

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 6807 OF 2017
(Arising out of SLP (C) No.34421 of 2015)

STATE OF UTTAR PRADESH AND ORS.

... Appellants

VERSUS

KDP BUILDWELL PRIVATE LIMITED AND ORS.

... Respondents

O R D E R

Leave granted.

The issue in this appeal fundamentally relates to construction of a high rising building in the city of Ghaziabad. When the matter was listed on 9.11.2016, the following order was passed :-

"In course of hearing, Mr. Harshvir Pratap Sharma, learned counsel appearing for the respondent Nos.1 and 2 has apprised us that there are multistorey buildings in the vicinity and that he shall produce photographs thereof.

Mr. S.R. Singh, learned senior counsel appearing for the petitioner-State is at liberty to apprise the Court about the real security impact and also take instructions whether there are multistorey buildings nearby.

Additionally, it is submitted by the learned counsel for the respondent Nos.1 and 2 that as there is a petrol pump situated in quite proximity to Provincial Armed Constabulary (PAC) which has the anti terrorist squad. Learned counsel for the respondent Nos.1 and 2 shall obtain instructions whether the developer will not construct the high-rise buildings which shall go beyond the existing multistorey buildings.

Parties are at liberty to file additional documents.

Let the matter be listed on 6th December, 2016. No letter circulation shall be accepted and no mentioning shall be entertained for adjournment of the matter on the next date of hearing."

Thereafter, on 21.4.2017, the following order was passed :-

"Heard Mr. Ravi Prakash Mehrotra, learned counsel submitted that he and Mr. Harsh Vir Pratap Sharma, learned counsel shall discuss and consider the conditions imposed by the Government and if any additional condition is to be imposed. We hereby make it clear that as mentioned earlier, the respondents cannot go beyond the high rise building which is existing in praesenti.

Let the matter be listed on 2.5.2017."

Be it noted, the matter was adjourned on certain occasions.

Today, Mr. Ajay Kumar Mishra, learned Additional Advocate General along with Mr. Ravi Prakash Mehrotra submits that there is a 14 storey building and if this Court thinks it appropriate, it can restrict the construction upto 14 storeys and not beyond the same or not enhance the height. That apart, it is urged by them that steps that are required to be taken by the appellants, as undertaken before the High Court, should be followed. Be it noted, the High Court has enumerated in this judgment about the steps which are agreed to be taken by the respondent herein. The relevant part of the same is reproduced below :-

- "1. We are taking a 15 mtr. Set-back area between the boundary of PAC and our building.
2. We are keeping the height of our boundary

wall up to 10 feet.

3. We are applying forked Wire fencing over the boundary wall.
4. We are planting straight Height trees very closely to each other so that they will look like a wall between PAC area and our Protect and remove the visibility to see across the project.

In another letter dated 4 August 2014, the petitioner has pointed out the following security factors :-

- '1. Possible Intrusion via Objects from persons with detrimental intension from our tower.
 - I. As per our design, the boundary wall will be of 10 ft. height with a cover of concertina wires so that no one will be able to scale the walls to gain entry in your perimeter.
 - II. We will have the entire complex covered by CCTV cameras with infrared and continuous recording round the clock with 10 days back-up. We will provide access as and when required, by your personnel to monitor the video recordings.
 - III. We have a 15m set-back as per our building design thereby ensuring an excess area which will not allow anyone to physically throw any object from our compound to the perimeter of PAC.
 - IV. All ingress and egress areas will have security personnel with gated metal detectors so that no one can enter the building premise with objectionable materials.
 - V. The project will have round the clock security, manned by security personnel from reputed security service providers.

VI. No flat owner will be given the roof rights of the premises. The access to the roof will be kept locked and the keys will be with the designated security personnel.

2. Provision for Helipad

I. The Helipad for operations of the helicopters can be designed in conformance with norms advised by DGCA (Annexure A). The design of our building qualifies for the same.

II. As per the norms, the space required for safe landing should be free from obstructions. This can be kept in mind at the designing stage.

III. As per our building design, we are keeping a set-back area of 15 meters between the building footprint and the boundary wall free.

3. Potential hindrance for Radio Mast Communication Working

I. Regarding the radio mast for communication, the company designing and installing the same can keep in view the presence of our building.

II. However, if required, the High Frequency Radio Mast can be installed on one of our terrace of the designated building for which we will voluntarily provide the space.'

In Yet another letter dated 16th August 2014, the petitioner has also highlighted the following factors regarding security:-

'We attach herewith a detailed proposal as received from Vantage-Integrated Security Solutions, as well established security

solutions provider with a 24 year old presence in the Security & Surveillance industry.

As a principal OEM, Vantage offers the latest technology and products in the security and surveillance domain. They offer tailor-made solutions across industries and are now a 300+ strong team of professionals with direct presence in Europe, North America, Middle-East and Asia, which helps them cater to over 30 countries worldwide. Vantage offers complete IT solutions for all kinds of small, medium and large organizations. With vast experience, in house R&D team and technical know-how, they are fully equipped and capable of providing world-class solutions customized according to the needs of their clients.

The proposed security mechanism is 5 layered security solution including

1. Boom barrier
2. An electronic access control system
3. Closed-circuit television
4. Non-lethal electrified fence system and
5. Hand-held & Door frame metal detector.'

The aforesaid factors which have been highlighted by the petitioner appear to adequately take care of the security problems of the PAC. Thus, the reason assigned by the PAC for declining to grant the NOC is without any basis and the PAC cannot object to the raising of the construction by the petitioner merely on the assumption that there would be some security problem."

The aforesaid undertakings shall be adhered to.

As the Height of the building and the construction of the building has been restricted by us, the respondents shall submit a new plan to the Ghaziabad Development Authority within two weeks hence and the said authority shall consider the same and pass the

appropriate directions within three weeks therefrom. Needless to say, the Authority shall be strictly guided by its own bylaws and the undertakings given by the respondents before the High Court which we have reproduced hereinabove.

On being asked, Mr. Krishnanand Pandeya, learned counsel appearing for the Authority submitted that the reduction of the height and the storeys of the building will not affect the FAR and the time of completion shall run from the date of sanction of the plan.

The appeal is disposed of in above terms.

As a sequel, I.As., if any, stands disposed of.

.....,J.
(Dipak Misra)

.....,J.
(Mohan M. Shantanagoudar)

New Delhi;
May 5, 2017.

ITEM NO.58

COURT NO.2

SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 34421/2015

(Arising out of impugned final judgment and order dated 07/04/2015 in CMWP No. 68456/2014 passed by the High Court of Judicature at Allahabad)

STATE OF UTTAR PRADESH AND ORS.

Petitioner(s)

VERSUS

KDP BUILDWELL PRIVATE LIMITED AND ORS.

Respondent(s)

(with appln. (s) for exemption from filing O.T. and permission to submit additional document(s) and stay and interim relief and office report)

Date : 05/05/2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Petitioner(s) Mr. Ajay Kumar Mishra, AAG
Mr. Ravi Prakash Mehrotra, AOR
Mr. Ashutosh Kumar Sharma, Adv.

For Respondent(s) Ms. Abha R. Sharma, AOR

Mr. Krishnanand Pandeya, AOR

Mr. Yash Tandon, Adv.
Mr. Ankit Mishra, Adv.
Mr. Kanupriya, Adv.
Mr. Anil Srivastava, AOR

Mr. P. Chidambaram, Sr. Adv.
Mr. H.P. Sharma, Adv.
Mr. Ajay Sharma, Adv.
Mr. Pankaj Kumar, AOR

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

Leave granted.

The appeal is disposed of in terms of the signed order.

As a sequel, I.As., if any, stand disposed of.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master