

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
AT PRINCIPAL BENCH, NEW DELHI**

O.A. 1172 OF 2024

IN THE MATTER OF:

ASHISH KUMAR PATHAK

... APPLICANT

Vs.

UOI & ORS.

... OPPOSITE PARTY/ RESPONDENTS

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AMIT TIWARI/CHETANYA PURI
ADVOCATES,

NEW DELHI
DATE: 09.11.2024

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COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT

NOS. 3, VARANASI DEVELOPMENT AUTHORITY

MOST RESPECTFULLY:

I, Sonjeev Kumar S/o Late Ram Avadh aged about 59
years, posted currently as A.E./zonal officer at V.D.A.

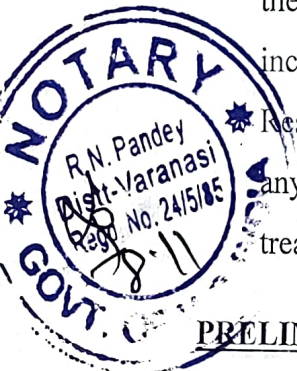
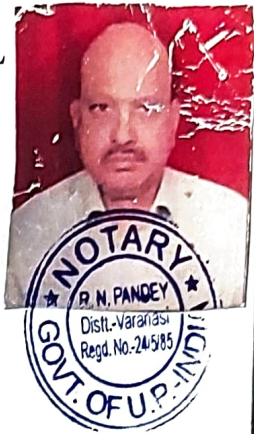
hereby solemnly affirm and declare as under:

That I am well conversant with the facts and circumstances of the case and thus I am competent and authorized to swear/ file this Counter Affidavit on behalf of the Respondent No.3, Varanasi Development Authority, before this Hon'ble Tribunal.

2. I have read and understood the contents of the OA and I state that the contents of the OA are denied to the extent that they are inconsistent with the submission made by the answering Respondents under the present reply. It is further stated that unless any averment is specifically admitted or traversed, the same may be treated as denied.

PRELIMINARY OBEJECTIONS:-

1. That the present OA is not maintainable and is liable to be dismissed as the applicant has not approached the Hon'ble Tribunal with clean



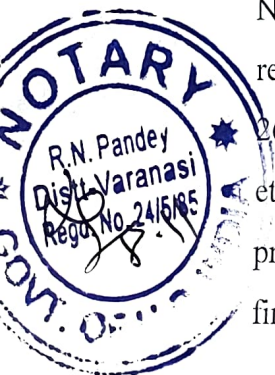
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hands and has stated incorrect and inconsistent facts and thus the OA so filed is liable to be dismissed on this ground alone.

2. The current OA filed by the applicant is not maintainable, as the applicant was aware that permission had been granted for an application dated 26/10/2023, submitted by Mr. Raghvendra Chadha. Following the receipt of a complaint from the applicant, a notice was issued to the owner requesting clarification. It was also ensured, through inspection after receiving the complaint, that all work at the premises was Stopped. A retention/boundary wall was constructed to prevent any materials from spilling into the river Ganga and while keeping the safety of adjacent building to protect the loss of property/ life/ limb etc. Subsequently, another notice was issued on 26/10/2024, requiring photographs of the existing building and clarification on discrepancies related to the specified house number. After a due hearing, it was determined that incorrect credentials/information had been provided by the owner when applying for permission. Consequently, the permission granted on 01/01/2024 was revoked by Order dated 06/11/2024, issued by the responding authority.

PRELIMINARY SUBMISSIONS:-

1. That the property referred in the present application under reply is House No.A-11/ 4A – 5A, Naya Mahadev, Adampur Ward, Varanasi, in the name of one Mr. Raghvendra Chadha S/o Jitendra Narayan Chadha. Mr. Raghvendra Chadha applied for repair/reconstruction of his property and along with his application dated 26.10.2023; he has also submitted his ownership documents, map etc. The answering respondent while relying upon the information provided by the Mr. Raghvendra Chadha, considered the case and finding it in the lights of and in consonance to the directions dated



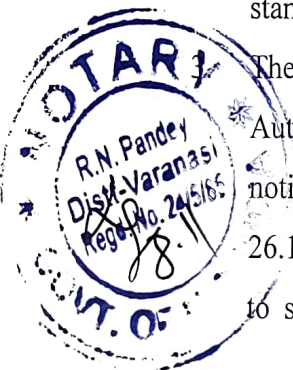
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28.04.2016, passed by the Hon'ble High of Allahabad in WPC 31229 of 2015 in the matter titled as 'Kautilya Society Vs. State of UP & Ors.', which allows for permission for repair/ reconstruction of the existing building/ properties situated within 200 Mts., granted the permission vide letter No.267/Development-Authority/Zonal-Officer/Adampur/Repair-Permission/2023-24 dated 01.01.2024. Since it was informed that the existing structure is an old structure and is in bad condition and requires immediate and urgent repair and thus the permission was granted to demolish and reconstruct, as per the rules, while keeping the safety of adjacent building to protect the loss of property/ life/ limb etc. apart from chances of scraps going into the river. A retention wall was also directed to be raised. As a safeguard measure, the said owner after covering the boundaries of the premises has started the repair/reconstruction of the building as to its previous permissible condition/situation.

Copy of the letter No.267/Development-Authority/Zonal-Officer/Adampur/Repair-Permission/2023-24 dated 01.01.2024 is annexed herewith as **ANNEXURE A**.

2. That after the receipt of the representation of the applicant, duly forwarded, the answering respondent conducted an inspection on 18.07.2024, on the property and upon finding that foundation work was going on in the property, any and every work going on was stopped immediately and it remained like this even till date. The said status was informed to the applicant and complaint so filed was stand closed vide report dated 02.08.2024.

Thereafter, a letter/notice vide No.308/ Development-Authority/Buildings/2024-25 dated 14.10.2024 and another letter/notice No.312/ Development-Authority/Buildings/2024-25 dated 26.10.2024, were issued, whereby asking Mr. Raghvendra Chadha to submit the photographs of existing building and status of the



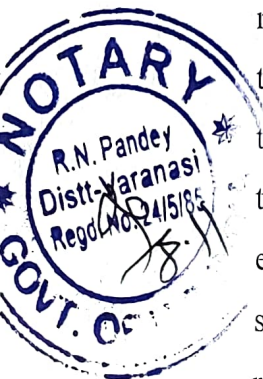
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property. It was also directed to provide clarification in respect of difference in property number as mentioned in the records of Municipality and as per Sale Deed.

Copy of the letter/notice vide No.308/ Development-Authority/Buildings/2024-25 dated 14.10.2024 is annexed herewith as **ANNEXURE B**.

Copy of the letter/notice vide No.312/ Development-Authority/Buildings/2024-25 dated 26.10.2024 is annexed herewith as **ANNEXURE C**.

4. Meanwhile, the answering respondent also tried to check as per the records and the photograph submitted by Mr. Raghvendra Chadha were not clear in terms of date/ time/ geo tagging etc., submitted at the time of application for permission, images from the google earth for the year 2011, 2014, 2016, 2017, 2020, 2022, & 2023 were also analyzed and it was found that no existing structure was found.
5. That in the meantime, Mr. Raghvendra Chadha submitted his reply dated 04.11.2024, along with the photographs of the property from all possible/ different angles/ sides, in response to the notices so issued by the answering respondent.
6. Since a mere comparison of the photographs so submitted by Mr. Raghvendra Chadha and that of the google image shows different status of properties. The answering respondent sought clarification from Mr. Raghvendra Chadha, who presented his case at length and made submissions. After considering the submissions advanced by the Mr. Raghvendra Chadha and the documents submitted by him at the time of the filing the application for repair/ reconstruction with that of the image submitted and comparison of same with the google earth images, it was found that the Mr. Raghvendra Chadha has submitted false information to obtain the permissions for repair/ reconstructions. Therefore, on account of same, the permission so



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granted vide permission dated 01.01.2024 was revoked vide order/ letterNo. 851/Development-Authority/Zonal-Officer(Adampur)/ 2024-25 dated 06.11.2024.

REPLY ON MERITS:

1. That the contents of Para 1 of the OA under reply to the extent of provision of law are matter of record and needs no reply. It is, however, wrong and denied that unauthorized or illegal construction/ new construction is going on under the nose of the answering respondent.
2. That the contents of Para 2 of the OA under reply is wrong and denied. It is denied that any new building/ construction work is being illegally raised at Rani Ghat (beside the Rani Kothi) in Varanasi, adjacent to Prahlad Ghat, as alleged by the applicant. Contrary to the allegation, it is submitted that building the applicant is referring to is in the name of one Mr. Raghvendra Chadha S/o Jitendra Narayan Chadha and is addressed at House No.A-11/ 4A – 5A, Naya Mahadev, Adampur Ward, Varanasi. Mr. Raghvendra Chadha has applied for and got the permission for repair/ reconstruction of his property by the answering respondent, in the lights of and in consonance to the directions/ orders dated 28.04.2016, passed by the Hon'ble High of Allahabad in WPC 31229 of 2015 in the matter titled as 'Kautilya Society Vs. State of UP & Ors.', which allows for permission for repair/ reconstruction of the existing building/ properties situated within 200 Mts.

That the contents of Para 3 of the OA under reply are wrong and denied. It is denied that any new construction/ building is being raised or that any activity is being undertaken in contravention of the orders passed by the Hon'ble Allahabad High Court in PIL No.31229 of 2005, which is connected to PIL No.4003 of 2005, and



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is pending before this Hon'ble Tribunal. The fact that the said PIL No.31229 of 2005, which is connected to PIL No.4003 of 2005, stands transferred to this Hon'ble Tribunal is concerned, is not denied.

4. That the contents of Para 4 of the OA under reply are not denied to the extent that the applicant moved a representation, which has come to answering respondent after being duly forwarded and a complaint was registered as numbered. It is also not denied that said complaint was disposed off by the answering respondent vide their response dated 02.08.2024. It is also not denied that the construction work was stopped immediately. As submitted above pursuant to the receipt of representation duly forwarded, an inspection was conducted on 18.07.2024, and upon finding the foundation work at site, work was stopped immediately. It is also relevant to mention that for the safety of the nearby/ adjacent building, a retention wall was directed to be constructed, which was already been constructed and further work has already been stopped. The representation of the applicant and complaint thereto was disposed off vide order dated 02.08.2024. Thereafter, further notices were issued to Mr. Raghvendra Chadha after scrutinizing the documents submitted by him at the time of applying for permission for repair/ reconstruction and since the photograph submitted by Mr. Raghvendra Chadha were not clear, the same were compared with the google earth images for various years and upon finding discrepancies in status of the property as well as number of the property as per municipal corporation records and sale deed, Mr. Raghvendra Chadha was asked to submit photographs and status of the property. Since the clarification submitted was not satisfactory and even the arguments advanced were also unsatisfactory, since the existing G.O dated 11/03/20215 & 17/8/2015 mentioned clearly that only existing



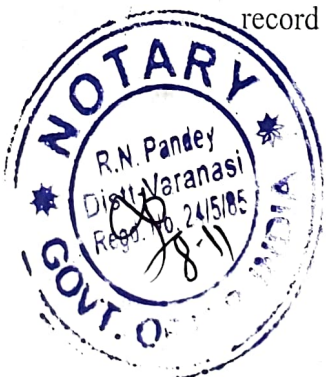
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buildings would be allowed for repair/reconstruction which the applicant was unable to prove the existence of existing building, thus the permission granted vide permission letter dated 01.01.2024 were revoked vide order dated 06.11.2024.

5-11. That the contents of Para 5-11 of the OA under reply are matter of record and as such needs no reply. It is, however, submitted that the answering respondent is diligently undertaking the task, that has been assigned to them and ensuring that no new construction was happening within 200 meters from the river Ganga at Varanasi. It is also relevant to mention that vide directions/ orders dated 28.04.2016, passed by the Hon'ble High of Allahabad in WPC 31229 of 2015 in the matter titled as 'Kautilya Society Vs. State of UP & Ors.', repair/ reconstruction activity is permitted in existing structure/ building and any permission so granted for it shall be within the lines of same and in compliance with the guidelines.

12-13. That the contents of Para 12-13 of the OA under reply are not denied to the extent that the flood plane zone is yet not demarcated. It is submitted that the same is under process under the supervision of this Hon'ble Tribunal. It is, however, denied that construction activity or new construction are being raised or that the local administration or the answering respondent remains as mute spectator or is in connivance with those raising illegal construction. It is submitted that no illegal construction is taking place therefore no question of issuing any specific directions to stop the illegal/ unauthorized construction in the flood plane zone of river Ganga.

14. That the contents of Para 14 of the OA under reply is a matter of record and needs no reply.



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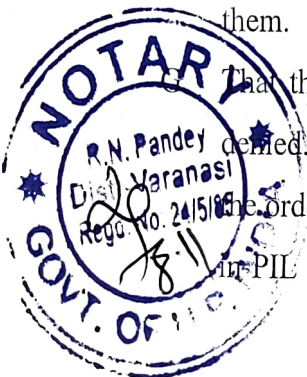
REPLY TO GROUNDS

That the contents as stated under grounds of the OA are not maintainable and is liable to be rejected outrightly. However, for the sake of convenience, each and every ground has been dealt as under:

A-E. That the contents stated in Grounds 'A-E' of the OA are wrong and denied. It is denied that new building/ construction work is being raised illegally at Rani Ghat, adjacent to Prahlad Ghat at the bank of river Ganga or that various unauthorized construction are being raised in connivance with or because of inaction of local administration. It is further denied that the answering respondent is being ignorant to all those doing construction as alleged by the applicant. The applicant must be put to strict proof in terms of such averments made. So far as the order/ guidelines of the pending writ petition or PIL is concerned, the same is matter of record and needs no reply.

F. That the contents as stated under Ground 'F' is not denied to the extent that the complaint was registered at the instance of the applicant and was disposed of by recording facts as stated. It is worthy to mention that the applicant has choose to reiterate the portion that was suitable to his false narrative, thereby raising question on the integrity of the officer bearer. The entire sequence of events as narrated above in "PRELIMINARY SUBMISSION" and response to Para 2-4 of "REPLY ON MERIT CUM SUBMISSION" would clearly demonstrate the situation that the answering respondent is very much diligent to the task assigned to them.

That the contents as stated under Ground 'G' are wrong and thus denied. It is denied that the answering respondent is not adhering to the order/ judgment passed by the Hon'ble High Court of Allahabad in PIL No.4003 of 2005 and various orders passed by this Hon'ble



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Tribunal. It is further wrong and thus denied that unauthorized construction is coming up on both sides of river. The allegations as alleged are wrong and thus vehemently denied. It is relevant to submit that had any construction activities were going on either side of the river, nothing has prevented the applicant from giving details of such other properties and this fact itself clarifies that the applicant is making vague allegations.

Last Para is prayer before this Hon'ble Tribunal and in the lights of abovementioned submissions, the grievances of the applicant in respect of illegal construction already stands redressed.

PRAYER

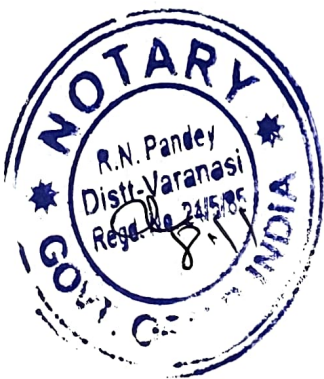
In the light of the abovementioned facts and circumstances, it is respectfully prayed that this Hon'ble Court may be please to dispose off the present OA in terms of the submission made above.


It is prayed accordingly..



DEPONENT

VERIFICATION:-

Verified at Varanasi on this 08. day of November, 2024, that the contents of the above affidavit are true and correct to my knowledge and no part of it is false and nothing material has been concealed therefrom.



before me
SWORN & VERIFIED

R.N. Pandey, Adv.
NOTARY (GOVT. OF U.P.)
Regd No. 24-5-85
Varanasi


C.O.P.No-UP176005
R.No-12965/2020


DEPONENT

8.11.24

सेवा में,

श्री राघवेन्द्र चट्टा पुत्र श्री जितेन्द्र नारायण चट्टा,
निवासी-भ0स0-ए-11/4-ए-5-ए, मोहल्ला-नया महादेव,
वार्ड-आदमपुर वाराणसी।

पत्रांक :- /वि0प्रा0/जोनल अधि0-आदमपुर/मरम्मत अनुज्ञा/2023-24 दिनांक :-

विषय :- गंगा किनारे से 200 मी0 के अन्तर्गत स्थित भवन की मरम्मत/पुनर्निर्माण की अनुज्ञा के सम्बन्ध में।

महोदय,

उपरोक्त विषयक अपने स्वकीय आवेदन पत्र दिनांक 28.10.2023 का सन्दर्भ ग्रहण करने का कष्ट करे, जिसके द्वारा निवासी-भ0स0-ए0-7/36, मोहल्ला-मुकिमगंज, वार्ड-आदमपुर वाराणसी स्थित भवन में मरम्मत/पुनर्निर्माण हेतु दिया गया है। आपके आवेदन पत्र के सम्बन्ध में प्राधिकरण के नगर नियोजक, जोनल अधिकारी, सहायक अभियन्ता, अवर अभियन्ता, मानचित्रकार की संयुक्त टीम (शासनादेश दिनांक 11 मार्च, 2015 के अनुपालन में सचिव विकास प्राधिकरण, वाराणसी द्वारा गठित समिति दिनांक 16-6-2016) द्वारा स्थलीय निरीक्षण रिपोर्ट और सचिव, विकास प्राधिकरण, वाराणसी की आख्या/अनुशंसा पर उपाध्यक्ष महोदय द्वारा दिनांक 20.12.2023 को उक्त भवन के मरम्मत/पुनर्निर्माण हेतु अनुमति प्रदान की गयी है। आपके वर्तमान निर्माण एवं वांछित मरम्मत/पुनर्निर्माण का विवरण इस प्रकार है :-

मौजूदा भवन का विवरण :-		
1	भूखण्ड/भवन का क्षेत्रफल-	364.62 वर्गमीटर।
2	चौहद्दी-	उत्तर-पत्थर बोका गली 5'10" वादहू मकान श्री अशोक पाण्डेय दक्षिण-रानी गंगा घाट वादहू गंगा नदी पूरव-मकान (श्री मुरारी सिंह) पश्चिम-6 फीट चौड़ी गली/सीढ़ी वादहू रानी कोठी
3	वर्तमान निर्माण-	बेसमेण्ट+भूतल (बी+जी) भवन। (चिट्टा के अनुसार) बेसमेण्ट में-एक कमरा। भूतल में-सात कमरा, शौचालय, आंगन।
4	अनुज्ञा हेतु प्रस्तावित-	बेसमेण्ट+भूतल (बी+जी) भवन। मरम्मत/पुनर्निर्माण का कार्य किया जाना है। फोटोग्राफ संख्या-1 से लेकर 9 तक।
5	निर्माण स्थिति-	भवन जीर्ण शीर्ण स्थिति में मौजूद है।
6	वाराणसी विकास प्राधिकरण की 127वीं बोर्ड बैठक दिनांक 31.05.2022 के अनुपालन में विकास शुल्क भवन निर्माण शुल्क, अम्बार शुल्क एवं निरीक्षण शुल्क दिनांक 26.12.2023 को पक्ष द्वारा चलान के माध्यम से प्राधिकरण कोश में जमा किया गया।	भूखण्ड का कुल क्षेत्रफल - 230.00 वर्ग मी0 भू-आच्छादन - 364.62 वर्ग मी0 विकास शुल्क - 230.00 x 132 = 30,360.00 निरीक्षण शुल्क - 364.62 x 23 = 8,386.26 मलबा शुल्क - 364.62 x 46 = 16,772.52 कुल योग = 55,518.78 यानि = 55,519.00 (मात्र) (पचपन हजार पाँच सौ उन्नीस रूपया मात्र)

उक्त अनुज्ञा निम्न नियमों एवं शर्तों के अधीन प्रदान की जाती है :-

भवन की मरम्मत/पुनर्निर्माण कार्य प्रारम्भ करने से पूर्व प्राधिकरण को इस आशय की अनिवार्य रूप से लिखित सूचना दी जायेगी।



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2. मरम्मत/पुनर्निर्माण कार्य पूर्ण हो जाने के उपरान्त उसकी लिखित सूचना प्राधिकरण को अनिवार्य दे दी जायेगी एवं निर्मित भवन के (सभी उपलब्ध दिशाओं से) फोटोग्राफ्स के साथ यथा समय जमा किये जायेंगे मरम्मत/पुनर्निर्माण हेतु जितनी अनुज्ञा दी गयी है, किसी भी दशा में उसमें विचलन होना चाहिए अन्यथा प्राधिकरण अग्रिम विधिक कार्यवाही के लिए स्वतंत्र होगा।
3. भवन की पुनर्निर्माण हेतु आवेदन पत्र के साथ प्राधिकरण में जमा किये गये विद्यमान भवन का मानचित्र, स्वांगित सम्बन्धी अभिलेख एवं "की प्लान", साइट प्लान, भवन की वर्तमान स्थिति के सभी उपलब्ध दिशाओं से फोटो ग्राफ्स, स्थल पर मौजूदा भवन का वर्तमान भू आच्छादन, विद्यमान रोड-वैक, सभी तलों के प्लान, सेक्शन, एलीवेशन, आदि अन्य अभिलेखों के साथ प्राधिकरण में जमा किये गये एवं शपथ-पत्र में प्राधिकरण द्वारा स्थलीय पुष्टि के उपरान्त प्रस्तुत मानचित्र एवं अन्य दस्तावेजों में कोई विरामति पाये जाने पर अथवा स्थल पर प्रस्तुत मानचित्र के विपरीत किसी प्रकार का विचलन पाये जाने पर किये गये निर्माण के विरुद्ध नियमानुसार कार्यवाही की जायेगी।
4. भवन के वर्तमान उपयोग में कोई परिवर्तन अनुमन्य नहीं होगा तथा भवन जिस उपयोग में लाया जा रहा है वही उपयोग अनुमन्य होगा। स्वीकृति के विपरीत अन्य उपयोग अथवा किसी अन्य व्यवसायिक उपयोग के लिए किये जाने की स्थिति में इसके विरुद्ध नियमानुसार कार्यवाही की जायेगी।
5. सीवरेज एवं ड्रेनेज का निस्तारण सीधे गंगा नदी में नहीं किया जायेगा।
6. मरम्मत/पुनर्निर्माण के विभिन्न चरणों (प्लिन्थ लेवल, प्रथम तल/द्वितीय/तृतीय तल का स्लैब आदि) के फोटोग्राफ्स भी समय-समय पर प्राधिकरण में अनिवार्य रूप से यथा समय जमा किये जायेंगे ताकि प्राधिकरण द्वारा मरम्मत/पुनर्निर्माण कार्यों की समय-समय पर स्थलीय पुष्टि भी की जा सके।
7. पूर्व निर्मित भवन के वाह्य स्वरूप में परिवर्तन अनुमन्य नहीं होगा, बल्कि विद्यमान स्वरूप में मरम्मत/पुनर्निर्माण की अनुमति होगी तथा भवन का फ्रन्ट एलीवेशन पूर्व निर्मित भवन के अनुसार ही रखा जायेगा। इसके अतिरिक्त विद्यमान भवन में फुट-प्रिन्ट, भू-आच्छादन, एफ.ए.आर. तथा भवन की ऊँचाई में कोई वृद्धि अनुमन्य नहीं होगा, बल्कि पूर्व निर्मित भवन की सीमान्तर्गत ही मरम्मत/पुनर्निर्माण अनुमन्य होगा।
8. गंगा नदी के किनारे नदी की ओर स्थित भवनों की वास्तुकला एवं सौंदर्य का संरक्षण सुनिश्चित किया जायेगा।
9. उपरोक्त उल्लिखित शर्तों एवं प्रतिबन्धों के उल्लंघन की दशा में प्राधिकरण द्वारा विधि सम्मत सुसंगत अधिनियम/नियम/उपनियम के अन्तर्गत कार्यवाही की जायेगी।
10. प्रश्नगत भवन के सामने स्थित सड़क के मध्य से 9 मीटर दूरी तक पक्ष को अपने भवन के सामने स्थित खुले चबुतरे की भूमि व मोटी दीवार के अंश भाग की भूमि मार्ग विस्तार में देने के साथ शासनादेश में उल्लेखित अन्य शर्तों का पालन किया जाना अनिवार्य होगा।

आज्ञा से

जोनल अधिकारी
(वार्ड-आदमपुर)

पत्रांक :- 267/वि0प्रा10/जोनल अधि0-आदमपुर/मरम्मत अनुज्ञा/2023-24 दिनांक :- 01/01/2024
प्रतिलिपि :- 1. नगर नियोजक, विकास प्राधिकरण, वाराणसी को सूचनार्थ।

2. क्षेत्रीय अवर अभियन्ता, विकास प्राधिकरण, वाराणसी को उपरोक्त शर्तों के अनुपालन सुनिश्चित कराने हेतु।

3. सम्बन्धित पत्रावली पर।



जोनल अधिकारी
(वार्ड-आदमपुर)

वाराणसी विकास प्राधिकरण, वाराणसी

सेवा में,

श्री राघवेन्द्र चव्वा पुत्र श्री जितेन्द्र नारायण चव्वा
निवासी-भ0सं0-ए-11/4-ए-5-ए, मोहल्ला-नया महादेव,
वार्ड-आदमपुर, वाराणसी।

पत्रांक:- 32/1 / वि0प्रा0 / भवन / 2024-25

दिनांक:- 14/10/24

विषय:- भ0सं0-ए-11/4-ए-5-ए, मोहल्ला-नया महादेव, वार्ड-आदमपुर, वाराणसी के सम्बन्ध में।
महोदय,

कृपया उपरोक्त विषयक प्रकरण के सम्बन्ध में सूचित करना है कि प्रस्तुत भू-व्याप्तिक सम्पत्ति विक्रय-विलेख में प्रश्नगत सम्पत्ति का म0नं0-ए0 11/4ए+5, ए जबकि नगर निगम द्वारा निर्गत चिट्ठा में प्रश्नगत भ0सं0- अ 11/4-5, मोहल्ला-नया महादेव, वार्ड-आदमपुर अंकित है। साथ ही प्रस्तुत विक्रय-विलेख में बेसमेन्ट का आच्छादित क्षेत्रफल 161.98 वर्गमी0 आर0बी0सी0 द्वितीय श्रेणी भूतल आच्छादित क्षेत्रफल 16.72 वर्गमी0 आर0बी0सी0 द्वितीय श्रेणी अंकित है एवं विक्रय विलेख में संलग्न भवन का फोटोग्राफ अत्यन्त अस्पष्ट होने के कारण निर्माण की स्थिति स्पष्ट नहीं हो पा रही है, जबकि नगर निगम से निर्गत चिट्ठा में प्रथम खण्ड 1 कमरा नया अत्यन्त किनारे द्वितीय खण्ड 7 कमरा साधारण एवं शौचालय अंकित है। विक्रय विलेख में अंकित भवन सं0 एवं निर्माण तथा नगर निगम द्वारा निर्गत चिट्ठे में अंकित भवन संख्या एवं निर्माण में भिन्नता है।

अतः आपको निर्देशित किया जाता है कि दिनांक 30.10.2024 के अन्दर प्रश्नगत भवन स सम्बन्धित स्पष्ट फोटोग्राफ एवं भवन संख्या की भिन्नता के सम्बन्ध में अपना स्पष्टीकरण प्रस्तुत करें, अन्यथा प्रदान की गयी अनुमति के विरुद्ध विधिक कार्यवाही सम्पादित करा दी जायेगी, जिसका समस्त उत्तरदायित्व आपका होगा।

भवदीय,

(सजीव कुमार)
जोनल अधिकारी

पत्रांक:- / वि0प्रा0 / भवन / 2024-25

दिनांक:-

- प्रतिलिपि:- 1. अपर सचिव महोदय को सादर अवलोकनार्थ प्रेषित।
2. प्रभारी अधिकारी (भवन) को सादर सूचनार्थ प्रेषित।



(सजीव कुमार)
जोनल अधिकारी

वाराणसी विकास प्राधिकरण, वाराणसी

सेवा में,

श्री राघवेन्द्र चढ़वा पुत्र श्री जितेन्द्र नारायण चढ़वा
निवासी-भ0सं0-ए-11/4-ए-5-ए, मोहल्ला-नया महादेव,
वार्ड-आदमपुर, वाराणसी।

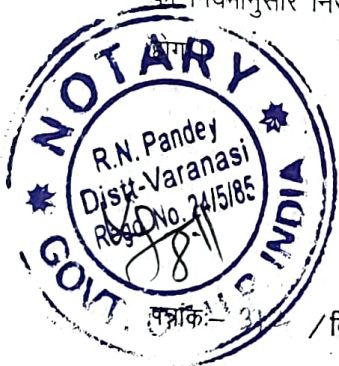
पत्रांक:- 312 /वि0प्रा0/भवन/2024-25

दिनांक:- 26/10/24

विषय:- भ0सं0-ए-11/4-ए-5-ए, मोहल्ला-नया महादेव, वार्ड-आदमपुर, वाराणसी के सम्बन्ध में।
महोदय,

कृपया उपरोक्त विषयक प्रकरण के सम्बन्ध में सूचित करना है कि प्रस्तुत भू-स्वामित्व सम्बन्धी विक्रय-विलेख में प्रश्नगत सम्पत्ति का म0नं0-ए0 11/4ए+5, ए जबकि नगर निगम द्वारा निर्गत चिट्ठा में प्रश्नगत भ0सं0- अ 11/4-5, मोहल्ला-नया महादेव, वार्ड-आदमपुर अंकित है। साथ ही प्रस्तुत विक्रय-विलेख में बेसमेन्ट का आच्छादित क्षेत्रफल 161.98 वर्गमी0 आर0बी0सी0 द्वितीय श्रेणी भूतल आच्छादित क्षेत्रफल 16.72 वर्गमी0 आर0बी0सी0 द्वितीय श्रेणी अंकित है एवं विक्रय विलेख में संलग्न भवन का फोटोग्राफ अत्यन्त अस्पष्ट होने के कारण निर्माण की स्थिति स्पष्ट नहीं हो पा रही है, जबकि नगर निगम से निर्गत चिट्ठा में प्रथम खण्ड 1 कमरा नया अत्यन्त किनारे द्वितीय खण्ड 7 क मरा साधारण एवं शौचालय अंकित है। विक्रय विलेख में अंकित भवन सं0 एवं निर्माण तथा नगर निगम द्वारा निर्गत चिट्ठे में अंकित भवन संख्या एवं निर्माण में भिन्नता है।

अतः आपको निर्देशित किया जाता है कि दिनांक 04.11.2024 के अन्दर प्रश्नगत भवन से सम्बन्धित स्पष्ट फोटोग्राफ एवं भवन संख्या की भिन्नता के सम्बन्ध में अपना स्पष्टीकरण प्रस्तुत करें, अन्यथा प्रदान की गयी अनुमति पत्रांक 267/वि0प्रा0/जोनल अधि0-आदमपुर/मरम्मत अनुज्ञा/2023-24 दिनांक 01.01.2024 को नियमानुसार निरस्त करने की कार्यवाही सम्पादित कर दी जाएगी, जिसका समस्त उत्तरदायित्व आपका



पत्रांक:- 312 /वि0प्रा0/भवन/2024-25

दिनांक:- 26/10/24

भवदीय,

(राजीव कुमार)
जोनल अधिकारी

प्रतिलिपि:- 1. अपर सचिव महोदय को सादर अवलोकनार्थ प्रेषित। 26/10/24
2. प्रभारी अधिकारी (भवन) को सादर सूचनार्थ प्रेषित।

26/10/24

Received
behalf
of
Raghuwanshi
26/10/2024

जोनल अधिकारी

Chief Justice's Court

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 31229 of 2005

Petitioner :- Kautilya Society Thru' General Secy. & Another

Respondent :- State Of U.P. Thru' Principal Secy. & Others

Counsel for Petitioner :- Neeraj Tiwari, Neera Tiwari, S.T. Ali, Sandeep Chaturvedi, Suneet Kumar, Suneet Tewari, Tahir Husain, U.N. Sharma, Virendra (In Person), Vrinda Dar

Counsel for Respondent :- C.S.C., A.N. Tewari, Ajay Kumar Singh, Ajit Kumar Singh, C.K. Parekh, Gyan Prakash, Manish Goyal, Prakash Padia, Q.H. Siddiqui, Raunak Parekh, Sanjay Kumar Om, Shambhu Chopra, Swati Agrawal, Vivek Varma

**Hon'ble Dr. Dhananjaya Yeshwant Chandrachud, Chief Justice
Hon'ble Dilip Gupta, J.**

A. Repair Bye-laws and Model Heritage Bye-laws

In the affidavit which has been filed by the Superintending Engineer of the Varanasi Development Authority¹ on 17 February 2016, it has been stated that in pursuance of the orders passed by this Court, building construction and development bye-laws have been amended after obtaining the prior approval of the State Government after which the bye-laws have been adopted by VDA. Bye-law 3.1.10 as amended contains provisions for regulating repairs and reconstruction of buildings situated within 200 meters of the banks of the river. At this stage, we may note that bye-law 3.1.10 has provided a complete mechanism to ensure that no new or fresh construction is raised in a manner that would either alter the exterior portion of an existing building or result in an alteration of the footprint, ground

¹ VDA

coverage area, floor area ratio or height of the building.

In this context for convenience of reference, we may extract clause (III) (छ) of the amended bye-laws which reads as follows:

“(छ) पूर्व निर्मित भवन के बाह्य स्वरूप में कोई परिवर्तन अनुमन्य नहीं होगा, बल्कि विद्यमान स्वरूप में ही मरम्मत/पुर्ननिर्माण की अनुमति दी जायेगी तथा भवन का फ्रन्ट एलिवेशन पूर्व निर्मित भवन के अनुसार ही रखा जायेगा। इसके अतिरिक्त विद्यमान भवन के 'फुट-प्रिन्ट', भू-आच्छादन, एफ.ए.आर. तथा भवन की ऊँचाई में कोई वृद्धि/अनुमन्य नहीं होगा। बल्कि पूर्व निर्मित भवन की सीमान्तर्गत ही अनुमन्य होंगे।”

The amended bye-laws also include various other requirements including the submission of the plan in respect of the existing building and relevant documents and contain stipulations to the effect that there would be no change of the use of the existing structure and there would be no discharge of sewage into the river. Provisions have also been made for inspection of the constructions so as to enable the development authority to verify that there has been a breach of the bye-laws.

The State Government in exercise of its powers conferred by Section 57 read with Section 9 (2) of the UP Urban Planning and Development Act 1973 has also notified on 20 January 2016 the Model Heritage Bye-laws which have been adopted by the VDA on 22 January 2016.

Since the amended bye-law 3.1.10 of the Building Construction and Development Bye-laws has now received the approval of the State Government and has been adopted by the VDA, we deem it appropriate and proper to order and direct that all permissions for repair and development strictly in accordance with the approved Bye-laws may be processed by the VDA. However, we clarify that this order shall not be construed as an order permitting the regularization of any construction which has been carried out in violation of the provisions of the UP Urban Planning and Development Act 1973 which, in any case, shall be dealt with in accordance with the provisions of the law by the VDA.

B. The Project of Inland Waterways Authority of India (IWAI)

The Inland Waterways Authority of India, which is a statutory body constituted under the Inland Waterways Authority of India Act 1985², is proposing to develop a multi modal water terminal at Ram Nagar, Varanasi. The land acquisition proceedings were completed in 2010 and approximately 5.6 hectares of land have been acquired. Among the waterways which have been declared as National Waterways, in implementation of the provisions of Section 14, is NW-1 which covers the Ganga – Bhagirathi – Hooghly river system from Allahabad to Haldia at a distance of 1620 Kms, traversing the States of Uttar Pradesh, Bihar, Jharkhand and West Bengal.

² IWAI Act

Permanent jetties with mechanical handling facilities have been set up at Patna and Kolkata in addition to which jetties for berthing facilities have been provided at two other places. The project envisages as many as twenty floating terminals at various locations between Haldia and Allahabad. The Vice Chairperson of IWAI, who has assisted the learned Senior Counsel during the course of the hearing of these proceedings, has stated before the Court that the project is being implemented with the technical and financial assistance of the World Bank involving a total of USD 859 million. The project at Ram Nagar is on the south bank of the river and involves the construction of off shore jetties which will not impede the flow or current of the river.

The Environmental Impact Assessment Notification of the Ministry of Environmental and Forests dated 14 September 2006 covers in item 7 (e) of its schedule, projects for ports and harbours. The Court has been apprised of the fact that though the provisions of the notification of MOEF dated 14 September 2006 are not attracted to the project, detailed environmental impact assessments and cumulative impact assessments have been carried out for the project.

The learned Additional Solicitor General of India has placed on the record a copy of the Draft Environmental Assessment Report in respect of Phase 1A of Multi Modal River Water Terminal at Ram Nagar, Varanasi. The submissions which have been made before the

Court indicate that the draft EIA report deals with the environmental impact assessment up to the stage of the commissioning of the project and hence, it would be appropriate if IWAI also undertakes to carry out an environmental impact assessment of the position after the commissioning of the project. We deem this suggestion to be fair and proper and the suggestion of the learned Amicus Curiae has not been opposed by the IWAI.

Accordingly, we allow the application which has been filed by IWAI and permit the authority to proceed with the project, subject to the receipt of all the required statutory clearances. This shall, however, be subject to the condition, which we have proceeded to accept of a requirement of obtaining an environmental impact assessment in respect of the project after the date of its commissioning.

C. Repair and Construction of Ghats

Applications have been submitted by the State (Irrigation Department) and (Jal Nigam) for (i) construction and development of four new Ghats on the banks of the river Ganga at Varanasi; and (ii) for carrying out the work of repair at the Ghats.

I. By orders dated 11 September 2014 and 29 January 2015, this Court had directed both the Union Government and the State Government to extend cooperation in the preparation of a

comprehensive analysis and plan by a team of experts, consisting of eminent persons drawn from diverse branches, including conservation architecture, ecology, hydro-geology, civil engineering and urban planning for the purpose of formulating a perspective plan for preserving the intrinsic character and heritage importance of Varanasi. The issues which were flagged in the order of this Court included the following:

- “(i) identification of the historic ghats, assessment of their heritage value, determining the present condition as well as the need and extent of restoration;
- (ii) repair of old constructions along side the banks of the river and the need to monitor the nature of the work that would be permitted and implemented;
- (iii) monitoring any new construction;
- (iv) pollution of the river caused due to new constructions along side the ghats;
- (v) public utilities and services on the ghats;
- (vi) sanitation and hygiene along side the ghats;
- (vii) addressing the issue of ecological imbalance.”

In pursuance of the order of this Court, a notification has been issued by the Union Government (National Mission for Clean Ganga), Ministry of Water Resources, River Development & Ganga Rejuvenation. A committee of experts has been constituted consisting

of the following members:

- i. Chairman, Varanasi Development Authority.....Chairman
- ii. Nominee of State Government, Uttar Pradesh
- iii. Commissioner, Nagar Nigam, Varanasi
- iv. District Magistrate, Varanasi
- v. Shri Jahnuj Sharma, Director- Conservation, ASI
(Representative of Ministry of Culture, Govt. of India)
- vi. Shri R.P. Singh, Supdt. Engineer, CPWD, Varanasi
(Representative of Ministry of Urban Development,
Govt. of India)
- vii. Shri Udit Ratna, Town & Country Planner, Town &
Country Planner Organization
(Representative of Ministry of Urban Development,
Govt. of India)
- viii. Regional Director, Central Ground Water Board,
Lucknow
(Representative of MoWR, RD & GR, GoI as Hydro-
geology expert)
- ix. Nominee, Department of Environment, Govt. of UP (as
Ecology expert)
- x. Additional Mission Director, National Mission for Clean
Ganga, MoWR, RD & GR, Delhi
.....Member Convener”

The terms of reference of the committee are as follows:

- i. To preserve and restore the intrinsic character and heritage importance of Varanasi Ganga Ghats with comprehensive analysis and Plan.

ii. Identification of the historic Ghats, assessment of their heritage value, determining the present condition as well as the need and extent of restoration of existing Ghats and proposal of new Ghats.

iii. Consider and recommend repair of old constructions alongside the banks of River Ganga and the need to monitor the nature of work that may be permitted.

iv. Assess the extent of pollution and recommend mitigative measures arising due to new construction, waste disposal, throwing of pious materials, and river-surface cleanliness along the Ghats.

v. Mechanism for monitoring of new construction, if any that may be permitted.

vi. Public utilities and services, sanitation and hygienic condition alongside of the Ghats.

vii. Addressing the issue of ecological imbalance.”

In the application which has been filed by the State (Jal Nigam) for repair of the Ghats, it has been stated that the plan for repairs has been sanctioned by the State Government so as to ensure the availability of basic infrastructure to cater to the needs of domestic and international tourists and pilgrims by providing facilities of toilets, drinking water, information kiosk, guiding tours, telecommunications and other ancillary facilities. The sanctions which were received cover the period from 2011 to 2015, details of which have been provided as follows:

“The plan for the year 2011-12 envisages installation of

electrical poles, sanitary and plumbing equipment, external illumination and also dismantling work, amongst other things for which the Government has been pleased to sanction the amount of Rs. 1165.96 crores.

The plan for the year 2012-13 for which a sanction for an amount of Rs. 1173.85 crores has been accorded, envisages construction of horticulture operations, street furniture, earth work, dredging work, clearance of site and civil and conservation work.

The plan for the year 2013-14 has been sanctioned at a total cost of Rs. 1174.81 lacs and the plan for 2014-15 has been sanctioned at an estimated cost of Rs.1155.31 lacs.”

In our view, now that a broad based committee has been constituted by the National Mission for Clean Ganga, consisting both of the representatives of the State Government as well as the Union Government, it would be appropriate and proper if the proposals for repair of the Ghats are placed before the committee. The terms of reference of the committee include the preservation and restoration of the intrinsic character and heritage importance of the Ghats on the banks of the river at Varanasi. The terms of reference are broad enough to cover proposals for repair and restoration of the Ghats.

Hence, we are of the view that it would be but appropriate and proper that the broad based committee which has been constituted considers the proposals which have been moved before the Court. Upon the receipt of the consent of the committee, the State

Government would be at liberty to proceed with the work of repair. In order to facilitate the fulfillment of the urgent need of repairing of the Ghats and to provide amenities to tourists, pilgrims as well as the local residents who visit the Ghats on a daily basis, we would request the committee initially to meet at least once every fortnight so as to facilitate an early decision on the proposal for repair. Once the requisite consent has been granted, the committee would be at liberty to schedule its meetings in accordance with the exigencies of work. To facilitate the work of repair of the Ghats, we lift the order of restraint. We clarify that subject to the above, the interim order shall not stand in the way of the carrying out of repairs to the Ghats.

II. Insofar as the proposal for the construction of four new Ghats is concerned (the learned Chief Standing Counsel has informed the Court that the initial proposal for four Ghats has now been enhanced to five new Ghats), we propose to issue a direction to the effect that this proposal should also be initially placed before the committee constituted on 17 February 2016 by the office memorandum referred to above. This application which has been submitted before the Court for construction of new Ghats and for the grant of permission by the Court would be taken up after the committee has an opportunity to consider the proposal and to submit a report in regard thereto containing its observations and findings. The committee would be at liberty to consider the matter from all its perspectives and suggest

such environmental and other safeguards as may be necessary if the proposal is found to be in order. We would request the committee to finalize its report on these aspects preferably within a period of two months from today. We direct that the representative of INTACH be also associated with the work of the committee.

Order on the Order Sheet

We direct that these proceedings be listed on 27 May 2016 at 2:00 pm so that the Court can be apprised of the status of the proceedings.

Order Date :- 28.4.2016

RK

(Dilip Gupta, J) (Dr D Y Chandrachud, CJ)

C.M. Application No. 135071 of 2015

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 31229 of 2005

Hon'ble Dr. Dhananjaya Yeshwant Chandrachud, Chief Justice
Hon'ble Dilip Gupta, J.

Allowed.

For orders, see order of date passed on the order sheet of
the petition.

Order Date :- 28.4.2016

RK

(Dilip Gupta, J) (Dr D Y Chandrachud, CJ)

21/10/15

23/10/15
21-10-15

प्रेषक:

राजा कान्त,
प्रमुख सचिव,
उत्तर प्रदेश शासन।

सेवा में,

सपाध्यक्ष,
वाराणसी विकास प्राधिकरण,
वाराणसी।

आवास एवं शहरी नियोजन अनुभाग-3 लखनऊ : दिनांक: // मार्च, 2015

विषय:- वाराणसी विकास प्राधिकरण क्षेत्र में गंगा के किनारे से 200 मीटर के अन्दर स्थित भवनों के मरम्मत/पुर्ननिर्माण हेतु भवन निर्माण एवं विकास उपविधि में संशोधन के संबंध में।

महोदय,

उपरोक्त विषयके प्राधिकरण के पत्र संख्या-476/वि0प्र0/न0नि0/13-14 दिनांक 17.06.2013, पत्र संख्या-600/वि0प्र0/न0नि0/13-14 दिनांक 29.06.2013 एवं पत्र संख्या-226/वि0प्र0/न0नि0/13-14 दिनांक 11.07.2013 का कृपया संदर्भ ग्रहण करें, जिसके माध्यम से पी0आईएल0 संख्या-31229/2005 में पारित मा0 उच्च न्यायालय इलाहाबाद के आदेश दिनांक 14.03.2013 द्वारा नीति तैयार करने के सम्बन्ध में प्राप्त निर्देशों के अनुपालन में गंगा नदी के किनारे 200 मीटर के अन्दर स्थित भवनों के निर्माण के सम्बन्ध में भवन निर्माण एवं विकास उपविधि में उ0प्र0 नगर नियोजन और विकास अधिनियम, 1973 की धारा-50 में किए गये प्राविधान के अन्तर्गत शासन के विचारार्थ सहमति/कार्यवाही हेतु संदर्भित किया गया है।

2- इस संबंध में मुझे यह कहने का निर्देश हुआ है कि प्राधिकरण द्वारा उपलब्ध कराये गये संशोधन प्रस्ताव पर समस्त विचार/शेपरान्त वाराणसी विकास प्राधिकरण क्षेत्र के अन्तर्गत गंगा के किनारे से 200 मीटर के अन्दर स्थित भवनों के मरम्मत/पुर्ननिर्माण अनुज्ञा के संबंध में वाराणसी विकास प्राधिकरण भवन निर्माण एवं विकास उपविधि के प्रस्ताव-3.1.10 में निम्न संशोधन किए जाने का निर्णय लिया गया है:-

प्रस्ताव-3.1.10 : गंगा नदी के किनारे 200 मीटर के क्षेत्र में निर्माण अनुज्ञा

(I) यह उपविधि गंगा नदी के किनारे वरी नयनों में नदी तट से 200 मीटर क्षेत्र के 'दि एनसिएन्ट मान्यूमेन्ट्स एण्ड आर्कियोलॉजिकल साइट्स एण्ड रिजेन्स एक्ट, 1958' तथा 'उ.प्र. पुरातत्व सर्वेक्षण विभाग द्वारा 'दि उत्तर प्रदेश एनसिएन्ट एण्ड हिस्टोरिकल मान्यूमेन्ट्स एण्ड आर्कियोलॉजिकल साइट्स एण्ड रिजेन्स प्रिजर्वेशन एक्ट, 1958' के अन्तर्गत घोषित संरक्षित स्मारकों पर लागू नहीं होगी।
स्पष्टीकरण-नदी तट का आशय समन्वित किनारों (राजस्व/रिंवाई) के अतिरिक्त में अंकित नदी तट से है।

(II) उपर्युक्त दोनों अधिनियमों में आबद्धित भवनों के अतिरिक्त अन्य विनिर्दिष्ट क्षेत्रों/भवनों में किसी भी प्रकार के मरम्मत/पुर्ननिर्माण की अनुमति स्थापित की जायेगी।

23/10/15

सावेब

जिफायम
21-3-15

23/10/15

23/10/15

विभागों (भारतीय पुरातत्व सर्वेक्षण विभाग/उ.प्र. राज्य पुरातत्व विभाग) से अनापत्ति प्राप्त करने के उपरान्त 'इन्स्टैक' (INIAOM) के परामर्श से देय होगी।

(III) गंगा नदी के किनारे नदी तट से 200 मीटर क्षेत्र में स्थित निजी भवनों (इरिज्ड स्थलों/भवनों को छोड़कर) के मरम्मत/पुनर्निर्माण की अनुमति निम्नलिखित शर्तों के अधीन देय होगी:-

(क) आवेदक द्वारा भवन की मरम्मत/पुनर्निर्माण हेतु आवेदन-पत्र के साथ विद्यमान भवन का मानचित्र, स्वामित्व सम्बन्धी अभिलेख, भवन की लोकेशन का 'की-प्लान', साइट प्लान, भवन की वर्तमान स्थिति के सभी उपलब्ध दिशाओं से फोटोग्राफ्स (फोटोग्राफ लेने की तिथि अंकित करते हुए), स्थल पर मौजूद भवन का वर्तमान भू-आच्छादन, विद्यमान सेट-बैक, सभी तलों के प्लान, सेक्शन, एलीवेशन, आदि अन्य वांछित अभिलेखों के साथ प्राधिकरण में जमा किए जाएंगे।

(ख) आवेदन-पत्र के साथ आवेदक द्वारा निम्न शपथ-पत्र भी प्राधिकरण को प्रस्तुत किया जाएगा:-

(I) भवन के वर्तमान उपयोग में परिवर्तन नहीं किया जाएगा।

(II) सीवरेज एवं ड्रेनेज का निस्तारण सीधे गंगा नदी में नहीं किया जाएगा।

(ग) आवेदक द्वारा उपरोक्त (क) एवं (ख) के अनुसार विकास प्राधिकरण को वास्तु दस्तावेज/सूचनाएं प्रस्तुत की जाएंगी, मानचित्र स्वीकृत कराना अनिवार्य नहीं होगा। परन्तु प्राधिकरण द्वारा स्थलीय पुष्टि के उपरान्त यदि प्रस्तुत मानचित्र एवं अन्य दस्तावेजों में कोई विसंगति पाई जाती है अथवा स्थल पर प्रस्तुत मानचित्र के विपरीत उल्लंघन पाया जाता है, तो ऐसे निर्माण के विरुद्ध नियमानुसार कार्यवाही की जाएगी।

(घ) भवन की मरम्मत/पुनर्निर्माण कार्य प्रारम्भ करने से पूर्व आवेदक द्वारा प्राधिकरण को इस आशय की लिखित सूचना दी जाएगी।

(ङ) आवेदक द्वारा भवन के मरम्मत/पुनर्निर्माण के विभिन्न चरणों (प्लिन्थ लेवल, प्रथम तल का स्लैब, द्वितीय तल का स्लैब, तृतीय तल का स्लैब, आदि) के फोटोग्राफ्स भी यथा-समय प्राधिकरण में जमा किए जाएंगे, जिनके आधार पर प्राधिकरण द्वारा मरम्मत/पुनर्निर्माण कार्य की समय-समय पर स्थलीय पुष्टि की जाएगी।

(च) भवन की मरम्मत/पुनर्निर्माण का कार्य पूर्ण होने के उपरान्त आवेदक द्वारा उसकी सूचना प्राधिकरण को अनिवार्य रूप से दी जाएगी एवं निर्मित भवन के फोटोग्राफ्स (सभी उपलब्ध दिशाओं से) भी जमा किए जाएंगे।

(छ) पूर्व निर्मित भवन के साह्य स्वरूप में कोई परिवर्तन अनुमत्त नहीं होगा, बल्कि विद्यमान स्वरूप में ही मरम्मत/पुनर्निर्माण की अनुमति दी जाएगी तथा भवन का ग्रन्ट एलीवेशन पूर्व निर्मित भवन के अनुसार ही रखा जाएगा। इसके अतिरिक्त विद्यमान भवन के 'फुट-प्रिन्ट', भू-आच्छादन, एफ.ए.आर. तथा भवन की ऊंचाई में कोई वृद्धि/अनुमत्त नहीं होगा। बल्कि पूर्व निर्मित भवन की सीमान्तर्गत ही अनुमत्त होगा।

(ज) भवन के आन्तरिक ले-आउट में परिवर्तन (स्ट्रक्चरल परिवर्तन को छोड़कर) अनुमत्त होगा। उदाहरणस्वरूप, पुराने भवनों में सीमित तल क्षेत्रफल के बेहतर उपयोग अथवा वारस्तुदोष के निराकरण हेतु आन्तरिक परिवर्तन अनुमत्त होंगे।

(झ) भवन के वर्तमान उपयोग में कोई भी अनावश्यक अंगुण्य नहीं होगा। भवन जिस उपयोग में लाया जा रहा है, वही उपयोग अनुमत्या होगा। यदि किसी भवन का उपयोग प्राधिकरण को प्रस्तुत मानचित्र के विपरीत अन्य उपयोग यथा-होटल/लॉज/रेस्टोरेन्ट/दुकान अथवा किसी अन्य व्यवसायिक उपयोग के लिए किया जाता है, तो उसके विरुद्ध नियमानुसार कार्यवाही की जाएगी।

(ज) गंगा नदी के किनारे नदी की ओर स्थित भवनों की वास्तुकला एवं सौन्दर्य (Aesthetics) का संरक्षण सुनिश्चित किया जाएगा।

(ट) भवन की मरम्मत/पुनर्निर्माण हेतु प्रस्तुत आवेदन-पत्रों का निम्न समिति द्वारा परीक्षा कर सपाध्यक्ष, विकास प्राधिकरण को परतुति प्रस्तुत की जाएगी:-

• सचिव, विकास प्राधिकरण	अध्यक्ष
• नियोजन प्रभारी, विकास प्राधिकरण	सदस्य-संयोजक
• प्रभारी अभियन्ता भवन, विकास प्राधिकरण	सदस्य

नोट:- (1) अध्यक्ष की अनुमति से आवश्यकतानुसार नगर निगम, जल निगम अथवा अन्य विभागों के अधिकारियों को उक्त समिति की बैठकों में आमन्त्रित किया जा सकेगा।

(11) विकास प्राधिकरण के सम्बन्धित तकनीकी कार्मिकों/अभियन्ताओं द्वारा स्थलीय सत्यापन, स्थल पर हो रहे मरम्मत/पुनर्निर्माण का विभिन्न चरण में निरीक्षण तथा कार्य पूर्ण होने के उपरान्त मानचित्र के अनुरूप/विपरीत निर्माण पूर्ण होने की रिपोर्ट सपाध्यक्ष, विकास प्राधिकरण को प्रस्तुत की जाएगी।

(ट) उपरोक्तानुसार अनुमत्या मरम्मत/पुनर्निर्माण सम्बन्धी कार्यों के अतिरिक्त इस क्षेत्र में अन्य विकास एवं निर्माण कार्य निषिद्ध होंगे।

(ड) गंगा नदी के किनारे नदी तट से 200 मीटर क्षेत्र में किए गए अनाधिकृत निर्माणों का शमन अनुमत्या नहीं होगा।

(ढ) महायोजना/जोनिंग रेगुलेशन्स/भवन निर्माण एवं विकास सपविधि के विद्यमान प्राविधान उपरोक्त सीमा तक संशोधित समझे जाएंगे।

3- अतएव अनुरोध है कि उक्त संशोधन वाराणसी विकास प्राधिकरण की बोर्ड बैठक में अंगीकृत/अनुमोदित कराते हुए अपेक्षित कार्यवाही सुनिश्चित करने का कष्ट करें।

भवदीय,

Mull 11/3/15
(सदा कान्त)
प्रमुखा सचिव

219/1115/12/11

123

संख्या 11/21 / 8-3-15-103 विविध/13

प्रेषक,

21/9/15

प्रणारी अधिकारी (संरक्षण/मरम्मत)

पनाधारी यादव,
सचिव,
उत्तर प्रदेश शासन।

कृपया नियमानुसार कार्यवाही
कर आइया.....दिन में
उपलब्ध कराये।

29

सेवा में,

उपायुक्त,
वाराणसी विकास प्राधिकरण,
वाराणसी।

एम 6 पी 0 विविध
सचिव
दिनांक 21/9/15

16/9/15
9.9.15

आवास एवं शहरी नियोजन अनुभाग-3

लखनऊ : दिनांक: 17 अगस्त 2015

विषय:- वाराणसी विकास प्राधिकरण क्षेत्र में गंगा के किनारे से 200 मीटर के अन्दर स्थित भवनों के मरम्मत/पुनर्निर्माण हेतु भवन निर्माण एवं विकास उपविधि में संशोधन के संबंध में।

महोदय,

उपर्युक्त विषयक प्राधिकरण के पत्र संख्या-78/वि0प्रा0/न0नि0/15-16 दिनांक 22.04.2015 का कृपया संदर्भ ग्रहण करने का कष्ट करें।

2- वाराणसी विकास प्राधिकरण क्षेत्र में गंगा के किनारे से 200 मीटर के अन्दर स्थित भवनों के मरम्मत/पुनर्निर्माण हेतु भवन निर्माण एवं विकास उपविधि में संशोधन के संबंध में निर्गत शासनादेश संख्या-049/8-3-15-103विविध/13 दिनांक 11.03.2015 के अनुपालन में प्राधिकरण की वार्ड बैठक दिनांक 30.03.2015 में लिये गये निर्णय के क्रम में प्राधिकरण के उपरिसंदर्भित पत्र द्वारा प्रकरण में 06 बिन्दुओं पर शासन से दिशा-निर्देश दिये जाने सम्बन्धी किये गये अनुरोध के दृष्टिकोण शासन का अभिमत बिन्दुवार निम्नवत् है:-

क्र.सं.	प्राधिकरण द्वारा उठाये गये बिन्दु	शासन का अभिमत/दिशा-निर्देश
1.	वाराणसी विकास प्राधिकरण क्षेत्र में गंगा नदी के किनारे से 200 मी. के अन्दर स्थित भवनों के मरम्मत/पुनर्निर्माण के सम्बन्ध में प्राप्त शासनादेश दि. 11.03.2015 में जन सुविधाओं यथा-घाट के किनारे चेजिंग, रूफ, शौचालय, सीढ़ियों के निर्माण/मरम्मत, आदि का समावेश किया जाना होगा।	इस सम्बन्ध में शासनादेश स्वतः स्पष्ट है। उल्लेखनीय है कि शासनादेश में गंगा नदी के किनारे नदी तट से 200मी. क्षेत्र में स्थित भवनों (हेरिटेज स्थलों/भवनों को छोड़कर) के मरम्मत/पुनर्निर्माण कतिपय शर्तों में शासन अनुमत्य किया गया है। स्पष्ट है कि नये निर्माण प्रतिबन्धित है।
2.	शासनादेश में भवनों के मरम्मत/पुनर्निर्माण के सम्बन्ध में कालबाधित होने की कोई समय सीमा उल्लेख नहीं किया गया है। स्पष्ट होना आवश्यक है।	शासनादेश में मात्र वर्तमान निर्मित भवनों हेतु ही मरम्मत/पुनर्निर्माण के प्राविधान हैं। अतः कालबाधित होने की समय सीमा का उल्लेख अप्रासंगिक है। तथापि प्राधिकरण द्वारा इस सम्बन्ध में निर्णय लिया जा सकता है।
3.	हेरिटेज बिल्डिंग के सम्बन्ध में निर्देश दिये जा चुके हैं कि उक्त को परिभाषित कर प्रमाणित किया जायेगा ताकि संशय की	Directorate General, Central Public Works Department द्वारा जारी Handbook of Conservation of Heritage Buildings में हेरिटेज बिल्डिंग को निम्नवत् परिभाषित किया गया है:-

PA
17/9/15

	कोई सुन्नाइश न रहे।	"Heritage building" means and includes a building of one or more premises or any part thereof and/or structure and/or artefact which requires conservation and/or preservation for historical and/or architectural and/or artleary and/or aesthetic and/or cultural and/or environmental and/or ecological purpose and includes such portion of land adjoining such building or part thereof as may be required for fencing or covering or in any manner preserving the historical and/or architectural and/or aesthetic and/or cultural value of such building. हेरिटेज बिल्डिंग्स को चिन्हित किये जाने की कार्यवाही विकास प्राधिकरण स्तर से किया जाना अपेक्षित है।
4.	गंगा नदी के किनारे से 200 मी. के अन्दर स्थित भवनों के भू-उपयोग यदि परिवर्तित करना अपरिहार्य हो जाता है तो भू-उपयोग परिवर्तन के सम्बन्ध में क्या नीति होगी, यह स्पष्ट किया जाना होगा।	शासनादेश स्वतः स्पष्ट है। उल्लेखनीय है कि शासनादेश के प्रस्तर III(अ) में स्पष्ट प्राविधान है कि भवन के वर्तमान उपयोग में कोई परिवर्तन अनुमत्य नहीं होगा तथा भवन जिस उपयोग में लाया जा रहा है, वही उपयोग अनुमत्य होगा। अतएव भू-उपयोग परिवर्तन किये जाने का कोई प्रश्न ही नहीं उठता।
5.	भवन की मरम्मत/पुनर्निर्माण हेतु प्राप्त आवेदन पत्रों के सम्बन्ध में जो सगिति गठित की गयी है, उसमें मरम्मत क्या होगा स्पष्ट किया जाना होगा।	समिति में मात्र तीन सदस्य हैं अतएव आवेदन पत्रों के परीक्षण हेतु सभी सदस्यों का उपस्थित रहना आवश्यक है। यदि आवश्यकतानुसार अन्य विभागों के प्रतिनिधियों को आमंत्रित किया जाता है तो उनका उपस्थित रहना भी अनिवार्य है।
6.	गंगा नदी के किनारे से 200 मी. के अन्दर मरम्मत/पुनर्निर्माण कार्यों के अतिरिक्त इस क्षेत्र में अन्य विकास निर्माण निषिद्ध होने का उल्लेख किया जायेगा जबकि पूर्व में गंगा नदी के किनारे से 200 मी. के अन्दर मठ, मन्दिर, आश्रम, आदि को अनुमत्य किया गया है। इसे स्पष्ट किया जाना होगा।	शासनादेश के प्राविधान स्वतः स्पष्ट है। शासनादेश में गंगा नदी के किनारे से 200 मी. के अन्दर मरम्मत/पुनर्निर्माण कार्यों के अतिरिक्त इस क्षेत्र में अन्य विकास एवं निर्माण कार्य निषिद्ध किया गया है, अर्थात् मठ, मन्दिर, आश्रम आदि के नये निर्माण अनुमत्य नहीं हैं।

3- इस विषय में मुझे यह कहने का निर्देश हुआ है कि प्राधिकरण की आगामी बोर्ड बैठक में प्रश्नगत प्रश्नों को अनुमोदित कराते हुए उपरोक्तानुसार अग्रोत्तर कार्यवाही सुनिश्चित कर- का

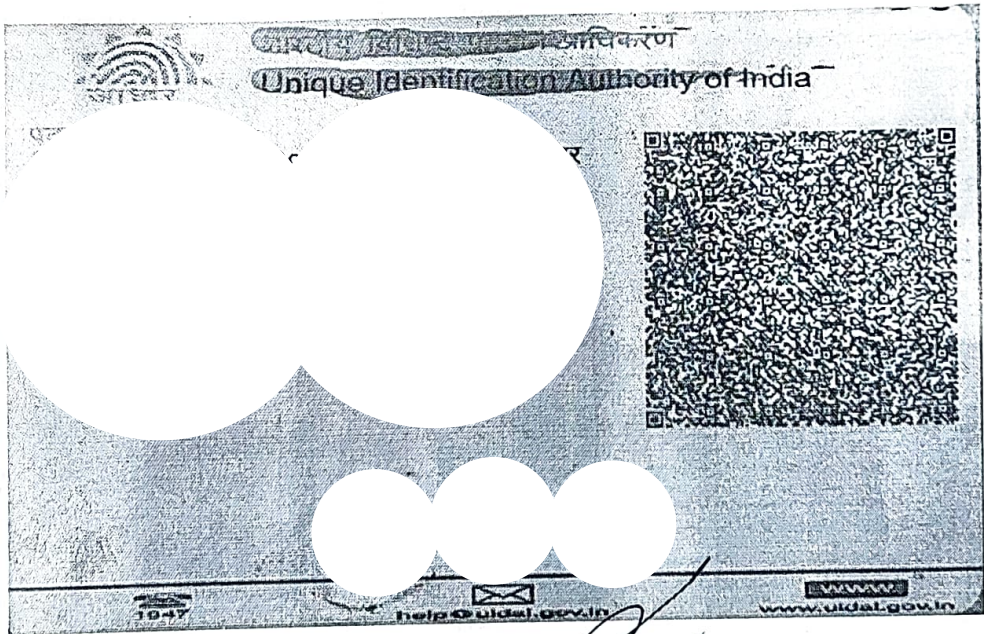
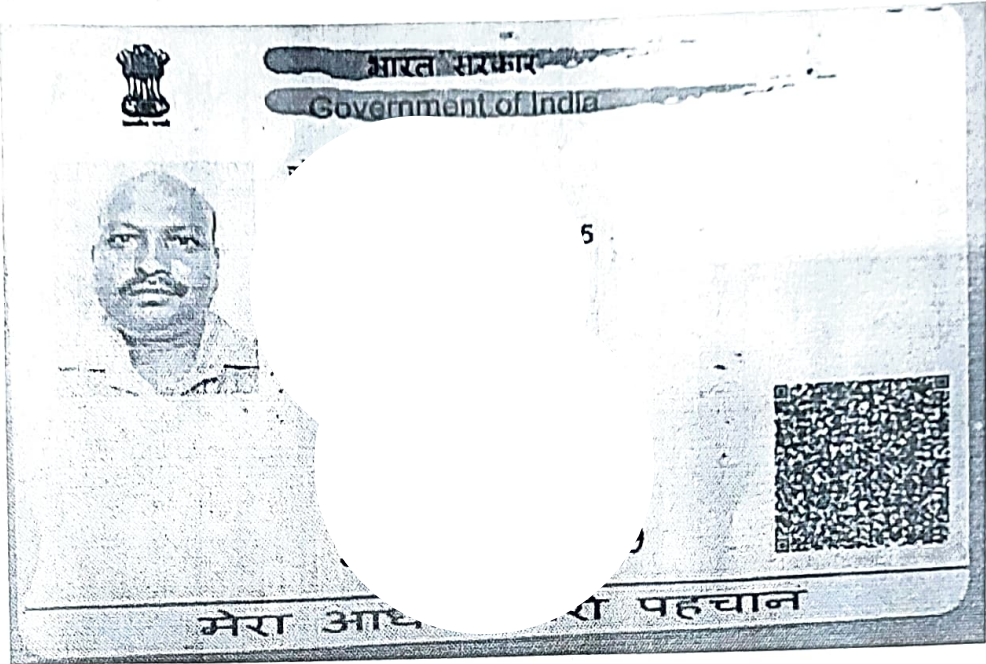
कष्ट करें।

21
19.8.2015

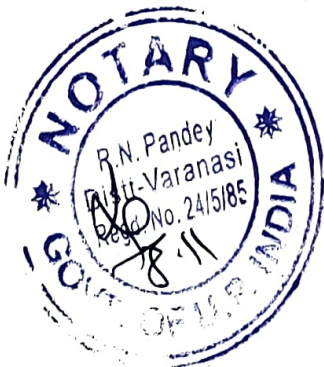
भवदीय,

(पनधारी यादव)

सचिव



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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 1172 OF 2024

IN THE MATTER OF:
ASHISH KUMAR PATHAK

...APPLICANT/PETITIONER

UNION OF INDIA AND OTHERS

VERSUS

...OPPOSITE PARTIES/RESPONDENTS

VAKALATNAMA

Rajeev Kumar Jaiswal S/o Late Pyare Lal

KNOW ALL to whom these present shall come that I _____ S/o _____, AGED ____ YEARS

R/O VDA, being Legal Incharge the above named Respondent No. 3,

do hereby appoint:

SH. AMIT TIWARI [D/2149/2011], SH. CHETANYA PURI [D/1512/2010],
& SH. KUSHAGRA KUMAR [D/4302/2017]
ADVOCATES
48, Lodhi Estate, New Delhi-110003
Mob:+91-8527271621
E-mail:- tiwariamit22@yahoo.com



to be My Advocate in the above noted case and authorize them:

1. To act, appear and plead in the above-noted case in this Tribunal or in any other Court/Forum/Tribunal in which the same may be tried or heard and in the appellate Court/Tribunal including High Court and/or Supreme Court subject to payment of fees separately for each Court by me/ us.
2. To sign, file verify and present pleadings, appeals cross objections or petitions for execution review, revision, withdrawal, compromise or other petitions or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages.
3. To file and take back documents to admit and/or deny the documents of opposite party.
4. To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case.
5. To take execution proceedings.
6. The deposit, draw and receive money, cheques, cash and grant receipts thereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.
7. To appoint and instruct any other Legal Practioner, authorizing him to exercise the power and authority hereby conferred upon the Advocate whenever he may think it to do so and to sign the Power of Attorney on our behalf.
8. And I/We the undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all intents and purposes.
9. And I/We undertake that I / we or my /our duly authorized agent would appear in the Court on all hearings and will inform the Advocates for appearance when the case is called.
10. And I /we undersigned do hereby agree not to hold the advocate or his substitute responsible for the result of the said case. The adjournment costs whenever ordered by the Court shall be of the Advocate which he shall receive and retain himself.
11. And I /we the undersigned do hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the Advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. I/We hereby agree that once the fee is paid. I /we will not be entitled for the refund of the same in any case whatsoever. If the case lasts for more than three years, the advocate shall be entitled for additional fee equivalent to half of the agreed fee for every addition three years or part thereof.

IN WITNESS WHEREOF I/We do hereunto set my /our hand to these presents the contents of which have been understood by me/us on this 3rd day of November, 2024.

Accepted subject to the terms of fees

प्रभारी अधिकारी / विधि
वाराणसी विकास प्राधिकरण
वाराणसी



Chetanya Puri <chetanya.puri@gmail.com>

Advance Service - Counter Affidavit in OA 1172 of 2024 titled Ashish Kumar Pathak Vs. UOI & Ors.

1 message

Chetanya Puri <chetanya.puri@gmail.com>

Sun, Nov 10, 2024 at 3:10 PM

To: "saurabhtiwarihighcourt@gmail.com" <saurabhtiwarihighcourt@gmail.com>

Cc: secy-moef@nic.in, csup@nic.in, dg@nmcg.nic.in, msch.cpcb@nic.in, "ms@uppcb.in" <ms@uppcb.in>, "psforest2015@gmail.com" <psforest2015@gmail.com>, pccf-up@nic.in, dmvar@nic.in, soenvups@rediffmail.com, vda-varanasi@nic.in, "vdavns.legal@gmail.com" <vdavns.legal@gmail.com>, Amit Tiwari <tiwariamit22@yahoo.com>

Mr. Saurabh,
Advocate

We are the counsel for Respondent No.3, Varanasi Development Authority in the captioned OA detailed above, hereby serve you the advance copy of the Counter Affidavit in captioned OA for and on behalf of R-3, which is coming up for hearing on 12.11.2024.

Regards,

Chetanya Puri,

Advocate / Senior Panel Counsel – Union of India

246 A, Chamber Block – I, Delhi High Court,

New Delhi – 110003

Phone: +91 98108 84689

E-mail: chetanya.puri@gmail.com

Office Hours: 9.00 AM to 8.00 PM Monday to Saturday

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 Counter Affidavit - OA 1172 of 2024.pdf
9866K