



HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 24064 of 2025

Tariq Ahmed And Another

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Ali Bin Saif
Counsel for Respondent(s)	:	C.S.C., Vibhanshu Vaibhav

Court No. - 29

HON'BLE MAHESH CHANDRA TRIPATHI, J.
HON'BLE NAND PRABHA SHUKLA, J.

1. Heard learned counsel for the petitioners, learned counsel for Development Authority and Shri Fuzail Ahmad Ansari, learned Standing Counsel for the State respondents.
2. The instant writ petition has been preferred with the prayer to quash the impugned order dated 04.06.2025 passed by the Commissioner Aligarh Division, Aligarh-respondent no.2 and the notice-cum-order dated 17.06.2025 passed by Vice Chairman, Aligarh Development Authority-respondent no.3. It is further prayed to command the respondent no.3 to compound the sealed portion as per the recent Supreme Court judgements and new bye-laws.
3. Record in question reflects that in the year 2019, the petitioners started construction over Khasra No.179/1M, 182/2M, Sir Syed Nagar, Dodhpur Mafi, Pargana and Tehsil Kol, Aligarh. It transpires from the record that the petitioners' application for sanction of map was approved by the Aligarh Development Authority (in short the 'ADA') as per building bye-laws framed under the U.P Urban Planning Development Act 1973 (in shot the 'Act 1973'). Later on, certain deviations were found from the approved map. Consequently, the 'ADA' had taken recourse under Section 28-A (1) of the 1973 Act and the property was sealed on 30.11.2021. Thereafter, an application was moved by the petitioners with an assurance to the authorities that in case there is any deviation in the construction, the same may be compounded as per building bye-laws and also assured that in case the portion, which is non-compoundable the same would be removed, the

compounding plan was sanctioned on 6.10.2023 and consequently some amount was deposited by the petitioners. It is claimed that again on 31.05.2024, an order under Section 28A(1) of the Act 1973 was passed by respondent no.3 against the petitioners without issuing proper notice and the site was again sealed on 24.06.2024, ignoring the application moved by the petitioner on 06.06.2024. Aggrieved with the order dated 31.05.2024, the petitioners have preferred Writ C no.23265 of 2024 (Tariq Ahmed and others vs. State of U.P. and others), which was disposed of vide order dated 23.07.2024 with following observations:-

"Considering the factual situation, at this stage, we are not inclined to adjudicate the controversy on merit. However, in the interest of justice, we dispose of the writ petition with an observation that in case petitioners move an appropriate application before the authority within two weeks from today seeking consideration of objection/representation in accordance with law, we hope and trust that the same would be considered by the Development Authority in consonance with the 1973 Act within two weeks thereafter. The order of sealing shall be subject to final outcome of the order passed on the objection/representation of the petitioners."

4. In pursuance of directions issued on 23.07.2024, the petitioners have filed representations before the respondent no.2 and 3, which was not addressed by the respondents and instead they have proceeded to pass an order dated 10.10.2024 asking the petitioners to demolish the illegal construction raised by them over the site. It is claimed that before passing the order dated 10.10.2024, no opportunity of hearing was provided to the petitioner, even they tried to remove the constructions. The petitioners have challenged the order dated 10.10.2024 in Writ C No.36211 of 2024 (Tariq Ahmed and others vs. State of U.P. and others), which was disposed of by the Division Bench of this Court vide order dated 14.11.2024 with following observations:-

"1. Fourth supplementary affidavit filed today is taken on record.

2. Heard Sri Ali Bin Saif for the petitioners. Learned Standing Counsel and Sri Vibhanshu Vaibhav have appeared on behalf of respondent nos. 1 and 2, respectively.

3. The petitioners have assailed an order dated 10.10.2024, passed by respondent no. 2. It records that the compounding plan was sanctioned on 6.10.2023; that the petitioners raised illegal constructions in three units and stilt area, contrary to the compounding plan; that instead of removing the said illegal constructions, the petitioners occupied the building without obtaining occupancy certificate and therefore, the petitioners have been called upon to forthwith remove the illegal constructions and not to occupy the building without obtaining occupancy certificate.

4. The case of the petitioners as set out in para 5 of the fourth supplementary affidavit is that the extra constructions raised by them were demolished and the said fact was duly intimated to the Authority by means of an application dated 6.6.2024. However, without considering the same, the Authority had sealed the constructions on 24.6.2024 and has now issued the impugned notice. It is urged that the petitioners may be given liberty to file objection and the Authority may be directed to decide the same.

5. We have considered the submissions of learned counsel for the petitioners and we are of the opinion that the plea of the petitioners that they had demolished the offending constructions, ought to be considered by the Authority before any further action is taken in the matter in pursuance of the impugned notice dated 10.10.2024.

6. Accordingly, the instant petition is disposed of with direction to the Authority to consider the application of the petitioner dated 6.6.2024, or any further representation as may be filed by them within a week from today, along with a true attested copy of the instant order, by passing a speaking order, within next four weeks.

7. The impugned order will abide by the decision as would be taken by the Authority in pursuance of the instant order"

5. Learned counsel for the petitioners submitted that during the pendency of Writ C No.36211 of 2024, the respondent no.3 has decided the representation/application of petitioners vide order dated 24.10.2024 in pursuance of order dated 23.07.2024 passed by Division Bench of this Court. The petitioners again made a representation before the competent authority i.e. respondent no.3, which was decided by him vide order dated 28.01.2025 and it is mentioned therein that respondent no.3 has acted as per rule and laws and not on the basis of complaints made by Ahmad Ashfaq. The petitioners have preferred an appeal under Section 28A(4) of the Act 1973 before the respondent no.2. He submitted that respondent no.3 vide order dated 21.04.2025 dismissed the said appeal by non-speaking order on delay and laches. The said order was again challenged in Writ C No.15925/2025. The learned Single Judge of this Court vide order dated 19.05.2025 has allowed the writ petition, set aside the order dated 21.04.2025 and relegated the appeal to the respondent no.2 for deciding afresh, on merits. For ready reference, the order dated 19.05.2025 is reproduced as under:-

"1. Heard learned counsel for the petitioner, learned Standing Counsel for respondent Nos.1 & 2 and Sri Vibhanshu Vaibhav, learned counsel for respondent Nos.3 & 4.

2. Facts in brief as contained in the writ petition are that the order dated 31.05.2024 was passed by the Prescribed Authority, Aligarh Development Authority by which part of the premises of the petitioner has been seized. The aforesaid order was challenged by the petitioner by filing Writ C No.23265 of 2024 which was disposed of by the Division Bench of this Court vide its order dated 27.03.2024 directing the

petitioner to move an appropriate application before the authorities within two weeks from the date of submission of their objections in accordance with law and the respondents are directed to decide the same within two weeks thereafter. The order of sealing shall be subject to final outcome of the order passed on the objection/representation of the petitioners. Pursuant to the aforesaid order, the petitioner filed objection which was rejected by the authorities vide its order dated 24.10.2024. Aggrieved against the aforesaid order, the petitioner filed statutory appeal as provided under Section 28-A (4) of the U.P. Urban Planning and Development Act, 1973 before the Commissioner, Aligarh Division Aligarh on 04.02.2025. Since there was a delay of three months in filing the appeal, a delay condonation application is also filed with the appeal.

3. It is stated in the application that the petitioner was fallen ill and his treatment is going on I.T. Multi Specialty Hospital Medical Road Aligarh where the petitioner at least on two occasions was hospitalized and he was remain on bed rest. It is further stated that one of the partner was living in abroad and another was facing health issues and a prayer has been made to condone the delay in filing the appeal.

4. It is argued by learned counsel for the petitioner that the delay condonation application has been rejected by the respondent No.2/Commissioner, Aligarh Division, Aligarh vide its order dated 21.04.2025 on the ground that no cogent ha been given in the delay condonation application while and cogent reason has been given in the application but without considering the same in right perspective, the application was rejected.

5. Heard learned counsel for the parties and perused the record.

6. From perusal of the record, it is clear that cogent reasons have been given in the application and delay has been satisfactory explained but without considering the same, the application was rejected. The law in this connection is well settled by the Hon'ble Supreme Court as well as this Court on various occassion that liberal view should be approached while dealing with the delay condonation application. Apart from the same, the order dated 21.04.2025 is a non speaking order.

7. In this view of the matter, the Court is of the opinion that the order dated 21.04.2025 passed by the respondent No.2/Commissioner, Aligarh Division, Aligarh is liable to be set aside and the same is hereby set aside and the delay in filing the appeal is condoned and the delay condonation application is allowed. The respondent No.2 is directed to decide the Appeal/Case No.183 of 2025 expeditiously on merits.

8. With the aforesaid observation, the writ petition is allowed."

6. Learned counsel for the petitioner vehemently submitted that in view of the order passed by the learned Single Judge, the petitioner's appeal was revived but in most arbitrary manner, the appellate authority-respondent no.2 had entertained the ex-parte complaint made by Ahmad Ashfaq and passed the impugned order dated 04.06.2025, that too being fully aware of the order passed by learned Single Judge. By order dated 04.06.2025, the petitioner was asked to remove the uncompounded portion and demolish the constructions and consequently, the ADA issued an notice-cum-order dated

17.06.2025. He submitted that the said action is arbitrary and hit by principles of natural justice.

7. We have perused the record. Once the learned Single Judge of this Court has relegated the matter to the Appellate Authority for considering the same on merit, we are surprised to note that the Appellate Authority had entertained the private complaint and passed order impugned and consequently the purported notice had also been issued by the ADA in spite of the fact that the appeal is still pending consideration.

8. Before proceeding further in the matter, let learned Standing Counsel for the respondents may obtain instructions from the appellate authority /Divisional Commissioner, Aligarh to the extent as to under what circumstances, once the statutory appeal was pending consideration, a complaint made by the third party has been entertained ex-parte and certain observations have been made on administrative side and consequently, the ADA had issued notice-cum-order dated 17.06.2025.

9. It is expected that in the meantime the appeal, which is pending consideration, may be decided by the Commissioner concerned on merits and outcome of the said proceeding shall be apprised on the next date fixed in the matter. Meanwhile, the Vice Chairman, Aligarh Development Authority is also directed to file response in the matter.

10. Put up as fresh on 15.09.2025.

**August 26,
2025**

A. Pandey **(Nand Prabha Shukla,J.) (Mahesh Chandra Tripathi,J.)**