

(2019) 12 UK CK 0035

In the Uttarakhand High Court

Case No : CLMA Delay Condonation Application No. 16190 Of 2019 In Special Appeal No. 1012 Of 2019

Harmahendra Singh Alias Harmender Singh

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 07-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 300A

Citation : (2019) 12 UK CK 0035

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Aditya Singh, Pradeep Joshi

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. The application (CLMA No. 16190 of 2019), seeking condonation of 23 daysâ?? delay in preferring the Special Appeal, is not opposed by Sri

Pradeep Joshi, learned Standing Counsel for the State Government; and the delay is, therefore, condoned. The application seeking condonation of delay stands allowed.

2. This Special Appeal is preferred against the order passed by the learned Single Judge in Writ Petition (M/S) No. 2944 of 2019 dated 24.09.2019.

3. The appellant herein filed Writ Petition (M/S) No. 2944 of 2019, seeking a writ of mandamus commanding the respondents to pay him

compensation of Rs. 4,78,26,191.23 with interest at 24% per annum compounded monthly for 348 months with effect from June, 1990 to May, 2019.

4. The appellant-writ petitioner claims to be the owner of land, which was acquired by the Government, under the provisions of the Land Acquisition

Act, in the year 1988. The compensation, according to the appellant-writ petitioner, was wrongly paid by the State Government to another person, though it is the appellant-writ petitioner who is the owner of the land, and not the other person.

5. The appellant-writ petitioner claims to have made several representations to the authorities concerned and, on the ground that such representations were of no avail, he filed Writ Petition (M/S) No. 1076 of 2019, which was dismissed by order dated 26.04.2019. Aggrieved thereby, the appellant-writ petitioner filed Special Appeal No. 542 of 2019, which was also dismissed on 27.05.2019. While dismissing the Special Appeal, the Division Bench, however, granted the appellant-writ petitioner liberty to move a representation before the authorities concerned, and to pursue his case before them. After the aforesaid order of the Division Bench, the appellant-writ petitioner moved a representation before the authorities concerned who, by order dated 13.08.2019, rejected the claim by passing a reasoned order. Instead of challenging the said order, the appellant-writ petitioner invoked the jurisdiction of this Court seeking the relief aforementioned.

6. In the order under appeal, the learned Single Judge observed that the only window which was opened for the appellant-writ petitioner, in Special Appeal No. 542 of 2019, was to move a representation before the concerned authority; the appellant-writ petitioner had availed the remedy by filing a representation before the authority, which did not find favour with them and was rejected by order dated 13.08.2019; if the appellant-writ petitioner was aggrieved by any order, it was the order dated 13.08.2019; and this order had not been challenged by the appellant-writ petitioner. The writ petition was dismissed as misconceived. Aggrieved thereby, the present Special Appeal.

7. While fairly stating that the appellant-writ petitioner ought to have also challenged the order dated 13.08.2019, Sri Aditya Singh, learned counsel for the appellant-writ petitioner, would submit that this Court may consider setting aside the order under appeal and restore the writ petition to file; in such an event, the appellant-writ petitioner would be entitled to file an application seeking amendment of the prayer to include a challenge to the order dated 13.08.2019; alternatively this Court may consider granting liberty to the appellant-writ petitioner to file a writ petition afresh including a challenge to the

order dated 13.08.2019; and denying the appellant-writ petitioner his judicial remedy of seeking payment of amount, which is due to them and which was wrongly paid to a third party, would result in depriving the appellant-writ petitioner of his constitutional right under Article 300-A of the Constitution of India.

8. While the submission of Sri Aditya Singh, learned counsel for the appellant-writ petitioner, is no doubt attractive, what the appellant-writ petitioner, in effect, seeks is for a mandamus from this Court to the Government to pay the appellant-writ petitioner compensation for the land, which was acquired in the year 1988, with respect to which an award was passed in the year 1990. It is not in dispute that, pursuant to the award, compensation was paid by the Government. The appellant-writ petitioner's contention is that the compensation should not have been paid to the third party but should, instead, have been paid to them.

9. The appellant-writ petitioner has not even arrayed the person, to whom the compensation was paid in the year 1990, as a respondent in this writ petition. Questions as to whether the amount is payable to the appellant-writ petitioner, whether it was wrongly paid to the other party etc. are all disputed questions of fact which can be effectively adjudicated in a suit filed before the competent Civil Court. The appellant-writ petitioner has kept quiet for more than 31 years from the date when the land was acquired in the year 1988 till 2019 when he filed Writ Petition (M/S) No. 1076 of 2019.

While his claim of violation of his constitutional right under Article 300-A of the Constitution of India cannot be brushed aside, the fact also remains that granting the relief sought in the writ petition would, in effect, require the State Government to pay compensation, for the same land, twice over.

10. Since these are matters which this Court would not, ordinarily, examine in proceedings under Article 226 of the Constitution of India, suffice it to dismiss the appeal, leaving it open to the appellant-writ petitioner to avail his common law remedy of filing a suit before the Civil Court of competent jurisdiction.

11. Needless to state that, in case its jurisdiction is invoked, the Civil Court shall adjudicate the claim on its merits and in accordance with law uninfluenced by any observations made either in the order under appeal, or in the order now passed by us. No costs.