
(1999) 03 AHC CK 0075

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 34826 of 1998

Gaya Prasad

APPELLANT

Vs

Collector, Distt. Sant Ravidas Nagar Bhadohi and Others

RESPONDENT

Date of Decision : 10-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 03 AHC CK 0075

Hon'ble Judges : Binod Kumar Roy, J and S.K.Jain, J

Final Decision : Dismissed

Judgement

1. The prayer of the petitioner, through this writ petition filed on 27101998, is to command the Respondents to dispose of his application dated 1101991 (as contained in Annexure 2) within a stipulated period taking into account the order dated 1451991 passed by VIIth Additional District Judge, Varanasi in Land Reference No. 339 of 1989, Sabhapativ. The Collector, Varanasi.

2. On 29101998 the Division Bench, before which this writ petition was placed, had passed the following order:

?Gaya Prasad, petitioner, is alleged to have made some application on 1101991 purporting to have been moved under Section 28A (1) of the Land Acquisition Act before the authority concerned. The question of facts are involved in this case Sri Vishnu Pratap, learned Standing Counsel, prays for and is granted three weeks time to file counteraffidavit. Rejoinder affidavit may be filed by Sri N.D. Shukla, learned counsel for the petitioner, within one week thereafter.

The petition shall be listed for admission/final disposal in the week commencing 7121998.?

3. In the counteraffidavit, a copy of which was served on the learned counsel for the petitioner on 2421999, it has been stated inter alia to the effect that the application in question was disposed of on 16101991 appending its copy as AnnexureCA1.

4. Today an application has been filed by the petitioner seeking following amendments in the writ petition:

?12A. That during pendency of the writ petition, before this Hon"ble Court, after service of the copy of the counteraffidavit of the respondents No. 1 and 2 upon the counsel of the petitioner on 24299, petitioner came to know that his application under Section 28A(1) of the Land Acquisition Act, has been rejected by the respondent No. 4, vide order dated 161091, which is illegal, arbitrary and not sustainable under the law. The true copy of the order dated 161091, passed by the respondent No. 4 is being filed herewith as Annexure No. 4 of this writ petition.?

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after ground No. "iii", a new ground as Ground No. "iv" maybe added in following manner:

?iv. Because the impugned order dated "161091, (Annexure No. 4) passed by the respondent No. 4 is illegal, arbitrary and not sustainable in the eye of law.?

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a new prayer as prayer No. AI" may be added in following manner:

?AI. issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 161091 (Annexure No. 4 to the writ petition), passed by the respondent No. 4.?

5. Mr. Umesh Narain Sharma, learned counsel appearing on behalf of the petitioner contended that since the petitioner was not made aware of the passing of the order dated 161091 earlier which was also passed behind his back, the amendments prayed for in the interest of justice be allowed. He also contended that there is nothing in the counteraffidavit to show that it was passed with notice to the petitioner or the petitioner was communicated the same by the respondents.

6. The learned Standing Counsel Mr. Vishnu Pratap opposed the prayer submitting that since the cause of action founded in the writ petition was not in existence on the day on which it was held inasmuch as the order disposing of his petition was passed on 161091. Therefore, it will not be in the interest of justice to allow the proposed amendments and this writ petition is liable to be dismissed on this ground alone.

7. Having heard learned counsel for the parties we find substance in the objection of the learned Standing Counsel.

8. Since 1 the cause of action for moving this Court was not in existence on the day on which this writ petition was filed it is dismissed. The petition seeking amendment is also dismissed.

9. Before; parting it is hereby clarified that if the petitioner files a writ petition

challenging the validity of the order dated 161091 on valid grounds explaining validity the (aches, then anything said herein will not preclude the Court to adjudicate that writ petition on its merit.

10. The office is directed to hand over a copy of this order within one week to the learned Standing Counsel Mr. Pratap for its communication to the Authority concerned. I Petition dismissed.