
(2014) 10 AHC CK 0131

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 48178 of 2013

Gopal Swarup Chaturvedi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 29-10-2014

Acts Referred:

Citation : (2014) 10 ADJ 695 : (2015) 108 ALR 2 : (2015) 2 AWC 1248 : (2015) 126 RD 572

Hon'ble Judges : Yashwant Varma, J; Arun Tandon, J

Bench : Division Bench

Advocate : Naveen Sinha and Samit Gopal, Advocate for the Appellant

Judgement

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1. Heard Shri Naveen Sinha, learned Senior Advocate assisted by Shri Samit Gopal on behalf of the petitioner and Shri Suresh Singh, Additional Chief Standing Counsel on behalf of the State Government. The dispute pertaining to grant of free hold rights in respect of Plot No. 146-A Civil Station, Allahabad which was subsequently bifurcated into three separate plots bearing Plot Nos. 146-A/1, 146-A/2 and 146-A/3 Civil Station, Allahabad was a subject-matter of consideration before a Division Bench of this Court in Writ Petition No. 18964/2009, filed by the present petitioner, Writ Petition No. 42745/2009 filed by Smt. Veena Chaturvedi and Writ Petition. 42748/2009 filed by Smt. Manorama Vajpai. The Division Bench of this Court after examining the provisions of the Government Order's dated 17/2/1996, 26/9/1997, 10/12/2002 and 21/10/2008, found that the demand notice dated 13/3/2009, as issued by the District Magistrate, Allahabad for grant of free hold rights in respect of the aforesaid subdivided plots was illegal. The demand notices were accordingly quashed and the District Magistrate was directed to redetermine the amount payable in the light of the observations made in the judgment and strictly in accordance with the Government Orders noticed by the Court. The Division Bench further clarified that a revised demand notice shall be issued to the petitioners within seven days

and that the amount already paid by the petitioners shall be adjusted. In case there is any short fall, the petitioners shall deposit the same within two weeks thereafter. In case it is found that any amount in excess has already been paid by the petitioners it shall be returned to them with simple interest at the rate of 6% per annum. The Division Bench of the Court after noticing the aforesaid Government Orders specifically opined as follows:

(A) Petitioners would be entitled to a rebate of 20% in terms of the Government Order dated 10/12/2002, and not a rebate of 10% as was provided by the District Magistrate, Allahabad in terms of the Government Order dated 21/10/2008.

(B) The calculation of the amount payable by the petitioners for getting the free hold right in respect of the plots in question shall be done in accordance with paragraph 3 of the Government Order dated 26/9/1997.

The District Magistrate, Allahabad in compliance to the order of the High Court referred to above, after affording opportunity of hearing to the petitioner has passed the order impugned dated 07/1/2013. This order of the District Magistrate is subject-matter of challenge in the present writ petition only to the extent that an additional demand of 10% of the circle rate as applicable in respect of land situate at Kasturba Gandhi Road has been demanded under Clause 3(2) in addition to the amount calculated under Clause 3(1) of the Government Order dated 26/9/1997, as corner charges.

2. Counsel for the petitioner submitted before us that this additional demand of 10% of the circle rate applicable to Kasturba Gandhi Road is unsustainable in the eyes of law. On a simple reading of Clause 3(2) of the Government Order dated 26/9/1997, this additional demand of 10% of the circle rate can only be made if the Nazul Plot was identified in the lease-deed with reference to a particular road i.e. its location is fixed with reference to any particular road in the lease-deed.

3. With reference to the lease-deed which was executed between the parties on 25/9/2007, after the bifurcation of the plots into three separate plots as detailed above, (copy whereof has been enclosed as Annexure-4 to the present petition), he explained that the identification of the bifurcated nazul plot has been mentioned as 146-A/1, 146 A/2 and 146 A/3 Civil Station Allahabad. [Reference page 97 of the paper book.] He explains that the location of the plot has not been identified with reference to any specific road in the lease-deed. Therefore, Clause 3(2) of the Government Order dated 26/9/1997 has no application.

4. Shri Suresh Singh, Additional Chief Standing Counsel disputes the correctness of the stand so taken on behalf of the petitioner. He submits that although the plot in question has been described as 146-A/1 Civil Station Allahabad in the lease-deed dated 25/9/2007, but from the boundaries mentioned in the lease-deed, it is apparent that the plot is situated on the crossing of Stanley Road and Kasturba Gandhi Marg, Allahabad, and therefore, he submits that the location of the plot subject-matter of the lease-deed has been fixed with reference to the

two roads mentioned above. Therefore, the District Magistrate is justified in demanding an additional 10% of the circle rate applicable to Kasturba Gandhi Road which was one of the roads by which the plot has been located in the lease-deed in view of Clause 3(2) of the Government Order. He further submitted that under the free hold lease-deed which has already been executed between the parties in respect of the plot in question, there is a clause which provides that if there is any dispute in respect of the free hold deed, any matter in relation thereto or in respect thereof, the same shall be referred to the State Government for adjudication. This according to him is in the nature of an arbitration clause and therefore, this Court may insist upon the petitioner to avail the remedy provided in the free hold deed, instead of examining the merits of the case in writ proceedings at the first instance.

5. We have heard the learned counsel for the parties and examined the records of the present petition.

We may first deal with the objection which has been raised with regard to the matter being referred to the State Government as per the free hold deed which has been executed in respect of the plot in question.

6. It may be noticed that the petitioner had earlier approached the High Court by means of Writ Petition No. 18964/2009, immediately after the demand notice was issued i.e. even prior to the execution of the free hold deed. The writ Court under the interim order dated 08/4/2009, provided that if the petitioner deposits the entire money as demanded then necessary steps shall be taken for execution of the free hold deed and the deposit made would be subject to the final orders to be passed in the writ petition. The writ petition came to be allowed finally under the judgment and order dated 18/9/2012 and the writ Court found that the demand notice as issued by the District Magistrate, Allahabad was unsustainable. Accordingly, it was quashed and the matter was remanded to the District Magistrate to redetermine the amount payable.

7. It is clear from the facts which have been noted above that the free hold lease-deed was executed on deposit of the money by the petitioner in terms of the interim order passed by this Court and such deposit of money was subject to the orders to be passed finally in the writ petition. As already recorded above the writ petition came to be finally allowed with the observation that the District Magistrate, Allahabad shall re-determine the demand and in case excess amount is found to be paid by the petitioners, as per the fresh demand notice, it shall be returned to the petitioner with interest. The order now issued by the District Magistrate has been challenged in the present writ petition. The issue is with regard to the applicability of Clause 3(2) of the Government Order dated 26/9/1997.

8. In the present petition which was filed in 2013, affidavits have been exchanged between the parties. We had also summoned the original records from the office of the District Magistrate, Allahabad for ascertaining as to

whether the plot in question is located with reference to any particular road in any of the lease-deeds or not. The original records have already been examined by us in detail.

9. In the totality of the circumstances as noticed above and in the background of the litigation which has taken place between the parties, we are of the opinion that it would not be appropriate to relegate the petitioner in the facts of the present case to the State Government. Therefore, the objection taken by Shri Suresh Singh, Additional Chief Standing Counsel in that regard is rejected.

10. So far as the merits of the writ petition is concerned, the dispute between the parties revolves around interpretation and application of Clause 3(2) of the Government Order dated 26/9/1997.

It would be worthwhile to reproduce Clause 3(1) and (2) of the Government Order dated 26/9/1997.

From a simple reading of the aforesaid two clauses, it is apparent that Clause (2) is in the nature of a proviso to Clause (1) and provides for something in addition to that provided for under Clause (1).

On a simple reading of Clause (2) of the Government Order dated 26/9/1997, it is apparent that the State Government is authorised to raise a demand of additional 10% of the circle rate of the road concerned only in cases where the nazul plot is located with reference to a particular road in the lease-deed and not otherwise.

11. It is but common sense that when a plot lies in the corner of two roads its boundary shall be identified with reference to the two roads. Therefore, if in the lease-deed the boundaries mention the two roads on the corner of which the plot lies, it cannot be said that the plot is identified/located with reference to any one particular road so as to attract Clause 3(2) of the Government Order dated 26/9/1997. To highlight the distinction one may peruse the free hold deed. [Ref. Page 73-74 of writ petition] where two roads are mentioned alongwith the number of the Nazul Plot. However, similar recital is absent in the original lease-deeds.

12. We have carefully gone through the original lease-deed in respect of the property in question which stands in the name of Smt. Sarla Chaturvedi before its bifurcation into three separate plots and we find from the said lease-deed also that the plot bears only one identification i.e. Plot No. 146-A Civil Station, Allahabad. Its location is not identified with reference to any of the two roads in the lease-deed.

13. In view of what has been referred above, we are of the considered opinion that Clause 3(2) of the Government Order dated 26/9/1997 is not attracted in the facts of the present case. Therefore, the additional demand of 10% as made under the order of the District Magistrate, Allahabad cannot be legally sustained. The order of the District Magistrate, Allahabad dated 07/1/2013, Annexure-7, to

the extent it raises demand of additional 10% treating the nazul plot to be identified with reference to the Kasturba Gandhi Road is hereby set-aside. The District Magistrate, Allahabad is directed to recalculate the total amount payable by the petitioner without application of Clause 3(2) of the Government Order dated 26/9/1997. All consequential action shall be taken thereafter strictly in accordance with the observations made by the Division Bench of this Court vide judgment and order dated 18/9/2012. The said exercise shall be completed within one month from the date of receipt of the certified copy of this order.

The writ petition is allowed.

No order as to cost.