writing from the Vice-Chairman in accordance with the provisions this Act.

(2) After the coming into operation of any of the plans in any development area no development shall be undertaken or carried out or continued in that area unless such development is also in accordance with such plans.

15. Application for permission.-(1) Every person or body (other than any department of Government or any local authority) desiring to obtain the permission referred to in Section 14 shall make an application in writing to the Vice-Chairman in such form and containing such particulars in respect of the development to which the application relates as may be prescribed by bye-laws.

(2) Every application under sub-section (1) shall be accompanied by such particulars as may be prescribed by rules.

(3) On the receipt of an application for permission under sub-section (1), the Vice-Chairman after making such inquiry as it considers necessary in relation to any matter specified in clause (d) of sub-section (2) of Section 9 or in relation to any other matter, shall by order in writing either grant the permission, subject to such conditions, if any, as may be specified in the order or refuse to grant such permission :

Provided that before making an order refusing such permission, the applicant shall be given a reasonable opportunity to show cause why the permission should not be refused :

Provided further that the Vice-Chairman may before passing any order on such application give an opportunity to the applicant to make any correction therein or to supply any further particulars of documents or to make good any deficiency in the requisite fee with a view to bringing it in conformity with the relevant rules or regulations.

Provided also that before granting permission, referred to in Section 14 the Vice-Chairman may get the fees and the charges levied under sub-section (2-A) deposited.

(4) Where permission is refused, the grounds of such refusal shall be recorded in writing and communicated to the applicant.

(5) Any person aggrieved by an order under sub-section (4) may appeal to the Chairman against that order within thirty days from the communication thereof and may after giving an opportunity of hearing to the appellant and, if necessary, also to the representative of the Vice-Chairman either dismiss the appeal or direct the Vice-Chairman to grant the permission applied for with such modifications, or subject to such conditions, if any, as may be specified."

A reading of the above reproduced provisions makes it clear that the legislature has not only imposed restriction on development of land in any area declared as development area under Section 3 except after obtaining permission from the Vice-Chairman but also provided for a remedy of appeal against the decision of the competent authority refusing to grant permission to carry out development in the development area. The remedy of appeal available under Section 15(5) of the Act cannot, by any stretch of imagination, be treated as ineffective or inefficacious. Therefore, the learned Single Judge was not justified in entertaining and allowing the writ petition ignoring the objection raised in the counter affidavit filed on behalf of Haridwar Development Authority. Indeed, it was neither the pleaded case of respondent No.1 nor it was argued that his case falls within the ambit of any of the exceptions carved out by this Court to the rule of alternative remedy - Babu Ram v. Zila Parishad AIR 1969 SC 556, Harbanslal Sahnia v. Indian Oil Corporation Ltd. 2003) 2 SCC 107 and United Bank of India v. Satyawati Tondon (2010) 8 SCC 110.

For the reason stated above, the appeals are allowed, the impugned order is set aside and the writ petition filed by respondent No.1 is dismissed. However, it is made clear that the writ petitioner and/or his successors-in-interest shall be free to avail the remedy of appeal under Section 15(5) of the Act. We also direct that if such an appeal is filed within a period of two months from today, then the appellate authority shall decide the same on merits.

.....J.
[G.S. SINGHVI]

.....J.
[SUDHANSU JYOTI MUKHOPADHAYA]

New Delhi,
December 5, 2012.
ITEM NO.19

COURT NO.4 SECTION X
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 3138 OF 2009

HARIDWAR DEVELOPMENT AUTHORITY, HARIDWAR Appellant (s)
VERSUS
MAHANT DAYAL DASS CHELA LATE MAHANT DOOJ DAS & ANR Respondent(s)

(With appln(s) for permission to place addl. documents on record and intervention and exemption from filing O.T. and permission to file additional affidavit and permission to bring additional facts and documents on record and permission to bring additional documents)(For final disposal) WITH Civil Appeal NO. 3284 of 2009
(With appln.(s) for permission to file additional affidavit and substitution of Lrs. of the deceased respondent and exemption from filing O.T. and office report)

Date: 05/12/2012 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Appellant(s) Mr. Sunil Gupta, Sr. Adv.
Mr. Vinay Garg, Adv.
Mr. Rohit Sthalkar, Adv.

Mr. Mukesh Verma, Adv.

For Respondent(s) Mr. Vijay Hansaria, Sr. Adv.
Ms. Manjula Gupta, Adv.
Ms. Sneha Kalita, Adv.
Mr. Devendra Kr. Singh, Adv.

Mr. Mukesh Verma, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeals are allowed in terms of the signed order and the impugned order is set aside.

As a sequel to final disposal of the appeals, all the pending applications are also disposed of.

(Parveen Kr. Chawla)
Court Master

(Phoolan Wati Arora)
Court Master