
(2009) 09 AHC CK 0047
In the Allahabad High Court

Dr. S.N. Sharma and Others	Vs	APPELLANT
The State of U.P. and Others		RESPONDENT

Date of Decision : 18-09-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 09 AHC CK 0047

Hon'ble Judges : R.A. Singh, J;Ashok Bhushan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Shri Rajeev Mishra, learned Counsel for the petitioners Shri C.K. Rai, learned Standing Counsel appearing for the respondent Nos. 1, 2,3,6 to 9 and Shri Atul Mehra appearing for respondent No. 10. The petitioners by this writ petition have challenged the survey reports dated 22/6/2009 and 07/6/2009, by which survey report the State authorities have determined that petitioners have encroached on the Varanasi-Ghazipur Road (National Highway No. 29) and the encroached portion which includes the boundary wall has been marked for demolition.

2. Brief facts necessary to be noted for deciding this writ petition are:

The petitioners being husband, wife and son purchased by registered sale deed different portion of land situate in Village Khajuri District Varanasi. The sale deed taken by the petitioners were of Plot No. 64/1 measuring 3261 Sq feet dated 24/2/1998, House No. S-8/460-C situate in Village Khajuri whose Plot No. was 65/1 area 2610 Sq Feet dated 24/2/1998, Plot No. 66/1 measuring 1790 sq feet dated 24/2/1998, Plot No. 64/1 measuring 1803 Sq feet dated 14/7/1999 and House No. S-8,460 Ka-1 area 1360 Sq feet in Plot No. 66/1 dated 12/5/2000. The building plan was submitted by the petitioners before the Varanasi Development Varanasi (hereinafter referred to as "VDA") which issued permission letters on 02/5/2002 and 17/5/2002. The petitioners claimed to have

made construction of their houses. On 30/8/2004, the officials of the PWD visited the house of the petitioners and demolished the boundary wall claiming it to be encroachment on the road. On 27/8/2004, petitioners had filed Original Suit No. 694/2004 in the Court of Civil Judge, Senior Division, Varanasi for permanent injunction. An ad interim injunction was granted on 14/9/2004. The defendants filed written statement in the suit claiming that the petitioners boundary wall is encroachment on the road land. It was also claimed by the State respondents that earlier the road in front of Plot Nos. 64/2,65/1 and 66/2 was 8 meters but land was acquired in the year 1956 for widening of the road on the left side where the above plots are situated. It was also submitted that the notification has also been issued under Sub-section 1 of Section 3 of the Roadside Control Act, 1945 (hereinafter called the "Act, 1945") notifying 220 feet from the centre line of the road within the controlled area. The trial court vide its judgment and decree dated 16/1/2008 decreed the suit injuncting the defendants from interfering with the construction of the plaintiffs and further restraining the defendants not to demolish the construction till clear demarcation is made of the acquired land of Plot Nos. 65/1,66/1 and 66/2. It was further ordered that after the measurement it will be open for the defendants to remove any construction on the acquired land and to include it in the road. Proceedings under the Act, 1945 which were initiated were dropped after the judgment and decree by the Civil Court. Petitioners case further is that on 24/5/2009, opposite parties dug a pit along with boundary wall of the petitioner in front of the entrance/exit gate blocking the entrance of the petitioners. Petitioners said to have submitted a representation on 25/5/2009 to the Executive Engineer and thereafter filed Civil Misc. Writ Petition No. 5300 (M/B) of 2009 (Dr. S.N. Sharma and Anr. v. State of U.P. and Ors.) in the Lucknow Bench of this Court on 05/6/2009. The said writ petition was disposed of vide order dated 12/6/2009 on the statement of the learned Chief Standing Counsel that the opposite parties are ready to get the demarcation of the land done in presence of the petitioners by the Revenue Authorities which shall start from 22/6/2009. The Court directed that till then status quo be maintained in the land in dispute. After the order of the Division Bench of this Court dated 12/6/2009, measurement started on 22/6/2009. Petitioners were called in the measurement and participated in the proceedings along with their Advocates. The measurement was conducted for about 6 hours and thereafter the report was prepared. Petitioners did not put their signatures on the measurement although revenue officials and Engineers signed the report and the map. In the measurement the portion of road which were encroached by the petitioners including their boundary wall has been marked apart from construction of others. Petitioners after the said measurement having aggrieved has filed this writ petition in this Court praying for following reliefs:

1. Issue a writ order or direction in the nature of certiorari quashing the survey report dated 22.6.2009 and the survey report dated 7.6.2006 (Annexure Nos. 26 and Annexure No. 20 to this writ petition).
2. Issue a writ order or direction in the nature of mandamus commanding the

respondent No. 8 the DM Varanasi to correct the revenue entry in respect of survey plot No. 65/1 as incorrectly occurring from the Khatauni of 1398 Fasli onwards.

3. Issue a writ order or direction in the nature of mandamus commanding the respondents not to take any action against the petitioners on the basis of the measurement/demarcation report dated 22.6.2009 and 7.6.2009.

4. Issue a writ order or direction in the nature of mandamus commanding the respondents not erect the pillar or the flyover in away which obstruction the entry/exit from the gate of the house of the petitioners and further to ensure a moterale service road is available to the petitioners.

5. Issue a writ order or direction in the nature of mandamus commanding the respondents not to close the pit dug by them in front of he house of the petitioners.

3. Counter affidavit has been filed on behalf of the State respondents to which rejoinder affidavit has also been filed by the petitioners.

4. Shri Rajeev Mishra, learned Counsel for the petitioners challenging the measurement dated 22/6/2009 contended that measurement made by the respondents is not in accordance with law. Petitioners were not given any notice before carrying out the measurement. It is contended that the plots in which the petitioners" house and boundary wall is existing were purchased by the petitioners by different sale deeds in the year 1998-99 and 2000. The boundary wall of the house is an old boundary wall which was existing much before the purchase by the petitioners. The boundary wall was illegally demolished on 30/8/2004. Petitioners claim to have put wire net fencing at the same place. The measurement which has been carried out by the respondents has not been carried out in accordance with the judgment and decree of the trial court dated 16/1/2008 in Suit No. 694/2004. The measurement has not been made as to what is the extent of land acquired by the State in Plot Nos. 65/1 and 66/1, referring to the area acquired by the aforesaid two plots, it is contended that at best the acquired portion of both the plots shall be only $435+435=870$ Sq feet and the strip of the land which has been marked in the petitioners plots is much beyond that area. It is submitted by the learned Counsel for the petitioners that the stand taken by the State in the written statement filed in the civil court in Suit No. 694/2004 is not in accordance with the stand now being taken by the respondents in the counter affidavit filed in this writ petition. It is further submitted that the petitioners have purchased Plot No. 65/1 from Gurdev Singh and Gurpreet Singh through sale deed dated 24/2/1998, but mutation of the petitioners name was made on Plot No. 65/2 which plot is shown in the name of Gurdev Singh and Gurpreet Singh. It is submitted that in Khasra No. 1397 to 1402, Plot No. 65/1 was recorded in the name of Gurdev Singh and Gurpreet Singh, but subsequently in Khatauni 1403 to 1408, Plot No. 65/1 was changed into Plot No. 65/2, without there being any order by the competent authority.

Learned Counsel for the petitioners further contended that although 3 wells were taken as fixed point in the measurement carried on 22/6/2009, but their internal distance were not verified. It is submitted that the plain table survey ought to have been conducted. It is submitted that the building plan having been approved by the VDA where the width of the road was duly mentioned, it is not open to the respondents to say that that the width of the road is much more as was mentioned in the plan.

5. Shri C.K. Rai, learned Standing Counsel refuting the contention of the learned Counsel for the petitioners contended that there is no error in the measurement which was made on 22/6/2009 in pursuance of the order of this Court dated 12/6/2009 in writ petition filed by the petitioners themselves and challenge to the various factual aspects of the measurement cannot be permitted to be adjudicated in writ proceedings. He contends that the judgment of the civil court dated 16/1/2008 permitted the defendants to remove the construction included in the area of the road after making proper demarcation. He submits that the exercise of the defendants is in accordance with the judgment and decree of the trial court dated 16/1/2008. It is contended that there is no contradiction in the stand taken by the defendants before the civil court in Suit No. 694/2004 in this writ petition. It is submitted that the width of the road on the side where the petitioners' house is existing is 20 metres and the encroachment of the petitioners on the road is to the extent of 3.6 metres which has been marked on the measurement carried on 22/6/2009. It is submitted that the petitioners were aware that the demarcation work shall start from 22/6/2009 and the petitioners were personally called on the spot where they came and were present along with their Advocates during the course of entire proceedings of measurement and demarcation. It is further submitted that petitioner Nos. 1 and 2 did not put their signatures on the measurement since the petitioners were found unauthorised occupant of the roadside land. It is submitted that the mere fact that the building plan was approved by the VDA is not a conclusive proof regarding the width of the road. It is submitted that the width of the road in the plan submitted by the petitioners was not correctly mentioned.

6. Learned Standing Counsel further contended that the PIL being Writ Petition No. 35841/2009 Dr. Lav Kumar Singh and Ors. v. State of U.P. and Ors. filed for commanding the respondents to specify the demarcation of the centre points of road where the proposed flyover is to be constructed in accordance with the revenue records taking into account the actual total width of the road existing over Plot Nos. 61/1,64/2,65/1,65/2,66/1 and 66/2 as well as other plots has been dismissed by this Court on 20/7/2009. The petitioners in the PIL were also the persons whose Nursing Home is located near the flyover adjoining to the present petitioners house this writ petition also deserves to be dismissed. Shri Atul Mehra, appearing for the Varanasi Development Authority has also supported the submissions made by Shri C.K. Rai, learned Standing Counsel.

7. We have considered the submission made by the learned Counsel for the

parties and have perused the record.

8. Varanasi-Ghazipur Road is passing in front of the petitioners newly constructed house, land for which was purchased by the petitioners in the year 1998-99-2000. Acquisition of the land was made for widening of the road in the year 1956, which acquisition also included Plot Nos. 65/1 and 66/1. The acquisition was made of different area of 23 plots including Plot Nos. 65/1 and 66/1. The issues raised by the petitioners in this writ petition is with regard to width of the road. The road in question is National Highway No. 29. A flyover is being constructed over the road in front of the petitioners house. The submission which has been much pressed by the learned Counsel for the petitioners is that proper measurement has not been done on 22/6/2009, which has only confirmed the earlier measurement on 07/6/2009, regarding the extent of the land acquired by the State in the year 1956. He has further relied on the judgment and decree of the civil court on 16/1/2008. It is relevant to note the operative portion of the judgment and order of the Civil Court dated 16/1/2008 which is quoted below:

vkns" k

nkok oknhx.k fo:) izfroknhx.k vkKIr djrs gq, vknsf"kr fd;k tkrk gS fd izfroknhx.k oknhx.k ds LokfeRo dh vkjkth la[;k 64@1 jdok 5064 oxZQhV vkjkth la[;k 65@1 jdok 2610 oxZQhV vkjkth la[;k 66@1 jdok 1360 oxZQhV vkjkth la[;k 66@1 jdok 1790 oxZQhV fLFkr ekStk [ktqjh ijxuk nsgrk vekur rglhy ftyk okjk.klh esa dksbZ gLr{ksi ;k mlesa fd, x, fuekZ.k dks rc rd /oLr u djsa tc rd fd Li"V lhekadu }kjk ;g n" kZr u dj ns fd muds }kjk vf/kxzfr vkjkth 65@1 ,oa 66@1 vFkok 66@2 ds fdLh va" k esa oknhx.k }kjk fd;k x;k fuekZ.k ;k muds }kjk dz; fd;k x;k dksbZ izkphu fuekZ.k iM+rk gSA

okn dh fof" k"V ifjLFkfr;ksa dks n` f"Vxr j[krs gq, eSa bl vfHker dk gWwa fd okn O;; mHk; i{k viuk viuk ogu djsaxs D;ksafd bl okn esa lhekadu ;k losZ vf/kxzfr vkjkth dh lhek Li"V djus gsrwq vko";d gS A oknhx.k tgkWa vius dz; dh x;h vkjft;kr ds miHkksx ds fy, Lora= gSsa ogha lhekadu ds i" pkr izfroknhx.k vf/kxzfr vkjkth esa iM+us okys fuekZ.k dks gVkdj iM+d esa lfEefyr djus ds vf/kdkjh gSsaA

9. A perusal of the above judgment of the civil court clearly indicates that the defendants were restrained from interfering and demolishing any portion of Plot Nos. 65/1, 66/1 and 66/2, unless the measurement and demarcation is made specifying limits of the acquired land. The judgment of the civil court thus clearly permitted the defendants to carry out the demarcation. It is relevant to note that in the civil court also the main dispute was regarding the width of the road and the measurement of plots which was claimed to be purchased by the petitioners. In paragraph 36 of the judgment the Court has clearly observed that situation on the spot is still not clear due to inaction of both the parties. The trial court had observed that neither of the parties had made any application for preparing a survey map ignoring the indication given by the Court that the preparation of the

survey map is necessary and justified. There being no survey map on the record of the civil court as noted above, the court clearly gave liberty to the defendants to carry out the measurement and demarcation and remove the unauthorised construction if any coming on the road. The petitioners have filed Writ Petition No. 5300 (M/B/2009) in the Lucknow Bench of this Court which was disposed of on 12/6/2009 by passing following order which is quoted below:

We have heard learned Counsel for the petitioners, learned Standing Counsel, and perused the record. The learned Chief Standing Counsel has informed this Court that opposite parties are ready to get the demarcation of the land done in presence of the petitioners by the Revenue Authorities, which shall start from 22 June, 2009. Till then status quo in respect of the land in dispute as the parties. With the aforesaid observations, the writ petition is disposed of finally.

10. From the above order of the Division Bench it is clear that the Court accepted the request of Chief Standing Counsel that the defendants are ready to get the demarcation of the land done in the presence of the petitioners by the Revenue Authorities which shall start from 22/6/2009. The submission of the learned Counsel for the petitioners that no notice was given for measurement and the measurement was ex-parte conducted, is to be rejected in view of the fact that it is the case of the petitioners themselves that they were orally summoned for the measurement on 22/6/2009 and it is not denied that petitioners No. 1 and 2 were present on the spot on 22/6/2009. In paragraph 36 following is the pleadings of the petitioners themselves.

36. That the petitioners were orally summoned by the aforesaid team and thereafter in the presence of the petitioners the measurement exercise started....

11. Thus, the petitioners were throughout present during the measurement which is clear from their own pleadings. The respondents in the counter affidavit have clearly stated that the petitioners No. 1 and 2 were present alongwith their Advocates during the demarcation, thus the submission of the petitioners that measurement was ex-parte conducted cannot be accepted.

12. Learned Counsel for the petitioners has challenged the manner of carrying out the survey dated 22/6/2009. The survey map and report has been brought on the record along with the counter affidavit. In the survey report, the width of the road has been demarcated and the encroachment on the road has also been marked. The submission of the petitioners is that the measurement of portion of the plots acquired in the year 1956 has not been appropriately done. The measurement of the road passing in front of the petitioners house and other houses by demarcating its width from the spot cannot be said to be a measurement not permissible to identify the encroachment on the road. Various submissions raised regarding the manner and procedure adopted in the measurement are such factual issues which cannot be appropriately adjudicated by this Court in exercise of writ jurisdiction. The stand taken by the respondents is that the width of the road in front of the petitioners house is 20 metres and

now the encroached portion of the land, the boundary wall and certain portion of the land have been indicated. As noted above, the boundary wall was demolished on 30/8/2004, which was subsequently constructed by the petitioners by wire net fencing. The Division Bench judgment relied by the learned Standing Counsel in PIL Writ Petition No. 35841 of 2009 which was dismissed on 20/7/2009 do support the contention of the learned Standing Counsel that this Court in exercise under Article 226 of the Constitution of India cannot interfere with the decision of the technical experts. It is useful to quote three paragraphs of the judgement which is quoted below:

This Public Interest Litigation petition has been filed under Article 226 of the Constitution of India for commanding the respondents to specify and demark the centre points of the road where over the proposed flyover is to be constructed strictly in accordance with the revenue records taking into account the actual total width of the road existing over Arazi Nos. 61/1,64/2,65/1,65/2,66/1 and 66/2 as well as 61/1 and 359, 360, 361/2, 362 and 363 as well as 364 and 67 and 355 and further the respondents be directed to proceed with the construction of the flyover only after finalizing the detailed structural design and scaled map as per the revenue records.

We are afraid such a prayer cannot be entertained in a Public Interest Litigation.

Admittedly the petitioner's Nursing Home is located near the proposed flyover and thus it appears that to protect the same the Public Interest Litigation has been filed.

Besides above, in respect of construction of flyover at a particular place decision is to be taken by technical experts and this Court while exercising jurisdiction under Article 226 of the Constitution of India cannot interfere with such decision of the technical experts.

13. Considering the submission of the learned Counsel for the parties and perusing the record, we are of the view that the various issues raised regarding the challenge to the demarcation made on 22/6/2009, cannot be adjudicated in proceedings under Article 226 of the Constitution which can be done only in appropriate suit proceedings in a competent civil court.

14. The petitioners have also made a prayer praying for a direction to the District Magistrate, i.e. respondent No. 8 to correct the revenue entry in respect of the survey plot No. 65/1 as incorrectly occurring from Khatauni No. 1390 onwards.

15. U.P. Land Revenue Act, 1901 provides for statutory forum for correction of any revenue entry. It is open for the petitioners to pursue the proceedings under the U.P. Land Revenue Act, 1901 for the aforesaid relief. For correction in the revenue record entry evidence is required to be taken and various factual issues are to be decided which can be done in the appropriate statutory proceedings under the Act, 1901.

16. In view of the foregoing discussions, petitioners are not entitled for the

relief"s as claimed in the writ petition.

17. Subject to observations as made above, the writ petition is dismissed.