

प्रेषक,

मोहिन्दर सिंह

प्रमुख सचिव

उत्तर प्रदेश शासन।

सेवा में,

1. **आवास आयुक्त**
उ.प्र. आवास एवं विकास परिषद,
लखनऊ।
2. **उपाध्यक्ष,**
समस्त विकास प्राधिकरण,
उत्तर प्रदेश।
3. **अध्यक्ष,**
समस्त विशेष क्षेत्र विकास प्राधिकरण,
उत्तर प्रदेश।
4. **समस्त नियंत्रक प्राधिकारी/अध्यक्ष,**
समस्त विनियमित क्षेत्र,
उत्तर प्रदेश।
5. **मुख्य नगर एवं ग्राम नियोजक,**
नगर एवं ग्राम नियोजन विभाग,
उत्तर प्रदेश, लखनऊ।

आवास एवं शहरी नियोजन अनुभाग-1

लखनऊ : दिनांक : 13 अगस्त, 2007

विषय : रिट याचिका संख्या : 5696 (एम/बी)/2006 गोमती नगर जनकल्याण महासमिति बनाम यूनियन आफ इण्डिया में मा. उच्च न्यायालय द्वारा पारित आदेश दिनांक 08.09.06 के अनुपालन में बहुमंजिले भवनों में अग्नि शमन सुरक्षा संबंधी व्यवस्थाएं सुनिश्चित किये जाने के संबंध में।

महोदय,

उपर्युक्त विषय पर मुझे यह सूचित किये जाने का निदेश हुआ है कि भवन निर्माण एवं विकास उपविधि, 2000 के अनुसार 4 मंजिल या 15 मी. से अधिक ऊँचाई के बहुमंजिले भवनों तथा सभागार, शैक्षिक संस्थागत औद्योगिक संग्रहगार व संकटमय मिश्रित आवासों में 400 मी. से अधिक भू-आच्छादन के भवनों हेतु स्थानीय अग्नि शमन प्राधिकारी से अनापत्ति प्रमाण पत्र प्राप्त किया जाना अनिवार्य था, परन्तु प्रदेश सरकार द्वारा प्रख्यापित उ.प्र. अग्नि निवारण एवं सुरक्षा अधिनियम 2005 एवं उसके अधीन बनायी गयी उ.प्र. अग्नि निवारण एवं अग्नि सुरक्षा नियमावली, 2005 के अनुसार बहुमंजिले भवनों के मानचित्र पर अनुज्ञा प्रदान करने हेतु सत्ता प्राधिकारी के रूप में स्थानीय प्राधिकारी, विकास प्राधिकरण, नगर पालिका, नगर निगम, आवास एवं विकास परिषद या भवन योजना संस्वीकृति प्राधिकारी को परिभाषित किया गया है। उक्त अधिनियम एवं नियमावली के प्राविधानों के अनुसार कार्यवाही करने हेतु आवास एवं शहरी नियोजन अनुभाग- के शासनादेश संख्या : 2805/आठ-1-05-48 विविध/05, दिनांक 30.05.05 द्वारा सभी संबंधित को आवश्यक निर्देश करते हुए उक्त नयी व्यवस्था को अंगीकृत किये जाने की अपेक्षा की गयी है।

2. इस संबंध में मा. उच्च न्यायालय, खण्डपीठ, लखनऊ द्वारा रिट याचिका संख्या : 5696 (एम/बी)/06ए गोमती नगर जनकल्याण महासमिति बनाम यूनियन आफ इण्डिया में उ.प्र. अग्नि निवारण एवं सुरक्षा

अधिनियम, 2005 की धारा-7 तथा उसके अनुपालन में जारी शासनादेशों को चुनौती दी गयी है। उक्त याचिका में मुख्य रूप से इस बिन्दु पर जोर दिया गया है कि अग्नि शमन विभाग को इसके दायित्व से मुक्त करते हुए अग्नि शमन सुरक्षा का दायित्व ऐसे अभिकरण को दिया गया है जो अग्नि शमन प्रबन्धन एवं निवारण में विशेषज्ञ नहीं हैं। अतः मा. न्यायालय द्वारा उक्त प्रश्नगत रिट याचिका में दिनांक 08.09.06 को निम्न आदेश पारित किये गये हैं :-

1. विकास प्राधिकरणों, आवास एवं विकास परिषद तथा अन्य अभिकरणों द्वारा बहुमंजिले भवनों के मानचित्र अग्नि शमन विभाग के अधिकारी जो मुख्य अग्नि शमन अधिकारी के स्तर से कम न होगा, का अनापत्ति प्रमाण पत्र प्राप्त किए बिना स्वीकृत नहीं किए जाएंगे। मुख्य अग्नि शमन अधिकारी अथवा अन्य उच्च स्तरीय अधिकारी द्वारा अनापत्ति प्रमाण पत्र जारी करते समय भवन में प्रस्तावित सुरक्षा उपायों का संक्षिप्त उल्लेख किया जायेगा तथा यह भी अंकित किया जायेगा कि भवन में किए गए उपाय मानकों के अनुसार हैं एवं संतोषजनक हैं।
2. ऐसे भवन मानचित्र जो अग्नि शमन विभाग के अनापत्ति प्रमाण पत्र प्राप्त किये बिना स्वीकृत किये जा चुके हैं परन्तु निर्माण कार्य अभी प्रारम्भ नहीं हुआ है, ऐसे भवनों में संबंधित अभिकरणों द्वारा निर्माण कार्य प्रारम्भ करने की अनुमति तब तक प्रदान नहीं की जायेगी जब तक अग्नि शमन विभाग से उपरोक्तानुसार निर्धारित प्रक्रिया के अनुसार अनापत्ति प्रमाण पत्र प्राप्त कर संबंधित अभिकरण के समक्ष प्रस्तुत नहीं कर दिया जाता है।
3. ऐसे भवन जिनमें मानचित्र स्वीकृति के उपरान्त निर्माण कार्य प्रारम्भ किया जा चुका है, का निर्माण कार्य संबंधित निर्माता/भू-स्वामी के स्वयं के जोखिम पर दो माह के लिए इस शर्त के साथ अनुमन्य किया जा सकता है कि उन्हें उक्त अवधि के अन्दर अग्नि शमन विभाग से निर्धारित अनापत्ति प्रमाण पत्र प्राप्त कर प्रस्तुत करना होगा। यदि उक्त अवधि में अनापत्ति प्रमाण पत्र प्रस्तुत नहीं किया जाता है, तो संबंधित अभिकरण द्वारा अग्रेतर निर्माण कार्य तब तक रूकवा दिया जायेगा, जब तक कि प्रमाण पत्र प्रस्तुत नहीं कर दिया जाता है।
4. अग्नि शमन विभाग तथा सत्ता प्राधिकारी का दायित्व होगा कि वे निर्माण कार्य के दौरान यह सुनिश्चित करेंगे कि संबंधित निर्माण स्वीकृति मानचित्र के अंतर्गत अग्नि शमन विभाग द्वारा प्राविधानित अग्नि सुरक्षा संबंधी मानकों एवं अपेक्षाओं के अनुरूप हैं। इस संबंध में स्वीकृत मानचित्र के सापेक्ष कोई उल्लंघन पाये जाने की दशा में उसके विरुद्ध नियमानुसार कार्यवाही की जायेगी एवं निर्माण कार्य तक रूकवा दिया जाएगा जब तक कि उसे स्वीकृत मानचित्र में प्राविधानित अग्नि शमन उपायों के अनुरूप नहीं कर लिया जाता है।
5. अग्नि शमन विभाग से अनापत्ति प्रमाण पत्र प्राप्त करने की आवश्यकता की जानकारी संबंधित समस्त व्यक्तियों/निर्माताओं आदि को देने के लिए लखनऊ विकास प्राधिकरण, उ.प्र. आवास एवं विकास परिषद एवं स्थानीय अभिकरण अथवा प्रदेश के अन्य अभिकरण कम से कम दो समाचार पत्रों (एक अंग्रेजी, एक हिन्दी) में सप्ताह में एक दिन छोड़कर न्यूनतम 3 बार विज्ञापन प्रकाशित कराएंगे तथा यथा समय व्यक्तिगत सूचना/नोटिस देंगे। ऐसे निर्माणकर्ताओं/भूस्वामियों, जिनके द्वारा स्वीकृत मानचित्र के अनुसार परन्तु अग्नि शमन विभाग का अनापत्ति प्रमाण पत्र प्राप्त किए बिना निर्माण कार्य प्रारम्भ किया गया है एवं जिनसे दो माह के अन्दर अग्नि शमन विभाग से अनापत्ति प्रमाण पत्र प्रस्तुत करने की

अपेक्षा की गई है, के लिए दो माह की अवधि समाचार पत्र में अन्तिम सूचना के प्रकाशन की तिथि से मान्य होगी तथा ऐसे व्यक्ति व्यक्तिगत नोटिस की प्रतीक्षा नहीं करेंगे।

3. अतः मुझे यह कहने का निदेश हुआ है कि उपर्युक्त निर्देशों का सर्वोच्च प्राथमिकता पर तत्काल अनुपालन सुनिश्चित करने का कष्ट करें तथा कृत कार्यवाही की सूचना शासन को तत्काल प्रेषित करें। मा. उच्च न्यायालय द्वारा पारित आदेश दिनांक 08.09.06 तथा दिनांक 13.10.06 की छाया प्रतियां भी अवलोकनार्थ संलग्न हैं।

संलग्नक : यथोपरि।

भवदीय,

मोहिन्दर सिंह
प्रमुख सचिव

संख्या : (1)/आठ-1-07, तददिनांक

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित :-

1. अध्यक्ष, समस्त विकास प्राधिकरण, उत्तर प्रदेश।
2. प्रमुख सचिव, गृह विभाग, उत्तर प्रदेश।
3. अधिशासी निदेशक, आवास बन्धु, उत्तर प्रदेश, लखनऊ।
4. अध्यक्ष, यूनिरेडको, कपूरथला काम्प्लेक्स, अलीगंज, लखनऊ।
5. अध्यक्ष, उ.प्र. आर्कीटेक्ट्स एसोसिएशन।

आज्ञा से,

आर.के. सिंह
विशेष सचिव

Category Code :
District : Lucknow
Group : Miscellaneous Bench

In The Hon'ble High Court of Judicature at Allahabad
Lucknow Bench, Lucknow
Inre

Writ Petition No.5696.....(MB) of 2006

Gomati Nagar Jan Kalyan Maha Samiti, Lucknow
4/147, Vivek Khand, Gomti Nagar, Lucknow through
Its General Secretary Rajesh Kumar aged about
40 years, S/o Sri late Jagdish Chandra Verma

..... Petitioner

Versus

1. Union of India through its Secretary, Ministry of Urban Development, Sansad Bhawan, New Delhi.
2. State of U.P. through the Chief Secretary, Civil Secretariat, Bapu Bhawan, Lucknow
3. Principal Secretary, Urban Planning and Development, Civil Secretariat, Lucknow
4. Principal Secretary, Home, Civil Secretariat, Lucknow.
5. Chief Town & Country Planner, U.P. Lucknow.
6. Lucknow Development Authority, 6 Jagdish Chandra Bose Road, Lucknow through its Vice-Chairman.
7. Chief Fire Officer, Hazaratganj, Lucknow.
8. Uttar Pradesh Avastha Vikas Parishad, Mahatmagangi marg, Lucknow through its Commissioner.

..... Respondents

Write Petition Under Article 226 of the Constitution of India

To

The Hon'ble the Chief Justice and other companion
Judges of this Hon'ble High Court

That the present petition is the first petition on behalf of the petitioner and he declares that earlier he has not filed any other petition either at Allahabad or at Lucknow on the same subject matter and facts.

Writ Petition No. 5696 (M.B.) of 2006
Gomti Nagar Jan Kalyan Maha Samiti
Vs.

Union of India through its Secretary Ministry of Urban
Development Sansad Bhavan, New Delhi and others

Hon'ble Pradeep Kant. J.
Hon'ble B.B. Agarwal. J

Learned counsel for the petitioner says that he may be permitted to implead U.P. Avastha Vikas Parishad as respondent no.8 to which learned counsel for the respondents have no objection.

Let aforesaid Parishad be impleaded as respondent no.8 and necessary corrections be made in the array of the respondents in the memo of the writ petition during the course of the day.

Notice of this petition on behalf of respondent no.1 has been accepted by Sri Dipak Seth; on behalf of respondent nos. 2, 3, 4, 5 and 7 by the learned Chief Standing Counsel and on behalf of respondent no.6 by Sri N.C. Mehotra. Sri Mahesh Chandra has accepted notice on behalf of newly added opposite party no.8

Since vires of the provisions of Section 7 of the U.P.Fire Prevention and Fire Safety Act, 2005 and Rule 2 kha of U.P.Agni Nivaran Aur Agni Surksha Niyamawali, 2005 are under challenge let notice be issued to learned Advocate General.

This petition in the nature of public interest litigation has been filed, challenging the vires of Section 7 of U.P.Fire Prevention and Fire Safety Act, 2005 and also Government Orders dated 9th December, 2005, 26th May, 2005, 30th May 2005 and 2nd May 2005. The petition expresses concern over the changed norms for having clearance with respect to the required safety measures against 'fire' which prescribe and provide a mechanism, giving power to the authorities, who cannot be taken as experts with respect to the fire management and its prevention and also the exclusion of the Fire Department in its entirety even from giving its opinion unless asked for, in the matter where building plans are to be sanctioned by the Lucknow Development Authority or the Housing Board or any other local authority, as the same are to be sanctioned only on the satisfaction of the 'Entity Authorized which term has been defined in Rule 2 Kha of U.P.Agni Nivaran Aur Agni Surksha Niyamawali, 2005 and means the Local Officer, the Development Authority, Nagar Palika, Nagar Nigam, Avas Vikas Parishad or Building Plan Sanctioning Authority.

The submission is that prior to the aforesaid Act of 2005 and the Rules aforesaid Director of Fire Services was required to give his satisfaction by issuing a 'No Objection Certificate' before the building permit was to be given. Not only this by means of the aforesaid four Government Orders, the role of Fire Department has been wholly and fully curtailed, and in fact, has made the requirement of having 'no objection certificate' from Fire Department absolutely non essential by providing that if any of the 'Entity Authorized' gives a certificate to the effect that the fire arrangements made are such that safety from fire is reasonable attainably in practical and can be achieved, then the building plans can be sanctioned. Consequently constructions will also be allowed.

Submission of the petitioner further, is that dispensing with the requirement of having 'No Objection Certificate' from the Fire Department and entrusting power to authorities, who cannot be said to be so well versed or trained in fire safety measures, as the officers of the Fire Department, is resulting into raising constructions of high rise building without proper safety measures making the buildings vulnerable to fire leaving occupants at the risk of loss of life and property.

Sri Jai Deep Narayan Mathur, learned Addl. Advocate General seeks four weeks' time to file counter affidavit but prima facie he has not been able to satisfy us, the reasoning and the object behind the aforesaid amendment on the Rules and the Act for total exclusion of the expert body of the Fire Department in the matter of scrutinizing and testing, as to whether the building plans over which the buildings, may be, multistoried, or otherwise are to be constructed, do have necessary safety measures and necessary precautions against fire. The entrustment of this work to officers of the local authorities or the Development Authority, that too for having satisfaction in the manner as it has been provided under Section 7 prima facia appears to be hardly sufficient for effective safety measures being taken against fire in building and in particular high-rise buildings. Government Orders have been read before us which prima facie establish that one after the other, Government Orders had been issued doing away with the power of the Fire Department in the matter of consideration of safety measures with respect to fire, while sanctioning the building plans or granting building permits for raising construction of high-rise buildings or any other buildings where safety measures are so required, nor it had been given any role to see that while raising

constructions of high rise buildings, safety measures as required are being provided or have been provided, even if they have been shown in the building plans.

It is needless to mention and we take note of the fact, that appropriate and effective safety measures against fire is one of the pre-requisites, normally, in any high rise building as the person and property of individuals occupying the same or that of the passersby or of those who are living in the vicinity cannot be allowed to be put in peril.

We under the circumstances provide as an interim measure that henceforth no building plan shall be sanctioned without a certificate of an officer of the Fire Department, not below the rank of Chief Fire Officer, which either has to be accompanied or produced, before, the building plans are considered for being sanctioned by the Parishad, Development Authority or the other local authorities. The Chief Fire Officer or any officer higher in rank while issuing the 'no objection certificate', shall, in brief, record the safety measures as proposed and his satisfaction that they are sufficient as per the norms. This requirement of the certificate from the Fire Department would not in any way be taken to mean that we have dispensed away with the responsibility of the 'Entity Authorised' under the Act, to have their own satisfaction and give the required certificate, but in the absence of certificate from the Fire Department, the building plans shall not be sanctioned.

The building plans, which have already been sanctioned in the absence of any such certificate and constructions have not yet started, the same shall not be allowed to be started by the concerned authorities till 'no objection certificate', as prescribed above, is obtained from the Fire Department and produced before the authority concerned.

In case constructions have already been started, after sanction of the building plan, such constructions may be allowed to continue for a period of two months at the own risk of the builder or the persons concerned, who are raising constructions but in the meantime they shall also furnish requisite certificate from the Fire Department and in case they fail to do so within the prescribed period, further constructions shall be stopped by the concerned authority till such certificate is produced.

We further provide that it would be the obligation of the Fire Department as well as 'Entity Authorised' to make inspections during the period, when the constructions are being raised to check and verify that the safety norms and measures as have been shown in the building plan and as have been specified by the Fire department are being provided. On detection of any deviation in this regard from the measures approved would call for an appropriate action and the construction may be stopped till due rectifications are made.

We further direct that the respondents, namely, Lucknow Development Authority, Uttar Pradesh Avas Evam Vikas Parishad and other Development Authorities and local authorities, or other authorities of the State, as the case may be, shall make this requirement of furnishing 'no objection certificate' from the Fire Department, known to all concerned by publishing the same in at least two newspapers, one in English and the other in Hindi, at least by putting three insertions, to be issued on alternate days within one week and if possible, by issuing intimation/notice individually also.

The period of two months, during which the builders or the persons concerned, who are raising constructions under a sanctioned building plan but without any 'no objection certificate' from the Fire Department and have to furnish the aforesaid certificate, would start from the date of the last insertion/publication in the newspapers and such persons shall not wait for individual notices.

The report of the action taken shall be submitted before the Court on the next date of listing.

List this matter after two months in the week commencing 20th November, 2006.

We may clarify that these directions have been issued only for those buildings, which require safety measures to be adopted under Rules and in particular, which are to be raised beyond the

height of 15 meters, unless otherwise fire safety measures are required to be taken under any law or rules for any other building also.

The question as to what steps be taken against the high rise buildings or buildings beyond the height of 15 meters, which have already been completed, but without 'no objection certificate' from the Fire Department, shall be considered on the next date of listing, after the affidavits are exchanged.

This order shall be followed in the entire State of U.P. and all concerned departments, may be, Development Authorities, Parishads and other Authorities, Departments and local authorities, who are authorized to sanction building plans for raising constructions beyond the height of 15 meters, and of course those buildings also which require safety measures to be taken under law even otherwise.

8-9-2006

Sd. – Pradeep Kant

Sd. – B.B. Agarwal

C.M.M. NO. 12255 OF 2006
Writ Petition No. 696 (MB) of 2006
Gomti Nagar Jan Kalyan Maha Samiti, Lucknow.

Union of India through its Secretary, Ministry of Urban
Development, Sansad Bhawan, New Delhi and other O Ps

Hon'ble Pradeep Kant, J.
Hon'ble B.B. Agarwal, J.

This matter has come up before us by notice

In this Public interest litigation we had passed an order on 8.9.2006

The grievance of the petitioner is that despite specific order passed by us on 8-9-2006 the Lucknow Development Authority, Avas Vikas Parishad and other Authorities and Institutions are sanctioning plans of high-rise buildings despite a clear restraint being put in that order with effect from 8-9-2006. Thus building plans are being sanctioned without 'no objection certificate' issued by the Fire Department. It was also provided in that order that the building plans which have already been sanctioned and constructions have not yet started, the same shall not be allowed to be started by the concerned authorities till 'no objection certificate' is obtained from the Fire Department. It was also provided that in case constructions have already been started after sanction of the building plan, such constructions may be allowed to continue for a period of two months at the own risk of the builders or the persons concerned, but in the two months they shall furnish requisite certificate from the Fire Department failing which the buildings shall not be constructed any further. The question regarding those buildings which have already been completed without obtaining 'no objection certificate' from the fire department was to be considered on the next date of listing.

We take serious note of the fact that the respondents have not yet issued the first advertisement even as they were supposed to put in three insertions in the newspapers as was required for compliance of the order.

We therefore, prima facie are satisfied that grievance raised by the petitioners that the respondents are not complying with the terms of the order passed by us and that not only they are allowing constructions to be continued but they are also not publishing the insertions directed by this Court. The deliberate inaction of the respondents and not publishing the notices as directed and sanctioning the building plans against the terms of the earlier order may constitute the deliberate disobedience of the Court's order.

Sri J.N. Mathur, learned Addl. Advocate General, Sri Punit Chandra for Ava Vikas Parishad and Sri N.C. Mehrotra for Lucknow Development Authority shall seek instructions and Sri J.N. Mathur shall file affidavit of the Principal secretary. Home and Principal Secretary of Urban Planning and Development and Housing Commissioner indicating the action taken towards the compliance of the aforesaid order. Vice Chairman of the Lucknow Development Authority and Housing Commissioner of Avas Evam Vikas Parishad shall file affidavits showing that whether building plans of High-Rise Buildings after 8-9-2006 have been sanctioned in the absence of 'no objection certificate' from the fire department and if yes then under what authority and circumstances. The respondents shall also indicate in their affidavits as to why they have not issued insertions in the newspapers till this date and have allowed the constructions to be continued despite

the specific order of this court that they shall not be allowed to be continued in absence of 'no objection certificate' issued from the fire department after two months. We further direct that such insertions shall be made in the newspapers as directed in the aforesaid order as the first insertion shall be made by Tuesday next, i.e. 17-10-2006 and consequently two further insertions shall be made on Thursday and Saturday next, i.e. 19-10-2006 and 21-10-2006.

In case the affidavits are not filed and full instructions are not received by the respective, Standing Counsel and Sri J.N. Mathur Addl. Advocate General, aforesaid Officers shall appear in person before this court on next date of listing.

List the application on 6-11-2006

Tripathi/OM

13.10.2008

Let a copy of this order be supplied to the counsel for the parties within 24 hours.

Let a copy of this order be sent to the Chief Standing Counsel Government of U.P. and the Legal Remembrancer, Government of U.P.

Tripathi/OM

13-10-2008