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**(2003) 05 AHC CK 0180**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 51188 of 2000**

Habib and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 20-05-2003

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2003) 4 AWC 2645

**Hon'ble Judges :** Rakesh Tiwari, J

**Bench :** Single Bench

**Advocate :** Sushil Kumar, for the Appellant; M.K. Gupta and D.R. Sharma, S.C., for the Respondent

**Final Decision :** Dismissed

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## Judgement

Rakesh Tiwari, J.—Heard learned counsel for the parties and perused the record.

2. Petitioners filed the aforesaid petition praying for the following reliefs :

(i) issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 27.9.2000 and order dated 3.11.2000 passed by respondent Nos. 2 and 3, respectively (Annexures 4 and 5).

(ii) issue a writ, order or direction in the nature of mandamus commanding the respondent No. 4 not to cut green trees which are standing over the disputed plot No. 74.

(iii) issue any other writ, order or direction which this Hon''ble Court may deem fit and proper in the circumstances of the case.

3. The dispute in the petition is regarding 75 trees standing on the disputed land, which belongs to Nazul Department.

4. The petitioner's case is that Gata No. 74 area 0.265 hectare was recorded in the names of the petitioners in the khatauni on the basis of possession on the

aforesaid land.

5. It is submitted that Azhar Aziz Bilgrami executed a sale deed in favour of Adal Singh and Manoj Kumar on 10.3.1999. The respondent No. 3, Shyam Kumar made an application before the respondent No. 2 for cutting the trees which are standing on the aforesaid plot No. 74.

6. The petitioners made a complaint before the District Magistrate, Aligarh, stating therein that his father was in possession of the aforesaid land and after his death in the year 1993 the names of the petitioners were recorded in the same year as category 10-ka. It was further stated that Civil Suit No. 108 of 1999 was filed by Smt. Safdari Khatoon w/o Azaharuddin Ahmad Bilgrami with regard to title of the disputed property which is still pending between the parties. On the complaint of the petitioners, respondent No. 2 restrained Sri Shyam Kumar, respondent No. 4 for cutting 46 trees till further orders vide order dated 24.8.2000. Thereafter, after hearing the parties and obtaining the opinion from the Government Advocate, the Regional Director, Social Forestry, Aligarh, by its order dated 27.9.2000 cancelled the order dated 24.8.2000 and permitted Shyam Kumar S/o Bhoop Singh to cut the 46 trees standing on the land in dispute within 30 days from the date of issue of the order.

7. An appeal was filed by the petitioners against the order dated 27.9.2000 before the learned District Judge, Aligarh. The Additional District Judge, Aligarh, rejected the appeal vide its order dated 3.11.2000,

8. Respondents' case is that the writ petition has been filed without arraying the necessary parties. Hence on coming to know about the case, the applicant Athar Aziz Bilgrami and Sudeesh Kumar Singh made an application under Chapter 22 Rule 5A of High Court Rules. It is submitted on behalf of the respondents that the land in dispute bearing Gata No. 74 was a Nazul Land. A lease for a period of 90 days was executed in favour of Qazi Azizuddin Ahmad Bilgrami by the Commissioner, Agra Division, Agra, on 16.8.1929. His name was duly recorded in the Government records.

9. The Qazi got the said lease renewed in the name of his wife Smt. Mubarak Fatima Begum by means of a registered deed dated 23.8.1965 for 30 years w.e.f. 16.8.1959.

10. That Qazi Azizuddin Ahmad Bilgrami was grand father of the applicants 1 and 2 who have filed an application for being heard as intervener.

11. In view of the Government policy for converting lease hold land into free hold, the respondent Nos. 1 and 2 and other lessees have nominated the applicant No. 3 and other members of his family and in pursuance whereof a sale deed dated 10.3.1999 has been executed by District Magistrate, Aligarh, on behalf of Governor in favour of applicant No. 3 and his other family members. It is stated that the entry relating to mutation of name of petitioners having been found to be fraudulent was cancelled and order of S.D.M. Koil, Aligarh, dated

22.3.1999 has been duly recorded in the, Government records.

12. It is further submitted that Suit No. 108 of 1999 was filed by the applicants against the petitioners as they were trying to interfere in their possession over khasra plot Nos. 74, 75, 84 and 85. In the said suit petitioner Nos. 1 and 2 were arrayed as defendant Nos. 1 and 2. The trial court after considering the entire aspect of the matter granted temporary injunction in favour of applicants. True copy of the order dated 10.5.1999 is filed as Annexure-C.A.4.

13. The contention of the counsel for the respondent is that the petitioners have no right title over the land in dispute, hence they cannot object to the cutting of the trees on the basis of the fraudulent entry obtained by them. It is submitted by the respondent No. 4 in his counter-affidavit that petitioners' whole claim is based on khatauni which is a forged document and that an application was filed by the intervener applicants 1 and 2 before the S.D.M. Koil, Aligarh, in which after a detailed enquiry it had been found by the S.D.M., Koil, that the entry of the names of the petitioners in the revenue record was a result of fraud and collusion between the petitioners and the Lekhpal. It is further stated that by the order dated 22.3.1999 the said entry was expunged and the S.D.M., Koil, also passed orders for taking appropriate action against the officials found guilty in this regard. This order is appended as Annexure-C.A. 1 to the counter filed by respondent No. 4.

14. It is further submitted that the petitioners are neither in possession of the land nor have any right title or interest with regard to the trees standing thereon, the respondents are in actual physical possession of the land in dispute and the petitioners are interfering only to extract the money from the applicants. It is further submitted by the respondents that the order dated 3.11.2000 of the Upper District Judge, Aligarh was passed that admittedly the question regarding the land a civil suit is pending between the parties and wherein the parties can get their right decided as the only question before the District Judge was as to who is the owner of the trees in dispute, hence the District Judge, Aligarh, has rightly held that the civil court is competent authority to decide this issue.

15. Lastly, it is submitted that on 30.11.2000 the petitioners obtained an ex parte interim order by concealment of facts and the petitioners have not come with clean hands before this Court and the petition is liable to be dismissed. In any case the findings of fact can be adjudicated by the civil court and not in the writ jurisdiction under Article 226 of the Constitution of India.

16. It has been submitted by the respondents that the sale was executed on 22.9.1999 in favour of respondent No. 3 and his family members, the applicant No. 3 has become owner of the land and is in actual physical possession of the land in question and since no suit for cancellation of sale deed has been filed by the petitioners till date, and as such the interim order dated 30.11.2000 passed by this Court is liable to be vacated and the petition is liable to be dismissed.

17. From perusal of the records and the arguments advanced by the counsel for

the parties, it is clear that the sale deed dated 22.9,1999, executed in favour of the respondents has not been challenged by the petitioners. There is also a clear finding recorded by the S.D.M., Koil, Aligarh, against the petitioners that they have got their names recorded in the revenue papers by fraudulent means in collusion with the Lekhpal as such the khatauni is of no help to them/petitioners. Concealment of facts is at large on the face of the records, it is not a fit case for interference under Article 226 of the Constitution of India, but in view of the fact that the suit is already pending and the appellate court by the impugned order has held that the matter can be decided in suit.

18. That the writ petition is not maintainable as admittedly the civil suit is pending between the parties and it is always open to the petitioners to seek appropriate orders from the trial court. The complaint filed by the petitioners was found to be mala fide and, therefore, respondent No. 2 has rightly permitted the applicants to cut the trees.

19. In view of the facts and circumstances stated above, I do not find any illegality in the impugned orders dated 27.9.2000 and 3.11.2000 passed by respondent Nos. 2 and 3 respectively.

20. In the result, the petition is dismissed. No order is made as to costs,

21. The interim order dated 30.11.2000 is vacated.