

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

SPECIAL APPEAL No. 817 of 2019

Pradeep Kumar SahAppellant.

Vs.

State of Uttarakhand and others. ...Respondents

Sri S.S. Yadav, learned counsel for the appellant-writ petitioner.

Sri S.S. Chaudhary, learned Brief Holder for the State of Uttarakhand / respondent no. 1.

Sri Sandeep Kothari, learned Standing Counsel for respondent nos. 2 to 5

Dated: 30th August, 2019

**Coram: Hon'ble Ramesh Ranganathan, C.J.
Hon'ble Alok Kumar Verma, J.**

Ramesh Ranganathan, C.J. (Oral)

Heard Sri S.S. Yadav, learned counsel for the appellant-writ petitioner, Sri Sandeep Kothari, learned Standing Counsel for respondent nos. 2 to 5 and Sri S.S. Chaudhary, learned Brief Holder appearing on behalf of the State Government and, with their consent, the Special Appeal is disposed of at the stage of admission.

2. The appellant-writ petitioner sought permission for construction of the third-floor of his hotel; and sanction was accorded to him, by the District Level Development Authority, in the year 2012. The sanction was to remain in force for a period of five years, which expired in the year 2017. The appellant-writ petitioner failed to complete construction within this five year period, i.e. before 2017. On the ground that he was not permitted to continue construction thereafter, he invoked the jurisdiction of this Court filing Writ Petition (M/S) No. 1394 of 2019; and a learned Single Judge of this Court, by his order dated 20.05.2019, directed the District Level Development Authority to decide the appellant-writ petitioner's representation. On the petitioner approaching the District Level Development Authority, the latter, by its order dated 24.07.2019, rejected the appellant-writ petitioner's request for grant of permission. Aggrieved thereby, the writ petition in which the order under appeal was passed.

3. In the order under appeal, the learned Single Judge observed that the ground for rejection was in accordance with law in as much as the construction, for which a map was sanctioned, was to be made within a period of five years; this limitation in law was for a valid purpose, since, after a period of five years, there was the distinct possibility that the building bye-laws may have changed, as had happened in the present case; and there was no anomaly in the order dated 24.07.2019.

4. Sri S.S. Yadav, learned counsel for the appellant-writ petitioner, would contend that, since permission was granted to the appellant-writ petitioner earlier, he cannot be denied the right to complete construction in terms of the said permission; the mere fact that the five-year period stipulated therein had elapsed would not denude him of his right to complete construction of the building; and the order, impugned in the appeal, necessitates being set aside. Learned counsel would further state that, even in case the permission granted earlier is presumed to have lapsed, the appellant-writ petitioner would nonetheless be entitled to apply afresh for grant of permission, and the respondents are obligated in law to consider such an application for grant of fresh permission.

5. On the other hand, Sri Sandeep Kothari, learned Standing Counsel for respondent nos. 2 to 5, would submit that, in terms of the building bye-laws, the permission granted by the competent Authority is valid only for a period of five years, and not thereafter; the object of placing such a restriction is that, over a period of five years, the conditions required to be complied with, for grant of permission for construction of the building, may change; in the present case, there has been an amendment to the building bye-laws; and the learned Single Judge was, therefore, justified in upholding the order passed on 24.07.2019 rejecting the petitioner's request to be permitted to continue with construction, based on the earlier permission granted in the year 2012.

6. While Sri S.S. Yadav, learned counsel for the appellant-writ petitioner, would contend that the map sanctioned to the appellant-writ petitioner makes no mention of the requirement of completing construction within a period of five years, it is not in dispute that the building bye-laws so require, in which event this Court would not be justified in directing the authorities to grant extension of the five year period, by a further period of a few years, to complete the construction partly raised by the appellant-writ petitioner. We find no error in the order under appeal to this extent.

7. The mere fact that the appellant-writ petitioner is not entitled to complete construction, in terms of the permission granted earlier in the year 2012, would not denude him of his right to submit an application, for grant of permission, afresh to respondent nos. 2 to 5; and, in case any such application is made, respondent nos. 2 to 5 would be required to consider his application in terms of the existing bye-laws, and not reject the same on the ground that his earlier permission had elapsed.

8. Sri Sandeep Kothari, learned Standing Counsel for respondent nos. 2 to 5, would fairly state that, in case a fresh application is made, the same would be considered in accordance with law. Suffice it, in such circumstances, to dispose of the appeal permitting the appellant-writ petitioner to make an application, for grant of fresh permission for construction of the third-floor of the hotel, within one month from the date of receipt of a certified copy of this order. On such an application being made seeking permission, respondent nos. 2 to 5 shall consider the same in accordance with law, and pass a reasoned order on the appellant-writ petitioner's application within two months from the date of receipt of his application.

9. The Special Appeal is, accordingly, disposed of. No costs.

(Alok Kumar Verma, J.)

30.08.2019

(Ramesh Ranganathan, C.J.)

30.08.2019