

(1999) 03 AHC CK 0076

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37102 of 1992

Manju Khan

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 15-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 03 AHC CK 0076

Hon'ble Judges : Binod Kumar Roy, J and M.C.Jain, J

Final Decision : Dismissed

Judgement

1. The prayer of the petitioners is to quash the letter/order dated 9692 of the District Magistrate, Nainital as contained in Annexure10.

2. A perusal of the impugned document shows that the District Magistrate, Nainital requested the Additional District Magistrate (Nazul), Rudrapur (Nainital) to forward a proposal of transfer of 0.167 hectare lands in favour of the U.P. State Road Transport Corporation, Kumaon Division, Nainital as per the rules and prevent anyone from encroaching the lands after observing that over an area of 1.29 hectares of land in Khasra No. 307 there is an orchard of Lichi and Mango, over 0.124 hectare, north of the said plot, there is a floor mill and over 0.032 hectare of plot No. 308 there is abadi but remaining 0.167 hectare of land on the spot is vacant which is said to have been leased earlier by the Nazul Department but the period has elapsed on which a Workshop and Busstand can be erected on which 60 buses can be accommodated.

3. The petitioners assert that in the Master Plan of Ram Nagar the place of Roadways Busstand and its workshop has been earmarked by letter T elsewhere of which the District Magistrate was himself the Chairman ; that after the expiry of 30 years period of the lease dated 4111939 its renewal has been recommended and the petitioners have already submitted requisite papers and the State Government had already directed the proceedings to be stayed and the District Magistrate, Nainital to renew their lease with a stipulation that it may be

acquired for residential purposes.

4. In the counteraffidavit attached with the impleadment application No. 79065 of 1997, filed by U.P. State Road Transport Corporation, to which no Rejoinderaffidavit has been filed by the petitioners despite receipt of their copy on 41297, it has been stated, inter alia, that even though the land in question was acquired for the purposes of Corporation and its possession was already handed over on 23992 these facts have been concealed in the writ petition, which has been filed without impleading the Corporation, which is a necessary and proper party; that thereafter the Corporation issued a notice inviting tenders for construction of boundary wall which the petitioners challenged by filing Civil Misc. Writ Petition No. 13420C of 1993 in which an interim order dated 26493 was passed staying the construction of the boundary walls ; that since the public of Ram Nagar were agitating for creating of a Corporation Bus Stand, the District Magistrate was of the opinion that the land in question was suitable for construction of Corporation Bus Stand as the lease in question had already expired and thereafter the follow up action has been taken; that it is wrong to suggest that the petitioners are still in possession of the leased land; and that no cogent reason has been given explaining the gross laches of 6 months in filing the writ petition and, accordingly, it is liable to be dismissed.

5. Sri Sameer Sharma, learned Counsel appearing on behalf of the Corporation, contended that in view of the undisputed facts the land in question are in possession of the Corporation, yet it has not been impleaded as a partyrespondent and thus the writ petition is liable to be dismissed on the ground of non impleadment of this necessary party alone.

6. Sri Gupta, learned Counsel for the petitioner, in reply, disputed the claim of execution of any document in favour of the Corporation by the State and prayed for admission of this writ petition.

7. On perusal of the impugned document (as contained in Annexure 10) we are of the view that the District Magistrate, Nainital has merely asked the Additional District Magistrate (Nazul) to send a proposal. We thus do not consider necessary to quash it moreso when another writ petition is pending adjudication at the instance of the petitioners themselves.

8. In the result we dismiss this writ petition. Consequently the application filed by the U.P. State Road Transport Corporation for impleadment is also dismissed.

9. Before parting, however, it is clarified that anything said herein by us shall not stand in the way of the petitioners in pressing/claiming the reliefs prayed for by them in their subsequent writ petition, provided they have made valid grounds.

10. The office is directed to hand over a copy of this order to Sri H.R. Misra, learned Standing Counsel within two weeks for its intimation to the District Magistrate, Nainital. Petition dismissed.