

**BEFORE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 171/2025**

IN THE MATTER OF:

MANGALA YADAV

...APPLICANT

VERSUS

STATE OF U.P. & ORS.

...RESPONDENT(s)

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2.	A COPY OF THE NOTICE DATED 07.08.2019 IS ANNEXED HEREWITH AND MARKED AS ANNEXURE-1	
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THROUGH COUNSEL



BHANWAR PAL SINGH JADON
 STANDING COUNSEL FOR THE STATE OF U.P.
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DATE: 26.05.2026

PLACE: NOIDA

BEFORE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 171/2025

IN THE MATTER OF:
MANGALA YADAV

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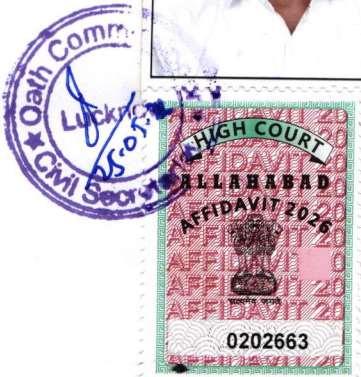
**REPLY ON BEHALF OF RESPONDENT NO. 1 AND 5 HOUSING AND URBAN
PLANNING DEPARTMENT, STATE OF U.P. IN COMPLIANCE OF ORDER DATED
27.02.2026 PASSED BY THE HON'BLE NATIONAL GREEN TRIBUNAL, PRINCIPAL
BENCH, NEW DELHI**



I, Vishwabhan Prakash Nagesh, aged about 58 years, S/o Late Sheo Pal R/o-64/65, Swapna Lok Colony, Kamta, Chinhat, Lucknow currently posted as Deputy Secretary, Housing and Urban Planning Department, State of U.P., do hereby solemnly state and affirm as under:

1. That I, the Deponent, am well conversant with the facts and circumstances of the present case and am competent to swear this affidavit.

Nagesh



BACKGROUND OF THE MATTER

2. That in the present Original Application, the Applicant has challenged the order dated 23.03.2023 passed by respondent no.3, order dated 25.07.2024 passed by respondent no.4 and **order dated 29.11.2024 passed by respondent no.1** construction of the applicant has been found to be in violation of the Act and Rules.

3. That the Hon'ble Tribunal vide order dated 27.02.2026 granted time to the answering Respondent to file their reply. The relevant part of the order is stated below:

"...1. A letter has been circulated by Counsel for State of Uttar Pradesh seeking two weeks' time to file the reply..."

SUBMISSIONS ARE AS FOLLOWS:

4. That the Applicant is owner of the property in question, *Arazi No. 82* and his ancestors have constructed a *Kachcha* house/shop over the *Arazi No.82* admeasuring area 30x80 square feet.

5. That the Hon'ble Allahabad High Court in *PIL No. "Kautilya Society & Ors. vs State of Uttar Pradesh & Ors."* vide order dated **28.04.2016**



Nagesh

in Para A under "Repair Bye-laws and Model Heritage Bye-laws" directed as under:

*"...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..."*

6. That the Applicant was carrying out shuttering work on the ground floor above the basement level at Araj No. 82, Mauja Malokhar, Ward Mugalsarai, District Chandauli over 30 ft x 80 ft area of the house. The illegal construction being carried out in a portion of the house was being done without seeking due approval and permissions from the Varanasi Development Authority (hereinafter referred to as "VDA") in compliance of the directions issued by the Hon'ble High Court in PIL No. "Kautilya Society & Ors. vs State of Uttar



Nagesh

Pradesh & Ors.”and in violation of the provisions of the UP Urban Planning and Development Act, 1973.

7. That, upon getting the information of the illegal construction being carried out by the Applicant, the VDA issued notice dated 07.08.2019 under section 27, 28(1) & 28(2) of the UP Urban Planning and Development Act, 1973 to the Applicant for demolishing of the illegal structure.

A copy of the notice dated 07.08.2019 is annexed herewith and marked as **ANNEXURE-1.**

8. That subsequent to the issuance of the notices by the VDA, the Applicant submitted map for approval/sanctioning of the already constructed structure. For the approval/sanctioning, a survey and inquiry were conducted by the VDA of the said constructed structure, it was found that the said area is situated within the 200 meters of the High Floodplain Level (HFL). Therefore, the request for sanctioning of the map was rejected on 28.12.2019 by the VDA.

A copy of the letter dated 28.12.2019 is annexed herewith and marked as

ANNEXURE-2.

Magesh



9. That upon detection of the unauthorized construction of Ground + 1st Floor at the site in question, in the HFL, the VDA on 23.03.2023 passed the demolition order under section 27(1) of the UP Urban Planning and Development Act, against the illegal structure.

A copy of the demolition order dated 23.03.2023 is annexed herewith and marked as **ANNEXURE-3**.

10. That, thereafter, the Applicant on 12.04.2023 filed an appeal against the demolition order before the Commissioner, Varanasi Division under section 27 (2) of the UP Urban Planning and Development Act, 1973. The said appeal was dismissed vide order dated 25.04.2024 on the grounds that the record showed that the applicant had carried out unauthorized construction and, despite multiple opportunities, failed to submit a compounding map. The construction was found to be in violation of statutory provisions and building bye-laws. Accordingly, the authority held that the demolition order was lawful and suffered from no infirmity. The appeal was found meritless and dismissed.

A copy of the order dated 25.04.2024 is annexed herewith and marked as **ANNEXURE-4**.

Nagesh



11. That the Applicant preferred a recall/restoration application before the Commissioner seeking recall of the order dated 25.04.2024, on the ground that the said order was passed *ex parte*. However, the said recall/restoration application was subsequently rejected vide order dated 25.07.2024 for the reasons that the Applicant was granted sufficient opportunity to place on record the compounding map, however, despite grant of sufficient opportunities, no such map was submitted.

A copy of the order dated 25.07.2024 is annexed herewith and marked as **ANNEXURE-5.**

12. That, thereafter, the Applicant preferred a Revision Petition before State Government of UP, against the dismissal of the recall/restoration order dated 25.07.2024. The Applicant through the Revision Petition prayed that the order of the demolition be set aside.

A copy of the Revision Petition is annexed herewith and marked as **ANNEXURE-6.**

13. That during the pendency of the Revision Petition before the State Government of UP, the Applicant approached the Hon'ble High Court



Magesh

through *Writ Petition No. 26236/2024* challenging the demolition order dated 23.03.2023 as well as the order(s) dated 25.04.2024 and 25.07.2024.

14. That the said Writ Petition was disposed by the Hon'ble High Court vide order dated 06.09.2024 while directing the State of UP Through Principal Secretary, Housing and Urban Planning Department, U.P. Lucknow, to decide the Revision Petition of the Applicant and grant the opportunity of being heard.

A copy of the order dated 06.09.2024 by the Hon'ble High Court is annexed herewith and marked as **ANNEXURE-7**.

15. That in compliance of the directions of the Hon'ble High Court, State of UP Through Principal Secretary Housing and Urban Planning Department heard the Applicant and the Revision Petition was disposed of vide its order dated 29.11.2024 on the grounds that the Applicant repeatedly sought time to submit a compounding map but failed to do so despite sufficient opportunities. This clearly indicates that adequate opportunity of hearing and to adduce evidence was afforded to the Applicant. Thus, no ground for interference was made out in respect of the demolition order dated 23.03.2023 issued for the unauthorized construction which falls within the

Magesh



200 meters of the HFL. Hence, the Revision Petition being devoid of merit and substance was dismissed.

A copy of the order dated 29.11.2024 is annexed herewith and marked as **ANNEXURE-8.**

16. That subsequently, the Applicant approached the Hon'ble High Court vide *Writ Petition No. 198/2025* challenging the order (s) dated 23.03.2023, 25.07.2024 and 29.11.2024. The said Writ Petition was permitted to be dismissed as withdrawn vide the order dated 17.02.2025, with liberty to approach this Hon'ble National Green Tribunal.

A copy of the order dated 17.02.2025 is annexed herewith and marked as **ANNEXURE-9.**

17. That it is germane to note that the Applicant has nowhere made the contention that prior permission was sought by the Applicant for the repair/reconstruction as per the directions of the Hon'ble High Court vide order dated 28.04.2016 in *PIL No. "Kautilya Society & Ors. vs State of Uttar Pradesh & Ors."*. That the Applicant has clearly stated that the Applicant has constructed a *pakka* house/shop, situated within 200 meters of the HFL, which was a *kaccha* house/shop which was constructed by his ancestors.



Maqesh

18. Hence, the present affidavit is being filed for the kind consideration and perusal of this Hon'ble Tribunal.

19. I state that everything stated above has been stated by me in my official capacity on and derived from the official records and I state that nothing material has been concealed therefrom.

Magesh

DEPONENT



VERIFICATION

Verified at Varanasi on this 25th day of MAY, 2026, that the contents of the above affidavit from paragraphs 1 to 19 are believed to be true and correct to the best of my knowledge and belief. No part of it is false and nothing material has been concealed therefrom.

Naresh
DEPONENT



कूपन सं० 0202663
द्वारा शपथ की गई निवृत्त प्रकाश नागेश, उप सचिव, आवास एवं शहरी नियोजन विभाग
जिनका परिवार श्री अनन्त कुमार सिंह, समीक्षा अधिकारी
दिनांक 25.05.26 समय 2-04 P.M.
बाद संख्या 171/2025
पक्षकार मंगला यादव वनाप्र 30 प्र० राज्य व अनन्त
न्यायालय मा० राष्ट्रिय इति अधिकरण
की फीस वसूली गई है

And
25/05/2026

1-IDENTIFY THE DEPONENT
WHO HAS SIGNED BEFORE ME

अनन्त कुमार सिंह
समीक्षा अधिकारी
आवास एवं शहरी
नियोजन अनुभाग-8
30 प्र० शासन

Chandrajit Yadav
25.05.24
(चन्द्रजीत यादव)
शपथ आयुक्त एवं अनुभाग अधिकारी
अनुश्रवण प्रकोष्ठ
उत्तर प्रदेश शासन।

वाराणसी विकास प्राधिकरण
वाराणसी

(नोटिस, अन्तर्गत धारा-27 उत्तर प्रदेश नियोजन एवं विकास अधिनियम 1973)

संख्या M-26/19-नो.0.../वि0प्रा0/भवन/...मुगलसाला...वार्ड दिनांक 03/08/19

श्रीमान् / श्रीमती ...मंगला सादव S/O स्व. म. रेखा

...पाठव ...चौराहा ...मौ. ...मसौलपुर

...बलदुरपुर ...मुगलसाला...

चूँकि आपने विकास प्राधिकरण की अनुज्ञा प्राप्त किये बिना जैसा कि उत्तर प्रदेश नगर नियोजन तथा विकास अधिनियम 1973 की धारा-14 के अन्तर्गत अपेक्षित है मादव चौराहा मौ. मसौलपुर मुहल्ले में स्थित भवन संख्या बलदुरपुर मु. में निर्माण कार्य प्रारम्भ किया है / कर रहे हैं / पूर्ण कर लिया है।

स्व निर्मित बेसमेंट के अ - ल 4x (लगभग 30x80
फुट) स्थान में स्ट्रोक का संपन्न किया जा रहा
है।

अतः अपेक्षित है कि आप दिनांक 19/08/19 को ... 11 ... बजे विकास प्राधिकरण कार्यालय में अधोहस्ताक्षरकर्ता के समक्ष उपस्थित होकर कारण बतलावें कि क्यों न आप द्वारा किये गये उपरोक्त निर्माण को हटा दिया जाय। आप स्वयं या आपके अधिकृत प्रतिनिधि उपस्थित हो सकते हैं।

नोट - उपरोक्त अधिनियम की धारा (1) की ओर आपका ध्यान आकर्षित किया जाता है जिसके अनुसार अधिनियम की धारा 14 के अन्तर्गत बिना अनुमति प्राप्त किये निर्माण कार्य करने पर दस हजार रुपये तक का अर्थदण्ड दिया जा सकता है और अपराध जारी रहने की दशा में अपराध के निमित्त प्रथम दोष सिद्ध के पश्चात् प्रत्येक ऐसे दिन के निमित्त जिसमें कि अपराध जारी रहे 500 रुपये प्रतिदिन के हिसाब से और भी अर्थदण्ड लगाया जा सकता है।



Neeraj

जोनल अधिकारी
%

(5)

वाराणसी विकास प्राधिकरण, वाराणसी

(निर्माण कार्य बन्द करने की नोटिस)

नोटिस संख्या..... 26/19 नो. वार्ड..... मुगलमारा / वि० प्रा० (भ०) दिनांक 07/08/19
 श्री/श्रीमती..... अमाता यादव पुत्र/पत्नी रतन प्यारे यादव
 मकान नं०..... पाटव चौराहा गाँव मलेशपुर वार्ड..... मुगलमारा
 बहादुरपुर मुगलमारा

(नोटिस उत्तर प्रदेश नगर योजना और विकास अधिनियम 1973 की धारा 28 के अन्तर्गत)

अवर सचिव की रिपोर्ट से मुझे समाधान हो चुका है कि वाराणसी विकास प्राधिकरण क्षेत्रान्तर्गत..... मुगलमारा..... मुहल्ले में स्थित भवन संख्या..... बहादुरपुर में अनुज्ञा प्राप्त किये बिना आपने..... पुष्प सिंह हौसने-पुके के मु (नं० 42 मुगलमारा) निर्माण कार्य प्रारम्भ किया है तथा कर रहे हैं। आपको आदेशित किया जाता है कि आप उक्त मकान में किए जा रहे सभी निर्माण कार्य को अविलम्ब रोक दें। अवहेलना की दशा में आपके विरुद्ध उक्त अधिनियम की धारा-28 की उप धारा (2) से (6) के अन्तर्गत कार्यवाही की जायेगी। एतद द्वारा आपको चेतावनी दी जाती है कि आप द्वारा उक्त आदेशों के पालन न किये जाने की दशा में आपके विरुद्ध न्यायालय में परिवाद प्रस्तुत किया जायेगा। जिस पर दस हजार रुपये तक अर्थदण्ड लग सकता है और अपराध अनवरत रूप से होने की दशा में उक्त दण्ड के साथ-साथ जब तक आदेश का पालन नहीं किया जाता, प्रत्येक ऐसे दिन के निमित्त जिसमें आपका अपराध जारी रहे, ₹ 200/- प्रतिदिन के हिसाब से और भी अर्थदण्ड लगाया जा सकता है।

Nagash



25/8/19

जोनल अधिकारी
वाराणसी विकास प्राधिकरण,
वाराणसी

सेवा में,

थानाध्यक्ष

थाना

वाराणसी-मुगलसराय

संख्या - M. 26/19 नो 10

दिनांक... 07.08.19.....

विषय - भवन सं०/आराजी सं० पाठव चौराहा मोठ मन्नेखपुर
वार्ड..मुगलसराय में किये जा रहे अनधिकृत निर्माण के सम्बन्ध में हटाया जाये

महोदय,

उत्तर प्रदेश नगर योजना और विकास अधिनियम 1973 की धारा 20 के अन्तर्गत श्री...संख्या...संख्या...S.O. No. 45...पत्र...संख्या...को इस विभाग द्वारा एक नोटिस इस आशय से जारी की गयी है कि वे उपर्युक्त भवन में किये जा रहे अनधिकृत निर्माण को रोक दें किन्तु उन्होंने इस आदेशों का पालन नहीं किया।

अतः आप बिना स्वीकृति किये जा रहे अनधिकृत निर्माण को उक्त अधिनियम की धारा-20 (2) के अन्तर्गत आवश्यक कार्यवाही कर रोक दें। यदि वे आपके कहने से कार्य बन्द न करें तो कार्य करने वाले को वहाँ से हटा दें।

Maqesh

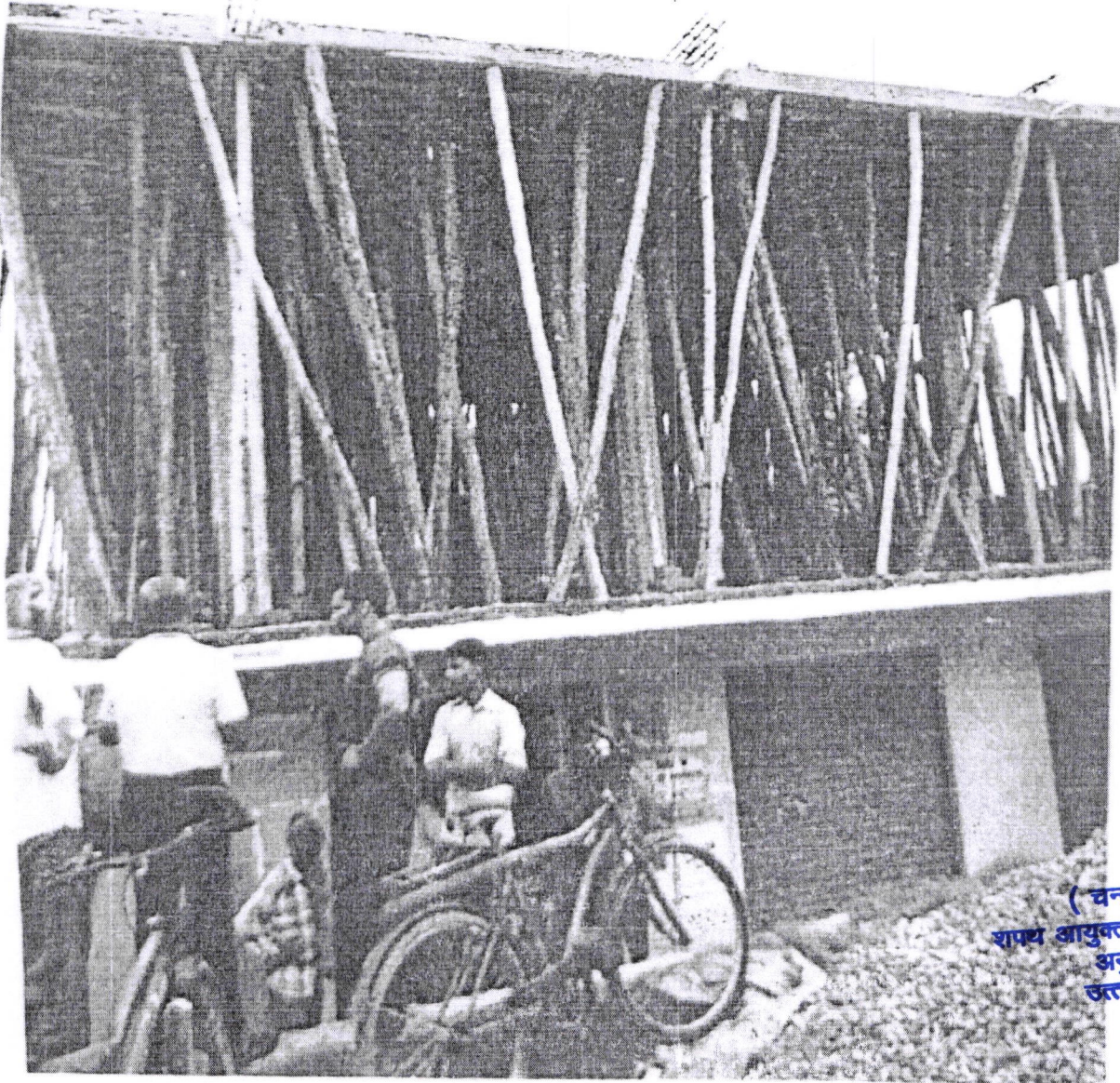


भवदीय,

25/8/19

जोनल अधिकारी

श्रीमंगला यादव



Shri
25.05.24

(चन्द्रजीत यादव)
शपथ आयुक्त एवं अनुमाग अधिकारी
अनुश्रवण प्रकोष्ठ
उत्तर प्रदेश शासन।



Naqeeb



वाराणसी विकास प्राधिकरण, वाराणसी

सेवा में,

श्री मंगला यादव पुत्र स्व० प्यारे लाल
निवासी- मौजा-मलोखर परगना मवई
मुगलसराय जिला-चन्दौली (मो०नं० 7007143032)

पत्रांक:-56/19 व्या०/शमन/विन्यास/वि०प्रा०/ 2019-20 दिनांक:- 28-12-19

विषय:- आराजी सं० 82 मौजा मलोखर परगना मवई वार्ड-मुगलसराय पर प्रस्तुत व्यावसायिक शमन मानचित्र के सम्बन्ध में।

महोदय,

कृपया अपने आवेदन पत्र दिनांक 13.11.19 का सन्दर्भ लेने का कष्ट करें। आप द्वारा आराजी सं० 82 मौजा मलोखर परगना मवई वार्ड-मुगलसराय पर प्रस्तुत व्यावसायिक शमन मानचित्र के सम्बन्ध में आपको अवगत कराना है कि आपको इस कार्यालय के पत्र सं०-56/19 व्या०/शमन/विन्यास/वि०प्रा०/ 2019-20 दिनांक 27.11.19 एवं 06.12.19 द्वारा आपत्तियों के निराकरण करने हेतु पत्र प्रेषित किया गया था, लेकिन आप द्वारा आपत्तियों का निराकरण नहीं किया गया; जिसके कारण आपका व्यावसायिक शमन मानचित्र अस्वीकार किया जाता है।

भववीर,

28/12/19
प्रभारी अधिकारी मानचित्र।

पत्रांक:-56/19 व्या०/शमन/विन्यास/वि०प्रा०/ 2019-20 दिनांक:- 28-12-19

प्रतिलिपि:- जोनल अधिकारी, मुगलसराय वार्ड को इस आ से प्रेषित कि पक्ष द्वारा प्रस्तुत व्यावसायिक शमन मानचित्र को उपाध्यक्ष महोदय द्वारा दिनांक 21.12.19 को अस्वीकार कर दिया गया है, साथ ही यह भी निर्देश दिया गया है कि प्रश्नगत स्थल पर निर्माण के विरुद्ध उ० प्र० नगर नियोजन एवं विकास अधिनियम की सुसंगत धाराओं के अन्तर्गत नियमानुसार कार्यवाही कर निर्माण की अद्यतन स्थिति के संबंध में आख्या एक माह के अन्दर उपाध्यक्ष महोदय के समक्ष प्रस्तुत करें।

28/12/19
प्रभारी अधिकारी, मानचित्र

25/05/20
25/05/20
(चन्द्रजीत यादव)
शपथ आयुक्त एवं अनुभाग अधिकारी
अनुश्रवण प्रकोष्ठ
उत्तर प्रदेश शासन



25/05/20
25/05/20
25/05/20
(25/05/20)

वाराणसी विकास प्राधिकरण, वाराणसी।

उ०प्र० नगर नियोजन एवं विकास अधिनियम, 1973 की धारा-27(1) के अन्तर्गत ध्वस्तीकरण आदेश

पत्रांक:- एम०-26/19/नो०/वि०प्र०/भवन/जोन-5/वार्ड-मुगलसराय

दिनांक 25.05.26

श्री मंगला यादव पुत्र स्व० प्यारे लाल यादव चौरहा द्वारा मौजा-मलोखर, बहादुरपुर वार्ड मुगलसराय, में पक्ष द्वारा पूर्व निर्मित बेसमेन्ट के भू-तल पर लगभग 30'x80' वर्गफीट एरिया में सटरिंग का कार्य किये जाने पर उ०प्र० नगर नियोजन एवं विकास अधिनियम, 1973 के अन्तर्गत श्री मंगला यादव पुत्र स्व० प्यारे लाल यादव को धारा-27 एवं 28 की नोटिस दिनांक 07.08.2019 को निर्गत की गई। निर्गत नोटिस के क्रम में निर्माणकर्ता को दिनांक 19.08.2019 की सुनवाई की तिथि नियत करते हुए पत्र प्रेषित किया गया जो कि मौके पर निर्माणकर्ता को प्राप्त कराया गया। निर्माणकर्ता सुनवाई की तिथि पर अनुपस्थित रहे। पुनः सुनवाई तिथि 20.09.2019, 30.09.2019, 16.10.2019 व 25.10.2019 नियत करते हुए पत्र प्रेषित किया गया, जो मौके पर निर्माणकर्ता को प्राप्त कराया गया। निर्माणकर्ता दिनांक 24.10.2019 को उपस्थित हुए एवं प्रार्थना पत्र के माध्यम से शमन मानचित्र जमा करने हेतु एक माह की समय की मांग की गयी। पुनः सुनवाई तिथि दिनांक 04.11.2019 नियत करते हुए पत्र प्रेषित किया गया जो मौके पर दिनांक 31.10.2019 को निर्माणकर्ता को प्राप्त कराया गया। निर्माणकर्ता सुनवाई की तिथि 04.11.2019 को उपस्थित हुए एवं प्रार्थना पत्र के माध्यम से शमन मानचित्र जमा करने हेतु 15 दिन की समय की मांग की गयी। पुनः सुनवाई तिथि दिनांक 13.11.2019, 02.09.2021, 21.09.2021, 08.10.2021, 22.10.2021 व 09.11.2021 नियत करते हुए पत्र प्रेषित किया गया जो मौके पर दिनांक 13.11.2019, 27.08.2021, 07.10.2021, 20.10.2021 व 03.11.2021 को निर्माणकर्ता को प्राप्त कराया गया। निर्माणकर्ता सुनवाई की तिथि 04.11.2019 को उपस्थित हुए एवं प्रार्थना पत्र के माध्यम से शमन मानचित्र जमा करने हेतु 15 दिन की समय की मांग की गयी। पक्ष द्वारा दिनांक 13.11.2019 को श्री मंगला यादव पुत्र स्व० प्यारेलाल के नाम से प्रश्नगत स्थल (आराजी संख्या 82, मौजा-मलोखर, परगना-मवई, वार्ड-मुगलसराय, जिला-चन्दौली) पर शमन मानचित्र स्वीकृति हेतु दाखिल किया गया था, जो नियोजन अनुभाग की आख्यानुसार उपलब्ध एच०एफ०एल० के सर्वेक्षण मानचित्र के अनुसार प्रश्नगत स्थल एच०एफ०एल० लाइन के 200 मीटर के अन्तर्गत होने के कारण शमन मानचित्र दिनांक 21.12.2019 को अस्वीकृत किया जा चुका है।

अवर अभियन्ता की आख्यानुसार मौके पर जी+1 247.87 वर्गमीटर पर व्यवसायिक/आवासीय निर्माण विद्यमान है। पक्ष द्वारा आपत्तियों का निराकरण न करने के कारण शमन प्रस्ताव निरस्त किया जा चुका है। उक्त के दृष्टिगत प्रश्नगत अवैध निर्माण के ध्वस्तीकरण आदेश पारित किये जाने के अतिरिक्त अन्य कोई विकल्प अवशेष नहीं है।

पक्ष द्वारा उक्त अधिनियम की धारा-14 का उल्लंघन करते हुए एवं भवन उपविधि 2018 के नियमों का उल्लंघन करते हुए अवैध निर्माण किया गया है। प्रश्नगत अवैध निर्माण के विरुद्ध ध्वस्तीकरण आदेश पारित करने के अतिरिक्त अन्य कोई विकल्प शेष नहीं बचता है।

अतएव उ०प्र० नगर नियोजन एवं विकास अधिनियम, 1973 की धारा-27(1) के अन्तर्गत श्री मंगला यादव पुत्र स्व० प्यारे लाल यादव चौरहा द्वारा मौजा-मलोखर, बहादुरपुर वार्ड मुगलसराय पर किये गये अवैध निर्माण को ध्वस्त किये जाने हेतु आदेश पारित किया जाता है। तदनुसार भू-स्वामी/अवैध निर्माणकर्ता को निर्देशित किया जाता है कि वह स्वतः प्रश्नगत अवैध निर्माण को 25 दिन के अन्दर हटाले, अन्यथा प्राधिकरण उसे ध्वस्त करा देगा और इस निमित्त होने वाला व्यय धारा-27(1) के तहत भू-राजस्व बकाये की भांति वसूल किया जायेगा। सम्बन्धित अवर अभियन्ता नियत समयावधि के उपरान्त नियमानुसार उक्त ध्वस्तीकरण आदेश का क्रियान्वयन सुनिश्चित कर पत्रावली पर अनुपालन आख्या प्रस्तुत करे।



श्री मंगला यादव पुत्र स्व० प्यारे लाल यादव
आराजी संख्या-82, मौजा-मलोखर
वार्ड-मुगलसराय, जिला-चन्दौली।
मो०-7007143032, 9839817290

Magesh

(चन्द्रजीत यादव)
शपथ आयुक्त एवं अनुभाग अधिकारी
(सिंह गौरव अनुप्रकाश)
जो नगर प्राधिकरण शासन।
जोन-5



न्यायालय :- आयुक्त

मण्डल : वाराणसी

कम्प्यूटरीकृत वाद संख्या:- C202314000000749

वाद संख्या:- 749/2023

मंगला यादव बनाम वाराणसी विकास प्राधिकरण

उ०प्र० शहरी योजना और विकास अधिनियम, 1973, अंतर्गत धारा:- 27(2)

" अंतिम आदेश "

आदेश तिथि:- 25/04/2024

आदेश

प्रश्नगत अपील उ०प्र० नगर नियोजन एवं विकास अधिनियम 1973 की धारा-27(2) के अन्तर्गत मंगला यादव पुत्र स्व० प्यारेलाल यादव, निवासी मौजा मलोखर बहादुरपुर, वार्ड मुगलसराय, जिला चन्दौली द्वारा जोनल अधिकारी जोन-5 व वाराणसी विकास प्राधिकरण, वाराणसी जरिये सचिव को बतौर विपक्षी पक्षकार बनाते हुए उ०प्र० नगर नियोजन एवं विकास अधिनियम 1973 की धारा-27(1) के अन्तर्गत जोनल अधिकारी द्वारा पारित ध्वस्तीकरण आदेश दिनांक 23-03-2023 के विरुद्ध प्रस्तुत की गयी है।

2- पत्रावली पेश हुई। अपीलार्थी एवं उनके विद्वान अधिवक्ता अनुपस्थित हैं, जबकि विकास प्राधिकरण के विद्वान अधिवक्ता उपस्थित हैं, उनके द्वारा प्रस्तुत तर्कों को सुना गया तथा पत्रावली का अवलोकन किया गया, जिससे विदित होता है कि अनाधिकृत निर्माण कराये जाने पर अपीलार्थी को नोटिस जारी की गयी। अपीलार्थी द्वारा शमन मानचित्र जमा करने हेतु बार-बार समय की मांग की जाती रही, समय दिये जाने के उपरान्त भी उसके द्वारा शमन मानचित्र प्रस्तुत नहीं किया गया। अपीलार्थी द्वारा अधिनियम की धारा 14 व भवन उपविधि 2018 के नियमों का उल्लंघन करते हुए अनाधिकृत निर्माण किया गया है। ऐसी स्थिति में विकास प्राधिकरण द्वारा ध्वस्तीकरण आदेश दिनांक 23-03-2023 पारित करने में कोई त्रुटि की गयी परिलक्षित नहीं होती है। फलस्वरूप प्रश्नगत अपील बलहीन है और निरस्त किये जाने योग्य है।

3- उपरोक्तानुसार किये गये विश्लेषण एवं वर्णित तथ्यों के आधार पर प्रश्नगत अपील बलहीन होने के कारण निरस्त की जाती है। प्रश्नगत अपील में यदि कोई स्थगन आदेश हो, तो वह इस आदेश के फलस्वरूप स्वतः निष्प्रभावी होकर समाप्त हो गया। आदेश की प्रमाणित प्रति विकास प्राधिकरण को भेजी जाय। बाद आवश्यक कार्यवाही अपीलीय पत्रावली संचित अभिलेखागार की जाय।

दिनांक: अप्रैल 25, 2024

(कौशल राज शर्मा)

आयुक्त/अध्यक्ष,

वाराणसी विकास प्राधिकरण,

वाराणसी।

यह आदेश मेरे द्वारा हस्ताक्षरित, दिनांकित एवं खुले न्यायालय में उद्घोषित।

दिनांक: अप्रैल 25, 2024

(कौशल राज शर्मा)

आयुक्त/अध्यक्ष,

वाराणसी विकास प्राधिकरण,

वाराणसी।

Disclaimer :

उपरोक्त सूचना मात्र सूचनार्थ है तथा राजस्व न्यायालय कम्प्यूटरीकृत प्रबन्धन प्रणाली (RCCMS) में उपलब्ध अद्यतन सूचना पर आधारित है, इस सूचना की कोई विधिक मान्यता नहीं होगी।

Handwritten signature





वास्तविक सूचना की पुष्टि सम्बंधित न्यायलय / न्यायालयों की पत्रावली / पत्रावलियों से की जा सकती है।"

Meqosh



25.05.24

(चन्द्रजीत यादव)
शपथ आयुक्त एवं अनुभाग अधिकारी
अनुश्रवण प्रकोष्ठ
उत्तर प्रदेश शासन।



न्यायालय :- आयुक्त
मण्डल : वाराणसी

ANNEXURE-5

कम्प्यूटरीकृत वाद संख्या:- C202414000001276

वाद संख्या:- 1276/2024

मंगला यादव बनाम -

उ०प्र० शहरी योजना और विकास अधिनियम, 1973, अंतर्गत धारा:- 27(2)

" अंतिम आदेश "

आदेश तिथि:- 25/07/2024

आदेश

प्रश्नगत अपील में पारित आदेश दिनांक 25-04-2024 के विरुद्ध प्रस्तुत तजवीजसानी प्रार्थना-पत्र दिनांक 01-05-2024 पर सुनवाई हेतु पत्रावली पेश हुई। उभयपक्ष के विद्वान अधिवक्ता द्वारा प्रस्तुत तर्कों को सुना गया तथा पत्रावली का अवलोकन किया गया। अपीलकर्ता के विद्वान अधिवक्ता का यह कथन है कि आदेश दिनांक 25-04-2024 बिना अपीलकर्ता को सुने एकपक्षीय रूप से पारित कर दिया गया है। अतः तजवीजसानी प्रार्थना-पत्र स्वीकार करते हुए आदेश दिनांक 25-04-2024 निरस्त कर अपील मूल नम्बर पर कायम की जाये तथा उभयपक्ष को सुनकर गुण-दोष के आधार पर अपील का निस्तारण किया जाये। दूसरी ओर विकास प्राधिकरण के विद्वान अधिवक्ता का यह कथन है कि इस न्यायालय द्वारा पारित आदेश दिनांक 25-04-2024 प्रकरण के गुण-दोष के आधार पर पारित किया गया है, जो विधि सम्मत है। अतः तजवीजसानी प्रार्थना-पत्र निरस्त किया जाये। पत्रावली पर उपलब्ध इस न्यायालय द्वारा पारित आदेश दिनांक 25-04-2024 का अवलोकन किया गया, जिससे स्पष्ट होता है कि अपीलार्थी द्वारा अनाधिकृत निर्माण कराये जाने पर अपीलार्थी को नोटिस जारी की गयी। अपीलार्थी द्वारा बार-बार शमन मानचित्र दाखिल करने हेतु समय की मांग की जाती रही, परन्तु समय दिये जाने के उपरान्त भी उसके द्वारा शमन मानचित्र प्रस्तुत नहीं किया गया। यद्यपि बाद में उसके द्वारा शमन मानचित्र प्रस्तुत करने पर एच०एफ०एल० लाइन के अन्तर्गत होने के कारण निरस्त किया जा चुका है। चूँकि अपीलार्थी द्वारा अधिनियम की धारा-14 व भवन उपविधि 2008 के नियमों का उल्लंघन करते हुए अनाधिकृत निर्माण किया गया है, जिसके बाबत विकास प्राधिकरण द्वारा ध्वस्तीकरण आदेश दिनांक 23-03-2023 पारित किया गया है, जिसमें कोई त्रुटि न होने के कारण उसके विरुद्ध प्रस्तुत अपील को इस न्यायालय के आदेश दिनांक 25-04-2024 के माध्यम से गुण-दोष के आधार पर निरस्त किया गया है, जो विधि सम्मत है। फलस्वरूप तजवीजसानी प्रार्थना-पत्र दिनांक 01-05-2024 बलहीन है और निरस्त किये जाने योग्य है।
क्रमशः.....2

2

2- उपर्युक्त विवेचना एवं वर्णित तथ्यों के परिप्रेक्ष्य में तजवीजसानी प्रार्थना-पत्र दिनांक 01-05-2024 बलहीन होने के कारण निरस्त किया जाता है। आदेश की प्रमाणित प्रति विकास प्राधिकरण को अग्रेतर कार्यवाही हेतु भेजी जाय। बाद आवश्यक कार्यवाही अपील पत्रावली संचित अभिलेखागार की जाय।

दिनांक: जुलाई 25, 2024

(कौशल राज शर्मा)
आयुक्त/अध्यक्ष,
वाराणसी विकास प्राधिकरण,
वाराणसी।

यह आदेश मेरे द्वारा हस्ताक्षरित, दिनांकित एवं खुले न्यायालय में उद्घोषित किया गया।

दिनांक: जुलाई 25, 2024



Magesh



(कौशल राज शर्मा)
आयुक्त/अध्यक्ष,
वाराणसी विकास प्राधिकरण,
वाराणसी।

Disclaimer :

उपरोक्त सूचना मात्र सूचनार्थ है तथा राजस्व न्यायालय कम्प्यूटरीकृत प्रबन्धन प्रणाली (RCCMS) में उपलब्ध अद्यतन सूचना पर आधारित है, इस सूचना की कोई विधिक मान्यता नहीं होगी। वास्तविक सूचना की पुष्टि सम्बंधित न्यायालय / न्यायालयों की पत्रावली / पत्रावलियों से की जा सकती है।"

Magesh



Chandrajit Yadav
25.05.26
(चन्द्रजीत यादव)
शपथ आयुक्त एवं अनुभाग अधिकारी
अनुश्रवण प्रकोष्ठ
उत्तर प्रदेश शासन।

Mangala Yadav son of Pyare Lal Yadav aged about 69 Years resident
of 099, Nai Dandi , Bhisauri, Mugalsarai, Chandauli, Uttar Pradesh
232101

.....REVISIONIST


Versus

1. Varanasi Development Authority through its Vice Chairmen.
2. Zonal Officer Zone -5, Varanasi Development Authority,
Varanasi.
3. Commissioner Varanasi Division, Varanasi

.....OPPOSITE PARTIES
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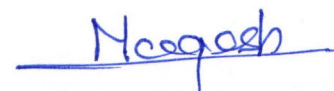
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Lucknow
Date- 20.08.2024


ALOK SINGH
Advocate
(M) 8960030009

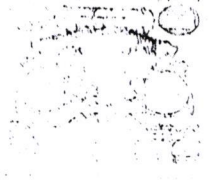
(Counsel for Revisionist)

advocatealoksingh@varanasi.com
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BEFORE THE PRINCIPAL SECRETARY, DEPARTMENT
OF HOUSING AND URBAN PLANNING, LUCKNOW
REVISION No of 2024



Mangala Yadav son of Pyare Lal Yadav aged about 69 Years
resident of 099, Nai Dandi , Bhisauri, Mugalsarai, Chandauli,
Uttar Pradesh 232101

.....REVISIONIST
Versus

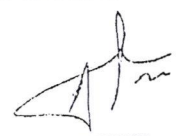
1. Varanasi Development Authority through its Vice Chairmen.
2. Zonal Officer Zone -5, Varanasi Development Authority, Varanasi.
3. Commissioner Varanasi Division, Varanasi

.....OPPOSITE
PARTIES

APPLICATION FOR INTERIM RELIEF

For the facts, reasons and circumstances stated in the accompanying revision duly supported by an affidavit, it is most humbly and respectfully prayed that this Hon'ble court may kindly be pleased to direct the opposite parties to stay the operation and implementation of order dated 23.03.2023. Passed by opposite Party No-2 passed vide letter bearing no. एमओ -26/19/नो0/वि0प्रा0/भवन/ जोन -5/ वार्ड - मुगलसराय by Prescribed Authority in respect of the property in question till the pendency of the present revision petition in the interest of Justice

Lucknow
Date- 20.08.2024


ALOK SINGH
Advocate

(M) 8960030009

(Counsel for Revisionist)

Email: advocate.singhalok@gmail.com

ADVOCATE SINGH ALOK @ GMAIL.COM



Magesh

BEFORE THE PRINCIPAL SECRETARY, DEPARTMENT
OF HOUSING AND URBAN PLANNING, LUCKNOW
REVISION No of 2024

Mangala Yadav son of Pyare Lal Yadav aged about 69 Years
resident of 099, Nai Dandi, Bhisauri, Mugalsarai, Chandauli,
Uttar Pradesh 232101

...REVISIONIST

Versus

1. Varanasi Development Authority through its Vice Chairmen.
2. Zonal Officer Zone -5, Varanasi Development Authority, Varanasi.
3. Commissioner Varanasi Division, Varanasi

.....OPPOSITE PARTIES

REVISION UNDER SECTION-41 OF U.P URBAN PLANNING
AND DEVELOPMENT ACT, 1973

The above-named Revisionist Submits as under

1. The Revisionist, Mangla Yadav is filing the present revision. The Revisionist, Mangla Yadav, respectfully submits this revision petition challenging the demolition order dated 23.03.2023 issued by the Zonal Officer, Zone-5, Varanasi Development Authority, Varanasi letter bearing no. एनओ - 26/19/नो0/वि0प्रा0/भवन/ जोन -5/ वार्ड - मुगलसराय under section 27(1) of Uttar Pradesh Urban Planning and Development Act, 1973. The order mandates the demolition of the property located at Araj Sankhya 82, Mauja Malokhar, Bahadurpur, Ward Mugalsarai, measuring 30x80 sq. ft. Subsequently, the appeal



Nagesh

against this demolition order was dismissed by the commissioner Varanasi Division, Varanasi on 25.04.2024. Further, the Revisionist's Restoration Application, seeking to reinstate the dismissed appeal, was also rejected by an order dated 25.07.2024. A copy of Demolition order dated 23.03.2024 is being annexed here as Annexure No.1

2. That the appeal was initially filed under section 27(2) of the Act on 12.04.2023 before Commissioner Varanasi Division, Varanasi, bearing computer no. C202314000000749/2023 and case no 749/2023 was scheduled for hearing. However, on the date of the hearing, neither the appellant nor his counsel appeared before the concerned authority to present their case. Due to their absence and the failure to provide any justification for their non-appearance, the authority dismissed the appeal. Consequently, the appeal was formally dismissed on 25.04.2024, resulting in the upholding of the original order against which the appeal was made. This dismissal occurred solely due to the lack of representation and failure to pursue the appeal diligently. A certified copy of memo of appeal and dismissal order is being annexed here as Annexure No. 2 & 3

3. That the Revisionist filed a Restoration Application bearing computer No. RST/1276/2024 on 01.05.2024 before Commissioner Varanasi Division, Varanasi with the intent to reinstate the dismissed appeal. The primary purpose of this application was to request the authority to reconsider the appeal and allow it to be decided on its merits, rather than letting the dismissal due to non-appearance stand. The Revisionist sought to have the appeal restored to the docket, arguing that a decision based on the substantive issues raised in



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the appeal would ensure a fair and just outcome. However, despite these efforts, the Restoration Application was also dismissed by the authority, as per the order dated 25.07.2024. This dismissal further denied the Revisionist an opportunity to have the appeal heard and adjudicated on its merits, effectively leaving the original demolition order unchallenged. A certified copy of Restoration application along with Dismissal order dated 25.07.2024 is being annexed here as Annexure No.4 & 5

Now the Facts which remain unrecorded in appeal.

4. That the property in question was constructed by the Revisionist in the year 2013. At the time of construction, the relevant authorities were fully aware of the ongoing development. Despite this, no notice or objection was raised by the authorities during or after the construction process. The absence of any communication or intervention by the authorities at that time led the Revisionist to reasonably believe that the construction was in compliance with all applicable regulations. The sudden issuance of the demolition order years later, without any prior intimation or warning, is not only arbitrary but also unjust, as it disregards the long-standing existence of the property and the Revisionist's good faith reliance on the silence of the authorities.

5. That multiple other houses and commercial units were developed in the same vicinity as the Revisionist's property, with some constructions even preceding the Revisionist's. Despite this, the authorities have unjustly singled out the Revisionist by issuing a demolition order exclusively against his property. No such notices or demolition orders have been issued to



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the owners of other properties in the area, even though their constructions were similarly situated. This selective targeting of the Revisionist's property, while ignoring similar structures nearby, not only raises serious concerns about the fairness and impartiality of the authorities' actions but also suggests a discriminatory approach that is inconsistent with the principles of equity and justice. In support of this contention, the Revisionist has annexed photographs of the surrounding properties, which clearly illustrate the presence of similar constructions in the vicinity that have not been subjected to any demolition orders by the authorities as Annexure No. 6

GROUNDNS FOR ADMITTING THE REVISION:

6. Improper Dismissal of Appeal Due to Non-Appearance:

The appeal filed by the Revisionist on 12.04.2023 was decided and dismissed on 25.04.2024 with no argument taken on record solely due to the non-appearance of both the appellant and his counsel. The dismissal was procedural rather than substantive, leading to the appeal being decided without consideration of the merits of the case. It is a well-established principle of law that justice should not be denied due to technicalities, especially when the subject matter involves significant rights of the parties involved. The Revisionist's right to a fair hearing was compromised, warranting the admission of this revision to ensure justice is served.

7. Erroneous Dismissal of the Restoration Application:

Following the dismissal of the appeal, the Revisionist promptly filed a Restoration Application to have the appeal reinstated. The intention was to allow the appeal to be heard and decided on its merits, ensuring that the



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substantial issues raised in the appeal were properly adjudicated. However, the Restoration Application was also dismissed vide order dated 25.07.2024, without adequate consideration of the Revisionist's request for a fair hearing. This dismissal further perpetuated the injustice caused by the initial procedural dismissal of the appeal.

8. Denial of the Right to a Fair Hearing:

The actions of the authority in dismissing both the appeal and the Restoration Application have effectively denied the Revisionist the right to have his case heard on its merits. The principles of natural justice dictate that every litigant should have the opportunity to present their case fully and fairly before an impartial tribunal. The failure to provide such an opportunity, particularly in a matter involving significant property rights, constitutes a miscarriage of justice, justifying the intervention of this Hon'ble Court.

9. Necessity for Judicial Review to Prevent Injustice:

The cumulative effect of the dismissal of the appeal and the subsequent Restoration Application has resulted in the original demolition order remaining unchallenged. This scenario represents a significant injustice, as the Revisionist has been deprived of the opportunity to defend his property rights. Admitting this revision is essential to prevent an unjust outcome and to ensure that the Revisionist's case is heard and decided on its substantive merits.

10. Because the Revisionist is keen to deposit the compounding fee as prescribed by the norm and condition.



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11. Because the opposite party no-2 did not consider the fact that the Revisionist invested the huge amount of money in Construction of the property in question and in case of demolition the revisionist will suffer irreparable loss which may not be compensated in any terms.
12. Because the Respondent No-2 and Respondent No.3 has failed to appreciate the evidences available on record and wrongly passed the impugned order on the basis of the assumptions and presumption. A relevant case law in support .

N. Balakrishnan vs M. Krishnamurthy [(1998) 7 SCC 123].

Case Summary:

- *Facts: In this case, the appellant failed to appear in court, leading to the dismissal of his suit. The appellant subsequently filed an application for restoration, which was also dismissed. He then filed a revision petition against these orders.*

- *Issue: The key issue before the Supreme Court was whether the lower courts were justified in dismissing the appeal and the restoration application without considering the substantive rights involved.*

- *Decision: The Supreme Court allowed the revision, emphasizing that procedural lapses, such as non-appearance due to a genuine mistake or oversight, should not lead to the denial of substantial justice. The Court held that a litigant should not suffer irreparable harm due to procedural defaults, especially when there is no evidence of deliberate negligence or misconduct.*

Key Legal Principle: The Court reiterated that the dismissal of an appeal due to non-appearance, followed by the rejection of a restoration application, should not be mechanically upheld if it results in the miscarriage of justice. Courts should take a lenient view, especially when the appellant provides a reasonable explanation for their absence.

Relevance: This case is relevant to situations where a party's appeal and subsequent restoration application were dismissed due to non-appearance. It supports the argument that such dismissals should be subject to judicial scrutiny, especially where there is a risk of substantial injustice.



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Prayer

Wherefore in view of the above it is prayed that this learned Authority in light of power vested under section 41 of the act of 1973 may be pleased to call the original records and set aside of the order dated 23.03.2024 passed by respondent no-2. Any other relief which this Hon'ble court may deem fit and proper in the circumstances of the case.



Lucknow

Date- 20.08.2024

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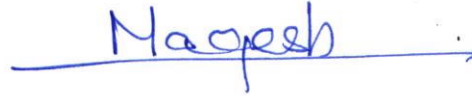
Advocate

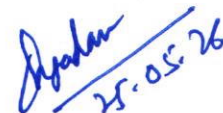
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(चन्द्रजीत यादव)
शपथ आयुक्त एवं अनुभाग अधिकारी
अनुश्रवण प्रकोष्ठ
उत्तर प्रदेश शासन।

Court No. - 33

ANNEXURE-7

Case :- WRIT - C No. - 26236 of 2024

Petitioner :- Mangala Yadav

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Shailendra Kumar Yadav

Counsel for Respondent :- C.S.C., Ravi Prakash Pandey

Hon'ble Chandra Kumar Rai, J.

1. Supplementary affidavit filed on behalf of the petitioner is taken on record.

2. Learned counsel for the petitioner is permitted to make necessary corrections in the prayer clause of the petition during the course of the day.

3. Heard Sri Shailendra Kumar Yadav, learned counsel for the petitioner, Mr. Ravi Prakash Pandey, learned counsel for respondent nos. 3 & 4 and Sri Krishna Mohan Mishra, learned Addl. C.S.C. for the state-respondents.

4. The instant writ petition has been filed for the following reliefs:-

"1. Issue a writ, order or direction in the nature of certiorari, quashing the impugned orders dated 23.3.2023, 25.4.2024 and 25.7.2024, passed by respondent nos. 2 & 4 (Annexure Nos. 4, 6 & 8).

2. Issue a writ, order or direction in the nature of mandamus, directing to the respondent concerned not to demolish the house/shop of the petitioner in the light of the impugned order considering the compoundable map of the house.

5. Issue a writ, order or direction in the nature of mandamus, directing the respondent no.1 to decide the revision of the petitioner dated 20.8.2024 within the time bound period."

5. Counsel for the petitioner states that order for demolition under the U.P. Urban and Planning Development Act, 1973 (for short "the Act") has been passed against the petitioner in arbitrary manner. He further submitted that the appeal under Section 27(2) of the Act filed by the petitioner has also been dismissed without considering the grounds set up in the appeal. He also submitted that after filing of the instant writ petition, petitioner has filed revision under Section 41(3) of the Act before respondent no.1 which is pending for consideration. He submitted that necessary direction be issued to respondent no.1/revisional authority to register the petitioner's revision and decide the same in accordance with law. He submitted that till the pendency of the revision, necessary protection be granted in favour of the



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petitioner in view of the ratio of law laid down by this Court reported in **2007 (102) RD 498, Ali Sher Vs. State of U.P. Through Collector, Bijnor and Others.**

6. On the other hand, learned Addl. C.S.C. and the counsel for respondent nos. 3 & 4 submitted that petitioner's revision under Section 41(3) of the Act is pending along with the stay application, as such, the writ petition is not maintainable and the petitioner should approach the revisional court for redressal of his grievance. It is further submitted that demolition order was passed in accordance with law, as such, no interference is required in the matter.

7. I have considered the arguments advanced by learned counsel for the parties and perused the records.

8. There is no dispute about the fact that revision filed under Section 41(3) of the Act is pending before respondent no.1. The copy of the grounds of revision dated 20.8.2024 which has been sent through the registered post by the petitioner on 21.8.2024, is annexed as Annexure No.S.A.-1 to the supplementary affidavit dated 27.8.2024.

9. This Court in **Ali Sher** (supra) has held that the interim protection be granted during pendency of appeal / revision if the order under appeal and revision has serious civil consequences. Paragraph Nos.4 & 5 of the judgment rendered in **Ali Sher** (supra) is relevant which is as follows:-

"4. It is well settled that once an appeal or revision is entertained by a higher Court against an order having civil consequences, stay normally should be granted to avoid swinging pendulum unless the Court for the reasons to be recorded finds that there is no case for grant of stay as observed by the Hon'ble Apex Court in the case of Mool Chand v. Raza Buland Sugar Industries."

5. Considering the facts and circumstances, impugned order dated 16.11.2006 is hereby quashed. Writ petition stands allowed. Appellate Court is directed to dispose of the appeal of petitioner in accordance with law as expeditiously as possible preferably within a period of two months from the date of production of certified copy of this order before him and till the disposal of appeal as directed above, parties shall maintain status quo with regard to nature and possession over the land in dispute."

10. In view of the facts and circumstances of the case and considering the ratio of law laid down in **Ali Sher** (supra), without expressing any opinion on the merits of the case, this petition is disposed of with the direction to respondent no.1/State of U.P. through Principal Secretary, Uttar Pradesh Planning and Development Department, U.P. at Lucknow to register the petitioner's revision dated 20.8.2024 and decide the same, after affording



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opportunity of hearing to the parties, as expeditiously as possible, preferably within a period of 6 weeks, from the date of production of a certified copy of this order before the authority concerned and till the disposal of the revision by respondent no.1, no coercive measures shall be taken against the petitioner in pursuance of the demolition orders passed by the authorities.

11. Learned counsel for the petitioner undertakes to produce a certified copy of this order before respondent no.1 within a week.

Order Date :- 6.9.2024
C.Prakash

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Prakash
25.05.24
(चन्द्रजीत यादव)
शपथ आयुक्त एवं अनुभाग अधिकारी
अनुश्रवण प्रकोष्ठ
उत्तर प्रदेश शासन।

उत्तर प्रदेश शासन
आवास एवं शहरी नियोजन अनुभाग-8
संख्या-पुन 050/आठ-8-2024-169पुन/2024
लखनऊ: दिनांक: नवम्बर, 2024
02 दिसम्बर

मंगला यादव

बनाम

पुनरीक्षणकर्ता

वाराणसी विकास प्राधिकरण
वाराणसी व अन्य।

विपक्षीगण

निर्णय

प्रश्नगत पुनरीक्षणवाद श्री मंगला यादव पुत्र स्व० प्यारे लाल यादव निवासी-099, डांडी, भिसौरी, मुगलसराय चंदौली, जनपद-वाराणसी द्वारा उत्तर प्रदेश नगर नियोजन एवं विकास अधिनियम, 1973 की धारा-41(3) के अन्तर्गत जोनल अधिकारी, वाराणसी विकास प्राधिकरण, वाराणसी के आदेश दिनांक 23.03.2023 एवं आयुक्त, वाराणसी मण्डल, वाराणसी के आदेश दिनांक 25.07.2024 के विरुद्ध शासन में वाद योजित करते हुये मुख्यतः कथन किया है कि The Revisionist, Mangla Yadav, respectfully submits this revision petition challenging the demolition order dated 23.03.2023 issued by the Zonal Officer, Zone-5, Varanasi Development Authority, Varanasi letter bearing no. एम० 26/19/नो०/वि०प्रा० / भवन / जोन - 5 / वार्ड - मुगलसराय under section 27(1) of Uttar Pradesh Urban Planning and Development Act, 1973. The order mandates the demolition of the property located at Araji Sankhya 82, Mauja Malokhar, Bahadurpur, Ward Mugalsarai, measuring 30x80 sq. ft. Subsequently, the appeal against this demolition order was dismissed by the commissioner Varanasi Division, Varanasi on 25.04.2024. Further, the Revisionist's Restoration Application, seeking to reinstate the dismissed appeal, was also rejected by an order dated 25.07.2024. The appeal was initially filed under section 27(2) of the Act on 12.04.2023 before Commissioner Varanasi Division, Varanasi, bearing computer no. C20231400000749/2023 and case no 749/2023 was scheduled for hearing. However, on the date of the hearing, neither the appellant nor his counsel appeared before the concerned authority to present their case. Due to their absence and the failure to provide any justification for their non-appearance, the authority dismissed the appeal. Consequently, the appeal was formally dismissed on 25.04.2024, resulting in the upholding of the original order against which the appeal was made. This dismissal occurred solely due to the lack of representation and failure to pursue the appeal diligently. The Revisionist filed a Restoration Application bearing computer No. RST/1276/2024 on 01.05.2024 before Commissioner Varanasi Division, Varanasi with the intent to reinstate the dismissed appeal. The primary purpose of this application was to request the authority to reconsider the appeal and allow it to be decided on its merits, rather than letting the dismissal due to non-appearance stand. The Revisionist sought to have the appeal restored to the docket, arguing that a decision based on the substantive issues raised in the appeal would ensure a fair and just outcome. However, despite these efforts, the Restoration Application was also dismissed by the authority, as per the order dated 25.07.2024. This dismissal further denied the Revisionist an opportunity to have the appeal heard and adjudicated on its merits, effectively leaving the original demolition order unchallenged. The property in question was constructed by the Revisionist in the year 2013. At the time of construction, the relevant authorities were fully aware of the ongoing development. Despite this, no notice or objection was raised by the authorities during or after the construction process. The absence of any communication or intervention by the authorities at that time led the Revisionist to reasonably believe that the construction was in compliance with all applicable regulations. The sudden issuance of the demolition order years later, without any prior intimation or warning, is not only arbitrary but also unjust, as it disregards the long-standing existence of



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the property and the Revisionist's good faith reliance on the silence of the authorities. Multiple other houses and commercial units were developed in the same vicinity as the Revisionist's property, with some constructions even preceding the Revisionist's. Despite this, the authorities have unjustly singled out the Revisionist by issuing a demolition order exclusively against his property. No such notices or demolition orders have been issued to the owners of other properties in the area, even though their constructions were similarly situated. This selective targeting of the Revisionist's property, while ignoring similar structures nearby, not only raises serious concerns about the fairness and impartiality of the authorities' actions but also suggests a discriminatory approach that is inconsistent with the principles of equity and justice. The appeal filed by the Revisionist on 12.04.2023 was decided and dismissed on 25.04.2024 with no argument taken on record solely due to the non-appearance of both the appellant and his counsel. The dismissal was procedural rather than substantive, leading to the appeal being decided without consideration of the merits of the case. It is a well-established principle of law that justice should not be denied due to technicalities, especially when the subject matter involves significant rights of the parties involved. The Revisionist's right to a fair hearing was compromised, warranting the admission of this revision to ensure justice is served. Following the dismissal of the appeal, the Revisionist promptly filed a Restoration Application to have the appeal reinstated. The intention was to allow the appeal to be heard and decided on its merits, ensuring that the substantial issues raised in the appeal were properly adjudicated. However, the Restoration Application was also dismissed vide order dated 25.07.2024, without adequate consideration of the Revisionist's request for a fair hearing. This dismissal further perpetuated the injustice caused by the initial procedural dismissal of the appeal. Actions of the authority in dismissing both the appeal and the Restoration Application have effectively denied the Revisionist the right to have his case heard on its merits. The principles of natural justice dictate that every litigant should have the opportunity to present their case fully and fairly before an impartial tribunal. The failure to provide such an opportunity, particularly in a matter involving significant property rights, constitutes a miscarriage of justice, justifying the intervention of this Hon'ble Court. उक्त के क्रम में प्रश्नगत पुनरीक्षणवाद को स्वीकार किए जाने के अनुरोध किया गया है।


2. उक्त पुनरीक्षणवाद प्रार्थना पत्र के संबंध में सचिव, वाराणसी विकास प्राधिकरण की आख्या दिनांक 05.10.2024 के अनुसार मुख्यतः यह अवगत कराया गया है कि रिवीजनकर्ता ने आराजी सं०-82 मौजा-मलोखर वार्ड-मुगलसराय जिला-चन्दौली जो वी०डी०ए० के सीमान्तगत है पर बिना अनुमति प्राप्त किए पूर्व निर्मित बेसमेंट के भूतल पर लगभग 30×80 वर्गफीट के क्षेत्रफल में सटरिंग का कार्य करने पर धारा 27 28 (1) व 28 (2) की नोटिस दिनांक 07.08.2019 जारी किया गया। रिवीजनकर्ता ने प्रश्नगत उक्त आराजी पर नव निर्माण प्रारम्भ कर जी+1 तल का अवैध निर्माण कर लिया जो एच०एफ०एल० से 200 मीटर के अन्तर्गत है और किसी भी दशा में शमनीय नहीं है, इसलिए दिनांक 23.03.2023 को नियमानुसार ध्वस्तीकरण आदेश पारित किया गया और ध्वस्तीकरण आदेश के विरुद्ध दाखिल अपील संख्या 749/2023 मंगला यादव बनाम वी०डी०ए० आयुक्त/अध्यक्ष न्यायालय वाराणसी द्वारा सम्यक विचारोपरान्त रिवीजनकर्ता के अनुपस्थिति में दिनांक 25.04.24 को खारिज कर दिया गया और रिव्यू प्रार्थना पत्र सं० 1276/2024 मंगला यादव बनाम वी०डी०ए० भी गुणदोष के आधार पर दिनांक 25.07.2024 को खारिज कर दिया गया। अतः आदेश दिनांक 23.03.2024 25.04.2024 एवं 25.07.2024 नियमानुसार विधिसम्मत ढंग से पारित हुआ है जो कायम रहने योग्य है। प्रश्नगत अवैध निर्माण बिना अनुमति के किया गया है। रिवीजनकर्ता की अवैध निर्माण में जो भी लागत आयी हो वह बिना अनुमति के है और एच०एफ०एल० से 200 मीटर के अन्दर है और शमनीय नहीं है। प्रकरण में PIL No-31229/05 कौटिल्य सोसायटी बनाम उ०प्र० व अन्य में मा० उच्च न्यायालय इलाहाबाद द्वारा पारित अंतरिम आदेश 27.05.2012 द्वारा गंगा नदी के दोनों ओर एच०एफ०एल० से 200 मीटर तक निर्माण पर रोक है, इसलिए उल्लिखित विधि व्यवस्था रिवीजनकर्ता के प्रकरण में नहीं होता है। उक्त के क्रम में पुनरीक्षणवाद बलहीन होने के कारण निरस्त किए जाने का अनुरोध किया गया है।



3. नियत तिथि को संबंधित पक्षों की बहस सुनी गयी। पत्रावली का सम्यक् अवलोकन किया गया। सुनवाई के दौरान पुनरीक्षणकर्ता/उनके उपस्थित अधिवक्ता द्वारा कहा गया कि प्रश्नगत प्रकरण में पारित आदेश बिना पुनरीक्षणकर्ता के पक्ष को सुने एवं सुनवाई का समुचित अवसर दिये बिना पारित किए गए हैं, जो निरस्त होने योग्य है। सुनवाई के दौरान प्राधिकरण के उपस्थिति अधिवक्ता/उनके प्रतिनिधि द्वारा कहा गया कि प्रश्नगत निर्माण बिना स्वीकृति के किया गया है, जो एच0एफ0एल0 से 200 मी0 के अंदर है तथा शमन योग्य नहीं है। तत्क्रम में नियमानुसार ध्वस्तीकरण आदेश पारित किया गया है। पत्रावली के अवलोकन से स्पष्ट है कि पुनरीक्षणकर्ता, प्राधिकरण के ध्वस्तीकरण आदेश के विरुद्ध मण्डलायुक्त वाराणसी के यहां स्वयं अपील में गया, किन्तु नियत सुनवाई में उपस्थित नहीं हुआ। उल्लेखनीय है कि मण्डलायुक्त वाराणसी के आदेश दिनांक 25.04.2024 में उल्लिखित है कि अपीलार्थी द्वारा शमन मानचित्र जमा करने हेतु बार-बार समय की मांग की जाती रही, किन्तु समय दिए जाने के उपरान्त भी अपीलार्थी द्वारा शमन मानचित्र प्रस्तुत नहीं किया गया। उक्त से स्पष्ट है कि पुनरीक्षणकर्ता को सुनवाई व साक्ष्य का पर्याप्त अवसर दिया गया। उपरोक्त तथ्यों के परिप्रेक्ष्य में जोनल अधिकारी, वाराणसी विकास प्राधिकरण, वाराणसी के आदेश दिनांक 23.03.2023 एवं आयुक्त, वाराणसी मण्डल, वाराणसी के आदेश दिनांक 25.07.2024 किसी हस्तक्षेप की आवश्यकता प्रतीत नहीं होती है। तत्क्रम में प्रश्नगत पुनरीक्षणवाद खारिज किये जाने योग्य है।

आदेश

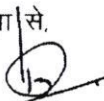
अतएव उपरोक्त विवेचना के आलोक में प्रश्नगत पुनरीक्षणवाद आधारहीन एवं बलहीन होने के कारण निरस्त करते हुए निस्तारित किया जाता है। बाद आवश्यक कार्यवाही पत्रावली दाखिल-दफतर हो।

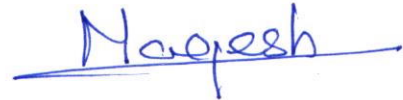

29.11.24
(राजेश कुमार राय)
विशेष सचिव।

संख्या एवं दिनांक तदैव।


प्रतिलिपि:- निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

1. उपाध्यक्ष, वाराणसी विकास प्राधिकरण, वाराणसी
2. श्री मंगला यादव पुत्र स्व0 प्यारे लाल यादव निवासी-099, डांडी, भिसौरी, मुगलसराय चंदौली, जनपद-वाराणसी द्वारा उपाध्यक्ष, वाराणसी विकास प्राधिकरण, वाराणसी।
3. श्री मंगला यादव पुत्र स्व0 प्यारे लाल यादव निवासी-099, डांडी, भिसौरी, मुगलसराय चंदौली, जनपद-वाराणसी
4. गार्ड फाईल।

आज्ञा से,

(राजेश कुमार राय)
विशेष सचिव।






25.05.26
(चन्द्रजीत यादव)
शपथ आयुक्त एवं अनुभाग अधिकारी
अनुश्रवण प्रकोष्ठ
उत्तर प्रदेश शासन।

Court No. - 33

Case :- WRIT - C No. - 198 of 2025

Petitioner :- Mangala Yadav**Respondent :-** State Of U.P. And 4 Others**Counsel for Petitioner :-** Shailendra Kumar Yadav**Counsel for Respondent :-** C.S.C., Ravi Prakash PandeyHon'ble Vikram D. Chauhan, J.

1. The writ petition is filed with the following prayer :

"i. Issue a writ order or direction in the nature of Certiorari to quash the impugned order dated 29.11.2024 passed by Special Secretary Housing and Urban Planning Lucknow, order dated 25.7.2024 passed by Commissioner Varanasi Division Varanasi as well as order dated 23.03.2023 passed by Zonal Officer, Zone 5th Varanasi Development Authority Varanasi under Section 27(1) of U.P. Urban Planning and Development Act 1973.

ii. Issue a writ order or direction in the nature of Mandamus commanding to the respondents not to demolish and damage the house of the petitioner."

2. In view of the statement made by learned counsel for Development Authority that 200 metres from the heights flood level of the banks of river Ganga at Varanasi has been declared no construction zone in PIL No.31229 of 2005 by order dated 27.07.2012 and the matter is remitted to National Green Tribunal.

3. At this stage, learned counsel for petitioner submits that he may be permitted to withdraw the writ petition with liberty to approach the National Green Tribunal.

4. Accordingly, the writ petition is **dismissed** as withdrawn with liberty to the petitioner to approach the National Green Tribunal in accordance with law.

Order Date :- 17.2.2025

Md Faisal

