

SUPREME COURT OF INDIA

Rajendra Kr. Sharma

Vs.

State of U.P.

C.A.No.5761 of 2009

(G.S. Singhvi and H.L. Dattu JJ.)

18.08.2009

ORDER

1. Although, the case has been listed for consideration of the I.A. filed by the petitioners for interim relief, learned counsel for the parties agreed that the main case may be disposed of.

2. Delay in filing the special leave petition is condoned.

3. Leave granted.

4. The appellants' land was acquired vide Notification dated 20.9.1990 issued under Section 4(1) read with Section 17(4) of the *Land Acquisition Act, 1894* (for short, 'the 1894 Act') for construction of residential houses by the Moradabad Development Authority (for short, 'the MDA'). After depositing 80% of the compensation determined by the Special Land Acquisition Collector, the MDA took possession of the land on 22.6.1991. The appellants challenged Notification dated 20.9.1990 and consequential proceedings in Writ Petition No.44749/1992. Shri Ram Singh, son of Shri Sunder Singh, who was then posted as Deputy Collector-cum-Special Land Acquisition Officer, Moradabad is said to have suo moto filed an affidavit stating therein that the petition has become infructuous and that award was not made because the MDA had sent letter dated 7.5.1993 to the Collector- cum-Land Acquisition Officer that it does not propose to acquire the land and the estimated compensation deposited by it be transferred to some other scheme.

5. On 17.2.1999, Shri A.K. Mishra, learned counsel appearing for the petitioners stated before the Court that as the petition has become infructuous, it shall not be pressed. The writ petition was accordingly dismissed as not pressed.

6. After about 3 years, the writ petitioners including the appellants herein, filed two applications for recall of order dated 17.2.1999. One of the applications was registered as Civil Misc. (Recall) Application No.178891/2005 and the other was registered as Civil Misc. (Recall) Application No.175596/2005. In Civil Misc. (Recall) Application No.178891/2005, the Division Bench of the High Court, after taking cognizance of the averments contained in

paragraph 22 of the counter affidavit filed in Civil Misc. Writ Petition No.20434/1994 (this petition was also filed by the appellants herein for restraining the respondents from dispossessing them and demolishing the construction made by them) that Shri Ram Singh, Deputy Collector-cum-Special Land Acquisition Officer, Moradabad had not filed any counter affidavit, passed an order on 4.1.2006 and directed the standing counsel to file a detailed affidavit as to under what circumstances counter affidavit was filed in this petition when the Court had not issued any direction to the State Government to do so. The Division Bench also took cognizance of the fact that in the supplementary counter affidavit filed in Writ Petition No.20434/1994 on behalf of the MDA, it was stated that possession of the acquired land had been taken on 22.6.1991; that award was made on 30.4.1994 and that reference under Section 18 was also decided. On 23.2.2006, the Division Bench directed District Collector, Moradabad to investigate into the matter and file his personal affidavit explaining whether Shri Ram Singh had the authority to file affidavit and, if so, under what circumstances the said affidavit had been filed. Shri Ram Singh was suo moto impleaded as party and was directed to file his affidavit. The District Collector, Moradabad submitted its report dated 17.4.2006. By an order dated 9.5.2006, Shri Ram Singh was directed to appear in person and the standing counsel was directed to produce the relevant records. After considering all the affidavits and enquiry report, the Division Bench dismissed the Recall Application No.178891/2005 by recording the following observations:

7. The deponent of the said affidavit could not satisfy the Courts as under what circumstances, the said averments had been made in the counter affidavit. He was also confronted with the narrative prepared by the D.G.C. (Civil) wherein in two paragraphs, i.e.8 and 29, it had been reiterated that possession of the land had already been taken on 20.6.1991 and handed it over to the Authority, they why the factum of dispossession had not been mentioned in the counter affidavit and once the land vested in the State free from all encumbrances, whether it could be divested for any reason, whatsoever. Generally, counter affidavit is not filed by the State without seeking several adjournments and many times after paying the cost. In the instant case, counter affidavit, merely stating something untenable in law, has been filed without even calling for the same. This kind of attitude seems to be quite collusive, unwarranted and uncalled for. There is nothing on record to show that the matter had ever been heard by the Court prior to its withdrawal. We fail to understand as how the counter affidavit to this effect had been filed and how the proceedings could become infructuous once the possession had been taken on 20.6.1991. In such a fact situation, we do not see any ground to recall the order. As we doubt the bona fide of both the parties and a fraud seems to have been played, of which the applicant is the beneficiary, we are not inclined to allow this application.

8. More so, the counsel who had withdrawn the writ petition has not appeared before us nor he filed this application. There is no reference in the Court's proceedings that the petition was being withdrawn in view of the counter affidavit filed by the Land Acquisition Officer. Had the learned counsel for the applicants, made such submission, the Court could have examined the contents of the counter affidavit and then perhaps could pass a different order in accordance with law. We fail to understand how the land acquisition proceedings could be dropped merely by receiving a letter by the Land Acquisition Officer from the Development

Authority, as the proceedings had been initiated by the State. More so, the conduct of the said officer itself is so reprehensible that it does not inspire any confidence. The application is hereby rejected.

9. Civil Misc. (Recall) Application No.175596/2005 was also listed on the same day before the Division Bench of the High Court and the same was dismissed as no one appeared on behalf of petitioners. Another application filed for recall of order dated 27.7.2006 passed in Civil Misc. (Recall) Application No.175596/2005 was dismissed by the High Court on 10.8.2006 as misconceived.

10. In this appeal, the appellants have prayed for setting aside the orders dated 27.7.2006 and 10.8.2006 passed in Civil Misc. (Recall) Application No.175596/2005 and Civil Misc. (Recall) Application No.158574/2006 by contending that the High Court was not justified in dismissing the two applications ignoring the fact that the writ petition was dismissed as not pressed in view of the affidavit filed on behalf of the MDA and they had become victims of untenable and malicious actions of the respondents.

11. In the counter affidavit filed on behalf of the MDA, an objection has been raised to the maintainability of the appeal on the premise that the appellants have not challenged order dated 27.7.2006 passed in Civil Misc. (Recall) Application No.178891/2005 and also on the ground that Special Leave Petition (Civil) No.16433/2006 filed against that order in which the appellants herein had joined as parties was entertained by this Court only in respect of the property of Smt. Usha Devi (respondent No.10) and was dismissed qua others. In the counter affidavit, it has been further averred that Civil Misc. Writ Petition No.20434/1994 filed by the petitioners was dismissed on 4.10.1996 because none appeared on their behalf. Another plea taken on behalf of the MDA is that after taking over possession on 22.6.1991, illegal construction made by the appellants were demolished.

12. The appellants have not filed rejoinder affidavit to controvert the assertion made in the counter affidavit that the possession of the land was taken on 22.6.1991; that Writ Petition No.20434/1994 filed by the appellants was dismissed for non-prosecution and that Special Leave Petition (Civil) No.16433/2006 filed against order dated 27.7.2006 passed in Civil Misc. (Recall) Application No.178891/2005 was dismissed by this Court except qua the property of respondent No.10 herein. This being the position, we do not find any valid ground to entertain the appellants' prayer for setting aside the impugned orders.

13. In the result, the appeal is dismissed. However, the parties are left to bear their own costs.

14. So far as I.A. is concerned, we do not find any justification to entertain the prayer for restraining the respondents from dispossessing the appellants-applicants because possession of the acquired land was taken by the MDA almost 18 years ago after 80% of the compensation had been deposited. Accordingly, the I.A. is dismissed.