
(2011) 10 AHC CK 0106

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No.59237 of 2011

Mahendra Singh

APPELLANT

Vs

State of and Others

RESPONDENT

Date of Decision : 14-10-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 10 AHC CK 0106

Hon'ble Judges : A.P.Sahi, J

Final Decision : Dismissed

Judgement

A.P. Sahi, J.

Heard Sri S.K. Mishra, learned counsel for the petitioner.

The prayer made in this petition is that the Deputy Collector, Dadri, District Gautam Budh Nagar, be commanded to act on the application dated 6.9.2011 under the provisions of Section 122B of the U.P. Zamindari Abolition & Land Reforms Act 1950 which provides for restoration of possession to allottees of land under the said Act.

A preliminary objection has been taken by Sri Satendra Narain Singh, learned counsel for Ishwar Chand respondent No.7 to the effect that in view of the statement of fact made in paragraph Nos.24 to 26 of the writ petition, the present writ petition is not maintainable inasmuch as the petitioners are not entitled to press for the said relief in view of dismissal of the earlier writ petition under the judgment dated 1.9.2011.

Learned Counsel further submitted that the petitioner No.1 Mahendra Singh S/o Jai Prakash had filed an Affidavit in the previous writ petition praying for the impleadment of Ishwar Chand and, therefore, the petitioner No.1 also cannot maintain this petition. Further, the petitioner No.4 and 7 were actually petitioners in the said writ petition, as such, this second writ petition on their behalf is not maintainable. He further points out that the petitioner Nos. 2, 3, 5, 6 and 8 are

the heirs and successors of the petitioners in the previous writ petition and, therefore, they also cannot move this writ petition under the garb of a modified prayer as the previous writ petition was dismissed as not pressed.

The Court had summoned the records of Writ Petition No.45226 of 2009. The said writ petition was disposed of on the first occasion on 27.8.2009 by the following order:

"Heard the learned counsel for the petitioners and the learned Standing Counsel for the State respondents.

The grievance of the petitioners is that although there is an allotment of housing site in their favour, one Ishwar Chand is illegally occupying the said land allotted to the petitioners as a result of which the petitioners are not able to construct their houses over the land allotted to them.

Petitioners in this regard may submit a detailed representation to the Deputy Collector, Tehsil Dadri, District Gautam Budh Nagar, within 15 days from today along with a certified copy of this order and also annexing the relevant evidence in support of their claim. Whereupon the Deputy Collector shall pass appropriate orders, and if the allotment of petitioners is found to be in order, he shall get the encroachment removed and ensure the possession of the petitioners over the land allotted to them within further period of six weeks.

Petition is disposed of as above. It is made clear that the Court has not adjudicated the claim of the petitioner on merit."

The answering respondent Ishwar Chand filed a Special Leave Petition before the Apex Court contending that the judgment had been delivered without putting the answering respondents to notice as they were affected parties and that they had allotments in their favour in respect of the same land. The Special Leave Petition was allowed on 14.5.2010 with a direction to the High Court to decide the matter again after hearing Ishwar Chand and others. The said judgment is quoted herein below:

"Heard learned counsel for the parties.

Leave granted.

This appeal is directed against the impugned judgment and order dated 27.8.2009 of the High Court of Judicature at Allahabad. By the impugned order the High Court has directed the Deputy Collector, Tehsil Dadri, District Gautam Budha Nagar that if the allotment of the writ petitioners (respondents herein) is found to be in order, he shall get the encroachment removed and ensure the possession of the writ petitioners over the land allotted to them.

Learned counsel for the appellants submitted that the appellants were not parties before the High Court. He further contended that in consolidation proceedings an order was passed in favour of the appellants.

We are not going into the correctness or otherwise of the statement made by learned counsel for the appellants. However, we are of the opinion that the appellants should have been made a party before the High Court. Hence, we set aside the impugned judgment and order and remand the matter to the High Court. The writ petitioners respondents shall implead the appellants as a party in the High Court and after hearing the appellants herein and other concerned parties, the High Court shall pass a fresh order.

Appeal allowed. No order as to the costs."

After remand, the matter was again taken up by this Court and the learned single Judge found that 11 persons had filed the said writ petition. Four out of these 11 persons namely Raghuvar, Suraj Bhan, Jai Prakash and Himmat were already dead at the time of filing of the writ petition. The Court further found that their signatures had been forged on the Vakalatnama. This fact was asserted through an application filed on behalf of the respondents therein. Confronted with this situation, learned counsel for the petitioner Sri S.K. Mishra, who is also counsel in the present writ petition prayed before the Court that the writ petition should be dismissed as not pressed. The Court, taking this to be an abuse of process of the Court, dismissed the writ petition on 1.9.2011 which is quoted below:

"Sri S.K. Mishra, learned counsel appearing on behalf of the petitioners submits that he has instruction not to press the writ petition. The said request is being hotly opposed by Sri Satyendra Kumar, learned counsel for the respondents. He submits that the filing of the present writ petition is nothing but an abuse of the process of the Court.

The present writ petition has been filed on behalf of the eleven persons including Raghuvar (petitioner no.1), Suraj Bhan (petitioner no.4), Jai Prakash (petitioner no.5) and Himmat (petitioner no.6).

The learned counsel for the respondents has filed an application for dismissal of the writ petition on the ground that these persons had died long ago even before the filing of the writ petition. Raghuvar, petitioner no.1, had died on 10.10.1996, Suraj Bhan, petitioner no.4, died on 13.4.2006 and the petitioner no.5, Jai Prakash died on 28.11.2007. The exact date of death of petitioner no.6 (Himmat) could not be ascertained. Copy of this application was served on the learned counsel for the respondents way back on 30th of May, 2011 but he has not filed any counter affidavit nor he is seeking any time to do the same.

It, thus, transpired that the present writ petition has been filed on behalf of the dead persons by forging the signatures on the Vakalatnama. This is nothing but an abuse of the process of the Court and the action of the petitioner cannot be taken lightly. When the other petitioners were called that the petition has been filed on behalf of the persons who are dead, they have taken a somersault not to press the writ petition. It is appropriate, therefore, that a heavy cost should be imposed on the petitioners to teach them a lesson not to adopt such course of

action in future.

In the result, the writ petition is dismissed with cost of Rs.25,000/ (Rupees Twenty Five Thousand) which shall be paid jointly and severally by the petitioners within a period of one month through a bank draft to the newly added respondent no.5 namely Ishwar Chandra. If the amount is not paid within the aforesaid period, it will be open to Ishwar Chandra to apply for execution of this order by filing an application before the Deputy Director of Consolidation/District Magistrate, Gautan Budha Nagar who will recover the said amount along with collection charges and shall pay the amount of Rs.25,000/ (Rupees Twenty Five Thousand) to the respondent no.5."

The relief claimed in the said writ petition was practically the same that is to decide the application of the petitioner and to restore the possession of the petitioner over the land in dispute. A comparison of the prayer made therein and the prayer made in this writ petition is identical.

Apart from this, once the said petitioner had already prayed for dismissing the writ petition as not pressed and it was also dismissed with costs, then, in my opinion, the second writ petition which is for the same cause of action and further that two of the petitioners are the same and rest of the petitioners are the heirs of the other petitioners, the second writ petition is not maintainable. The preliminary objection, therefore, raised by the respondents' counsel has to be upheld.

The writ petition is dismissed with Rs. 5,000/ as costs.