

Mool Chand Yadav and Another

Vs

Raza Buland Sugar Company Limited, Rampur and Others

Civil Appeal No. 3343 of 1982

(R. B. Misra, D. A. Desai JJ)

15.10.1982

JUDGMENT

1. Special leave granted.

2. The matter discloses a battle of wits rather than of any legal substance at injured rights. There is one room in Hari Bhawan which at present is occupied by a gentleman called Mool Chand Yadav who is described as General Manager of U.P. State Sugar Corporation Ltd., Rampur Unit ('Corporation', for short). The dispute going on is whether Hari Bhawan is a property which has vested in the Corporation and whether the Corporation is entitled to occupy it and whether a part of it can be used by the General Manager of the Corporation. In a suit filed by respondents an injunction was granted restraining the present appellants or their officers from occupying Hari Bhawan against which an appeal was filed by the present appellants which is pending. Subsequently, an application was made alleging flouting of the Court's order and the Court was invited to hold the Corporation and its officers in contempt and to punish them for the same. This application resulted in the following order :

Accordingly the application Ex. IV-1 is being accepted. One month's time is being granted to defendant, Mool Chand Yadav, to vacate the disputed room and if he does not do so all the movable property of defendants 2 and 3 will be attached in compliance with the order of temporary injunction passed on November 2, 1979.

3. An appeal from this order was preferred being F.A.F.O. No. Nil of 1982. We are told that appeal was admitted and notice of motion was taken out for suspension of the order under appeal. But the Division Bench of the Allahabad High Court declined to grant stay. Hence, this appeal by special leave.

4. We heard Mr S.N. Kacker, learned counsel for the appellants, and the respondents appeared by Caveat through Mr Manoj Swarup, Advocate. We are not inclined to examine any contention on merits at present, but we would like to take notice of the emerging situation if the operation of the order under appeal is not suspended during the pendency of the appeal. If the F.A.F.O. is allowed obviously Mool Chand Yadav would be entitled to continue in possession. Now, if the order is not suspended in order to avoid any action in contempt pending the appeal, Mool Chand Yadav would have to vacate the room and hand over the possession to the respondents in obedience to the Court's order. We are in full agreement with Mr Manoj Swarup, learned Advocate for respondents, that the Court's order cannot be flouted and even a covert disrespect to Court's order cannot be tolerated. But if orders are challenged and the appeals are pending, one cannot permit a swinging pendulum continuously taking place during the pendency of the appeal. Mr Manoj Swarup may be wholly

right in submitting that there is intentional flouting of the Court's order. We are not interdicting that finding. But judicial approaches requires that during the pendency of the appeal the operation of an order having serious civil consequences must be suspended. More so when appeal is admitted. Previous history of litigation cannot be overlooked. And it is not seriously disputed that the whole of the building, Hari Bhawan, except one room in dispute is in possession of the Corporation. We accordingly suspend the operation of the order dated August 6, 1982 directing the appellants to hand over the possession of the room to the respondents till the disposal of the first appeal against that order pending in the High Court of Allahabad. Mr Manoj Swarup requests that both the earlier and later appeals should be heard together as early as possible. We order accordingly and request the High Court if it considers proper in its own discretion to hear both the appeals as expeditiously as possible in order to avoid the continuance of the boiling situation. The appeal stands disposed of. There shall be no order as to costs.

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