
(2008) 03 AHC CK 0031
In the Allahabad High Court

Anju Gupta and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (2008) 6 AWC 5904 : (2008) 2 UPLBEC 1674

Hon'ble Judges : Sudhir Agarwal, J;Anjani Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Anjani Kumar and Sudhir Agarwal, JJ.—Heard Sri Anjani Kumar Misra, learned Counsel for the petitioners and Sri Rajeev Dwivedi learned Counsel for contesting respondent No. 7.

2. Nine petitioners have jointly filed this writ petition Challenging the order dated 17th August 2007 (Annexure 1 to the writ petition), whereby the Ordnance Factory Board, Kolkata (hereinafter referred to as the "OFB") has rejected the request of respondent No. 7 to grant lease of the premises whereat Secondary School is being run by respondent No. 7. The petitioners have sought the following reliefs:

(i) Issue a writ of certiorari or a writ order or direction in the nature of certiorari to quash the order dated 17.08.2007 passed by opp. Party No. 2 as contained in Annexure No. 1 to the writ petition.

(ii) Issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding to opposite parties No. 1 to 6 not to create any hindrance in the functioning of the school from the disputed premises situated at Larmour Bagh, Cantonment, Kanpur.

3. Relief No. (ii) clearly shows that the petitioners seek a writ of mandamus authorising respondent No. 7 to continue to occupy the present premises, i.e.,

Larmour Bagh, Cantonment, Kanpur whereat presently the school of respondent No. 7 is running, even beyond 31st March 2008.

4. In order to appreciate the controversy, it would be appropriate to have a bird eye view of the facts giving rise to the present writ petition. Respondent No. 7, namely, Ayudh Upskar Nirmani Karyan Samiti, Kanpur, U.P. is a society registered under Societies Registration Act, 1860 and it is said to have been established by the officers and employees of Ordnance Equipment Factory, Kanpur (hereinafter referred to as OEF"). It has established Secondary School recognised by Central Board of Secondary Education (hereinafter referred to as "CBSE") running from Class I to XII and it is said that there are about 1000 students" in the said institution. At the premises of Larmour Bagh earlier there was a Kendriya Vidyalaya which was being run but was shifted to another place sometime in the year 2000 whereupon it handed over the said premises to respondent No. 7 for running the Secondary School in the said building and premises. Respondent No. 7 requested the OFB to grant a lease and while correspondence was going on, the school continued to run in the said premises. The OFB, however, vide its order dated 4.4.2005 communicated its decision that no school would run in the premises of OEF, Kanpur and directed respondent No. 7 to close down the said institution at the said premises after academic session 2005-2006. It also required respondent No. 7 not to admit any further student(s) in Classes IX and XI in the academic year 2005-2006 so that the students may not suffer any inconvenience for Board Examinations when the School was to discontinue after academic session 2005-2006. Respondent No. 7 challenged the said order in writ petition No. 39846 of 2005 which was disposed of by this Court vide judgment dated 17th May 2005 directing OFB to take final decision with respect to the request of respondent No. 7 for grant of lease for the purpose of running the aforesaid school. The OFB thereafter passed order on 21st June 2005 rejecting the said request and directing respondent No. 7 to comply with its order dated 4.4.2005. Aggrieved, respondent No. 7 again filed writ petition No. 47566 of 2005 which was dismissed by this Court vide judgment dated 26th July 2005. Respondent No. 7 preferred appeal before the Apex Court, i.e., SLP (Civil) No. 23892 of 2005 which was decided vide judgment dated 14.11.2006 and the Hon"ble Apex Court considering the fact that the students studying in Classes IX and XI presently may face some inconvenience and, therefore, in their interest to complete their education, the institution may be allowed to occupy the premises in question till 31st March 2008, permitted respondent No. 7 to occupy the premises till 31st March 2008 subject to filing an undertaking before the Apex Court that it shall vacate the premises latest by 31st March 2008 and shall also pay all the dues to the respondents for occupation of the premises. Operative portion of the order of the the Hon"ble Apex Court is asunder:

Let an undertaking filed by the appellant to vacate the premises latest by 31.3.2008 with the further undertaking to pay the amounts to be charged by the respondents for occupation of the premises. On such undertaking being filed, appellant shall be permitted to occupy the premises till 31.3.2008.

The appeal is accordingly disposed of. However, disposal of the present appeal snail not stand on the way of the appellant moving the authorities for grant of lease of the premises in question. If such request is made the same shall be considered in its own perspective about which we express no opinion. There will be no order as to costs.

5. It is admitted at the bar that pursuant to the aforesaid direction of the Apex Court, respondent No. 7 has filed an undertaking before the Apex Court and pursuant thereto it has been permitted to occupy the premises in question and is now to vacate by 31st March 2008. It is in this background, to frustrate the aforesaid undertaking, and, the order of the Apex Court, the present writ petition has been filed by the petitioners by challenging the order passed by the OFB, Declining to grant lease to respondent No. 7 so that respondent No. 7 may continue to occupy the premises in question despite having lost the matter before this Court as well as the Apex Court and despite giving undertaking to vacate the premises in question by 31st March 2008.

6. Besides, the fact that the petitioners could not show any locus to challenge the order dated 17th August 2007 whereby respondent No. 7 has been communicated the decision of OFB, declining grant of lease of the premises in question at OEF, Kanpur to respondent No. 7, we are also of the view that the present writ petition is collusive one having been sponsored by respondent No. 7 and behind the mask of the petitioners, it is the respondent No. 7 who has managed the present writ petition to be filed by the petitioners. Various documents which have been filed by the petitioners obviously could not have been in their possession and must have been supplied by respondent No. 7 since it was already involved in the earlier litigation. Besides, respondent No. 7 was aware that he had to vacate the premises after the Session 2005-2006 vide order passed by Ordinance authorities, and now, pursuant to Apex Court's decision dated 14th November 2006, he was also aware that latest by 31st March 2008 the present premises has to be vacated, yet it appears that it has continued on admitting students in the academic session 2007-2008 in new classes I and XI as is evident from para 1 of the writ petition showing that the son of petitioner No. 1 is studying in Class XI and the son of petitioner No. 2 is studying in Class I. Obviously, when the institution was to vacate the premises in question, unless it has made proper alternative arrangement at some other place, it was not expected to have admitted students in the initial class like Class I and the higher classes where the Board examinations have to be attended by students, i.e., IX and XI but unfazed by the situation that respondent No. 7 had to vacate the premises in question by 31st March 2008 since it has admitted the students in the current academic session, i.e., 2007-2008 in Class I and Class XI, it is evident that it has allowed a situation where the students are bound to suffer though the institution, in fact, has to be closed down by 31st March 2008. The petitioners if suffer on account of some kind of mischief or misrepresentation on the part of respondent No. 7, it is always open to them to take such legal action as permissible in law but to prefer the present writ petition which goes in

the teeth of the Apex Court's decision and direction, in our view, is nothing but a gross abuse of process of law. The present writ petition being collusive in nature, deserves to be dismissed with exemplary costs.

7. Even otherwise, from the facts as narrated above, the present writ petition is totally a frivolous petition and ought not to have been filed by the petitioners inasmuch as, it has resulted not only in wastage of precious time of this Court but has also caused inconvenience to the respondents who have been compelled to defend a frivolous litigation and thereby incur avoidable unnecessary expenses at the costs of public revenue.

8. In *Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others*, the Apex Court while deprecating the attitude of filing frivolous and vexatious petitions, observed in para 13 of the judgment that "it would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts."

No litigant has a right to unlimited draught on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petition.

9. Learned Counsel for the petitioners sought to rely on a decision of the Apex Court in *P.R. Deshpande Vs. Maruti Balaram Haibatti*, and contended that the present writ petition at the instance of the petitioner is maintainable and the undertaking given by respondent No. 7 would not impede the right of the petitioners to file present writ petition. The contention is thoroughly misconceived and the judgment relied upon by the learned Counsel has no application to the case in hand as, in that case, in the matter of tenanted premises, the High Court while dismissing the revision petition of tenant, granted him six months" time to vacate the premises in question subject to filing of an undertaking by him. The tenant consequently filed such undertaking and thereafter availed his remedy of appeal under Article 136 of the Constitution of India and preferred a SLP before the Apex Court. A preliminary objection was raised on behalf of landlord opposite party that once an undertaking has been given to the High Court to vacate the premises within six months, thereafter, the tenant was deprived of any right to challenge the judgment of High Court even by filing appeal in Supreme Court. This objection was not accepted by the Apex Court, observing that principle of estoppel has no application when statutory liability and rights are involved and it would not impede the right to appeal and particularly constitutional remedy. The Apex Court thus held that so long as the High Court judgment is there, no doubt, tenant is bound by his undertaking but it is obvious that subject to the condition that such judgment is upheld by the higher Court or by the same Court after appeal/review etc. is filed. The Court held that appeal filed under Article 136 cannot be dismissed as not maintainable on the mere ground that the appellant has given undertaking to the High Court

for vacating the premises in question. We fail to understand as to how the aforesaid authority would help the petitioners in the case in hand, inasmuch as, the petitioners are not availing any right of appeal against the decision and undertaking given by respondent No. 7 before the Apex Court. Moreover, the opportunity given by the Apex Court to respondent No. 7 for approaching the authority concerned for grant of lease in respect of premises in question also cannot be extended to confer a substantive right upon the petitioners to challenge the order of the authorities passed on the application of respondent No. 7, rejecting the request for grant of lease and for the said purpose, the petitioners cannot be said to be the persons aggrieved.

10. In view of the aforesaid discussion and considering entirety of the facts, we have no manner of doubt that the present writ petition is nothing but a grossest abuse of process of law. The petitioners are guilty of filing frivolous and collusive petition and that too in the teeth of the directions of the Apex Court. The petition is, therefore, dismissed in limine with exemplary cost of Rs. One Lac. The petitioners shall deposit the same with the Registrar General of this Court within three months from today failing which, it would be open to the Registrar General to initiate proceedings to realize the said amount as arrears of land revenue from the petitioners. The costs so deposited/recovered shall be forwarded to the Allahabad High Court Legal Services Committee and Allahabad High Court Mediation and Conciliation Centre in equal share.