
(2008) 10 AHC CK 0084

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 47276 of 2008

Rangji Sahkari Awas Samiti Ltd

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 21-10-2008

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16(5)(b)

Citation : (2008) 10 AHC CK 0084

Hon'ble Judges : Ashok Bhushan, J and A.P.Sahi, J

Final Decision : Disposed Of

Judgement

1. The petitioner is a housing Cooperative Society registered under the Cooperative Societies Act, 1965, the main object whereof is to arrange land, building material and other services for its members and also to help the in constructing buildings. The petitionerSociety is in possession of a permanent lease from the erstwhile owner of the property in question which is dated 10.2.1989 and under the said deed, the lessors have given absolute right to the petitioner's Samiti to demolish whole or part of the above property and reconstruct the same and use it as it likes. The District Magistrate, Agra, on the recommendation of Respondent No. 3 has passed a restraint order on 2.7.2008 preventing the petitionersociety from demolishing the building, which has been assailed by the petitioner in the present writ petition. The order is challenged on the ground that it is without jurisdiction, arbitrary and is a motivated order with a view to defeat the final judgment of this Court dated 26.3.2008. It has further been submitted that there is no valid or legal reason to prevent the demolition of the building.

2. We have heard Sri V.K. Singh, learned senior Counsel for the petitioner, learned Standing Counsel Sri Neeraj Upadhyay for Respondent Nos. 1,2 and 3 and Sri P.C. Jain for The Uttar Pradesh Jat Mahasabha, whose impleadment application has been allowed by us. The State has already filed a counteraffidavit; to which a rejoinderaffidavit has been filed by the petitioner and

a counteraffidavit has also been filed by the newly impleaded Respondent No. 4 which has been perused by us and with the consent of parties, we proceed to finally dispose of this petition.

3. The property in question namely, "Bharatpur House" bearing municipal No. 3/15, Kandhari, Agra, was undisputedly the property of the erstwhile ruler of Bharatpur and came to be recorded in favour of a trust created by the erstwhile owners namely Bharatpur Royal Family Religious and Ceremonial Trust. The petitioner Cooperative Society is a permanent lessee from the said Trust with regard to which facts in detail are indicated in the judgment dated 26.3.2008; a copy whereof is Annexure 2 to the writ petition. After obtaining the permanent lease, the vacant land appears to have been settled and insofar as the house and constructions are concerned, the same was occupied by the Government in which the office of the Chief Development Officer was running. The part of the building which was occupied by the Chief Development Officer was vacated on 17.11.1997 and under fresh allotment proceedings, the premises was allotted in favour of the District Supply Officer, Agra, on 29.11.1998. Upon an application moved by the petitioner, the said allotment dated 29.11.1998 was set aside on 13.1.2000 against which the District Supply Officer filed a revision which was dismissed on 5.8.2000. The District Supply Officer preferred a Writ Petition being Writ Petition No. 43774 of 2000 before this Court which was also dismissed on 11.5.2001.

4. The petitioner filed 2 applications one under Section 16 (1)(b) and other under Section 16 (5)(b) under U.P. Act No. 13 of 1972. The first application was for release of the building and second for restoration of the possession on the ground that the District Supply Officer is continuing in unauthorized occupation inspite of the fact that the allotment order had already been set aside. The said applications were not being disposed of as a result whereof writ petitions were filed in which directions were issued for deciding the applications. Both the applications referred to herein above, were dismissed on 26.8.2003. The petitioner preferred 2 revisions and further filed 2 writ petitions for expeditious disposal of the writ petitions whereafter on 12.10.2007 both the revisions were decided. The revision filed by the petitioner against the refusal to release the building was dismissed. The other revision concerning the restoration of possession was disposed of with the direction that the petitioner shall retain the possession till a valid allotment is made in accordance with the provisions of the Act.

5. The petitioner filed writ petition No. 61885 of 2007 assailing the revisional order as well as the order dated 26.8.2003 whereby the release application had been dismissed. The District Supply Officer filed Writ Petition No. 56658 of 2007 assailing the order of the revisional Court whereby possession had been allowed to be retained by the petitioner till a valid allotment is made. Both the writ petitions were finally heard and the writ petition filed by the District Supply Officer challenging the restoration of possession in favour of the petitioner was

dismissed and the petition filed by the petitioner assailing the order refusing to release the building was allowed. Consequently, the building stood released in favour of the petitioner with a direction to handover possession and award all consequential damages. The petitioner was handed over possession of the building on 18.5.2008 and the aforesaid proceeding became final.

6. It is, thus, to be seen that a long drawn battle right from 1997 with regard to occupation in possession of the building was brought to a close in the aforesaid manner.

7. A new turn was given to the controversy about the said building when certain members of the Jat community through an organisation known as Uttar Pradesh Jat Mahasabha started raising objections to the effect that the building should not be permitted to be demolished as it concerns the heritage of India couple with its association with the freedom movement and the sentiments of the Jat community. The claim was that the building was constructed by the erstwhile ruler of Bharatpur Estate and it also had its roots to the time of the Mughal Emperor Shahjahan who is stated to have brought into existence the grove in which this building was situated. The Addl. City Magistrate, who was apprised of this voice of the Jat Mahasabha wrote a D.O. letter to the Police Station Incharge, Police Station Hari Parwat, Agra, stating therein that an inquiry is being made in the matter and till such application is being processed, the Police Officer should keep a vigilant watch and see to it that the nature of the building is not changed, a copy of the said letter dated 26.5.2008 is Annexure4 to the writ petition. Another complaint is said to have been made on 7.6.2008 by an alleged Society namely Bharatpur House Bachao Sangharsh Samiti, Agra; a copy whereof is Annexure1 to the counteraffidavit filed on behalf of Respondent Nos. 2 and 3. After making an inquiry and after having apprised himself of the facts, the Addl. City Magistrate withdrew his earlier order dated 26.5.2008. While withdrawing the order, the Addl. City Magistrate commented that during the inquiry full opportunity had been given to the protesters, who have not taken any steps for the protection of the monument and there was no occasion to further proceed with the inquiry. The Addl. City Magistrate also indicated that the adjoining land to the building had been earlier transferred in 1998 in favour of another housing Society yet the protesters either of the Jat Mahasabha or of the Sangharsh Samiti did not take any steps or raise any protest when the aforesaid transfer had been effected.

8. It appears that after the aforesaid order was passed by the Addl. City Magistrate, a fresh complaint was moved on 28.6.2008 before the District Magistrate; a copy whereof is Annexure2 to the counteraffidavit of Respondent Nos. 2 and 3. A report was called for by the Addl. District Magistrate from the authorities including the Archaeological Survey of India. The Superintendent of Archaeological Survey of India at Agra wrote a letter on 1.7.2008 to the Addl. District Magistrate (City) suggesting that the building should be protected as it has Historical importance and the State Government can take steps for declaring

it a protected monument. It appears that on the strength of such suggestion, the Addl. District Magistrate (City), Agra, submitted a report before the District Magistrate that the demolition should be stopped and a request should be made for declaring the building to be a protected monument. The said report also indicates an opinion obtained from the District Government Counsel (Civil) and also from the Director of Archaeological Department of the State of Uttar Pradesh. The District Magistrate approved the said report of the Addl. District Magistrate on 2.7.2008 issuing directions from stopping the demolition of the building. It is this order which is assailed in the present writ petition.

9. The petitioner, however, did not immediately rush up to this Court and certain developments took place thereafter. A representation appears to have been made by the Uttar Pradesh Jat Mahasabha to the Chief Minister on 7.7.2008. The District Magistrate had also sent a letter to the Principal Secretary, Ministry of Culture, Government of U.P., Lucknow, on 2.7.2008; a copy whereof is Annexure9 to the counteraffidavit, requesting for passing appropriate orders for either declaring the monument to be protected monument or to proceed to take such appropriate action so that the matter be resolved. A letter was received by the District Magistrate from the State Government on 22.7.2008 informing about the complaints and calling for report from the District Magistrate. The District Magistrate sent a report to the State Government on 1.9.2008 stating therein that neither the Archaeological Survey of India has declared the building to be a protected monument nor has the Archaeological Survey of India expressed any desire to do so. On the contrary, the communication of the Superintendent dated 7.7.2008 which is Annexure10 to the writ petition was reiterated wherein the Superintendent had made it clear that there are about 400 protected monuments in Agra Region and with the limited resources available, it was not possible to protect and maintain any other monument. This information had already been given to the Sangharsh Samiti as well as to the Jat Mahasabha. The letter further points out that there being no order of any competent authority for treating the building to be a protected monument, there did not appear to be any legal authority available to continue the restraint order. The District Magistrate, however, did not withdraw his order dated 2.7.2008 and further made a request seeking guidance from the State Government. It is in the aforesaid background of facts that the present writ petition was preferred on 7.9.2008 questioning the order dated 2.7.2008 passed by the District Magistrate.

10. Sri V.K. Singh, learned Senior Counsel for the petitioner, has urged that the District Magistrate has no authority under any law for the time being in force to pass such an administrative restraint order more so when the possession of the building has been handed over to the petitioner pursuant to the direction of this Court dated 26.3.2008. He further submitted that there is no legal impediment which could prevent the petitioner from proceeding to demolish the building. It has been further pointed out that the entire episode appears to have been generated by the motivation of some rival builders and political persons, who were bent upon harassing the petitioner. The nature of the protest through the

Jat Mahasabha is an orchestrated attempt to frustrate the judgment of this Court dated 26.3.2008. He further submits that the order of the Addl. City Magistrate dated 26.6.2008 and the comments of the District Magistrate himself in the letter dated 1.9.2008 make it amply clear that but for the alleged protest, there was no legal impediment in the way of the petitioner nor there were any orders passed by the State Government which could prevent the petitioner from demolition. In this view of the matter, it is urged that the entire action of the respondents is mala fide arbitrary and violative of Article 14 of the Constitution.

11. In reply, Sri P.C. Jain, learned counsel for the newly impleaded Respondent No. 4Jat Mahasabha has urged that the origin of the building relates back to the time of Emperor Shahjahan, who had brought up the grove known as Kandhari Bagh and which later came in the possession of Bharatpur Rulers, who raised the building which had witnessed a lot of scenes during the mutiny and the freedom struggle. The monument represented not only the sentiments of the Jat community but also the public at large as the building was connected with national events. He contends that the building being an heritage site deserves to be protected and, therefore, the authorities were fully justified in preventing the demolition of the building. He further contends that the State Government is still in the process of considering the matter and, as such, the petition deserves to be dismissed. He further points out that it is for this reason that a Public Interest Litigation has also been filed and which has been heard by us today upon nomination by the Chief Justice.

12. Learned Standing Counsel Sri Neeraj Upadhyay invited the attention of the Court to the letter dated 1.9.2008 and has urged that at present there is no order of the State Government declaring the premises to be a protected monument and in view of the said letter, it also appears that the Archaeological survey is not in a position to undertake any exercise on its own. He has further submitted that there is no indication of the State Government at present to have taken any steps for declaring the building to be a protected monument.

13. Having heard learned counsel for the parties, we find that the petitionerSociety succeeded in getting possession of the property after a long drawn litigation of 11 years. During the pendency of these 11 years, no protest has been raised by any of the parties nor any attempt has been made for getting the building to be declared a protected monument. It is only after the judgment of this Court dated 26.3.2008 and the handing over the physical possession to the petitioner on 18.5.2008 that complaints were generated. The District Magistrate stepped into the scene by passing an order after the Addl. City Magistrate had withdrawn his earlier order. The question as to whether the demolition could have taken place or not could not have been a matter of consideration on the administrative side by the District Magistrate except otherwise than in accordance with law. According to the letter of the District Magistrate himself dated 1.9.2008 there were no lawful proceedings which could in any way justify the continuance of the restraint order. Apart from this, even

though the matter has been reengaging the attention of the State Government, no steps have been taken for declaring the monument to be a protected monument. Thus, there appears to be no legal and valid basis for preventing the demolition on the ground that the building is of historical importance. The historical importance has to be such that the building is ultimately declared to be one as a protected monument under the provisions of The Ancient Monuments and Archaeological Sites and Remains Act, 1958. The procedure provided under the Act is exhaustive and for the preservation of such monument, The Ancient Monument Preservation Act, 1904, also gives indications. The powers and the duties prescribed therein indicate that they are to be exercised in the manner prescribed therein. The authorities cannot, on their own on a mere alleged outcry, pass an order which may in effect amount to frustrating the directions of a judicial order. In the instant case, the judgment dated 26.3.2008 had become final between the parties. To us, it appears that after the judgment was delivered, all the complaints mushroomed simultaneously without there being any indication of any protest or effort being made by these organisations to get the monument protected. The manner in which the complaints were being entertained and the administrative orders were being passed, do not indicate any steps being taken in accordance with law. These orders were being passed on account of a claimed administrative exigency to defuse the situation. Whatever be the Historical background of the building, there appears to be no justification for the District Magistrate to continue with the order dated 2.7.2008. In our opinion, the District Magistrate had no authority through such an administrative order to restrain the petitioner from proceeding to demolish the building. This is also evident from the comments of the District Magistrate himself dated 1.9.2008.

14. Having given our anxious consideration to the aforesaid aspects, the order dated 2.7.2008 is unsustainable and is hereby set aside. The writ petition stands allowed and is disposed of, accordingly.