

Vibhuti Narain Singh vs Improvement Trust, Benaras And Anr. on 18 February, 1954

Equivalent citations: AIR1954ALL520, AIR 1954 ALLAHABAD 520

Author: V. Bhargava

Bench: V. Bhargava

ORDER

V. Bhargava, J.

1. By this petition under Article 226 of the Constitution the petitioner challenges the validity of an order of the Improvement Trust, Banaras, sanctioning a plan for constructions submitted by the petitioner subject to certain amendments. The petitioner seeks the issue of a writ of mandamus directing the Improvement Trust, Banaras, and the Municipal Board, Banaras, to stop them from taking coercive measures to enforce the amendment of the plan or interfering in the construction of the building by the applicant according to the plan submitted by him on 9-5-1952.

The petitioner has admitted in his own petition that his building is sought to be constructed along a road in respect of which the Improvement Trust of Banaras has already made a Deferred Street Scheme prescribing alignment on each side of the street. In enforcing this Deferred Street Scheme, the Improvement Trust directed by a resolution dated 22-8-1949 that no construction should be permitted which did not leave 7 1/2 ft. wide land on either side of the street for widening the road on both sides. In spite of this scheme, the petitioner sought to make constructions so as to include 7 1/2 ft. wide strip of land along the street also within his building. The Improvement Trust when sanctioning the plan directed that no constructions should be made over this 7 1/2 ft. wide strip of land except a cantilevered balcony subject to its being open to sky and, air.

2. The petitioner's contention is that Section 180, U. P. Municipalities Act which governs the exercise of the power by the Town Improvement Trust to sanction constructions did not empower the Town Improvement Trust to impose such a condition. On the face of it this contention on behalf of the petitioner completely ignores the specific provision of the Town Improvement Act, 1919, under which the Deferred Street Scheme was made by the Improvement Trust. Section 29, Sub-section (1), Clause (b) of that Act lays down:

"No person shall erect, re-erect, add to or alter any building or wall so as to make the same project beyond the prescribed alignments of the street except with the written permission of the Trust."

This provision of law specifically takes away the power of the petitioner to make constructions over the 7 1/2 ft. strip of land. In the Deferred Street Scheme an alignment of the building was prescribed on a land 7 1/2 ft. removed from the boundary of the road. So far as Section 180, U. P. Municipalities Act is concerned, it only governs the powers of the Improvement Trust in so far as it is not inconsistent with the provisions of the Town Improvement Act, 1919. Any provision in the Municipalities Act which would limit the power of the Improvement Trust under Section 29(1) (b), Town Improvement Trust Act would, therefore, be inconsistent and consequently inapplicable. The validity of the orders passed by the Improvement Trust has to be judged with reference to the provisions of the Town Improvement Act.

Learned counsel for the petitioner is unable to show how the order passed in his case by the Improvement Trust is beyond the scope of the powers vested in it under Section 29(1) (b) of the Act, as reproduced above. When the right of the petitioner to make the constructions was taken away altogether by Section (29) (1) (b) except to the extent to which he might obtain written permission of the Improvement Trust, his exercise of that right would be limited to the extent of the permission granted. In this case the Improvement Trust chose it improper to permit the petitioner to put up cantilevered balcony on 74 ft. strip of land without permitting any further constructions on the arcade. The permission being limited in this manner the petitioner could not make any construction beyond the extent specified in the order granting the permission. It cannot be said that the permission granted was in any way void.

The conditions in the permission granted by the Improvement Trust were within the powers of the Improvement Trust granted to it under Section 29 (1) (b) and I do not see how the order passed in any way infringes the fundamental rights of the petitioner. Even if it be said that these limitations on his power to make constructions on land owned by him do infringe his fundamental right under Article 19(1)(f) of the Constitution, the limitation is a reasonable limitation in the interest of the general public. It is obviously in the interest of the public that the land 7 1/2 ft. abutting the road should be left open and should not be allowed to be covered except by a single arcade. Learned counsel failed to show me any connection between the order passed by the Improvement Trust and Article 19(1)(g) of the Constitution. There is no question of any right of trade, business or profession being affected by an order granting permission to make the construction in this limited manner.

3. In these circumstances, the order passed by the Improvement Trust is valid and the petition fails and is dismissed with costs which I assess at Rs. 200/-.