T.N. Rugmani and Another

Vs

C. Achutha Menon and Others

Civil Appeals Nos. 557-558 of 1986

(K.N. Saikia, R.M. Sahai JJ)

20.12.1990

JUDGMENT

R. M. SAHAI J

1. Much ado about nothing' or the appellants were guilty of condemnable conduct' disentitling them from any relief in equity jurisdiction was the issue which was debated, vigorously, in these appeals directed against order of the Kerala High Court. More so because the High Court, not only, dismissed the writ petition of appellants but issued directions, in a public interest litigation to the Municipal Council to take appropriate action in relation to the construction, raised in pursuance of interim order granted by the court.

2. Nature of public interest litigation, its pro bono publico content, justification for entertaining it are not proposed to be gone into but it need be observed that the court being ceased of a petition dealing with same subject matter, it would have been more appropriate if, it could have exercised restraint in light of the law laid down by this Court in Chhetriya Pradushan Mukti Sangharsh Samiti v. State of U.P. (1990) 3 JT 685 : (AIR 1990 SC 2060), Ramsharan Autyanuprasi v. Union of India, 1989 Suppl (1) SCR 251 : (AIR 1989 SC 549) and Sachidanand Pandey v. State of West Bengal (1987) 2 SCC 295 : (AIR 1987 SC 1109). Merely because authorities constituted under the statute failed in their effort to get interim order vacated was hardly any occasion for invoking jurisdiction under Art. 226 by way of public interest litigation. We stop at this as what started as grievance against flagrant disregard of provisions of law by the Urban Development Authority and Municipal Council of Trichur (for brevity TUDA and MC respectively) for unjustifiably, withholding permission to raise construction on land which was not earmarked for any scheme for planned development under Town Planning Act (referred as Act) changed complexion with appearance of no less a person than exChief Minister of the State espousing social cause, joined, later, by a local editor, of newspaper, as well, and this Writ Petition No. 11011/83 became the main petition with impleadment of the appellant and Shri Unnikrishnan (hereinafter referred as UK) the petitioner of Petition No. 5287/ 83. However, we may hasten to add, to obviate any misgiving, that if the finding recorded by the High Court that theWrit Petition No. 5287/83was not maintainable or the appellant by their condfit forfeited their right to get redress is well founded then no other issue arises irrespective of it that the material which formed the basis for the aforesaid finding was collected in petition No. 11011/ 83 filed in public interest whereas the building was constructed in pursuance of interim order granted in Writ Petition No. 5287 of 1983.

3. Taking up the issue of non-maintainability it may be stated that denial of constitutional remedy,

for this reason, cannot be equated with bad faith or lack of bona fide. The scope of the two are different. In one a person may be honest and his grievance genuine yet the Court may not be able to grant him any relief either because the cause of action or any part of it did not arise within the territorial jurisdiction exercised by the High Court or the petition may be defective as the person approaching may not be entitled to file it. That is something akin to lack of jurisdiction. The other, namely, dismissal for bad faith arises due to improper conduct of the person invoking Jurisdiction either before or after presentation of the petition. Even an unassailable cause or illegal and arbitrary order may fail to move the conscience of the Court due to inequitable and unjustifiable behaviour or conduct in equitable jurisdiction. The basic error committed by the High Court was that it did not keep in mind the distinction between non-maintainability and lack of bona fide. Consequently it held the petition No. 5287 of 1983 to be not maintainable because of its conclusions that even though appellants were the real owner the petition was filed by another person and the appellants had not come to Court with correct and true disclosure. The error in this finding shall stand demonstrated when the two are examined separately, as should have been done by the High Court. Writ Petition No. 5287/ 83 was filed on behalf of one M. B. Menon Unnikrishnan (hereinafter referred as MBUK) with power of attorney in favour of Shri E. P. G. Menon (hereinafter referred as EPG) for direction to the TUDA to sanction the plan as directed by the State Government. It has been found by the High ' Court that there was no one with this name. True, but that was. inadvertent error as UK who, admittedly, was the owner of the plots in dispute filed an affidavit admitting that Writ Petition No. 5287 of 1983 was filed on his behalf by his father as holder of power of attorney. He explained that his name was wrongly described in cause title as MBUK. And his father, who signed on his behalf, inadvertently failed to notice the mistake. This was admitted even by EPG, when he appeared as witness. The petition was, thus, filed by a person who was very much there except that his name was incorrectly mentioned. The High Court in view of these facts, unnecessarily, made too much of small inadvertent - mistake. From evidence on record, specially deposition of EPG, it is clear that on the date when petition was filed UK was the real owner and there was only a proposal between EPG and Shankernarayanan (referred as SN) for sale of land in dispute which materialised long after filing of the petition. Therefore, SN could not have filed the petition in March 1983. Accepting everything found by the High Court SN, utmost, was an interested person who could not have approached the Court for issuing a writ of mandamus to State Government since on the date of filing of petition no right or title vested, in the land in dispute, in him. Nor he could be considered to be a person aggrieved by inaction of 'I'UDA who could have sought any direction from the Court. The High Court, therefore, decided the maintainability of the petition, erroneously, not on the facts as they were on the date when petition was filed but on subsequent events which took place much thereafter. The finding in these circumstances that appellant was real owner and he should have filed the petition cannot be sustained.

4. Coming to the next and most crucial, as well as serious issue learned single Judge of the High Court found that since there was no person MBUK it was apparent that real person did not come forward 'obliquely'and the petition was filed deliberately with allegations which were untrue to mislead the court. The court held that averment in the petition that MBUK had, 'no other land', did not fit with SN who was owner of extensive property. The court from this and other allegations inferred that it was deliberately done by SN to obtain interim order as such allegations could not have been made by him if he would have himself filed the petition. The learned judge ventured a guess that the judge who granted the, interim order and thereby, 'virtually allowed the petition' was misled, 'deliberately and totally by projecting a poignant personal grievance, of a person having 18 cents of land in the town obtained in the partition in his own family eager to put up a building therein, but unjust harassed by the authorities'. After reaching this conclusion the learned judge went

into evidence collected in W. P. 11011/ 83 and records summoned from Govt. and local authorities and found that various applications for permission to sanction the plan and representations having not been signed, by the person by whom they were purported to have been signed it was forgery and fraud committed by appellants and they were not entitled to any relief. In appeal the Division Bench affirmed the order.

5. Needless to say that if any of these findings either collectively or individually are found to he correct then they were sufficient to warrant dismissal of the writ petition. But by nature of harsh consequences they entail they were required to be examined closely and carefully. The finding that interim order was obtained either on incorrect allegations or with oblique motive to mislead the court is based on assumptions which are unfounded and proceeded more on imagination than truth. The learned judge drew adverse inference against appellant and fastened falsehood on him because he could not have succeeded in persuading the court that he was not possessed of any land. But what was lost sight of was that ownership of 18 cents of land, only, or number of buildings was totally irrelevant for the relief sought in the petition. The claim was grounded on failure of TUDA to obey direction issued by Govt. to grant permission to construct on the land in respect of which no development scheme was pending and not on possession of any building, land or house. The High Court, thus proceeded on irrelevant considerations in recording the finding that the interim order was obtained by, projecting poignant personal grievance'.

6. As regards finding of forgery, fraud and misrepresentation the High Court found that since the application for permission for sanction, before the local authorities, represensation before the Govt., orders in pursuance of it and various other letters exchanged between authorities and the person applying for permission were not signed by the person on whose behalf they were purported to have been made, they were forged. Reliance was placed on depositions of Sri M. B. Menon (referred as MB) and EPG. Occasion to record their statement arose as according to learned single judge, 'The scrutiny of those files, prima facie, indicated a disturbing situation about the manner in which Governmental and quasi-governmental institution were being misled to pass orders on spurious representations and forged applications'. From the evidence on record it is, und6ubtedly, established that many applications and letters were not signed by MB or EPG, on whose behalf they were purported to have been made. But the error in which the High Court fell, resulting in erroneous finding, was its failure to appreciate the oral testimony as a whole and decide if the applications were given or orders obtained for any undue benefit to the appellant. What is astonishing, is that, the court proceeded to record such grave findings, that there had been committed such serious acts as forged fabrication of documents and deliberate misleading of local authorities and govt. on the basis of such forged, fabricated documents without finding necessary facts to raise an inference in law. Mere denial of signature or the proof that it was not signed by MB or EPG was insufficient to warrant the conclusion that appellant had forged it. What was fundamental to decide if these applications were made without authority of the real owner express or implied. The finding that SN was interested was insufficient by itself to arrive at the finding that he was guilty of forgery and fraud. No effort was made to bring on record any material, oral or documentary from relevant source to establish link between SN and the signatures. Even assuming that SN was responsible for these signatures the was respons Court, surprisingly, did not pay any heed to vital admission both by MB and EPG in their deposition that SN obtained necessary permission from local. athorities for them. In the entire deposition of these persons there is not the remotest denial by them that they were not aware of these proceedings. From facts as the Arrive come on record it is indeed impossible to believe that what was done was without the knowledge of EPG. UK was out of India. EPG was in service in Bombay. Land was in Kerala. Permission was to be obtained from local authorities. But that was not easy. Effort by EPG had already failed. He was informed in December

1982 by TUDA that his application shall be considered after records had been received from Municipality. In the meantime permission had been obtained by M B, brother-in-law of EPG whose wife and son, like his, had inherited the property from the mother-in-law. Anil at was obtained through none else but SN as appears from deposition of MB. Consequently EPG also entered into proposal with SN in January or February 1983 to sell his land as he was willing to take chance of obtaining permission. But no agreement of sale was executed till June 1983, much after the permission had been obtained. The High Court did not give any weight to the circumstance that in absence of any agreement of sale EPG could have refused to sell it to SN. EPG admitted to have signed an application for sanction of the map. But the application on which sanction was granted was not the one signed by him From this denial of signature the High Court drew inference against the appellant. But it did not make any effort to advert to other part of the statement which would have demonstrated that the sanction was obtained with his knowledge. It stood clinched by the averments in W.P. 5287/83 which was admitted by EPC to have been based on true facts and was signed by him after reading. The High Court failed to realise the full impact of it. The petition was founded on direction issued by govt. to TUDA on 28th March 1983 in pursuance of representation made to it. It was purported to have been made by M B, his wife, son, daughter-in-law etc. MB denied his signature on it. He further deposed that his wife was dead and two of the persons mentioned were in Kuwait. Therefore the High Court found that the,'representation which is the fundamental basis of the governmental direction contained in Exhibit 5 and which, in turn, was the foundation for this Court's interim order, was clearly a forged one. But the High Court, missed the real issue. In the letter sent by Govt. to TUDA directing it to sanction the plan, which was the basis of petition it was mentioned that the order was passed in reference to petition of M B and five others. When EPG filed this letter and stated in Writ Petition, 'that Govt. passed the order and communicated to the petitioner informing him about the directions contained in Ex. 5, then he unequivocally admitted that the' representation was made by petitioner, namely(UK) and he was informed of it. UK was in india. Therefore somebody had to act on his behalf. Power of attorney was in favour of EPG. He therefore should be assumed to have instructed someone, to do the needful. That is how the mistake arose. But once EPG owned she responsibility of the statements made in the writ petition the High Court could not clear, inferences of misleading the Govt. and local iuthorities without confronting EPG when appeared as a witness whether it was done in his direction or not. Mere denial of signature was not sufficient. What is deducible from these is that what was done was with knowledge of E PG for his benefit or benefit of UK with their consent express or implied. In any case the material was insufficient to arrive at the conclusion that forgery, fraud or misrepresentation of Govt. records had taken place or that the Govt. was misled to issue order on forged document. The High Court, with respect, misdirected itself, in being oblivious of the difference between filing on application by a person under direction or instruction of another in mistaken name and making a false document with intent to cause damage or injury to any person or to support any claim or title or to commit any act with intention to deceive another.

7. Mistake in mention of names occurring,probabl , due to instructions is clear as the application for permission was made in the name of MBUK where as the representation was made to Govt. in name of MB and writ petition wasfiled by MBUK. All this was certainly improper. But once EPG filed writ petition and stated about each and every of these applications and that they contained true facts, about which there was never any dispute, then at least his tacit consent express or implied was there. Substantive offence of forgery and ingredients of fraud and misrepresentation or the manner of their proof and procedure to establish them are not necessary to be examined but the High Court was certainly not justified in assuming these against appellant without any finding that the signatures were made to cause harm to person on whose behalf they were made or without their knowledge or

that they were untrue. In fact the statements in the applications or representations did not contain any factual inaccuracy. Truly speaking not much survived after EPG took the responsibility in his deposition not only of filing the petition but even admitting that it was based on correct facts. The High Court failed to notice that when in April 1983 the State Govt. sent a letter to MB to meet the Collector and other officer of local authorities to work out suggestion to modify the plan the letter was not only seen by MR but he even authorised one person to appear on his behalf. The High Court thus appears to have been swayed in wave of public interest litigation. We may not be understood as condoning or approving the impropriety of moving applications or signing of these by persons other than on whose behalf they purported to be. But the error committed by the High Court was that once it grew suspicious it went on feeding it without any regard to facts and legal consequences, because appellants were stated, in public interest litigation, to be financially affluent with political approach and administrative pull. In our opinion an examination of the statement of MB and EPG coupled with affidavits of UK and MB did not justify the finding of forgery, fraud and misrepresentation. MB denied his signature on letters sent in June, Oct. and Dec. 82 which led the Court to record finding against appellants. But they did not relate to land in dispute. They were not put to EPG. All that they established was that these letters were written on his behalf. The High Court did not find that the orders obtained on it were either to cause loss to him or gain to appellant. The High Court failed to notice or even refer to statement of MB wherein he admitted that he obtained permission to construct from MC which papers were fetched to him by SN and he sold his share to SN. Any correspondence thereafter was irrelevant unless it related to land in dispute. There is no such findifig. it appears to have been referred only to show that how things happened in local bodies. That may reflect adversely in working in those offices. But the High Court was not justified in thrusting it on appellants. The finding of the High Court, thus, even on this score cannot be maintained.

8. Turning to merits ,it is necessary to give a little background. Admittedly MC of Trichur framed certain schemes, including the West Road Scheme, in 1976. Since the scheme was not published within two years, as required by law, it lapsed. In 1981 the State Govt. constituted TUDA undertown Planning Act but even this body did not take any step at least till June 83: Effect of lapse of scheme in 1978 and its non-revival till 1983 was that all lands which were subject matter of acquisition stood automatically released and it was available to be used by owners subject to any restriction, for instance, sanction of map etc. by MC. Yet unfortunately, whenever any owner approached the MC and TUDA he was subjected to undue harassment with the result that they approached the Govt. against unreasonable attitude of local authorities and the Govt. after ascertaining from Town Planner that no scheme was pending directed the authorities concerned to sanction plan and permit construction. The earliest such order, which is on record, was passed in 1979 in favour of one Shri Unni in respect of land adjacent to land in dispute. Similar order was passed on application of MB in 1982 in respect of survey No. 887 and 888, a property part of which is in dispute, and, which had come to share of the wives and sons of the two son-in-laws MB and EPG on death of their mother-in-law in 1980. In March 1983, TUDA appears to have taken a decision to notify the West Road Development Scheme of 1976 out the Government, on the very next day, informed it that the scheme may be notified only after intimation and order of the Government. Once notification of the scheme was stayed by the Government, an application was filed, purported to be, by Unnikrishnan M.B. Menon before the MC for permission.to build on the disputed land. It was sanctioned by the Council subject to its approval by TUDAwhich in its turn informed that the application would be considered after renotification of the scheme. When this was brought to the notice of the Government it sent a reply on 28th March, 1982 which reads as under:-

"I am directed to invite a reference to the letter cited and inform you as follows: The

Trichur Urban Development Authority came into existence on 8-9-1981. All the pending schemes published by the Trichur Municipality and approval of Government not obtained lapsed with the constitution of Trichur Urban Development Authority. The Authority has so far neither republished and taken further action on those proposals nor has it formulated any scheme and notified them till the end of February 1983.

The petitioners have earlier obtained permission from Trichur Municipality for the construction of shop building in Survey Nos. 887 and 888 of Ayyanthole Village. Subsequently they requested Trichur Urban Development Authority to grant permission for the above construction.

The Trichur Urban Development Authority vide a reply dated 7-12-1982 informed the petitioners that their request would be considered after receipt of the scheme records from the Trichur Municipality. Now the authority informs that the request will be considered only after renotification of the above scheme. It will be unfair to deny the petitioners the permission applied for as it was the fault of the authority not to have taken prompt action to get the. necessary records and notify the scheme immediately after the constitution of the authority. Any scheme proposed to be renotified should therefore be taken into consideration the pending application of the parties for development of the area.

In the circumstances I am directed to request you to give approval of the authority to the plans submitted by the petitioners for the construction of the shop building in Sy. Nos. 887 and 888 of Ayyanthole."

By this time, the TUDA had resolved, u/ S. 7 of the Act, to frame a scheme on West Fort, therefore, it appears to have taken up matter with the Government on which a letter was sent on 25th April to MB to meet the District Collector, Chairman, TUDA and the Municipal Chairman, Trichur at 11-00 a.m. on 29th April for negotiation in connection with the approval of the proposed shopping-cum-office building. Meeting as directed did take place. And on the same day, a letter was sent that in consequence of discussion, the applicant had no objection to provide a setback of 6 mts. in front provided he was permitted to construct without leaving any open space in the rear. Requirement under bye-law was to provide front setback of 3.5 mts. only. Correspondence thereafter went on between TUDA and the Government and on 16th June,. the Government issued a letter to the TUDA which is extracted below:-

"With reference to the Letter cited, I am to inform you that Government's intention is not to stall the proper development of the area. As the authority has not so far published the notification u/ S. 8 of the Town Planning Act and the party has been waiting for approval for the proposed construction for a long time, the party subject to the following conditions The party will leave the minimum necessary land for road improvement and also observe building rules.

2. The Trichur Urban Development Authority may go ahead with the publication of the Notification u/ S. 8 of the Town Planning Act. While publishing the scheme ul S.. 9, the Authority should take into consideration the directions of Govt. contained in letter No. 12259/G3/83/LA & SWD dated 8-31983 and exclude the party's land from

acquisition, except to the extent required for road development."

On 23rd June, letter was sent that the appellant was submitting revised plan providing a setback of 6 mts. as agreed in front and also 3mts. in the back. But the TUDA did not pass any order. Consequently, writ petition No. 5287/ 83 was filed on 27th June 1983. The petition was founded on allegation that the petitioner had desire to make use of the only small property he had for making shop building on road from West Fort area in Trichur to Kunnamkulam as entire road frontage was occupied by shop buildings abutting the road. Allegations were made against prevailing practice of municipal board to notify ambitious scheme without any financial resource of genuine inclination, only to freeze the land and release if in favour of those who could approach authorities resulting in gross abuse of power and corruption. Referring to various orders beginning from March 1982 to June 1983 and to delay and obstruction by the MC and TUDA even though the petitioner had agreed to leave 6mt as even if the road was widened only 3 mts. could be needed, it was stated that the opposite parties were not complying with direction of Government. Therefore, orders were sought to TUDA to implement the directive of the State Government. On 5th July, the Bench after hearing the learned counsel for petitioner and TUDA, passed an order directing the TUDA to permit petitioner to construct a building in accordance with the permission granted by the Trichur Municipality. Despite this order, the sanction does not appear to have been granted and TUDA approached for clarification of the order dated 5th July 1983. But the court did not find anv necessity either to clarify or modify the order and it was observed that the TUDA was Delaying passing of the order consequently, the court directed it to pass the order immediately. In pursuance of it, the TUDA passed the order on 29th July permitting the petition to construct subject to decision of writ petition. After grant of interim order, UK, that owner handed over possession, in the last week of July, to SN and executed the sale deed in favour of his wife, in Oct. 1983.

9. The appellants appear to have raised construction and, probably, attempted to add another storey for which they had no permission, therefore, in December 1983, another petition No. 11011/83 was filed in public interest by Shri Achitta Menon, the ex-Chief Minister of the State. It was alleged that Government was not discharging its obligation by fulfilling non -offical vacancies on the Board of TUDA. no exception could be taken to it but after mentioning it, the petition proceeded with its real purpose by alleging collusion between appellant and Government, thus, seeking interim order restraining appellant from raising any construction. It was alleged that for implementation of DTP scheme for West Fort 1 oad with width of 25 mts., 10 mts. could b. required from the land in dispute besides a sett ack of 4.5 mts. Plea of ultra vires and mala fide of the Government was raised as, even, when TUDA decided on 2-3-83 to notify the scheme, the Government by its order dated 3-3-83 stayed the issuance of notification and directed TUDA to grant permission. It was alleged that direction of Govt. that property situated at the West Fort junction may be excluded was motivated. Allegation of negligence was made against Secretary TUDA and it was alleged even though TUDA decided to notify the scheme on 24th June, it was not done with the result that stay order was obtained from the court. Allegations were made of violating the undertaking given in the revised plan as only 5.3 metres was left in the front and 1 mt. in the back. The petitioner went on to state that despite MC and the TUDA having been apprised of it they were not movinging in the matter as MBUK was an influential person to whom the authorities wanted to shield. Result was that on January 2, 1984, respondent No. 4, namely, M. B. Menon Unnlkrishnan, that is UK, respondent. in Writ Petition 11011/ 83 was restrained from making any further construction UK was permitted

later order to withdram from Writ Petition No. 5287/83 and appellant was impleaded in his place

10. Since specific allegations of violation of sanction plan were made, the Court appointed a Commissioner. The Commissioner found that Kuralakun road was 7 mts. insides the untarred road margin, having width of 3.95 mts. both on east and west. And on western side, margin was a drain of 45 cm. width the existence of which was claimed by the appellant to be in his property. The Commissioner found the distance between the road and the building, excluding the drain to be 53, 5.82 and 5.95 metres on East, South and North side respectively. Affidavits were filed on behalf of she Govt., TUDA, MC and the Chairman of the MC. The Govt. reiterated that in absence of any notification u,/S. 8 of the Act, the permission could not be refused. Further TUDA was directed to go ahead with the scheme after excluding land of the owner except to the extent required for road. The TUDA, and MC also reiterated their stand and denied any negligence. But two facts need be stated, one that it was in affidavit of TUDA that from surveyor's report, it was clear that the drain in front of the site formed part of the property belong to appellant and the municipal commissioner admitted that as per plan approved by the MC, the owner was required to leave 3.3 mts. only in front. Allegation of any violation was denied.

11. From facts, more or less undisputed it stands out clearly, that when direction was issued by State Govt. on 25th March, 1983 no scheme had been framed by the TUDA under the Town Planning Act. There was, therefore, no statutory requirement for petitioner to have approached it nor was there any power in TUDA to refuse it. The practice of MC to sanction a plan subject to its approval by TUDA, as. a matter of routine cannot be appreciated. There can be no rationale for the two authorities to be oblivious of their responsibility by not being aware of latest position and escape by passing on, what is required to be done by one, to other by issuing such orders, unmindful of untold misery and hardship it causes to an ordinary man. But for such attitude permission could not have been refused to EPG in Dec. 82. However, we may not be understood as saying that TUDA should be ignored. What is being stressed is that if in absence of any scheme the development authority receives the plan it should endorse it without any delay. But in this case things moved much ahead. The Govt. which is the ultimate authority whose functions are discharged by local bodies issued directions to TUDA that in absence of any scheme there was no justification to withhold the scheme. In subsequent letter it pointed out that sanction may be granted after excluding the land requirement for widening the road. Even the Chairman of MC admitted in affidavit filed before MC that only 3.5 metres could be needed for the road. Yet the TUDA did not pass the order till directions were issued by the Court. In our opinion, the TUDA acted arbitrarily and without any justification in withholding the permission.

12. Action of TUDA was, even, contrary to law. S. 15(1)(a) of the Act which provides restriction on construction is extracted below:

> "Restrictions after declaration - (1) After the publication of a notification u/S.8 or S. 10 -
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> (a) no person shall within the area included in the scheme erect or proceed with any building work or remove, pull down or alter any building or part of a building or remove any earth; stone or material unless such person has applied for and obtained the necessary permission, which shall be contained in a commencement certificate granted, in cases where the scheme has not been sanctioned, by the municipal council, and in other cases by the responsible authority, in the form prescribed;"

From the section itself it is clear that the restriction could operate only if notification u/S. 8 or 10 had been published. S. 10 deals with power of Govt. to require the council to frame a scheme. It is not relevant. S. 8 reads as under:-

"Notification of resolution to make or adopt scheme:- The resolution u/ S. 7 shall be published by notification in the prescribed manner by the chairman; and such notification shall state that a copy of the plan is kept for the inspection of the public at all reasonable hours at the municipal office."

The manner to publish notification is provided by R. 32(a) and 33(a) and (b) which are extracted below:-

"32(a) The Notification u/ S. 8 which shall be called Notification No. 1 shall be in Form No. 4 and shall be published on the notice board of the office of the municipal council.

33(a) A notice in Form No. 5 shall also be published within 30 days of the date of publication of Notification No. 1 under R.

(i) on the notice board of the office of every Tahsildar within whose revenue jurisdiction any portion of the area proposed to be included in the scheme is situated;

(ii) in the Government Gazette; and

(iii) in one or more newspapers circulating in the revenue division in which such area is situated.

33(b) after the issue of a notification u/S. 8, the Chairman shall send a notice to every owner who is concerned, drawing his attention to the provisions of S. 15."

13. Reading of these rules together makes it abundantly clear that the restriction, visualized, u /S. 15, of the Act, does not come into operation prior to publication of the second notification under R. 33(b). This notice was not published till September 1983. That is clear from affidavit filed by TUDA in this Court. It gives out details of resolutions passed by TUDA from, 2nd March 1983 deciding to revive eight schemes including West Road Scheme, taking decision on 24th June to notify the scheme u/ S. 8 of the Act, publication of notice in Form 4 under R. 32(a) on 27th June and issuance of notice in Form 5 under R. 33(b) on 3rd Sept. 1983. Therefore, strictly speaking, the TU DA could not have exercised any power till Sept. 1983 either of sanctioning the plan or withholding it. The State Govt., thus, even in absence of any necessity to get approval of TUDA, did not commit any error in law or fact in issuing the direction in March 1983, presumably, in interest of development to sanction the plan for construction of the building. Even assuming that in the interest of planned development no one could be permitted to build or construct a building unless the plan had been approved by the TUDA or it is at 1,east routed through it, the TUDA could not withhold it as it was contemplating to revive some scheme. In any case putting the case of TUDA at the highest and assuming that the restriction of S. 15 had come into operation it only required owner of land to construct a building after obtaining permission from the authority. It was, obviously, complied as the Govt. on intimation from TUDA modified its direction in April 1983 and permitted TUDA to sanction the plan only on the area which was not needed for widening the road. The TU.DA did consider it and passed a resolutin of 12th 1983, as stated in the counter-affidavit filed by it in the High Court, authorising the Chairman of TUDA and MC to negotiate with owner to

find out if he was agreeable to leave sufficient road in front of proposed shop building as per shop building rules for widening the road. It was in pursuance of this that the owner ultimately agreed to leave 6 metres in front instead of 3.5 metres as required in the bye-laws. The TUDA and MC agreed to it as appears from the statement in counter-affidavit filed by the TUDA in High Court. Relevant part of it is extracted below

> "On 23-6-83, presumably after knowing the contents of Ext. R3(d), petitioner addressed a letter to the Secretary, Development Authority, informing him that the petitioner is prepared to construct the building in accordance with the revised plan submitted along with letter, providing a front set back of 6 metres and a rear space of 3 metres. The development authority considered this request at its meeting on 24-6-83 and decided to consider the request of the petitioner for sanction after a survey of the land etc. as is seen from its resolution 11 (a)."
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> Yet the order was not passed. Be it so but it leaves hardly any room for doubt that the authorities were satisfied that if the owner constructed the building after leaving six metres it would not come in way of widening the road. The subsequent going back on it because the owner approached the court since the matter was being delayed, to say the least, was neither proper nor fair. The entire episode was, aptly, described by the learned counsel for appellant as much ado about nothing.

14. For the reasons stated above the appeals succeed and are allowed. Order dated 25th March 1985 and 12th April 1985 passed by the learned single Judge and Division Bench of the High Court are quashed. The Writ Petition No. 5287/83 is allowed subject to following directions. Writ Petition No. 11011/83 is dismissed, except to the extent the Court directed the Govt. To fill the posts of non-official members.

> (1) The appellant shall be permitted to raise construction in accordance with permission granted by the Municipal Council and the TUDA, if it has not been completed as yet.
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> (2) From the Commissioner's report and the Surveyor's report it appears that drain is in the appellant's land, therefore, the requirement of leaving 6 metres was complied with. However, we still leave it open to the TUDA to examine the matter and in case there is any breach and the appellant had encroacher upon. 5 or.6 over and above the land which he was required to leave then th; area being nominal it may be compounded in accordance with law.
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> (3) In case the State Govt. finally sanctions the scheme u/ S. 12 of the Act and it becomes necessary to widen the road to such an extent that it may result in demolition of whole or any part of appellant's building then the appellant shall be compensated for the same, in accordance with law on the prevalent market rate.
>
> (4) Parties shall bear their costs throughout. But the direction of the learned single Judge for paying costs of Commissioner and witnesses shall remain intact.

Appeals allowed.

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