

PETITIONER:
T.N. RUGMANI AND ANOTHER

Vs.

RESPONDENT:
C. ACHUTHA MENON AND ORS.

DATE OF JUDGMENT 20/12/1990

BENCH:
SAHAI, R.M. (J)
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SAHAI, R.M. (J)
SAIKIA, K.N. (J)

CITATION:
1991 AIR 983 1990 SCR Supl. (3) 638
1991 SCC Supl. (1) 520 JT 1991 (1) 265
1990 SCALE (2) 1317

ACT:
Town Planning Act/Town Planning--Sections 8, 10,
15/Rules 32 (a) and 33(a) (b)--Trichur Urban Development
Authority--Sanction for construction of building---Validity
of.

HEADNOTE:

Municipal Council of Trichur framed certain schemes, including the West Road Scheme in 1976 and thus intended to acquire the lands in question but since the scheme was not published for two years, as required by law, it lapsed, with the result the lands sought to be acquired stood released from acquisition. In 1981 the State Government constituted TUDA under Town Planning Act but even this body did not take any step till June 1983. The owners of the land were thus free to use their lands subject to any restriction, for instance sanction of maps etc. by Municipal Council. Even though the lands in question did not form part of any plan/scheme. The owners thereof were subjected to a great deal of harassment whenever anyone of them approached these authorities, M.C. and TUDA for permission to construct or to approve the map. This led these owners to approach the State Government against unreasonable attitude of these local authorities and the Government after ascertaining from the Town Planner that no scheme was pending directed the authorities concerned to sanction plan and permit construction. Such an order in respect of survey Nos. 887 and 888, owned by Unnikrishnan was passed in 1982. In March 1983, TUDA, took a decision to notify that West Road Development Scheme of 1976 but the Government stayed it. Thereupon Unnikrishnan M.B. Menon filed an application before the Municipal Corporation for permission to build on the disputed land, a shop building. It was sanctioned by the Municipal Council subject to its approval by the TUDA which in turn informed that the application would be considered after notification of the scheme. The State Government when informed however, took the view that it would be unfair to deny the petitioners the permission applied for as it was the fault of the authority not to have taken prompt action to get the necessary records and notify the scheme and consequently, the State Government directed the authority to accord its approval to the plans

submitted by the petitioners. Some negotiations between the TUDA and the petitioners thereafter proceeded regarding

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providing set-backs etc. but the TUDA did not pass any order permit. ting construction. Thereupon Unnikrishnan through EPG filed a writ petition (No. 5287 of 1988) before the High Court complaining against the flagrant disregard of provisions of law by the Urban Development Authority and the Municipal Council. Trichur and praying for a mandamus directing these authorities to accord permission to the petitioner to raise construction in compliance with the permission granted by the State Government. By an interim order dated 5.7.1983, the High Court directed the TUDA to permit the petitioner to construct a building in accordance with the permission granted by the Trichur Municipality. On 29th July, the TUDA passed the order permitting the petitioner to construct subject to decision of writ petition. After grant of interim order, UK, the owner, handed over possession of the land to SN and executed the sale deed in favour of his wife in October 1983. It appears the appellants attempted to raise further construction by adding another story for which they had no permission.

In order to change their said action, a writ petition was filed by Shri Achuta Menon, Ex-Chief Minister of the State-respondent under the public interest litigation alleging that the Government was not discharging its Obligation of fulfilling non-official vacancies on the board of TUDA. The petition further alleged connivance between the Government and the petitioner-UK in securing permission regarding construction attributing the same to the influence that UK was wielding with the Government. The High Court dismissed the writ petition filed by UK holding the same to be not maintainable for lack of bona-fide and allowed the writ petition filed by the respondent and gave certain directions to the Municipal Corporation to take appropriate action in relation to the construction, raised in pursuance of interim order granted by the High Court. The Division Bench having affirmed the order passed by the Single Judge, these appeals have been filed in this Court, against those orders. Allowing the appeals, this Court,

HELD: On the issue of non-maintainability, it may be stated that denial of constitutional remedy, for this reason, cannot be equated with bad faith or lack of bona-fide. The scope of the two are different. In one a person may be honest and his grievance genuine, yet the Court may not be able to grant him any relief as any part of it the cause of action did not arise within the territorial jurisdiction exercised by the High Court or the petition may be defective as the person approaching may not be entitled to file it. That is something akin to lack of jurisdiction.

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The other, namely, dismissal for bad faith arises due to improper conduct of the person invoking jurisdiction either before or after presentation of the petition. [641H-642B]

Even an unassailable cause or illegal and arbitrary order may fail to move the conscience of the Court due to inequitable and unjustifiable behavior or conduct in equitable jurisdiction. The basic error committed by the High Court was that it did not keep in mind the distinction between non-maintainability and lack of bona-fide. [642C]

The TUDA acted arbitrarily and without any justification in withholding the permission. [652C]

The restriction, Visualized, under Section 15, of the Act, does not come into operation prior to publication of the second notification under rule 33(b). [653F]

Even assuming that in the interest of planned development, no one could be permitted to build or construct a building unless the plan had been approved by the TUDA or it is at least routed through it, the TUDA could not withhold it as it was contemplating to revive some scheme. [654B]

Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P. and Ors., JT 1990 3 SC 685; Ramsharan Autyanuprasi and Ors. v. Union of India & Ors., [1989] Suppl. 1 SCR 251 and Schidanand Panday and Anr. v. State of West Bengal and Ors. [1987] 2 SCC 295, referred to.

JUDGMENT :

JUDIS