
(2011) 10 AHC CK 0189
In the Allahabad High Court
Case No : Criminal M.W.P. No. 19034 of 2011

Prem Narain Shukla @ Raja	Vs	APPELLANT
State of U.P. and Another		RESPONDENT

Date of Decision : 11-10-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 1 ACR 151 : (2011) 10 ADJ 746

Hon'ble Judges : Sheo Kumar Singh, J; Jayashree Tiwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sheo Kumar Singh and Mrs. Jayashree Tiwari, JJ.—Heard Sri V. M. Zaidi, learned senior advocate assisted by his colleague in support of this petition and Sri Sand, learned Addl. Government Advocate who appeared for the State officials.

2. Challenge in this petition is the order passed by the District Magistrate, Kanpur Nagar by which representation filed by the petitioner for release of the attached property has been rejected and reference has been made as provided u/s 16 of The U. P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 for consideration of the claim by the Special Court constituted for the purpose.

3. Submission of the learned counsel for the petitioner is that order of the District Magistrate is clearly arbitrary and that is against the weight of the evidence on record and various documents filed by the petitioner in the shape of map, municipal record etc. has been over-looked or has been mis-red and no proper satisfaction has been recorded as required under the Act, and therefore, it is a case where property of the petitioner has been taken away in arbitrary manner.

4. Submission is that on these facts order passed by the District Collector is to be quashed by this Court and the remedy, if any. that may be available may not be treated as bar, as has been held by decision of this Court given in the case of

Devendra Singh Negi v. State of U. P. and others, 1993 (3) ACC 455 : 1993 ACR 184.

In support of the submission that there has to be proper reason to belief, learned counsel for the petitioner has cited decision given in case of Joti Prasad v. State of Haryana. 1993 (3) ACC 100 : 1992 ACR 658 (SC).

5. In response to the aforesaid Sri Sand, learned advocate submits that the District Collector has considered the provisions as contained in Section 15 (1) of The U. P. Gangsters and Anti-Social Activities (Prevention) Act and thereafter he refused to release the property. District Magistrate has recorded clear finding that petitioner side has failed to discharge the burden to demonstrate various facts, and therefore, if by passing the order of refusal to release the property he has made reference for adjudication of the claim by the competent Court, as provided under the Act, then no exception can be taken to the order passed by the District Magistrate.

It is further submitted that trial is to take place and after full fledged evidence the order will be passed by the competent Court and that will be subject to appeal as provided under the Act. It is for the petitioner to challenge the same either before this Court or even before higher Court. Submission is that it is not the stage where extraordinary powers of this Court is to be invoked and thus writ petition deserves simply dismissal.

6. After hearing arguments advanced, as noted in the preceding paragraphs, we propose to disposed of the matter.

7. At the very outset this Court is to observe that learned counsel for the petitioner argued the writ petition just like the matter before the appellate court/forum.

Learned counsel for the petitioner tried to refer various evidence which is said to have been filed in the shape of the map and municipal record to demonstrate the validity/genuineness of the acquisition of the property against the findings so recorded by the District Collector.

8. We are to simply observe that it is not a case where competent Court has decided the matter finally in the light of the oral and documentary evidence and thus we are not supposed to assess the evidence so as to record a finding either way.

9. Here is the case where the District Collector exercising powers under the provisions of The U. P. Gangsters and Anti-Social Activities (Prevention) Act has passed the order in which he recorded his satisfaction against expectation of the petitioner and reasons for not releasing the property and at the same time he after exercising powers as provided under 16 (2) of The U. P. Gangsters and Anti-Social Activities (Prevention) Act referred the matter to be adjudicated by the competent Court.

10. There cannot be any dispute about the fact that the competent Court is to exercise powers like civil court and after giving full fledged opportunity of leading evidence to the parties final decision in respect to the petitioner's claim is to be given.

The order of the competent Court may also be subject to appeal as provided under the Act. It is not the case where petitioner's property has been taken away in arbitrary manner finally rather it is the case where final decision is yet to be given by the Court.

11. Submission of the learned counsel for the petitioner that his property has been taken away in arbitrary manner, if accepted to be correct then in no case order of attachment or seizure etc. is to be passed. In case at the first stage it has to happen if law permits, and therefore, the argument that property of the petitioner has been taken away is without any basis and is totally misconceived thus is to be straightway rejected.

12. Submission that even if alternative remedy is there it may not be an absolute bar has no quarrel but at the same time this Court do not find any unusual situation so as to exercise powers as conferred under Article 226 of the Constitution.

Decision referred by the learned counsel for the petitioner Devendra Singh Negi (supra) and Jyoti Prasad (supra) has no application in the facts of the present case.

13. So far another judgment which was given by this Court in case of Smt. Kahkashan Parveen and another v. State of U. P., 1999 UP CrR 810 :1999 (2) ACR 1762, on which reliance has been placed there was an order passed by the District Collector u/s 14 of the U. P. Gangsters and Anti-Social Activities (Prevention) Act which was under challenge and in that very judgment it was clearly observed that satisfaction of the District Collector is not open to be challenged in any appeal and only a representation is provided before the District Collector u/s 15 of the Act and in case he refuses to release the property on such representation he is to make a reference to the court of competent jurisdiction to try an offence under the Act.

The relevant portion of para 7 of the judgment is hereby quoted :

This satisfaction of the District Magistrate is not open to be challenged in any appeal. Only a representation is provided for before the District Magistrate himself u/s 15 and in case he refuses to release the property on such representation he is to make a reference to the Court having jurisdiction to try an offence under the Act.

14. In respect to the judgment given in the case of Jyoti Prasad (supra) suffice it to say that the District Collector has recorded the satisfaction by assigning proper reason and it is not a case of either non-application of mind or exercise in an arbitrary manner. The sufficiency of the reason/evidence is not to be

permitted a ground in the writ petition straightway but that is to be demonstrated before the lower forum at the first instance where large scope of examining the things is there and thus the decision referred by the learned counsel is of no help to the petitioner at this stage.

15. In view of the aforesaid, if learned District Magistrate has chosen to make reference as provided u/s 16 of the Act, and the effective remedy to file appeal is also available thereafter to the petitioner, we are of the view that this Court is not to examine various factual aspects so as to record a finding on the question of fact in the light of evidence as tried to be placed here.

This Court is not to be converted as the court of appeal to examine various factual aspects by looking into oral and documentary evidence and that too at the first instance.

16 For various reasons so Indicated we decline to intervene and thus the writ petition fails and is dismissed.

However, it is always open for the petitioner to move before the competent Court for early disposal of the matter and if such application is moved then that is to be examined and is to be decided on merits in accordance with law, with all expedition for which no direction is required.