

(2007) 08 AHC CK 0159
In the Allahabad High Court

R.D. Ram

APPELLANT

Vs

Ratan Kumar Tandon

RESPONDENT

Date of Decision : 29-08-2007

Acts Referred:

Constitution of India, 1950 — Article 227

Land Acquisition Act, 1894 — Section 16, 17, 4, 6

Citation : (2008) 2 AWC 1681

Hon'ble Judges : Rakesh Sharma, J;B.S. Chauhan, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

B.S. Chauhan, J.—This Special Appeal has been filed under the provisions of Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 against the order dated 06.08.2007 passed by the learned Single Judge in Civil Misc. Contempt Petition No. 3875 of 2005 rejecting the application for recall of its earlier orders dated 02.03.2007 and 16.03.2007.

2. This case has a chequered history, as two rounds of litigation have already been completed. The matter has gone upto the Hon'ble Supreme Court twice and in spite of the fact that several orders have been passed by various Courts, the litigation is not coming to an end.

3. The facts and circumstances giving rise to this case are that the land in dispute, i.e. Bungalow 26/14, Hastings Road (Nyaya Marg), Allahabad, measuring an area of 22528 sq. meters stood notified under the provisions of Section 4(1) of the Land Acquisition Act, 1894 (hereinafter called the "Act 1894") on 14.02.1986 and in respect of the same, declaration u/s 6 of the Act 1894 was made on 15.02.1986. As the land was urgently needed, provisions contained u/s 17 of the Act 1894 were invoked. Possession of the entire land was taken u/s 16 of the Act 1894 on 08.05.1986 and it vested in the State free from all encumbrances. In respect of the said property, an Award was made by the Special Land Acquisition Collector (hereinafter called the "Collector") on

28.10.1987 giving separate amount of compensation in respect of land, building, trees and other fixtures etc., assessing the value of the land @ Rs. 500/- per sq. meter. Against the said Award dated 28.10.1987, L.A. Reference No. 122 of 1988 was filed, which was decided by the District Judge, Allahabad on 20.07.1989 assessing the market value of the land @ Rs. 500/- per sq. meter with apportionment to 75% in favour of claimants and 25% in favour of the State, for the reason that the land was the leasehold property and the lease was to expire only after seven years of the date of acquisition. Being aggrieved, the claimants approached this Court by filing First Appeal No. 147 of 1990, which was decided on 22.10.1992 assessing the market rate of the land @ Rs. 423/- per sq. meter and further holding that the State was entitled for 50% of the compensation. However, this Court observed that the said land also ought to have been assessed under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter called the "Act 1976") and directed the authority under the Act 1976 to determine the surplus land, if any, at the hands of the persons interested and to make payment of compensation for that area under the provisions of the Act 1976. The claimants approached the Hon'ble Supreme Court by filing Civil Appeal No. 10786 of 1996, which was dismissed by the Supreme Court vide judgment and order dated 1st August, 1996. In the meanwhile, the Competent Authority under the Act 1976 vide its order dated 18.06.1993 had decided that claimants were having 13657.35 sq. meters as surplus land. Being aggrieved, they preferred a Ceiling Appeal before the District Judge, Allahabad, which was decided vide judgment and order dated 02.05.1995, wherein it was held that claimants were having only 9157 sq. meters as surplus land. Being aggrieved, the claimants preferred three writ petitions, i.e. Civil Misc. Writ Petition No. 26415 of 1995; 26416 of 1995; and 26449 of 1995. All the said writ petitions came up for hearing before the Division Bench of this Court on 9th August, 2005 wherein the issue arose as to whether the proceedings under the Act 1976 had lapsed in view of the fact that the Act 1976 stood repealed by the provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter called the "Act 1999"). The Court did not address itself to the issue as to whether in the facts and circumstances of the case, where possession had been taken on 08.05.1986 and the surplus area, if any, was to be determined notionally only for the purpose of determination of compensation payable for the area under orders of High Court as affirmed by Hon'ble Supreme Court,, the proceedings would lapse, rather recorded the concession made by the Standing Counsel appearing for the State and held that the proceedings under the Act 1976 stood abated. The Court allowed the claimants to apply before the Collector under the Act 1894 and the authority was directed to decide the matter within a period of three months from the date of its communication. The impugned orders passed by the authorities under the Act 1976 were quashed. The State authorities challenged the said judgement and order dated 09.08.2005, however, the Hon'ble Supreme Court dismissed the said SLP (Civil) No...of 2007 (CC No.572 of 2007) vide order dated 22.01.2.007 only on the ground of delay and laches.

4. The claimants approached the Collector to determine the compensation under the Act 1894 submitting their own calculation chart on 08.09.2005. The Collector, being confronted with several orders passed by this Court as well as by the Hon"ble Supreme Court earlier, decided the said application, vide order dated 01.12.2005, observing that as the matter stood finalised by the order passed earlier by this Court as well as by the Hon"ble Supreme Court, he could not reopen the issues nor he could examine the applicability of the provisions of the Act 1976. The claimants instead of challenging the order of District Collector by means of a writ petition, filed contempt application No. 3857 of 2005 Ratan Kumar Tandon v. Sri J. Ram and Ors.

5. While entertaining the contempt application, notices were issued vide order dated 14.12.2005 giving opportunity to the Collector to ensure compliance of the order passed by this Court on 9th August, 2005. When the matter was listed on 26th September, 2006, this Court held that the order dated 01.12.2005 was not satisfactory and once the order of the Authorities under the Act 1976 had been quashed by this Court observing that the said proceedings stood abated, the applicants/respondents were entitled for compensation for the entire land under the Act 1894, and the respondent No. 1 did not comply with the order of this Court in its letter and spirit. Thus, he was given one more opportunity to ensure its compliance. The matter had been listed several times. It is evident from the record that various statements had been made before the contempt Court that the compensation would be paid under the provisions of the Act 1894 and for that some time would be given to the State authorities. As the payment was not made, the officers had been directed to remain present in the Court several times but payment has not yet been made, though the Contempt Court issued several directions fixing the time limit for making the payment and lastly issued direction for making the payment with compound interest @ 10 % per annum. Being aggrieved, the appellants filed Special Appeal No. 382 of 2007 challenging the orders passed by the Contempt Court from time to time. However, the said appeal was dismissed as withdrawn with liberty to the appellants to file an application for recall of the orders dated 02.03.2007 and 16.03.2007. (Vide order dated 02.03.2007, a direction was issued to make payment with 10 percent compound interest per annum and in case of non-payment, the District Collector, Principal Secretary (Culture) and the Principal Secretary (Revenue) were directed to remain present, vide order dated 16.03.2007 direction was issued to make the entire payment to the applicants before the next date of listing and in case of non-payment, the District Collector, Principal Secretary (Culture) and the Principal Secretary (Revenue) were directed to remain present before the Court. Thereafter, an application to recall the aforesaid two orders was filed, which has been dismissed vide impugned order dated 6th August, 2007. Hence this Special Appeal.

6. Shri Shashi Nandan, learned Senior Counsel with Shri Anoop Trivedi, appearing for the appellants has submitted that under the orders of this Court and the Hon"ble Supreme Court, proceedings under the Act 1976 were only for

the purposes of determining the surplus area for payment of compensation specifically as possession of the land had already been taken by the State Government on 08.05.1986 and the land had vested in the State free from all encumbrances. The question of abatement of such proceedings under the Act 1976 would not arise. Any judgment or order of the Court based on consent of the counsel is not enforceable in case the consent of the Standing Counsel was in contravention of law or it was not in conformity with the judgment and order of the Hon"ble Supreme Court. The Act 1999 provides that the proceedings under the Act 1976 would abate provided the tenure holder was still in actual and physical possession. In the instant case, as the possession had been taken 20 years ago, the proceedings under the Act 1976 would not lapse and these proceedings were required only to determine as what could have been the area of the surplus land. Even if the proceedings had lapsed, the Collector passed the order dated 01.12.2005 in compliance of the order of this Court dated 9th August, 2005, if the applicants were so aggrieved, they could have challenged the said order by filing a writ petition but contempt proceedings were not maintainable. It has further been urged by Shri Shashi Nandan that contempt proceedings cannot be used as execution proceedings for the purpose of recovery of the amount of compensation. More so, when there was no specific direction by this Court in its order dated 9th August, 2005, for making payment of compensation, the direction was only to consider the application for compensation. In any event, the contempt Court could not calculate the amount of compensation and issue a direction to make payment with 10 percent compound interest annually. Thus, the order impugned passed by the Contempt Court is liable to be set aside.

7. On the contrary, Shri R.N. Singh, learned Senior Counsel with Shri A.K. Rai, appearing for the applicant respondents, has submitted that in case the order dated 9th August, 2005 attained finality as the SLP against the same has been dismissed on the ground of delay and laches vide order of the Hon"ble Supreme Court dated 10.01.2007, the respondents are bound to make payment of compensation under the Act 1894. The order passed by the respondent No. 1 was in flagrant violation of the mandate issued by the Division Bench in its order dated 9th August, 2005, therefore, it was a clear-cut case of contempt and no fault can be found with the orders passed from time to time by the Contempt Court. Order dated 09.08.2005 is a consent order. More so, during the pendency of the contempt proceedings, State Authorities had given undertakings on affidavit that payment of compensation under the Act 1894 would be made, question of non-compliance of these undertakings itself amounts to contempt of the Court. Order dated 01.12.2005 passed by the respondent is merely a technical compliance not a compliance in letter and spirit of the judgment and order of this Court dated 09.08.2005. The appeal lacks merit and is liable to be dismissed.

8. We have considered the rival submissions made by learned Counsel for the parties and perused the record.

9. Admittedly, the possession of the land had been taken on 8th May, 1986. The proceedings under the Act 1976 had never been initiated by the authority under the said Statute. In fact, proceedings under the Act 1976 stood initiated in pursuance of the judgment and order of this Court dated 22.10.1992 only for determination of the rate to be applied for payment of compensation. The said judgment was upheld by the Hon"ble Supreme Court vide judgment and order dated 1st August, 1996. The authority initiated proceedings under the Act 1976 and declared the land as surplus to certain extent. The Appellate Court modified that order, however, this Court in First Appeals declared the proceedings as stood abated, though the judgment is based on concession made by the Standing Counsel and the SLP against the same has been dismissed by the Hon"ble Supreme Court on the ground of delay and laches.

10. It is settled law that in a raise where the order is passed by the Authority through mistake, inadvertence or by mis-understanding of the meaning and purport of the order, passed by the Court but unless it is intentional, no charge of contempt can be brought home. In B.K. Kar Vs. The Chief Justice and His Companion Judges of The High Court of Orissa and Another, the Hon"ble Supreme Court has observed as under:

There may perhaps be a case where an order disobeyed could be reasonably construed in two ways and the subordinate court construed it in one of those ways but in a way different from that intended by the superior court. Surely, it cannot be said that disobedience of the order by the subordinate court was contempt of the superior court. There may possibly be a case where disobedience is accidental. If that is so, there would be no contempt.

11. Similarly, in Debabrata Bandopadhyay and Others Vs. The State of West Bengal and Another, the Hon"ble Supreme Court has observed as under:

A question whether there is contempt of court or not is a serious one. The court is both the accuser as well as the judge of the accusation. It behoves the court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in courts and tribunals. It is only when a clear case of contumacious conduct not explainable otherwise, arises that the contemnor must be punished.... Punishment under the law of Contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged. (Emphasis added)

12. The same view had been reiterated by the Hon"ble Apex Court in Bharat Coking Coal Limited Vs. State of Bihar and Ors, Capt. Dushyant Somal Vs. Smt. Sushma Somal and Another, and Niaz Mohammad and others, etc. etc. Vs. State of Haryana and others,

13. Thus, there has to be a clear-cut direction, coupled with a wilful disobedience in compliance thereof, a party may lodge a complaint for contempt otherwise

not. There may be a case where contempt petition may be filed that the judgment and order had been complied with only partially. In such a case the court has to examine: what were the circumstances under which the judgment could not be given effect to fully. In *Lt. Col. K.D. Gupta Vs. Union of India (UOI) and Others*, , this aspect was considered; as petition was filed that the entire amount, as directed by the Hon''ble Supreme Court, had not been paid to the applicant. The Union of India took the plea that before making the payment to the applicant therein, the Authority was under an obligation to deduct the Income Tax at Source. The Hon''ble Supreme Court rejected the plea of contempt and held that in such a case neither the plea of mala fide nor of wilful disobedience can be entertained as the Authority had acted bona fide in compliance of the law in force. If the order is capable of being interpreted in two different ways, the court should not resort to the contempt proceedings.

14. In the case of *Manish Gupta and others Vs. Gurudas Roy*, , the Apex Court observed that where an Authority passes the order in pursuance of the judgment of a Court and the order is to be passed in accordance with the Rules holding the field and the party is aggrieved of such an order, it is not permissible for such a party to bring a contempt petition if he is aggrieved of such an order. If the party feels that the order has not been made in accordance with the relevant rules, he may pursue the remedy available to him in law for enforcing his rights.

15. In *Abdul Razack Sahib Vs. Mrs. Azizunnissa Begum and Others*, , it was held that contempt proceedings should not be used as "legal thumb screw" by a party against his opponent for enforcement of his claim.

16. A Constitution Bench of the Hon''ble Supreme Court, in *The State of Bihar Vs. Rani Sonabati Kumari*, , has categorically held that provisions contained in Contempt of Courts Act, deal with the wilful defiance of the order passed by the Court. Thus, no order of punishment be passed if the Court is satisfied that the Authority/party was, in fact, under a misapprehension as to the scope of the order or there was an unintentional wrong for the reason that the order was ambiguous and reasonably capable of more than one interpretation or the party never intended to disobey the order but conducted himself in accordance with the interpretation of the order.

17. The contempt proceedings are quasi-criminal in nature and are, thus, punitive. The standard of proof required to establish a charge in contempt proceedings is the same as in any other criminal proceedings, and has to be proved beyond reasonable doubt. The guilt of a person for having committed contempt of court must rest on reasonable certainty. Suspicion, no matter how strong and speculative, must not form the basis of contempt. Vide *Andre Paul Terence Ambard v. The Attorney General for Trinidad and Tabago* AIR 1936 PC 141; *Sukhdeo Singh v. Hon''ble The Chief Justice S. Teja Singh and Hon''ble Judges of the Pepsu High Court at Patiala* AIR 1954 SC 186 ; *S. Abdul Karim and Others Vs. M.K. Prakash and Others*, *V.G. Nigam and others Vs. Kedar Nath Gupta and another*, ; *Murray and Co. Vs. Ashok Kr. Newatia and Another*, ;

Mrityunjay Das and Another Vs. Sayed Hasibur Rahaman and Others, and Chhotu Ram Vs. Urvashi Gulati and Another,

18. In T.N. Godavarman Thirumulpad through the Amicus Curiae Vs. Ashok Khot and Another, the Hon''ble Supreme Court also referred to the issue of mensrea and personal element in the alleged contumacy.

19. In R.N. Dey and Others Vs. Bhagyabati Pramanik and Others, , the issue arose as to whether the contempt proceedings can be used for execution of a decree. The Hon''ble Apex Court held as under:

Normally, it can not be used for execution of a decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the Court is to be exercised for maintenance of the court's dignity and majesty of law. Further, an aggrieved party has no right to insist that the Court should exercise such jurisdiction as contempt is between the contemnor and the court....

Even presuming, that the claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled to recover the same by executing the said award wherein the State can or may contend that the award is a nullity. In such a situation, as there was no wilful or deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified.

(Emphasis added)

20. In Babu Ram Gupta Vs. Sudhir Bhasin and Another, the Apex Court held that consent decree is required to be executed in the Court and initiation of contempt proceedings is not the appropriate remedy.

21. In All India Regional Rural Bank Officers Federation and Ors. v. Government of India and Ors. AIR 2002 SC 1398, the Hon''ble Supreme Court examined the notification issued by the Government of India purportedly in compliance with the Hon''ble Supreme Court decision and came to the conclusion that it was not in conformity with the said order, but the same did not involve deliberate violation thereof and in such a situation, the Court held that it would not be safe to punish any person under the Contempt of Court's Act rather, the Hon''ble Supreme Court quashed the notification and directed the Central Government to issue a fresh notification for proper implementation of the judgment and order passed by it.

22. In Director of Education, Uttaranchal and Others Vs. Ved Prakash Joshi and Others, the Hon''ble Supreme Court held that while dealing with an application for contempt, the Court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. If there was any ambiguity or indefiniteness in the order, it is for the party concerned to approach the higher court if according to him the same is not legally tenable. The Court exercising the contempt jurisdiction cannot take upon itself the power to decide the original proceedings in a manner not dealt with by the Court passing

the judgment and order right or wrong, the order has to be obeyed. The contempt court cannot traverse beyond the order, non-compliance of which is alleged i.e., taking note of what should not have been done or what should have been done. The Contempt Court cannot test the correctness of the order or give additional directions or delete any direction as it would amount to exercising review jurisdiction which is impermissible and indefensible.

23. In *State of Orissa and Another Vs. Aswini Kumar Baliarsingh*, the Supreme Court after considering large number of its earlier judgments came to the conclusion as under:

The learned Counsel, however, may be correct in contending that while exercising its contempt jurisdiction, the High Court may, in a given case issue appropriate direction, although no penal action is taken against contemnors. But, even in respect thereof, a finding would be required to be arrived at to the effect that the contemnors have disobeyed the order of the Court. Only when such a finding is arrived at, the Court may in exercise of its inherent jurisdiction put the parties to the same position as if its order was not violated".

24. In *Smt. Shail Vs. Shri Manoj Kumar and Others*, the Hon''ble Supreme Court held that even while dealing with the contempt jurisdiction, the Court can exercise its power under Article 227 of the Constitution and it is not limited only to issue direction or guiding the inferior court as to manner in which it would proceed hence, but also has jurisdiction itself to pass such a decision or direction as the inferior Court or Tribunal should have made. But, such powers must be exercised sparingly and with care and caution.

25. In *Midnapore Peoples'' Co-op. Bank Ltd. and Others Vs. Chunilal Nanda and Others*, the Hon''ble Supreme Court held that under the contempt proceedings it is not appropriate to adjudicate or decide any issue relating to the merit of the dispute between the parties. More so, issuance of any direction in addition to what has been directed by the order, violation of which is alleged, is not permissible. In the said case, the Contempt Court had revoked the suspension order and directed for giving arrears of salary within a stipulated period. The Apex Court held that passing such orders would amount to adjudication of rights and liabilities of the parties, an issue not in contempt proceedings.

26. Similar view has been reiterated in *J. Parihar Vs. Ganpat Duggar and others*, wherein the Apex court held that if in compliance of the order of the High Court a seniority list had been drawn, the contempt application alleging that the seniority list had not been drawn in conformity with the order of the High Court was not justified as such an exercise may not be in wilful disobedience of the Court''s order. The direction given by the Contempt Court to draw a fresh seniority list was held to be without jurisdiction.

27. In *Lalith Mathur V. L. Maheswara Rao*, (2000) 10 SCC 285 the Hon''ble Supreme Court examined a case wherein the State Government considered the case of a party in pursuance of the order of the Court and rejected the same on

merit. Contempt proceedings were initiated. The Court held that in such a case where the order passed by the Court has been complied with, the appropriate proceedings is to challenge the orders passed by the State Government in a fresh writ petition and not by initiating contempt proceedings.

28. The issue of enforcement/execution of the consent decree has also been considered by the Court's from time to time. It remains settled law that there can be no justification for not giving effect to such a consent order for the reason that in such a case, the issue remains regarding the compliance of the order of the Court based on consent of the parties and such an order is not merely an order, rather, it requires approval of the course of action consented to. Vide *Bank of Baroda v. Sadruddin Hasan Daya and Anr.* AIR 2004 SC 942 ; and *Rama Narang Vs. Ramesh Narang and Another*,

29. In *Smt. Pushpaben and Another Vs. Narandas V. Badiani and Another*, ; *Shanti Sarup Gupta Vs. Anjuman Isnai Ashria*, ; and *Mohd. Aslam alias Bhure Vs. Union of India*, , the Hon"ble Apex Court held that undertaking given to the Court by a party requires compliance otherwise it's violation amounts to contempt of Court and in case the party, which has given an undertaking, fails to satisfy the Court by placing sufficient material as to why the undertaking could not be complied with, he is bound to be punished. The logic behind this, is that a party after giving an undertaking before the Court, cannot be permitted to take a somersault, as the undertaking cannot be permitted to be an employ to subterfuge the contempt proceedings.

30. In *Dr. (Mrs.) Roshan Sam Joyce Vs. S.R. Cotton Mills Ltd. and others*, the Apex Court held that not complying with the undertaking given before the Court amounts to deceiving the Court and the other party. Therefore, such a person becomes guilty of committing contempt of the Court.

31. In *Amar Chand Kapoor v. Roshanlal and Ors.* 1967 AU 442, this Court explained the meaning of word "Undertaking" observing that the said expression may not necessarily mean a compromise before the Court rather it may simply be a solemn promise by a party to the other party.

32. The reason why breach of an undertaking given to a Court amounts to contempt is that the contemnor by making false representation to the Court, obtains benefit for himself and if he fails to honour the undertaking, he plays a serious fraud upon the Court and thereby obstructs the course of justice and violation of an undertaking becomes analogous to breach of an injunction. Vide *Chhaganbhai Norsinbhai Vs. Soni Chandubhai Gordhanbhai and Others*, and *Hoshiam Shavaksha Dolikuka Vs. Thrity Hoshie Dolikuka*,

33. In such a case, the Court may not be vindictive, however, it cannot permit the litigant to break, with impunity, the undertaking given by him for the reason that once an undertaking is given in a pending proceeding on the faith of which the Court sanctions a particular course of action or inaction, has the same force as an injunction made by the Court and the breach of the undertaking is

misconduct amounting to contempt. However, the undertaking may not be vague, rather it should be based on clear understanding of the parties or the statement made by the Counsel should be unambiguous and crystal clear.

34. Thus, the law on the issue can be summarised that punishment for contempt is permissible provided there is a disobedience of a clear-cut order of the Court and the order does not require any kind of interpretation. The consent decree may generally be executed through the execution proceedings rather than by initiation of contempt proceedings. However, in case an undertaking is given to the Court, its non-compliance amounts to contempt. The Court cannot go beyond the terms of the order, non-compliance of which is alleged nor the contempt Court can issue a fresh direction in addition to what has been directed in the main judgment and order.

35. The instant case requires to be examined in the light of the aforesaid settled legal proposition.

36. The issue as to whether where the possession had been taken 20 years ago and the authorities were directed only to calculate the surplus area under the Act 1976, for the purposes of making payment of compensation, the proceedings under the Act 1976 would lapse, merely remains an academic issue, for the reason that the Division Bench of this Court had quashed all the orders passed by the authorities under the Act 1976 and this Court cannot sit in appeal against the said order dated 9th August, 2005 or review that order. More so, the SLP against the said order has been dismissed on the ground of delay and laches by the Hon''ble Supreme Court. Thus, judicial propriety demands not to entertain the issue further. Thus it remains undisputed that the order dated 9th August, 2005 attained finality. In pursuance of the said judgment and order dated 9th August, 2005, the Collector considered the application filed by the claimants and passed the order dated 01.12.2005 that in view of the earlier passed by this Court as well as by the Hon''ble Supreme Court, it was not possible for him to reopen the issues. Such an order could be challenged by the applicants by filing a writ petition. Instead, they filed a contempt petition before the Court.

37. The Division Bench vide order dated 09.08.2005 allowed the writ petitions of the claimants/applicants by the following order:

In such circumstances, we are of the view that the petitioner is entitled to apply before the appropriate authority under the Land Acquisition Act and the Authority in such case will decide the matter within a period of three months from the date of communication of this order before him. As a result whereof, the impugned order stands quashed".

38. The Collector, while considering the applications filed by the claimants took into consideration the earlier orders passed by this Court as well by the Hon''ble Apex Court and rejected the representation by an order, the English translation of which is as follows:

It is evident from the above, that in respect of the land in dispute, after the decision of the District Court, Hon"ble High Court, and Hon"ble Supreme Court, Special Land Acquisition Officer is not competent to review the order. Nor the undersigned is competent to consider in respect of determination of the surplus area under the Urban Land (Ceiling and Regulation), Act. Nor he is competent to award compensation in respect of the land declared surplus in favour of the State. Thus, representation of the applicants is rejected.

39. The learned Judge while dealing with the contempt application passed several orders. The order dated 26.09.2006 records that the order dated 01.12.2005 passed by the authority concerned has been passed observing that he could not pass any further order with regard to compensation for the surplus land in view of the earlier orders passed by this Court as well as by the Hon"ble Supreme Court. The learned Judge further observed as under:

A perusal of the record shows that the claim set up by the applicant after the remand order of the Division Bench before the opposite party was sketchy but all the aforesaid facts are duly mentioned in the order of the opposite party. Once the order of the Ceiling Authorities have been quashed as having abated, prima-facie, the applicant was entitled for compensation for the land declared surplus.

Thus, it is apparent that the opposite party has not complied with the order of the Division Bench in its letter and spirit. He is granted one more opportunity.

40. On the next date, i.e. 5th October, 2006, the Contempt Court observed as under:

A perusal of the record shows that the claim set up by the applicant after the remand order of the Division Bench before the opposite party was sketchy but all the aforesaid facts are duly mentioned in the order of the opposite party. Once the order of the Ceiling Authorities have been quashed as having abated, prima-facie the applicant was entitled for compensation for the land declared surplus.

Thus, it is apparent that the opposite party has not complied with the order of the Division Bench in its letter and spirit. He is granted one more opportunity.

41. In its order dated 2nd March, 2007, the Contempt Court further observed as under:

Today, the learned Advocate-General has stated that the matter may be adjourned and be listed after two weeks by that time the amount shall be paid. Without entering into the merits of the adjournment, the prayer is granted.

In case, the entire money due in all the three connected contempt petitions which are listed today is not paid to the applicant together with 10% per annum compound interest from the date of the writ order till the date it is actually paid, the opposite party No. 4 and the Principal Secretary, Cultural Department and the Principal Secretary, Revenue shall appear in person.

(Emphasis added).

42. In its order dated 16th March, 2007, the Contempt Court further directed as under:

However, neither the calculation nor details have been provided in the affidavit as to how the deponent has calculated the aforesaid amount to be paid, specially when the calculations given in Annexure-2 of the affidavit in the contempt petition showing the outstanding dues upto 9.8.05 amount to Rs. 1,7,72,629/-, remains un rebutted.

43. The Contempt Court while rejecting the application for recall, had taken note of all previous orders and recorded a finding that the Land Acquisition Collector ought to have paid the compensation under the Act 1894 in pursuance of the judgment and order dated of this Court dated 9th August, 2005.

44. It is also worth noting that on behalf of the officers of the State, statements were made that payment would be made and time was sought to comply with the judgment and order of this Court dated 9th August, 2005. A prayer in writing was also made in the application filed in March, 2007 by the Standing Counsel wherein relief sought was "to grant some time for making actual payment to the concerned persons in all the three contempt petitions". Along with the said application, the affidavit of Dr. Hari Om, the then District Collector Allahabad was filed wherein in paragraphs 7 to 11, an assurance was given that the payment of compensation would be made. On record, there are communications between various authorities of the State for releasing the amount for making payment of compensation. Not only that, a statement was made on 2nd March, 2007 by the learned Advocate General, who appeared before the Contempt Court and sought adjournment for two weeks, that "by that time, the amount would be paid".

45. Several legal issues have been agitated in this appeal, particularly, as to whether it was permissible for the Division Bench vide its judgment dated 9th August, 2005 to nullify the judgment dated 22.10.1992 of the earlier Division Bench of this Court, which stood affirmed by the Hon'ble Supreme Court by its judgment dated 01.08.1996 wherein direction had been issued to calculate whether claimants were having any surplus land under the provisions of the Act 1976; and in case possession itself had been taken in 1986, whether the proceedings under the Act 1976 would lapse in view of the Act 1999; whether the Standing Counsel was competent to make any concession in favour of the claimants considering that the provisions under the Act 1976 stood repelled; and whether such concession was in consonance with the statutory provisions.

46. Judicial propriety demands that we must not deal with any issue covered by the judgment and order of this Court dated 9th August, 2005 against which the SLP was dismissed by the Hon'ble Supreme Court, though only on the ground of delay and laches.

47. We fail to understand as to under what circumstances, in spite of the assurances given by the State Officers and the statement made by the highest Law officer of the State before the Contempt Court, they did not make the

payment.

48. Be that as it may, several times the learned Standing Counsel made statement before the Contempt Court that the Government was willing to pay the amount and it was on the basis of the correspondence that had been made between the various departments of the State that time was prayed and granted by the Contempt Court to make the payment. The highest Law Officer of the State, learned Advocate General also made a statement on 2nd March, 2007 seeking adjournment for two weeks stating that by that time the amount would be paid. The appellants are, therefore, even guilty of not complying with the undertaking given before the Contempt Court that the amount would be paid. However, in the facts and circumstances of the case, we do not see any justification for the learned Contempt Court to direct for payment of compensation with 10 percent compound interest and in view thereof, the appeal deserves to be allowed only to that extent.

49. The appeal succeeds and is allowed partly. The order of learned Contempt Court dated 2nd March, 2007 imposing condition for making payment with 10 percent compound interest is set aside. The State authorities may now make the payment as indicated above within one month from today.