
(2010) 08 AHC CK 0522

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 50057 of 2010

Chintamani Ghosh Trust and another

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 23-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 2 UPLBEC 1003

Hon'ble Judges : Ashok Bhushan, J;Amreshwar Pratap Sahi, J

Bench : Division Bench

Judgement

Ashok Bhushan and Amreshwar Pratap Sahi, JJ.—The petitioner has come up in this writ petition questioning the correctness of the order dated 7.7.2010 passed by the District Magistrate whereby the representation of the petitioner in relation to the action taken by the respondents for resuming the land for public purpose invoking the clauses in the lease deed has been rejected holding that it is not possible to accept the request of the petitioner to grant freehold rights over the said land as the same has been handed over to the Development Authority for the purpose of public parking in the area of Civil Lines, Allahabad.

2. The request of the petitioner was earlier brought to this Court in writ petition No. 35269 of 2009 where it was alleged that petitioner had nominated M/s Madhu Colonisers for the disputed land and authorised to get the freehold land. M/s Madhu Colonisers also joined the petitioner by filing Writ Petition No. 31153 of 2009 and both the writ petitions were finally allowed with a direction to the District Magistrate to reconsider the application of Mssrs Madhu Coloniser afresh for conversion of lease rights into freehold rights on the nomination of the lessee in accordance with law without being influenced by the directions issued by the High Court on 8.5.2006 in Writ Petition No. 2547 of 2005.

3. The petitioner as well as M/s Madhu Colonisers were put to notice and District Magistrate has thereafter proceeded to pass the order on 7.7.2010 holding that the land is required for the public purpose of multi-storied parking and keeping in

view the aforesaid necessity it has been decided to resume that part of the land and the area as referred to therein.

4. Learned Counsel for the petitioner, Sri Krishna Mohan, contends that the aforesaid resumption has been made contrary to law and without there being any requirement of public purpose. He submits that apart from this under the notice which was served to the petitioner a certain amount of compensation was offered for the built up area which is totally inadequate and the impugned order does not indicate anything about the same. He further submits that the order deserves to be set aside.

5. Learned Standing Counsel, on the other hand, contends that the land has been resumed by the Collector keeping in view the powers conferred on him under the Government Grants Act, 1895 in view of the observations made by this Court in the Judgment dated 27.5.2010 which clearly indicates that before the Collector decides to re-enter he has to put the lessor to notice under clause 3(c) read with clause 4 of the lease. The learned Standing Counsel further submits that the public purpose for which the lease was sought to be resumed to the extent as indicated in the order could not be successfully demolished by the petitioner and, therefore, the impugned order does not require any interference by this Court.

6. Sri Ashwini Mishra, learned Counsel for the Development Authority contends that there is nothing on the record to indicate that the aforesaid public purpose is not a genuine purpose and the land is not being retained for a bona fide purpose. In the absence of such material, the writ petition must fail.

7. We have considered the rival submissions.

8. The matter was remitted to the Collector to determine as to whether the lease could be curtailed that was in favour of the petitioner keeping in view the requirement of multi-storey parking or for any other public purpose. The Collector upon examination of the facts and records arrived at the conclusion that the area of Civil Lines, Allahabad is in dire necessity of a public parking place and for that purpose the aforesaid land was being resumed which is in vicinity of the said area. The Collector has also referred to the relevant provisions of the lease deed and the provisions of the Government Grants Act, 1895 and has justified the stand for resuming the lease to the extent it has been done.

9. We have examined the same and we do not find any material on record which may demonstrate that the Collector has exercised the power of resumption for any oblique purpose or unknown purpose which may be alien to the requirement of a public multi-storey parking in the area concerned. There is no material either pleaded or brought on the record which may indicate that the land, which is sought to be resumed, would not suffice for the said purpose. In view of this, the order of the Collector, in our opinion, does not suffer from any infirmity which may warrant exercise of our powers under Article 226 of the Constitution of India.

10. The other contention raised by the petitioner with regard to the offer of low compensation for the built up area and for the existing material on the spot, suffice it to say that the petitioner on the earlier occasion had filed the writ petition, which did not grant any such relief. If the petitioner is aggrieved by offer of low compensation, which is not commensurate to the material on the spot, it is open for him to move a representation to the Collector in this regard who shall proceed to deal with it in accordance with law as and when this representation is filed.

11. The petitioner may make a request to the Collector for issuance of the receipt of the lease rent for the balance of the land the lease whereof, according to the petitioner, subsists.

12. With the aforesaid observation, the writ petition stands disposed of.