



2026:AHC:44277-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 5663 of 2026

M/S Scc Builders Pvt. Ltd.

.....Petitioner(s)

Versus

State Of U.P. And 4 Others

.....Respondent(s)

Counsel for Petitioner(s) : Devendra Singh, Pravindra Singh
Counsel for Respondent(s) : C.S.C., Tejasvi Misra

A.F.R.

Court No. - 2

**HON'BLE ATUL SREEDHARAN, J.
HON'BLE SIDDHARTH NANDAN, J.**

(Per: Hon'ble Siddharth Nandan,J.)

1. Heard Sri Devendra Singh, learned counsel for the petitioner, Sri Tejasvi Misra, learned counsel for the Ghaziabad Development Authority and learned Standing Counsel for the State-respondents.
2. The present writ petition has been filed challenging the order dated 14.11.2025 by which Complaint Reference No.137 of 2025 Mrs. Bobby Bagga Vs. President/Director/Competent Authority, M/s SCC Builders, Pvt. Ltd.) under the provisions of the Rights of Persons with Disabilities Act, 2016 has been decided.
3. The sole argument that the petitioner has raised is that on the first date itself, the complaint was decided.
4. We have perused the record. The order sheet has not been brought on record.
5. Brief conspectus of facts are that the allottee who is 90% disabled, was given an allotment by builder in one of the projects named as SCC Sapphire being Flat No. D 509, Block - D; as per terms of the agreement, she was also allotted Parking No. UB - 37. Subsequently, after eight years, another Flat was sold by the builder. In pursuance thereof, he divided Parking No. UB 37 into UB 37 A and 37 B which was originally allotted to Mrs. Bobby Bagga.
6. Aggrieved by the aforesaid action, she approached the Ghaziabad

Development Authority who carried out inspection on 16.09.2025 and submitted an inquiry report on 25.10.2025. The State Commissioner took note of the fact that the spot inspection was carried out in the presence of the parties and it clearly reveals that the complaint made by Mrs. Bobby Bagga was correct.

7. Perusal of the impugned order also clearly demonstrates that an adequate opportunity was given to the petitioner and argument of his representative before the State Commissioner was also considered. For ready reference, the following paragraphs of the impugned order are reproduced hereinbelow:

"उल्लेखनीय है कि प्रश्नगत प्रकरण में विशेष कार्याधिकारी, प्रभारी प्रवर्तन जो-1, गाजियाबाद विकास प्राधिकरण गाजियाबाद की आख्या पत्रांक 1470/ प्रवर्तन जो-1/आई0जी0आर0एस 0/2025 दिनांक 25-10-2025 जोकि जिलाधिकारी, गाजियाबाद को सम्बोधित एवं शिकायतकर्ता को पृष्ठान्तित है, में उल्लिखित किया गया है कि राजनगर एक्सटेंशन में स्थित ग्रुप हाउसिंग एससीसी सफायर के बिल्डर द्वारा शिकायतकर्ता को अन्वंटित पार्किंग स्थान यू0बी0-37 को विभाजित कर दो भागों में बांट दिया गया है, जिस कारण शिकायतकर्ता को पार्किंग, से लिफ्ट तक जाने में परेशानी हो रही है, के सम्बन्ध में शिकायतकर्ता द्वारा ईमेल के माध्यम से भी शिकायत की गयी थी, के सम्बन्ध में पुनः आईजीआरएस के माध्यम से शिकायत की गयी है।

उक्त के सम्बन्ध में क्षेत्रीय अभियन्ता द्वारा स्थल निरीक्षणोपरान्त अवगत कराया गया है कि प्रश्नगत ग्रुप हाउसिंग के विकासकर्ता के प्रतिनिधि एवं शिकायतकर्ता श्रीमती बोबी बग्गा के साथ दिनांक 16.09.2025 को पार्किंग स्थल का निरीक्षण किया गया। स्थल पर श्रीमती बोबी बग्गा से कई स्थानों पर गाडियां खड़ी कराकर लिफ्ट में जाने तक देखा गया। स्थल पर श्रीमती बोबी बग्गा द्वारा बताया गया कि उनको यूबी-37 नम्बर की पार्किंग आवंटित हुई थी जिसे बिल्डर द्वारा दो भागों में विभाजित करते हुए अन्य व्यक्ति को आवंटित कर दिया गया है, जिस कारण श्रीमती बोबी बग्गा को लिफ्ट तक जाने में परेशानी हो रही है।

तदोपरान्त सहायक अभियन्ता, प्रवर्तन जोन-1 गाजियाबाद विकास प्राधिकरण के कार्यालय पत्र संख्या-173/प्रवर्तन जोन-1/2025 दिनांक 03-10-2025 द्वारा मै0 एस0सी0सी0 बिल्डर्स प्रा0लि0, ग्रुप हाउसिंग एस0सी0सी0 सफायर, राजनगर एक्सटेंशन, गाजियाबाद को निर्देशित किया गया है कि सुश्री बॉबी बग्गा फ्लैट संख्या डी-509 को मूल पार्किंग स्थान स्वीकृत मानचित्र एवं अनुबन्ध के अनुसार आवंटित किया जाना सुनिश्चित करें।

मा0 न्यायालय द्वारा गाजियाबाद विकास प्राधिकरण की उपरोक्त आख्या दिनांक 25-10-2025 के परिशीलनोपरान्त पृच्छा की गई कि विपक्षी द्वारा शिकायतकर्ता को आवंटित पार्किंग को 08 साल बाद परिवर्तित किए जाने की आवश्यकता क्यों पड़ी? क्या विपक्षी द्वारा शिकायतकर्ता को आवंटित एक बड़ी पार्किंग को दो भागों में विभाजित कर आधे भाग को अन्य आवंटी को प्रदान किया जाना वाणिज्यिक परिदृश्य नहीं है? विपक्षी द्वारा शिकायतकर्ता को पार्किंग आवंटित किए जाने के उपरान्त उसे निरस्त परिवर्तित क्यों किया गया ? क्या विपक्षी को ऐसा प्रतीत होता है कि शिकायतकर्ता सुश्री बॉबी बग्गा (90 प्रतिशत चलन क्रिया दिव्यांग) बार-बार मा0 न्यायालय अथवा अन्य किसी प्राधिकरण में आने-जाने में समर्थ हैं? मा0 न्यायालय द्वारा की गई पृच्छाओं को विपक्षी के अधिकृत प्रतिनिधि द्वारा स्वीकार किया गया किन्तु बिन्दुवार उत्तर प्रदान किए जाने हेतु अतिरिक्त समय की मांग की गई जिसे मा0 न्यायालय द्वारा अस्वीकार किया गया।"

8. The statement of objects and reasons of the "Rights of Persons with Disabilities Act, 2016" while considering the 19 specified disabilities, enumerates various rights vis-a-vis duties and responsibilities of the appropriate Government. It is not disputed that the inquiry which is being

conducted under the Act by the Chief Commissioner or the State Commissioner for persons with disabilities is considered to be a summary proceeding designed to be quick, efficient and accessible, rather than lengthy and formal. The forum acts as a quasi-judicial authority and the Commissioner acts as a civil court for specific purpose i.e. empowered to summon witnesses, receive evidence and enforce production of records, if the need arises. However, it being a summary proceeding and the process contemplated is, with an objective to provide speedy redressal, the Act is also to give effect to the United Nations Convention on the Right of Persons with Disability and for matters connected therewith an incidental thereto. The United Nations General Assembly adopted its convention on the Rights of Persons with Disability on 13.12.2006; which lays down certain principles for empowerment of Persons with disability, which includes "accessibility" and India is a signatory to the said Convention and has also ratified the same on 01.10.2007. It is for the implementation of the said principles that the Parliament has enacted the said legislation i.e. "Rights of Persons with Disabilities Act, 2016".

9. That one of the facets of the mechanism, is to provide speedy redressal and it is for this reason Act, 2016 contemplates that the complaint " shall " be inquired within 2 weeks of its registration; under Section 23(3) of the Act, 2016. We also find that under Chapter VII of the Act, 2016, makes special provisions for persons with disabilities with high support needs, which has been prescribed, more particularly under Section 44 of the Act, 2016. It has been provided that no establishment shall be granted permission to build any structure if the building does not adhere to the Rules formulated.

10. For ready reference, Section 44 is quoted herein below:

"44. Mandatory observance of accessibility norms. (1) No establishment shall be granted permission to build any structure if the building plan does not adhere to the rules formulated by the Central Government under section 40.

(2) No establishment shall be issued a certificate of completion or allowed to take occupation of a building unless it has adhered to the rules formulated by the Central Government."

11. Perusal of the impugned order also indicates that the forum was conscious of the fact that the original parking was allotted in a building, which was granted the completion certificate after examining the approved map, which necessarily was required to adhere to the mandate of Section 44 of the Act, 2016. The representative of the petitioner who had appeared, had also not denied the fact that the original allotment was not cancelled and the fact that the original parking allotted was subsequently partitioned without

consent of the original allottee, was also admitted. Taking into account the aforesaid evidence and the admitted position, since nature of the proceedings were summary in nature, the Commissioner had proceeded on the basis of the admitted facts and documents on record, while not finding it necessary, to call for parawise reply.

12. On a pointed query to the learned counsel for the petitioner that in case further indulgence being given by the Commissioner, what objection or document contrary to the finding in the impugned order, could have been produced; he had only relied on his argument that the proceedings were allegedly ex parte which as stated herein above could not have been accepted because representative of the petitioner was part of the proceeding and he had admitted the facts that the original allotment was not cancelled or whether he could have challenged the original allotment after five years. Therefore, approach of the Commissioner that an allottee with 90% disability cannot be made to run from pillar to post and on account of fact as the development authority had already carried out a spot inspection and submitted a report on 25.10.2025, which was not controverted by the representative of the petitioner, cannot be faulted; and accordingly we do not find any error in the proceedings or violation of the principles of natural justice.

13. At this juncture, the Court also takes note of the fact that the "Right to Accessibility" now being a fundamental right as guaranteed under Article 21 of the Constitution of India (**State of Himanchal Pradesh vs. Umed Ram Sharma 1986 (2) SCC 68**), is broad enough to incorporate and be extended to a "Right to Accessibility in a Community Living; also. These rights are essential for enabling persons with disabilities (hereinafter referred as "PWDs) to live independently, participate in a Society and enjoy their rights on a equal basis with others. Article 14 of the Constitution of India upholds equal access to spaces and services, as well. (See: *Jeeja Ghosh v. Union of India (2016) 7 SCC 761*; *Rajive Raturi vs. Union of India (2018) 2 SCC 413*; *Ravinder Kumar Dharwal vs. Union of India, 2023 (2) SCC 209*; *Vikash Kumar vs. Union Public Service Commission, 2021 (5) SCC 370 and Rajiv Raturi vs. Union of India and others 2024 (1) SCC 654*)

14. The Right to Accessibility, can not now be confined to the principles of accessibility in public infrastructure; but now it demands that in "Community Living" also, where there are common facilities like lift, pavements, playgrounds, community centres and gymnasium etc., the "Right to Accessibility" should be unhindered.

15. The sanctioning of the map for a building meant for community living, now ought to take into account parking space with clear and unhindered

access to the common facilities like lift for PWDs; and any change or hindrance to the access of common facilities (including access to lift from the parking lot), should be seen as violation of the fundamental right under Article 21 of the Constitution of India. In the case of **Rajiv Raturi vs. Union of India and others, 2024 (1) SCC 654** the Apex Court being seized with the issue of "Right to Accessibility", also considered a report of a Committee on 'Rights of Persons with Disability'; and found that accessibility is related to groups, whereas reasonable accommodation is related to individuals. State parties need to set accessibility standards, which must be negotiated with organizations of 'Persons with Disability', and need to be specified for service providers, builders and other relevant stake holders. Accessibility standards must be broad and standardised in case of individuals, who have disabilities, that were not taken into account. The accessibility standards were developed to use the modes, methods and meaning, offering to achieve accessibility; and where the application of disability standards may not be sufficient to ensure them access, in such cases, principles of reasonable accommodation may apply.

16. The duty to provide reasonable accommodation is an *ex-nunc* duty, which means that it is enforceable from the moment an individual with an impairment needs it; and in a given situation, individual accommodation seeks to achieve individual justice in the sense that non-discrimination and equality are assured, taking the dignity, autonomy, and choice of the individual into account; and as such, accommodation may also be required for a scenario which falls beyond the scope of an accessibility standard. The decision to provide it or not depends on whether it is reasonable or whether it imposes a disproportionate and undue audit.

17. The Court is also persuaded from the fact that the Rule of Law also demands that the locomotor disability, visible impairment, hearing and speech impairments and neurodevelopmental disorder and learning disability, multiple disability or survivors of accidents, crime etc. are to be protected, in case of the disabilities which restricts a normal pattern in daily chores. Section 34 deals with the mandatory observance of the accessibility Rules to be framed by the Central Government under Section 40 and the consequences of non-compliance; which under sub-clause (1) states that no establishment shall be granted permission to built any structure, if the building plan does not adhere to the Rules formulated by the Central Government under Section 40; and sub-clause (2) stipulates that no establishment shall be issued a certificate of completion or allow to take occupation of a building unless it has adhered to the Rules formulated by the Central Government. Therefore, at both stages—when the building plan is prepared and at the stage of completion—mandatory adherence to the

accessibility Rules is envisaged by the Act.

18. In the facts of the present case, we find that the Commissioner has taken note of the fact that during the on spot inspection, Mrs. Bobby Bagga's right to accessibility to a common facility e.g. lift, was assessed by observing contingencies, wherein, her vehicle being parked at the different places, whether gave her an unhindered access to the lift in view of her disability; and it was found the act of the builder, by dividing her parking into two, was causing inherece to the incumbent, from accessing the lift.

19. We have no hesitation in holding that the 'Right to Accessibility' cannot be confined only in public places but as a fundamental right, it is also to be extended to a structure or building which is being utilized as "community living"; and as such right to accessibility which is a fundamental right, has to be adhered to in residential buildings, which caters to the requirement of providing a shelter with common facilities like lift, pavement, playgrounds, community centres, gymnasium etc. It is a fundamental right of a PWD to have right to accessibility, for facilities which are common in a building or structure, which is providing a shelter to an incumbent.

20. Apart from the aforesaid reasons, we find that the petitioner has failed to bring on record the allotment letter which could have clearly demonstrated that the parking which was allotted to Mrs. Bobby Bagga was UB - 37; and it is only subsequent to the allotment made to one Virendra Singh, that parking was split into 37A and 37B, without the consent of the original allottee; but nevertheless representative of the petitioner was duly heard and the impugned order is based on the inspection report of the Ghaziabad Development Authority, which was done in the presence of the parties. It was only thereafter, the inquiry report dated 25.10.2025 was submitted.

21. Perusal of the report also indicates that efforts were made to find out alternative parking for the allottee with 90% disabilities but it was found that no other parking is suitable for her; to access the lift for her Flat and for that reason also, an alternative arrangement was also not feasible.

22. It has been held by this Court as well as Hon'ble Apex Court that exercise of extraordinary jurisdiction under Article 226 of the Constitution of India, has to be made only in circumstances where there is apparent injustice being caused to the petitioner and thus violation of the principles of nature justice, which leads to some prejudice to the petitioner. In the present case, we do not find any prejudice being caused to the petitioner; and on the contrary by unilaterally dividing petitioner's parking into two parking spaces, it has been to the detriment of the allottee, the same cannot be

sustained; and in view of the aforesaid admitted position and documents, no infirmity or perversity can be found in the impugned order or any prejudice being caused to the petitioner or there being any violation of the procedure prescribed, under the Act.

23. In view of the aforesaid and nature of the proceedings, we decline to exercise our extraordinary jurisdiction under Article 226 of the Constitution of India.

24. However, we find it appropriate in the facts of the case to issue directions, as follows:-

(i) That, the Development Authorities in the State of Uttar Pradesh to incorporate necessary guidelines, which may be necessary to ensure that persons with disability are not put to a inequitable position and the maps which is being sanctioned for such community living, it may be necessary that proper parking spaces may be made for persons with disability, from where there is a clear access to a common facility like lift; and also provisions for convenience of "persons with disabilities" to have access to other common facilities like pavement, playgrounds, community centres, gymnasium etc.

(ii) It is expected from the Government to ensure mandatory observance of the Accessibility Rules applicable, at the stage of granting permission to build any structure and issuance of certificate of completion; and it may also be verified that there has been a mandatory adherence to the Accessibility Rules as envisaged.

25. With the above, the present writ petition is disposed off.

February 26, 2026

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(Siddharth Nandan,J.) (Atul Sreedharan,J.)