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Neutral Citation No. - 2025:AHC:133387

Judgment Rerserved on - 23.07.2025

Judgment Delivered on – 07.08.2025

Court No. - 33

Case :- WRIT - C No. - 33964 of 2023

Petitioner :- Pheasant Infrastructure Private Limited

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Nikhil Agrawal, Sanjay Kumar Mishra

Counsel for Respondent :- Amit Manohar, Ravi Prakash Pandey

Hon'ble Prakash Padia, J.

1. Heard Sri Nikhil Agarwal, learned counsel along with Sanjay Kumar Mishra, learned counsel for the petitioner, learned Standing Counsel appearing on behalf of State-respondent and Sri Amit Manohar, learned counsel for the respondent nos. 2, 3 and 4/Ghaziabad Development Authority, Ghaziabad.

2. The petitioner has preferred the present petition *inter alia* with the following prayer:-

"i. to issue a suitable writ or direction in the nature of certiorari quashing the impugned orders dated 23.05.2023 passed by the Principal Secretary, Housing (enclosed as Annexure no.3);

ii. issue a suitable writ or direction in the nature of mandamus directing the Respondent no.1 to re-consider the matter in revision and decide afresh considering each and every aspect of the matter regarding map release of the petitioner, in terms of Kamlesh Garg and another vs State of U.P. (WRIT - C No. 65099 of 2015);

iii. to issue a suitable writ or direction in the nature of certiorari quashing the impugned orders dated 05.10.2012 and 22.11.2019 passed by the Ghaziabad Development Authority (enclosed as Annexure no.1 & 2);

iv. issue a suitable writ or direction in the nature of mandamus directing the Ghaziabad Development Authority to release the maps of the Petitioner company;

v. issue any suitable, order or direction as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case to meet the ends of justice.

vi. award the cost of the petition in favour of the Petitioner."

3. Pleadings have already been exchanged between the parties. With the consent of counsel for the parties, the present petition is disposed of finally at the admission stage itself.

4. Facts in brief as contained in the writ petition are that the petitioner company is incorporated under the provisions of Companies Act, 1956, having its registered office at 5140-41/34, Chaudhary Market, 1st Floor, Preet-Wali-Gali, Dori Mandi, Sadar Bazar, District Ghaziabad and is engaged in business of Real Estate. The petitioner company has submitted a map for group housing over khasra no. 915M, 921, 923M, 924M, 925M, 926M, 927M, 928M, 929M, 930M, 937M, 939M & 945M situated at Village Noor Nagar, Pargana Loni, District Ghaziabad. The aforesaid map submitted by the petitioner for group housing was approved by the Technical Committee for construction of group housing vide order dated 28.11.2006. Certain conditions were required to be fulfilled by the petitioner. One of the relevant condition was that the land equal to land of Gram Samaj, Chak Road and Nali has to be left in one side of project and the permission for the same has to be obtained by the District Magistrate. The Principal Secretary, (Housing) has issued a Government Order dated 25.1.1996, notified that where there are partial Gram Samaj land, falling within the layout of the project/plan, equal size of land ought to be kept aside for the purpose of community facility and in case it is not possible the value of concern partial land be deposited in the office of District Magistrate and with the said condition, layout plan be passed. Copy of the Government Order dated 25.1.1996 has been appended as Annexure-5 to the writ petition.

5. It is further stated in paragraph 11 of the writ petition that various projects have been approved/sanctioned on the basis of aforesaid Government Order dated 25.1.1996 and a list of projects which has been approved on the basis of aforesaid government order has been appended as annexure-6 to the writ petition.

6. It is stated in paragraph 12 of the writ petition that on 28.11.2006, the petitioner received approval of map from the Technical Committee for construction of Group Housing subject to completion of formalities. One of the condition mentioned in the aforesaid letter to deposit a sum of Rs.2,92,06,044/- as change of land use. . The petitioner vide letter dated 29.11.2006 requested the Development Authority to waive the charges for change of use of land, in view of the Government Order No. 4988/832006 dated 18.10.2006. The respondent Development Authority, considering the said application of the petitioner and by letter dated 15.12.2006 informed the petitioner that the charges of change of land use has been waived by the Development Authority. Copy of letter written by the Assistant Engineer, Ghaziabad Development Authority is appended as Annexure No. 9 to the writ petition.

7. It is further stated that the petitioner has deposited bank draft of Rs. 2,10,95,598/- being the charges, as mentioned in the sanction letter dated 28.11.2006, except the charges of change of land use. The petitioner has further deposited bank guarantee of Rs. 2,56,80,457/- of Cooperative Bank.

8. It is further stated that the Nagar Nigam, Ghaziabad has granted no objection vide no objection certificate in favour of the petitioner dated 16.01.2007. The National Highway Authority of India has also issued NOC in favour of the petitioner. Apart from the same the Fire Department vide letter dated 6.8.2008 and the Ministry of Defence vide letter dated 22.9.2008 also has submitted the No Objection Certificate in favour of the petitioner.

9. The respondent Development Authority issued a letter dated 10.1.2009, asking the petitioner to complete the formalities within one week, failing which, map will be rejected. The petitioner replied the aforesaid letter vide letter dated 29.1.2009, intimating that all the formalities have been completed, but the map was not released. The

petitioner again wrote a letter dated 28.2.2009 in which again request was made to release of map. In the aforesaid letter it is again stated by the petitioner that in response to the letter of the Development Authority, the petitioner has already explained that all the formalities have been completed and as such a request has been made to release the map. It is further stated that the petitioner, after completing all the formalities, has continuously and regularly prayed the Development Authority to release the map, but the map was not released.

10. Despite the aforesaid fact that all the formalities were completed map was not released in view of fact that the Master Plan-2021 was approved by the Ghaziabad Development Authority. In the Master Plan 2021 the land use of khasra numbers belonging to the petitioner company had been marked for community facility and road instead of residential use.

11. Despite representations made by the petitioner to the Chairman, Ghaziabad Development Authority, Principal Secretary Housing Development for release of map, nothing was done and finally the petitioner moved a representation/grievances before Hon'ble the Chief Minister. which was forwarded by his office to the Development Authority. The petitioner thereafter, moved a representation before the Vice-Chairman, Ghaziabad Development Authority and Special Secretary of Housing and Urban Planning, stating therein that the petitioner company has completed all the formalities within time but the map is not being released in his favour. In reply to the aforesaid letter dated 10.4.2018, the petitioner was informed vide letter dated 28.5.2018 that due to non-compliance of condition, sanction of map of the petitioner company has been cancelled on 5.10.2012 and for the first time, the order dated 5.10.2012 was provided to the petitioner alongwith aforesaid letter.

12. The petitioner being aggrieved with the order of cancellation of map dated 5.10.2022, preferred an appeal before the Commissioner, Meerut Division Meerut. The Commissioner. Meerut Division, Meerut, vide order dated 8.7.2019 has set aside the order dated 5.10.2012 and further remanded the matter to the Vice-Chairman of Ghaziabad Development Authority with the finding that the petitioner has submitted map till 2006 and all the formalities were completed by the petitioner in the year 2009, as such, the case of the petitioner for grant of approval with regard to the map of the petitioner be re-considered. The operative portion of the order passed by the Vice-Chairman, Ghaziabad Development Authority reads as follows:-

"आदेश

अपील आंशिक रूप से स्वीकार की जाती है। प्राधिकरण द्वारा पारित आक्षेपित आदेश दिनांक 05.10.2012 निरस्त किया जाता है। प्रकरण उपाध्यक्ष, गाजियाबाद विकास प्राधिकरण को इस निर्देश के साथ प्रतिप्रेषित किया जाता है कि क्योंकि अपीलार्थी द्वारा प्रश्नगत मानचित्र वर्ष 2006 में प्राधिकरण के समक्ष प्रस्तुत किया गया था तथा उसके उपरान्त प्राधिकरण के निर्देशानुसार वर्ष 2009 तक औपचारिकतायें पूर्ण कर आवश्यक धनराशि व बैंक गारन्टी आदि भी प्राधिकरण के समक्ष प्रस्तुत की गयी है। इसलिये अपीलार्थी के प्रश्नगत मानचित्र का पुनः परीक्षण कर नियमानुसार औपचारिकतायें पूर्ण कराकर अपीलार्थी के मानचित्र के सम्बन्ध में पुनः निर्णय पारित किया जाये। आदेश की सत्यापित प्रति सहित उपाध्यक्ष गाजियाबाद विकास प्राधिकरण की पत्रावली अनुपालनार्थ प्रेषित की जाये। आवश्यक कार्यवाही उपरान्त इस न्यायालय को पत्रावली अभिलेखागार में संचित की जाये।

दिनांक 08.07.2019

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(अनीता सी० मेश्राम)
आयुक्त
मेरठ मण्डल, मेरठ।

यह आदेश मेरे द्वारा आज दिनांक 08.07.2019 को खुले न्यायालय में हस्ताक्षरित कर उद्घोषित किया गया।

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(अनीता सी० मेश्राम)
आयुक्त
मेरठ मण्डल, मेरठ।"

13. The Vice Chairman of the Ghaziabad Development Authority vide order dated 22.11.2019 denied the approval to the map of the petitioner on the

ground that khasra nos. 915, 945, 946, 939, 937, 921, 923 to 930 situated at Village Noor Nagar are under Master Plan 2021, Zone-1 and the use of aforesaid khasra is community facility, whereas the map submitted by the petitioner is for group housing, as such, unless and until the proposal by the petitioner for change of land use is submitted before the Development Authority, the map cannot be sanctioned and in case the map for the use of land for community facility is submitted, the same may be considered.

14. Being aggrieved with the aforesaid order dated 22.11.2019, the petitioner preferred a revision as provided section 41(3) of U.P. Urban Planning and Development Act, 1973 before the Principal Secretary, Housing and Urban Development, Civil Secretariat, Vidhan Sbhavha Marg, Lucknow. The aforesaid revision filed by the petitioner has been rejected by the Respondent no. 1/Secretary Housing & Urban Development vide order dated 23.5.2023. Aggrieved against the aforesaid the petitioner has preferred the present petition.

15. The petitioner has claimed parity with case of Kamlesh Garg in his appeal. It was specifically stated in the appeal that in case of Kamlesh Garg, the State Government by order dated 14.12.2016 has granted permission on the ground that her case for grant of permission was pending prior to enforcement of Master Plan 2021 and she has partly complied with the terms and conditions of sanction of map, as such, she is entitled for sanction of map as per land use, which was applicable prior to Master Plan 2021.

16. In the counter affidavit filed by the respondents it is stated that the letter of Technical Committee dated 28.11.2006 was recommendation of the Technical Committee to complete the formalities. It is also stated that it was not an order for sanction of map, as applied for by the petitioner firm.

17. A new case has been set up in the counter affidavit, stating therein that the petitioner firm has completely failed to obtain necessary order for exchange of land of Gram Sabha under section 161 of The U.P. Zamindari Abolition and Land Reforms Act, 1950 from the District Magistrate, Ghaziabad as per letter

dated 16.1.2007, as such, recommendation of Technical Committee was cancelled in the year 2012.

18. It is further stated that the Ghaziabad Development Authority has prepared its Zonal Development Plan 2021 under section 9 of the U.P. Urban Planning & Development Act, 1973 and has invited objection from the public against the proposed plan. Various objections were filed and after considering these objections/suggestion by the Technical Committee, so empowered, the zonal plan was approved and pending application for sanction of map found in accordance with the Master Plan 2021 were included in the plan.

19. It is further stated in the counter affidavit that the map applied for group housing was not found in consonance with Master Plan 2021 Zone-1, as the land was marked for zonal road and community service and therefore, map was rejected. In view of the aforesaid averment, the contention of learned counsel for the respondents is that as the petitioner has not fulfilled the conditions mentioned in the letter dated 28.11.2006, his map was rightly cancelled and in view of the Master Plan 2021, the petitioner's map cannot be sanctioned.

20. It is argued by the learned counsel for the petitioner that the order dated 5.10.2012 was passed without giving any notice or opportunity of hearing to the petitioner and the said order was even not communicated to the petitioner within time. The said order was communicated to the petitioner with information/order dated 28.5.2018. Referring to the aforesaid order, the learned counsel for the petitioner submits the arbitrariness and biased action of the Development Authority reflect in the said order. In the said order, it is clearly mentioned that the map was sanctioned by the Development Authority, but was not issued and time period is over as such, there is no justification of approval. The said order also contains recital that no notice for cancellation of map is required and even there is no need to inform the petitioner about cancellation. The said order reads as under:

“उपाध्यक्ष

कृपया पूर्व आख्या पृष्ठ पर विधि सहायक कार्यालय आख्या का अवलोकन करने का कष्ट करें, जिससे प्रमाणित है कि प्राधिकरण द्वारा मानचित्र स्वीकृत किया गया था, परन्तु निर्गत नहीं किया गया और समयावधि समाप्त हो चुकी है। अब उक्त स्वीकृति का कोई विधिक औचित्य नहीं है। मानचित्र स्वीकृति का पालन न करने के कारण मानचित्र आरम्भ से ही निरस्त होने योग्य है। निरस्तीकरण हेतु कोई नोटिस भेजने की विधिक राय के अनुसार कोई आवश्यकता नहीं है और न ही निरस्तीकरण उपरान्त कोई सूचना भेजनी आवश्यक है। उचित होगा कि अधिशासी अभियन्ता-1 (प्रवर्तन) के माध्यम से यह सत्यापन करा लिया जाये कि स्थल पर स्वीकृति के क्रम में कोई निर्माण तो नहीं है, यदि निर्माण है तो उसके विषय में अधिनियम का सुसंगत धाराओं के अन्तर्गत कार्यवाही की जाये। कृपया अनुमोदन प्रदान करने का कष्ट करें।

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05/10/12

(आर०के० सिंह)

सचिव ”

21. It is further argued by the learned counsel for the petitioner that the said order was not communicated to the petitioner till 2018 and this fact is admitted by the respondents. The learned counsel for the petitioner argued that un-communicated order is not an order in the eyes of law. For the said proposition, the learned counsel for the petitioner has relied upon the judgment and order of the Hon'ble Apex Court passed in the case of ***State of Punjab Vs. Amar Singh Harika reported in 1966 AIR Supreme Court 1313*** in which the Hon'ble Apex Court specifically stated that mere passing of an order is not effective unless it is published and communicated to the officer concerned. The relevant portion of paragraph 11 of the said judgment quoted hereinbelow:-

“We are, therefore, reluctant to hold that an order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it will take effect as from the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise published.”

22. Thus, it is argued by the learned counsel for the petitioner that when the order of cancellation of map was passed, Master Plan 2021 was not in existence. The zonal plan has been approved and implemented from 3.2.2015. Thus, cancellation order being illegal and having been set aside by the

Commissioner in appeal filed by the petitioner, sanction of map by order dated 28.11.2006 was revived and thus, on the date of approval of Master Plan 2021, map of the petitioner stands sanctioned.

23. Heard counsel for the parties and perused the record.

24. From perusal of records it appears that in compliance of the order passed by the Commissioner in the appeal, the Development Authority was under obligation to consider that the formalities, as required by letter dated 28.11.2006 had been completed or not and in case, the formalities, as mentioned in the order are completed, the authority was required to release the map, but the Development Authority, wholly illegally, carved out a new case to reject the sanction of map, i.e. land use under Master Plan 2021, which is contrary to the directions issued by the Commissioner in the appeal.

24A. The State Government, while passing the impugned order, has not at all considered this aspect of the matter that the order of cancellation dated 5.10.2012 having being set aside by the Commissioner, the order dated 28.11.2006 stands revived and on the date of approval of master plan 2021, the map of the petitioner stands sanctioned as all the conditions of order dated 28.11.2006 were fulfilled.

25. In the counter affidavit, a new case is being carved out for rejecting the claim of the petitioner that no order of exchange of land, as provided under section 161 of The U.P. Zamindari Abolition and Land Reforms Act, 1950 was passed by the District Magistrate, Ghaziabad, but in view of the government order dated 25.1.1996, there was no requirement of any order under section 161 of the Act, 1950 and the only requirement was to provide consolidated land equal to the land of Gram Sabha, chak road or Nali in the layout plan. Moreover, in view of the law laid down by the Hon'ble Apex Court in case of ***Mahendra Singh Gill and Another Vs. Chief Election Commissioner, New Delhi reported in AIR 1978 SC 851***, the reasons cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Paragraph 8 of the aforesaid judgment reads as follows:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.”

26. Moreover, in the counter affidavit, in paragraphs 30 & 33, the respondents have clearly admitted that all the formalities mentioned in the letter dated 28.11.2006 were completed by the petitioner. The relevant paragraphs 30 & 33 are reproduced below:

“30. That the contents of paragraph no. 37 of the writ petition are not admitted hence denied. In reply thereof, it is submitted that while passing the order dated 28.11.2006 the terms and conditions prescribed therein was honored by the present petitioner.

33. That the contents of paragraph no. 40 and 41 of the writ petition are not admitted hence denied. In reply thereof, it is submitted that while passing the order dated 28.11.2006 the terms and conditions prescribed therein was honored by the present petitioner.”

27. Having considered the arguments of counsel for the parties and from perusal of record, the Court finds that the order dated 5.10.2012, cancelling the sanction of map was passed only on the ground that the time for issuance of map is over. In the said order, it is nowhere mentioned that the petitioner has not completed the formalities, as mentioned in the letter dated 28.11.2006. The said order has been set aside by the Commissioner in appeal, with a direction that if any formalities remains, the same be fulfilled and a fresh decision be taken. The said order of Commissioner is final between the parties. This order clearly refers that the map was submitted in 2006 and all the formalities were completed upto year 2009, including payment of requisite amount and submission of bank guarantee. In view of the aforesaid findings, the Development Authority was under legal obligation to consider the issuance of map as per letter dated 28.11.2006. From the perusal of the order of Commissioner dated 8.7.2019, it is clear that the Development Authority was required to consider only compliance of conditions of letter dated 28.11.2006, admittedly till the time of cancellation of order dated 28.11.2006, neither master plan 2021 was approved nor the order dated 5.10.2012 was passed on the ground of change of land use. Thus, the order of Vice Chairman dated

22.11.2019 is contrary to the directions issued by the Commissioner in its order dated 8.7.2019.

28. The order dated 23.5.2023 has been passed by the respondent no. 1 only on the ground that the formalities as per letter dated 28.11.2006 were not completed and as per the present use of land as per master plan 2021, the map could not sanctioned.

29. The Vice Chairman of Development Authority, while passing the order dated 22.11.2019 as well as the respondent no. 1, while passing the order dated 23.5.2023 has not at all considered the effect of setting aside of the order dated 5.10.2012 by the Commissioner and has also not considered that in similar circumstances, the State Government itself by an order dated 14.12.2018 has granted permission contrary to the master plan 2021 to Kamlesh Garg on the ground that prior to passing of master plan 2021, the formalities for sanction of map were completed, as such, change of land use in master plan 2021 cannot be basis for rejection of map.

30. The order of Vice Chairman dated 22.11.2019 is contrary to law, as the Vice Chairman while passing the aforesaid order has proceeded on the basis of land use in Master Plan 2021, whereas the sanction of map of petitioner stands revived, after setting aside the order dated 5.10.2012 and as the sanction was prior to enforcement of Master Plan 2021, the order passed by the Vice-Chairman dated 22.11.2019 is hereby quashed.

31. The order passed by the respondent no. 1 under section 43(1) of U.P. Urban Planning and Development Act, 1973 also proceeded on the presumption that the permission has to be considered as the map was filed for sanction after approval of Master Plan 2021, whereas the map of the petitioner was sanctioned by letter dated 28.11.2006 as per the then use of land. The contention of the respondents that no exchange as provided under section 161 of The U.P. Zamindari Abolition and Land Reforms Act, 1950 was made, is contrary to the own admission of the respondent in paragraphs 30 & 33 of the counter affidavit as well as contrary to the Government Order dated

25.1.1996. Since the order dated 28.11.2006 was revived after setting aside of cancellation, the order of respondent no. 1 dated 23.5.2023 is quashed.

32. As the order of cancellation of map dated 5.10.2012 has already been set aside by the order dated 08.07.2019 passed by the Commissioner, the same is not required to be quashed as it is a non-est order.

33. The writ petition is **allowed**. A Mandamus is issued to Respondent no. 2/Vice Chairman, Ghaziabad Development Authority, Ghaziabad to release the map of the petitioner from Group Housing which has already been sanctioned vide letter dated 28.11.2006 within a period of four weeks from the date of production of certified copy of this order.

34. No order as to costs.

Order Date :-07.8.2025

Arti