

Bareilly Development Authority

Vs

Methodist Church of India and Another

Special Leave Petition No. 1264 of 1988

(A.P. Sen, L.M. Sharma JJ)

12.02.1988

ORDER

1. We are satisfied that in the facts and circumstances of the case, the judgment of the High Court does not call for any interference.
2. Purporting to act under Section 28(1) of the U.P. Urban Planning and Development Act, 1973, the Bareilly Development Authority served a notice dated June 17, 1987 directing stay of further construction of the proposed commercial complex as per sanctioned plan by the Methodist Church of India, respondent 1, over an area of 7 acres at 95, Civil Lines, Bareilly forming part of the mission compound where the mission hospital as well as a medical college are located. Thereafter, the Development Authority served another notice dated June 19, 1987 purporting to act under Section 27(1) requiring respondent 1 to show cause why the said construction being unauthorised should not be demolished on the ground that there was a breach of condition No. 6 of the sanctioned plan, namely, failure to complete the work of construction within a period of three years w.e.f. November 11, 1983, the date of order of the sanctioned plan. On January 24, 1984, the Development Authority passed a contrary order rejecting the building plan on certain ground. As there were two conflicting orders, respondent 1 took up the matter with the State Government and the government on April 8, 1985 remitted the matter to the Development Authority for consideration afresh according to law. Pursuant to the advice tendered by the government, the Development Authority reconsidered the entire matter and took a fresh decision on May 30, 1985 to the effect that approval and permission accorded on November 11, 1983 would stand restored and according the subsequent order dated January 24, 1984 rescinding sanction be treated as ineffective. The decision so arrived at was communicated by the Development Authority not only to the government but also to respondent 1, in consequence whereof respondent 1 resumed the work of construction. Subsequently, the Development Authority presumably setting on the suspicion that the sanction of the building plan had been obtained by the builders fraudulently, directed as investigation by the Central Investigation Department but the result of the investigation is not known. In the meanwhile, the Development Authority proceeded to pass the impugned order dated July 19, 1987 directing the demolition of the structure on the ground that the construction had not been completed within the prescribed period and that it was in contravention of the master plan.
3. By its reasoned judgment, the High Court has rightly quashed the impugned notices as well as the order of demolition on the ground that there was no breach of condition No. 6 of the order granting sanction. It rightly held that in computation of the period of three years for completion of the proposed building, the period from January 24, 1984 to May 30, 1985 i.e. the period during which the work of construction had been stopped, had to be excluded.

4. After hearing learned counsel at quite some length, we have no doubt that it would clearly be against the public interest to prevent the construction of the commercial complex by respondent 1 according to the sanctioned plan. Shri Anil Divan, learned counsel for the petitioner, with his usual fairness, could not question the correctness of the view taken by the High Court that there was no breach of condition No. 6. He complained that the construction of the proposed commercial complex would be in violation of the provisions of the master plan as the land comprising of about 40 acres forming the this, Shri Asoke Sen appearing for respondent 1 very fairly offers that one of the floors of the three-storeyed commercial complex shall be converted into a modern air-conditioned Nursing Home to be run by respondent 1 on a commercial basis, having regard to the land user in the master plan. Shri Divan submits that this should be made a prerequisite. We order accordingly. The grant of sanction for the construction of the proposed commercial complex shall be subject to the fulfilment of this condition.

5. The compliance of the aforesaid condition, namely, conversion of one of the floors into a Nursing Home, shall not come in the way of the completion of the building by the end of April 1988, as directed by the High Court. Respondent 1 shall be at liberty to move the petitioner for necessary modification of the sanctioned plan in relation to the floor intended and meant to be used as a Nursing Home within six weeks from today. Shri Divan assures on behalf of the Development Authority that the necessary sanction shall be granted subject to compliance of the relevant building bye-laws and he further states that the time for completion would be suitably extended, if necessary.

6. The special leave petition is disposed of accordingly.

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