

Smt. Ramawati vs State Of U.P. And 2 Others on 13 August, 2015

Author: Sudhir Kumar Saxena

Bench: Sudhir Kumar Saxena

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Court No. -27

Case :- CRIMINAL REVISION No. - 64 of 2015

Revisionist :- Smt. Ramawati

Opposite Party :- State Of U.P. And 2 Others

Counsel for Revisionist :- Sumant Kumar Tiwari

Counsel for Opposite Party :- Govt.Advocate,Akhil Ranjan,Praveen Kumar Srivastava

Hon'ble Sudhir Kumar Saxena, J.

1. This revision has been filed under Section 397/401 Cr.P.C. against the order dated 18/12/2014 passed by City Magistrate, Gorakhpur in case no. 24 under Section 133 Cr.P.C., directing revisionist to remove the encroachment within a week, failing which face prosecution under Section 188 IPC.

2. I have heard Sri P.K. Srivastava for respondent and learned AGA. None appeared for the revisionist. I have perused the record.

3. Briefly stated revisionist's case is that an application was filed by Smt. Manorama Srivastava before City Magistrate, whereupon Police submitted report to the effect that revisionist-Smt.Ramawati has closed the public way creating obstruction in movement of the common people. Agreeing with the report of the Police, City Magistrate issued a conditional order on 25/07/2013 under Section 133 (1) Cr.P.C. Smt. Ramawati in her statement before learned Magistrate alleged that she had been living with her husband and children in House no. 311, since long as tenant, which house has been purchased by her. No encroachment has been done by her. After demolishing old house, new construction has been made and report of the Police is not correct.

A civil suit was filed for injunction bearing suit no. 1044 of 2013. Notice has been issued without hearing as such same may be rescinded etc. etc.

4. Complainant stated that area of plot no. 264 is only 650 sq. feet while total construction made is on 1100 sq. feet, which is definitely an encroachment warranting intervention under Section 133 Cr.P.C. Width of the public street was eight feet, which has been reduced to two feet. Moreover, Smt. Ramawati Devi had purchased the house covering the area of 967 sq. feet and there is encroachment on public road. Complainant's case is that revisionist had constructed RCC pillars, blocked the road and overhanging projections have been built, restricting the movement in public street.

5. City Magistrate came to the conclusion that there has been public street between the house of both the parties. Nagar Nigam and Gorakhpur Development Authority both have found that Smt. Ramawati Devi has encroached over the public way. Consequently, City Magistrate concluded that revisionist and her sons have closed the public street by making illegal construction as such, conditional order is liable to be confirmed. City Magistrate confirmed the order dated 25/07/2013 and directed Smt. Ramawati Devi to remove the encroachment within a week failing which she will be held guilty of violation of the court's order. Copy was sent to Inspector, Rajghat for compliance. This very order of City Magistrate passed on 18/12/2014 has been impugned in this revision.

6. Before reverting to the legal submission, facts culled out from the affidavit filed by revisionist may be mentioned. Smt. Ramawati has filed an affidavit in revision giving the entire history of litigation. In para 3 of the affidavit, it is stated that she purchased the house measuring 967.79 sq. feet, through registered sale deed on 08/08/2008 and got her name mutated in the record of Nagar Nigam, Gorakhpur. Copy of the sale deed and Khasra issued by Nagar Nigam have been annexed with the affidavit. From the copy of sale deed, it is apparent that Ashwini Kumar and Akhilesh Kumar, erstwhile owner sold the house to Smt. Ramawati Devi for a sum of Rs. 6,75,000/-. Total area sold is 967.71 sq. feet. i.e. 89.93 sq. metre. Constructed area was 894.71 sq. feet i.e. 83.1514 sq. metre. Revisionist was tenant in the house for the last 35 years which she purchased by means of registered sale deed. Not only on the top but also in the body of the sale deed, total area has been mentioned as 967.71 sq. feet (89.9358 sq. metre) which was sold. Boundaries of the house as mentioned in the sale deed show that towards east, there is house of Ganga Prasad Srivastava, towards west, eight feet wide gali (road), towards north, house of Dr. Ghaneshwar Prasad Shukla and towards south, land and house of Sri Baijnath Rai are situated. Alongwith sale deed, map has also been annexed which bears signature of vendor and vendee. Map shows that towards west side of the house, eight feet wide Gali exists. North-south length of the house is 57' 7½". Width of the house towards north is 25 feet and towards south is 10 feet. This map also mentions the area i.e. total area 967.71 sq. feet. Constructed portion is 894.71 sq. feet, open portion 73.00 sq. feet. Thus, from the sale deed and map annexed by the revisionist herself, it is manifest that she had purchased a house having an area of 967.71 sq. feet in all, which covers not only constructed part but also open area. Sale deed as well as map annexed therewith clearly mention that 8 feet wide road exists towards west of the house purchased.

7. Revisionist has also annexed the copy of judgment given in suit no. 337/2013. This suit has been decided on the basis of compromise which was filed by Ganga Prasad Srivastava against the

revisionist-Smt. Ramawati Devi and their sons. This suit was in respect of dispute pertaining to drainage as issue raised was whether plaintiff was entitled to use the drainage shown in the plaint. Parties compromised the matter and this suit was decreed. Boundary mentioned in the sale deed show that house of Ganga Prasad Srivastava is situated towards east of the house under sale. Map annexed with the sale deed shows that house of Sri Ganga Prasad Srivastava is situated towards east of the house sold and has nothing to do with the street, which is situated towards west of the house sold, as such dispute between Ganga Prasad Srivastava and present revisionist was in respect of an area quite away on the opposite side of public street. It would not bind the respondent as she was not a party nor would bind Nagar Nigam or Gorakhpur Development Authority. Furthermore, there cannot be any compromise between the private parties with regard to public road, which admittedly exists between the house of both the parties.

8. Revisionist has filed some more papers which also need mention. Objection filed by revisionist before City Magistrate is annexed with the revision, in which it is stated that revisionist had purchased the house, in which she was living as tenant and she has not made any encroachment over the Gali that exist towards west of the house. She has not blocked any public way.

9. Annexure 4 is a report by Assistant Municipal Commissioner, according to which the total width of Gali is 2.6 feet and it becomes 6 feet wide thereafter. It is stated that people do not pass through that Gali. Son of revisionist has unnecessarily stored malwa on the Gali for removal of which order has been passed. From the report of Assistant Municipal Commissioner, it is apparent that width of Gali has been reduced at some place to 6 feet and between the house of respondent and revisionist to 2.6 feet. Chief Health Officer, Nagar Nigam, Gorakhpur has reported that no new construction has been made on the road and it does not obstruct any movement. It is stated in this report that Ajit Kumar Chauhan working in Nagar Nigam has stored malwa on the street, after getting construction of the house.

10. A note sheet has been placed on record by revisionist which shows that a report was submitted to Deputy Municipal Commissioner and according to report, Smt. Ramawati has constructed two storey house in Plot No. 264 measurement thereof are 59 feet x 27 feet and towards south 15 feet. On the spot, construction has been made on 58 feet x 27 feet area and matter requires to be demarcated by revenue department. Municipal Commissioner in his report to District Magistrate, Gorakhpur does mention the case of respondent that total construction has been made over 1100 sq. feet, which is in excess of area purchased. So far as encroachment part is concerned, matter has been referred to Gorakhpur Development Authority as it is competent to take action. Copy of the plaint shows that suit no. 1044 of 2013 was filed by revisionist Smt. Ramawati and in para 3 of the plaint, it is mentioned that there does exist Gali between the two houses, which is 12 feet wide towards North but this width was reduced to 8 feet, 6 feet, 4 feet and now 2 feet. It is further mentioned that after purchasing the house, she made construction over the ground floor and first floor. What is strange is that no measurements have been given in the plaint or in the map annexed with the plaint. On the other hand, the width of road shown in the plaint map between the two houses is 2 feet while in the map annexed with the sale deed the width has been shown to be 8 feet.

11. Affidavit of two persons have been filed by revisionist to show that no obstruction has been made on the public path as Amit Kumar Gupta, Smt. Kamini Singh, Ghaneshwar Prasad Shukla, Ram Sahay Singh, Manorama Srivastava and Ramawati Devi use this Gali for movement. Said Gali is being used as a road and nobody is facing difficulty. All the houses are situated along this Gali.

12. Report of the Sub-Inspector which led to the proceedings under Section 133 Cr.P.C. has also been filed which shows that Gali is being used by local residents which was a public way. Width of Gali is 8 feet, 6 feet and 4 feet. Revisionist has made encroachment and constructed stairs on the Gali. Projection of 4 feet has been constructed and has closed the drainage. Moreover, he has closed the road by storing Malwa as such, public way has been obstructed. Details of alleged construction have been shown in the map prepared by Sub-Inspector.

13. Counter affidavit has been filed by Sri Suresh Chandra Srivastava, counsel for respondent no. 3, in which it was stated that earlier revisionist was tenant of House no. 311 (Plot No. 264). She purchased said house on 08/08/2008 by means of registered sale deed and according to sale deed she purchased an area of 967.71 sq. feet (89.93 sq. metre) from Ashwini Kumar and Akhilesh Kumar. Boundary of the sale deed show that there exists a public street towards west of the house which was eight feet wide. Map attached to the sale deed shows that length of the house was 57' 7½" while width of the house on the southern side was 10 feet. Revisionist, after purchasing the above house demolished the entire house and without getting map sanctioned from Gorakhpur Development Authority (G.D.A.) started construction and made encroachment over the public street of Nagar Nigam with the collusion and connivance of Officers of Nagar Nigam and Gorakhpur Development Authority. It was stated that son of revisionist- Ajit Kumar Chauhan is an employee of Nagar Nigam. Number of complaints were made to Nagar Nigam and Gorakhpur Development Authority, but no action was taken.

14. Nagar Ayukt instructed the Tax Inspector to inspect the site, who found that total constructed area is 1566 sq. feet and suggested further measurement by Revenue Department. Revenue Department did not give any report regarding any encroachment. It was specifically stated in para 8 that revisionist has encroached and made construction illegally over 600 sq. feet upon the public street. In para 9, it is specifically stated that construction was made without getting map sanctioned from the Gorakhpur Development Authority, which passed demolition order on 18/12/2013. An appeal filed against the order of Gorakhpur Development Authority, also came to be dismissed on 24/06/2014 by Chairman, Gorakhpur Development Authority. Not getting any relief, respondent no. 2 approached City Magistrate under Section 133 Cr.P.C. On 02/07/2013. In order to involve the matter in litigation, revisionist concealing the fact that proceedings under Section 133 Cr.P.C. are pending, filed suit for injunction on 22/07/2013 before Civil Judge (JD), who did not grant any injunction. Aforesaid suit was dismissed in default on 04/12/2014 and has not been restored so far. In objection before City Magistrate, she admitted having made construction over the excess area. It has been further stated that revision has been filed by making false statement that civil suit is pending. Neither civil suit was pending when proceedings under Section 133 Cr.P.C. were initiated nor it was pending when revision was filed. Consequently, action was sought for filing false affidavit before this Court. It is further stated that Gorakhpur Development Authority has already passed order for demolition which was concealed from this Court. Instead of making construction over

967.71 sq. feet. an area which she purchased by way of sale deed, she has encroached over 600 sq. feet., area of public land which has been rightly taken note of by City Magistrate.

15. Rejoinder affidavit has been filed by Smt. Ramawati in which no reply has been given with regard to measurement of the area which was purchased and the area over which construction has been made. It has also not been denied that son of revisionist is working with Nagar Nigam. A vague statement has been made that house has been constructed only on the area which has been purchased. Para 8 & 9 of the counter affidavit have not been denied that construction was made without getting the map sanctioned from Gorakhpur Development Authority.

16. It has not been denied that civil suit was dismissed for default but it was stated that restoration application is pending. In para 14, it is said that dismissal in default would not affect the merit of the case as civil suit is still pending for consideration.

17. It is further stated that except respondent no. 3-Smt. Manorama Devi, nobody else is raising objection to the construction as such, it is not 'public nuisance'. In para 22, it is stated that area of the house of the revisionist is under determination of the Civil court. In para 23, it is stated that the house, in question, has been constructed according to sale deed.

18. Revisionist has made the construction and has fixed big gate, opening on the street, submitted respondent and placed photographs of the same by means of supplementary affidavit. Copy of the restoration application filed for restoring civil suit 1044 of 2013 has been filed to show that application was filed on 19/01/2015 and is still pending. Strangely, revisionist has not given any measurement in plaint or in rejoinder affidavit filed in this Court.

19. On 17/04/2015, this Court directed revisionist to inform the Court if suit has been restored, by means of supplementary affidavit. The case was listed on 18/05/2015 when two weeks further time was granted. On 29/05/2015, 13/07/2015 & 20/07/2015, case was got adjourned by revisionist. On 27/07/2015, two weeks and no more time was allowed to file supplementary affidavit but till date same was not filed, establishing the fact that suit is still lying dismissed.

20. From the above discussion and the documents filed by revisionist, following situation emerges:-

- 1) Revisionist was tenant of house no. 311, which was purchased by means of sale deed from its erstwhile owner on 8/8/2008.
- 2) Total area of the house was 967.71 sq. feet, which finds mention at various places in the sale deed and map annexed therewith.
- 3) There exists 8 feet wide public street towards west of the house of revisionist, whereafter house of respondent is situated and a reference of 8 feet wide Gali has been mentioned not only in the sale deed but also in the map annexed therewith.

4) Towards south, width of the house purchased was 10 feet while length of the house was 57' 7½" (East-West). Towards north, width of the house was 24 feet.

5) After demolition, new construction has been made on the ground floor and the first floor.

6) New construction according to report of Nagar Nigam shows the width of house towards south as 15 feet (as against 10 feet purchased through sale deed).

7) Total area constructed is 1100 sq. feet while total area purchased was 967.71 sq. feet.

8) In the plaint no measurement has been given and in the map annexed with the plaint, width of the street has been shown to be 2 feet. It is contrary to what finds mention in the sale deed.

9) No suit was pending at the time of initiation of proceedings under Section 133 Cr.P.C. No injunction was granted by any court.

10) No suit was pending when the revision was filed as suit had already been dismissed for default and restoration application was not filed till the filing of revision as such, submission made in the affidavit that suit is pending was not correct.

11) Construction has been made without getting map sanctioned from Gorakhpur Development Authority, which has passed order for demolition.

12) Evidence of the revisionist i.e. affidavits of neighbours show that road was used by public for movement and is a public street. This is not disputed by anybody.

13) Son of revisionist is working in the Nagar Nigam.

14) Police report as well as report submitted by Officers of the Nagar Nigam do show construction over the excess area and shrinking of public street.

15) Civil Suit no. 337 of 2013 was between Ganga Prasad Srivastava and revisionist for right to flow water through drainage that too towards east of the house not in any way connected with the disputed Gali.

21. From the above discussion, it is manifest that revisionist has made construction over the area which was not purchased by her and has encroached over the public street. Finding of City Magistrate that public way has been blocked is supported from the admitted material submitted by the revisionist in this Court. Existence of public way is not denied. Whether it is used by thousand persons or one person would not make any difference and does not change the nature of public way.

Public property belongs to entire public and everyone has right to access on every inch of the public road. Nobody has right to encroach or block public street, road or footpath. It is irrelevant that it is used by limited persons or that even after encroachment not much difficulty would be caused.

22. It is strange that Nagar Nigam despite finding that road has been blocked, took the defence that movement is not affected. It is duty of the Nagar Nigam to maintain all the roads intact. It has failed in its duty. In fact, Nagar Nigam of its own should have done it instead of forcing residents of locality to litigate, spending their own money and time or referring the matter to Gorakhpur Development Authority.

23. Gorakhpur Development Authority has found the construction to be illegal. Nagar Nigam has found the construction to be illegal. There should not have been any difficulty in taking action under Section 26/27 of the U.P. Urban Planning Development Act, 1973 ('Act' in short). It is the duty of the development authority to take care of unauthorised construction or encroachment over the public property. No stay order has been passed by any court or the State Government. Thus, Gorakhpur Development Authority should have proceeded with the demolition. Nagar Nigam also failed in its duty in maintaining the road intact and submitting half hearted report, merely to favour its own employee.

24. Forcing a citizen to fight for the cause of public way amounts to abdication of duty and shows callous indifference on the part of authorities. Once a citizen informs the authority that public property has been encroached upon, it is their duty to take upon themselves the task of ascertaining and then demolishing/removing the same. No civil court grants any injunction on the encroachment over public land. Hon'ble Apex Court has taken the encroachment over the public land very seriously.

25. Hon'ble Supreme Court in the case of Sudhir Madan and Others vs. Municipal Corporation of Delhi and Ors. [(2009) 17 SCC 332] has observed in para 3 that "We have to keep in mind the principle that the right to use the pathway, footpath etc. is that of the citizens."

26. Hon'ble Apex Court goes on to say in para 5 that "We do not wish to give the authorities an impression that the streets, lanes, footpaths and the parks exist only for hawkers. The reality is that they exist for the benefit of the ordinary people living in those localities. "Citizens have a fundamental right to use the roads, parks and other public conveniences provided by the State. These and other such considerations must permeate the thinking of the authorities." In para 10, Hon'ble Apex Court went on to say that there shall be no exception and all unauthorized persons must be removed.

(emphasis supplied)

27. Hon'ble Apex Court in the case of Hari Ram vs. Jyoti Prasad and Anr. [(2011) 2 SCC 682], has observed in para 16, which is as under:-

" Any act of encroachment is a wrong committed by the doer. Such an encroachment when made to a public property like encroachment to public road would be a graver wrong, as such wrong prejudicially affects a number of people and therefore is a public wrong. So long any obstruction or obstacle is created to free and unhindered access and movement in the road, the wrongful act continues thereby preventing the persons to use the public road freely and unhindered. Therefore, that being a continuing source of wrong and injury, cause of action is created as long as such injury continues and as long as the doer is responsible for causing such injury."

(Emphasis supplied)

28. In the case of M.C. Mehta vs. Union of India and Others [(2003) 10 SCC 619], Hon'ble Apex Court directed the removal of Mandir from the public land treating it to be an encroachment.

29. In the case of Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan [(1997) 11 SCC 121], para 8 defined the nature of footpath and street. Relevant extracts of this case are being reproduced hereinbelow:-

"Footpath, street or pavement are public property which are intended to serve the convenience of the general public. They are not laid for private use and indeed, their use for a private purpose frustrates the very object for which they are carved out from portions of public roads. The main reason for laying out pavements is to ensure that the pedestrians are able to go about their daily affairs with a reasonable measure of safety and security. That facility, which has matured into a right of the pedestrians, cannot be set at naught by allowing encroachments to be made on the pavements.

.....No one has a right to make use of a public property for their private purpose without the requisite authorisation from the competent authority. It would, therefore, be but the duty of the competent authority to remove encroachment on the pavement or footpath of the public street obstructing free flow of traffic or passing or repassing by the pedestrians."

.....The removal of encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for passing or repassing of the pedestrians on the pavements or footpaths facilitating free flow of regulated traffic on the road or use of public places.

.....If the encroachment is not removed within the specified time, the competent authority would be at liberty to have it removed."

30. On the one hand, there is a complainant, a citizen of India running to Nagar Nigam, Gorakhpur Development Authority, City Magistrate, State Government and High Court for restoration of a

public street meant for use of cohabitants and public at large and on the other hand an audacious employee of Nagar Nigam who not only encroached over public street, made constructions without getting the map sanctioned but also stored building material, set up a big gate opening outwards, blocking even remaining two feet wide street and then contending brazenly that other residents are not objecting while admitting public nature of the street.

31. In view of the discussions made above, it is found that there is no error in the order of City Magistrate and same must be confirmed. Although, it is the duty of Nagar Nigam and Gorakhpur Development Authority both, to carry out the demolition because the construction is illegal and unauthorised, without getting the map sanctioned and also because it is encroachment over public road, yet taking into consideration the entire material and law and for ensuring effective implementation, this Court directs Vice Chairman, Gorakhpur Development Authority, Municipal Commissioner and City Magistrate to carry out the demolition and restore the street as it was before construction, within a month from today.

32. City Magistrate, Municipal Commissioner and Vice Chairman, Gorakhpur Development Authority will ensure compliance of the order. Senior Superintendent of Police, Gorakhpur will ensure that necessary police force is provided, if needed by the authorities. This order is being passed only to restore the public street to its original form. Delay or non-compliance in this regard will not be countenanced. The area purchased by the revisionist under the sale deed will not be reduced (967.71 sq. feet).

33. Compliance of this order will be reported to Registrar General of High Court as well as to Principal Secretary (Housing), State of U.P.

34. It will be open to Nagar Nigam to take appropriate action against its employee, if it finds that any other action (criminal or departmental) is required under law for committing public wrong and for constructing over hanging projections or opening gate towards public street.

35. Gorakhpur Development Authority is also free to act in accordance with law against the revisionist for making unauthorised construction without getting the map sanctioned, apart from carrying out order of demolition passed under Section 27 of the Act and confirmed in appeal.

36. While closing, it is apt to make certain observations. Encroachment on public road/public place is a menace. It is seen that people find it convenient to encroach over the public property. People ordinarily do not complain either because of fear, nearness, indifference or because it does not affect them much. This is not a happy situation. Public property belongs to public and its preservation and maintenance has to be given top priority. Roads, footpaths, parks are being encroached upon brazenly with impunity. Pedestrian has a first right to use public road, footpath or lane. Law is already in place and it contemplates action against the person who is Incharge of the area for overlooking encroachment, which may include the concerned officers of Nagar Nigam, Gorakhpur Development Authority and even Police personnel. Authorities are not supposed to wait for somebody to come and complain about encroachment. How long authorities would wait for a citizen to come forward, litigate like his personal case at the cost of his own money and time for a public

cause. This very approach militates against the spirit of Act. It is sickening to see unhindered encroachment over public property with all brazenness and audacity.

37. Police Act makes it incumbent upon Police officers to see that roads are not blocked for any period. Local bodies e.g. Municipal Boards, Nagar Nigam are duty bound under the law to ensure encroachment free roads, streets, footpaths and parks. Sections 26-A, 26-C & 26-D of the Act specifically entrust Development Authority with the task of removing encroachment from public road and public property. There is also provision for punishment of Officer-in-Charge for overlooking encroachment to ensure encroachment free public street, public space. These provisions are quoted below:-

" 5[26-A. Encroachment or obstruction on public land.-

(1) Whoever makes any encroachment on any land not being private property, whether such land belongs to or vests in the authority or not in a development area, except steps over drain in any public street, shall be punishable with simple imprisonment for a term which may extend to one year and with fine which may extend to twenty thousand rupees.

(2) Any offence punishable under Sub-section (1) shall be cognizable.

(3) Whoever by placing or depositing building material or any other thing whatsoever, or otherwise makes any obstruction in any street or land not being private property, whether such street or land belongs to or vests in the Authority or not in a development area, except steps over drain in any public street or placing of building material during such period as may be permitted on payment of stacking fees on a public street of public place, shall be punishable with simple imprisonment for a term which may extend to one month or with fine which may extend to two thousand rupees or with both.

4) If there are grounds to believe that a person has made any encroachment or obstruction on a land in a development area which is not a private property, the Authority or an officer authorised by it in this behalf may serve upon the person making encroachment or obstruction, a notice requiring him to show cause why he shall not be required remove the encroachment or obstruction within such period not being less than fifteen days as may be specified in the notice, and after considering the cause, if any, shown by such person, may order removal of such encroachment or obstruction for reason to be 'recorded in writing 26-C. Authority may without notice remove anything erected or deposited in contraventions of Act.-

The Authority or an officer authorised by it in this behalf may, without notice, cause to be removed-

Any wall, fence, rail, post. Step, booth or other structure whether fixed or movable and whether of a permanent or temporary nature or any fixture which shall be erected, or set in or upon or over any

street or upon or over any open channel, drain, well or tank contrary to the provisions of this Act.

Any stall, chair, bench, box, ladder, bale, board or shelf of any other thing whatever placed, deposited, projected, attached or suspended in, upon, from or to any place in contravention of this Act.

26-D. Penalty for not preventing encroachment.-

Whoever specially entrusted with the duty to stop or prevent the encroachment or obstruction under this Act or any other Act, rules or bye-laws wilfully or knowingly neglects or deliberately omits to stop or prevent such encroachment or obstruction shall be punishable with simple imprisonment for a term which may extend to one month or with fine which may extend to ten thousand rupees or with both.

28 Power to stop development;-

(I) Where any development in a development area has been commenced or continued in contravention of the Master Plan or Zonal Development Plan or without the permission, approval or sanction referred to in Section 14 or In contravention of any conditions subject to which such permission, approval or sanction has been granted, then, without prejudice to the provisions of Sections 26 and 27, the Vice Chairman of the Authority or any officer of the Authority empowered by him in that behalf may make an order requiring the development to be discontinued on and from the date of the service of the order, and such order shall be complied with accordingly.

Where such development is not discontinued in pursuance of the order under Sub-section (1), the Vice-Chairman or the said officer of the Authority may require any police officer to remove the person by whom the development has been commenced and all his assistants and workmen from the place of development within such time as may be specified in the requisition, and such police officer shall comply with the requisition accordingly.

After the requisition under Sub-section (2) has been complied with the Vice-Chairman of the Authority may depute by a written order a police officer or an officer or employee of the Authority to watch the place in order to ensure that the development is not continued.

Any person failing to comply with an order under Sub-section (1) shall be punishable with fine which may extend to two hundred rupees, for every day during which the non-compliance continues after the service of the order.

No compensation shall be claimable by any person for any damage which he may sustain in consequence of the removal of any development under Section 27 or the discontinuance of the development under this section.

The provisions of this section shall be in addition to and not in derogation of, any other provision relating to stoppage of building operations contained in any other law for the time being in force."

38. The Uttar Pradesh Municipal Corporations Act, 1959 also obligates Municipal Commissioner to ensure no projections (over hanging) are made on the street. Doors are not made to open outwards on streets and no construction of any sort is made on the public street. In fact, power has been given to remove these encroachments even without notice. Section 292, 294 & 296 are relevant which need to be complied with by the Municipal Commissioner. Section 302 of the Act enjoins the duty upon Municipal Commissioner to ensure that no building material is deposited/stored on the public street. Section 296 of the Act authorises Municipal Commissioner to remove the wall, fence or any other structure. Section 296 of the Uttar Pradesh Municipal Corporations Act, 1959 is being reproduced below:-

"Municipal Commissioner may, without notice, remove anything erected, deposited or hawked or exposed for sale in contravention of Act- The Municipal Commissioner may, without notice, cause to be removed-

(a) any wall, fence, rail, post, step, booth or other structure whether fixed or movable and whether of a permanent or a temporary nature or any fixture which shall be erected, or set up in or upon or over any street or upon or over any open channel, drain, well or tank contrary to the provisions of this Act after the appointed day;

(b) any stall, chair, bench, box, ladder, bale, board or shelf, or any other thing whatever placed, deposited, attached or suspended in, upon from or to any place in contravention of this Act;

(c) any article, whatsoever hawked or exposed for sale in a public place or in any public street in contravention of the provisions of this Act and any vehicle, package, box or any other thing in or on which such article is placed."

39. It is duty of In-charge of the area to notice the encroachment and take action. So far picture has been very gloomy. Section 26-D of the Act has been seldom used and provision seems to have been forgotten completely.

40. Engulfing parks, footpaths, drains, public streets has become a menace which should not be tolerated even for a minute. This not only results in blocking roads, chocking drains, shrinking breathing area but also disturbs entire ecology, apart from resulting in depletion in ground water, water logging etc. Tethering of cattle, over hanging projections, putting stairs or gates opening outwards are some of the common modes of encroachment equally objectionable and illegal as making constructions over the public road. Nagar Nigam hardly resorts to Section 296 of the Act which give them sweeping powers. Similar is the case with Development Authorities. Lack of will, belief in status-go i.e. functional paralysis and possibility of political interference which is not uncommon, are some of the causes for inaction. Courts do not have sword. Repeated court orders have failed to evoke any enthusiastic repose. It is high time there is paradigm shift in the approach of authorities.

41. Hon'ble Apex Court has termed encroachment on public land to be a public wrong. They have to treat public wrong as wrong done to public and therefore to involve public at every level. An effective grievance redressal system followed by proper monitoring may bring positive results. Public has to be involved in a big way and for this purpose due publicity aimed at creating awareness may have to be done. Effort should be to insulate encroachers and make them feel that they are wrong doers-guilty of wrong done to society. Unless, citizen is empowered and armed with an effective grievance redressal system, entire exercise will remain in confines of paper only. Now the concept of Smart City has come into being. Grievance redressal mechanism through electronic means can be effectively put in place (e-governance). If idea of involving public is implemented, sense of pride and dignity will automatically get ingrained in the citizenry and citizen will not have to feel small and subjugated before a person committing public wrong with brazenness. At least they will feel isolated, insulated and stigmatized making it difficult to flaunt their authority with impunity and get away too.

42. With a view to save and preserve public street/parks and not leaving the wrongs to be noticed, only at the behest of a whistle bower or a vigilant citizen who wants to remain in anonymity, this Court directs Principal Secretary (Housing), State of U.P. to chart out a mechanism like setting up website/helpline where anyone can make a complaint regarding encroachment over public property. Such a complaint should be examined and if found true, immediate action be taken against the wrong doer as well as against the Incharge of the area, whose connivance, ignorance or indifference has led to encroachment. For creating awareness about encroachment on public property, an effective publicity campaign be launched so that people start forthcoming to the assistance and aid of authority and State is successful in converting awareness into public movement forcing wrong doers/encroachers to look for shelter.

43. Mechanism in this regard will be developed by Principal Secretary (Housing) within two months.

44. Principal Secretary (Housing) and Secretary, Nagar Vikas will also ensure that a time-bound drive is launched to clear all the encroachment over roads, footpaths, parks and other public places over the State.

45. It is believed that State Government will take the observation and direction of this Court in correct perspective and would do the needful without any reservation.

46. Registrar General will ensure compliance of the order.

47. Subject to above, revision is dismissed.

Order date: 13/08/2015 Nitesh