

**Court No. - 9**

**Case :-** WRIT - C No. - 11754 of 2023

**Petitioner :-** Abha Nagar And 4 Others

**Respondent :-** Chairman Lucknow Development Authority  
And 3 Others

**Counsel for Petitioner :-** Shashank Singh, Abhinav Singh

**Counsel for Respondent :-** Ratnesh Chandra

**Hon'ble Rajan Roy, J.**

**Hon'ble Jaspreet Singh, J.**

Heard Shri Abhinav Singh, learned counsel for the petitioners and Shri V.K. Shahi and Shri Ratnesh Chandra, learned counsel for the opposite parties.

This Bench has been constituted today under the orders of Hon'ble the Acting Chief Justice considering the urgency shown by the petitioner's counsel, as they apprehended demolition of their flats situated at F.I. Tower 37 Cantt. Road, Police Station - Kaiserbagh, Lucknow.

In similar matter bearing Writ - C No. 11753 of 2023; Mohd. Tauqeer Siddique Vs. Chairman Lucknow Development Authority Lucknow and Ors. we have already passed an order yesterday i.e. 24.12.2023 disposing of it. The order dated 24.12.2023 reads as under:-

*"Shri V. K. Shahi and Shri Ratnesh Chandra, learned Advocates have filed their vakalatnama on behalf of opposite parties. The same is taken on record.*

*Heard Shri Abhinav Singh, learned counsel for the petitioner and Shri V.K. Shahi and Shri Ratnesh Chandra, learned counsel for the opposite parties.*

*This Bench has been constituted today under the orders of Hon'ble the Acting Chief Justice considering the urgency shown by the petitioner's counsel, as he apprehended demolition of his premises which is a flat situated at F.I. Tower 37 Cantt. Road, Police Station - Kaiserbagh, Lucknow.*

*The contention of the petitioner's counsel in nutshell is that an order of demolition has been passed under Section 27(1) of the U.P. Urban Planning and Development Act 1973 on 23.11.2023 in Case No. 323/2022 (Lucknow Development Authority vs Manager, F.I. Towers 37 Cantt. Road, Police Station - Kaiserbagh, Lucknow. The petitioner happens to be the owner of a Flat in the said Tower. According to the petitioner's counsel, though, in the gift deed the situation of the flat is mentioned as on the 6th*

Floor, but, he fairly admitted to the fact that in fact it is on the 7th floor. He had further explanation to offer in this regard, however, we do not deem it necessary to record the same as we are not entering into the merits of the same.

Sri Ratnesh Chandra, learned counsel for the L.D.A. contended on merits that in fact permission for constructing the building was available only for the stilt plus 6 floors, therefore, the flat of the petitioner herein exists on the 7th floor for which no sanction of map is there.

We do not wish to go into the merits of the matter, as, against the aforesaid order dated 23.11.2023 the petitioner claims to have preferred an appeal before the Chairman of Lucknow Development Authority, Lucknow under Section 27(2) of the U.P. Urban Planning and Development Act, 1973 on 23.12.2023 i.e. within the time stipulated which has been registered in the computer as Case No. 3994 of 2023 (Computerized Case No. C202310000003994).

The submission is that the said appeal has not been heard even once. It is claimed that the appeal is accompanied by an application for interim relief which has also not been heard as yet.

Learned counsel for the petitioner has relied upon a Division Bench judgment of this Court rendered in Writ - C No. 16357 of 2020; Abbas Ansari and Anr. Vs. State of U.P. and Ors. dated 15.10.2020, a copy of which is annexed as Annexure No. 21 to the writ petition, according to which, certain general directions have been issued to the authorities, in alia, to the effect where ever demolition orders are passed in respect of constructions raised on private properties under the Act referred therein, the demolition should wait till statutory period of appeal comes to an end. Further direction is to the appellate authority to endeavour to decide the interim relief application filed along with appeals, if any, expeditiously preferably within a a period of two weeks from the date of filing of the interim application and till disposal of the interim application filed in such statutory appeals the authorities should not take any steps for executing demolition orders.

The contention of the petitioner's counsel is that the impugned action of demolition is in the teeth of the said Division Bench Judgment.

On being confronted, Sri Ratnesh Chandra, learned counsel for the Lucknow Development Authority could not deny the fact that there is a Division Bench Judgment to the aforesaid effect which contains general directions.

Be that as it may, we do not delve at length on the issues involved, as, they would be seen in the Appeal which has been filed, if it is so, before the opposite party no.1 keeping in mind the Division Bench judgment and such other law as may be applicable on the subject.

Suffice it to say that the Appeal having been filed and the same not having been heard nor interim relief application having been heard, we cannot allow the demolition of the premises relating to the petitioner to go on in pursuance to the impugned order, as, it would not only render the statutory appeal infructuous and cause grave prejudice to the petitioner, even otherwise, it would not be in keeping with principles of fairness and

*natural justice.*

*Accordingly, we stay the demolition of the petitioner's flat in pursuance of the impugned order till disposal of the interim relief application of the petitioner which is said to have been filed in the aforesaid appeal before the opposite party no.1 i.e. Chairman, Lucknow Development Authority, Lucknow.*

*In fact, we request opposite party no.1 i.e. Chairman, Lucknow Development Authority to either decide the application for interim relief or the appeal itself within a reasonable time after affording opportunity of hearing to the concerned parties, keeping in mind law on the subject. While doing so, the Chairman, Lucknow Development Authority shall adhere to the judgement dated 25.10.2020 referred hereinabove.*

*The protection granted by us will be available only till disposal of the application for interim relief as aforesaid.*

*We make it clear that our order shall not prejudice the rights of the parties in the pending appeal in any manner whatsoever. However, the Division Bench judgment referred hereinabove will have to be kept in mind.*

*Sri V. K. Shahi, learned Additional Advocate General and Sri Ratnesh Chandra, learned counsel for the Lucknow Development Authority who are present shall immediately communicate this order, without waiting for its certified copy, to the Chairman and Vice-Chairman, Lucknow Development Authority, for strict compliance.*

*With the aforesaid observations/directions, the writ petition is disposed of.*

*The In-charge Senior Registrar of the Court shall also communicate this order to the aforesaid authorities forthwith."*

In this case also it is said that appeals against the impugned order dated 23.11.2023 are pending, the details of which are given in Para-67 with supporting documents annexed at Page-64 Annexure No.13 of the writ petition. Interim relief application has not been considered as yet.

Shri Abhinav Singh, learned counsel for the petitioners submits that he received communication for preponing of the date fixed in the appeal from 28.12.2023 to 26.12.2023 whereupon learned counsel for the LDA Shri V.K. Sahi and Shri Ratnesh Chandra were asked to get the said facts verified and produce the records which they have done and according to them no doubt a mention was made by learned counsel for the LDA for preponing the date considering our earlier order passed yesterday but the same has not been accepted and the date already fixed i.e. 28.12.2023 is the date on which the appeals/interim relief filed therein would be considered.

It was also contended by Shri Abhinav Singh, learned counsel for the petitioners that if adverse decision is taken by the

Chairman on 28.12.2023 or any subsequent date then at least some reasonable time be made available to the petitioners so as to enable them to avail further remedy in this regard as after all their rights to shelter would be adversely affected, if it is so.

Shri V.K. Sahi and Shri Ratnesh Chandra have opposed the writ petition as they did at the time of the earlier writ petition on the same grounds.

We **dispose of** this writ petition also in terms of the above quoted order dated 24.12.2023, meaning thereby, the petitioners herein shall be entitled to be benefit of the observations/directions contained in the above quoted order with corresponding obligation on the opposite parties. In addition to the above quoted order, we provide that if any decision is taken on the interim relief application or on the appeal itself substantially affecting the petitioners herein then such orders shall be uploaded by the office of the Chairman, LDA, within next 24 hours and a certified copy of the same shall also be provided to the petitioners within the said period. A week's time shall be available from the date of uploading of the order and provision of certified copy to the petitioners, to avail other remedies and during the said period the said orders as also the order impugned herein shall not be given effect.

Sri V. K. Shahi, learned Additional Advocate General and Sri Ratnesh Chandra, learned counsel for the Lucknow Development Authority who are present shall immediately communicate this order, without waiting for its certified copy, to the Chairman and Vice-Chairman, Lucknow Development Authority, for strict compliance.

The In-charge Senior Registrar of the Court shall also communicate this order to the aforesaid authorities forthwith.

**(Jaspreet Singh,J.)      (Rajan Roy,J.)**

**Order Date :- 25.12.2023**

Rakesh/-