
(2012) 01 AHC CK 0472
In the Allahabad High Court
Case No : Misc. Bench No. - 11669 of 2011

SGS Construction and Developers Pvt.Ltd.	APPELLANT
Vs	
UP Awas Avem Vikas Parishad and Others	RESPONDENT

Date of Decision : 06-01-2012

Acts Referred:

Constitution of India, 1950 — Article 215, 226
Contempt of Courts Act, 1971 — Section 14

Citation : (2012) 01 AHC CK 0472

Hon'ble Judges : Uma Nath Singh, J;Devendra Kumar Arora, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This Court on 22.11.2011 after hearing learned counsel for parties, passed the following order :

We have heard learned counsel for parties and perused the pleadings of writ petition. Shri Vikas Singh, learned senior counsel, appearing for petitioner submitted that the properties in dispute are situated in Uttar Pradesh i.e. Ghaziabad, but the recovery proceedings have been instituted before the Debt Recovery Tribunal, Delhi. The Recovery Officer on an application made by the petitioner passed an order on 06.09.2011, vide Annexure 6, but the said order has not been complied with and now the opposite party no.3 has filed an application for modification which is pending before the Recovery Officer. Moreover, the Recovery Officer has not yet passed any order on the objections filed towards his order. On being asked a pointed question during the course of hearing, as to how the writ petition filed in respect of the properties situated in Ghaziabad would lie before this Bench, learned senior counsel Shri Vikas Singh referred to and relied upon a Constitution Bench judgment of Hon'ble the Apex Court reported in Sri Nasiruddin Vs. State Transport Appellate Tribunal, to contend that if a part of cause of action arises within the jurisdiction of Lucknow Bench of this High Court and the rest within the jurisdiction of Allahabad Bench,

on the choice of litigant, this Bench can decide the entire dispute. Paragraphs 37 and 38 of the aforesaid judgment being relevant on reproduction read as:

37. The conclusion as well as the reasoning of the High Court is incorrect. It is unsound because the expression "cause of action" in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow then Lucknow would have jurisdiction though the original order was passed at a place outside the areas in Oudh. It may be that the original order was in favour of the person applying for a writ. In such case an adverse appellate order might be the cause of action. The expression "cause of action" is well-known. If the cause of action arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified Oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in Oudh it would be open to the litigant who is the dominus litis to have his forum conveniens. The litigant has the right to go to a Court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The choice is by reason of the jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court. Similarly, if the cause of action can be said to have arisen part within specified areas in Oudh and part outside the specified Oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The Court will find out in each case whether the jurisdiction of the Court rightly attracted by the alleged cause of action.

38. To sum up. Our conclusions are as follows. First there is no permanent seat of the High Court at Allahabad. The seats at Allahabad and at Lucknow may be changed in accordance with the provisions of the order. Second, the Chief Justice of the High Court has no power to increase or decrease the areas in Oudh from time to time. The areas in Oudh have been determined once by the Chief Justice and, therefore, there is no scope for changing the areas. Third, the Chief Justice has power under the second proviso to paragraph 14 of the order to direct in his discretion that any case or class of cases arising in Oudh areas shall be heard at Allahabad. Any case or class of cases are those which are instituted at Lucknow. The interpretation given by the High Court that the word "heard" confers powers on the Chief Justice to order that any case or class of cases arising in Oudh areas shall be instituted or filed at Allahabad, instead of Lucknow is wrong. The word "heard" means that cases which have already been instituted or filed at Lucknow may in the discretion of the Chief Justice under the second proviso to paragraph 14 of the order be directed to be heard at Allahabad. Fourth, the expression "cause of action" with regard to a civil matter means that it should be left to the litigant to institute cases at Lucknow Bench or at Allahabad Bench according to the cause of action arising wholly or in part within either of the areas. If the cause of action arises wholly within Oudh areas then the Lucknow Bench will have jurisdiction. Similarly, if the cause of action arises wholly outside the specified

areas in Oudh then Allahabad will have jurisdiction. If the cause of action in part arises in the specified Oudh areas and part of the cause of action arises outside the specified areas, it will be open to the litigant to frame the case appropriately to attract the jurisdiction either at Lucknow or at Allahabad. Fifth, a criminal case arises where the offence has been committed or otherwise as provided in the Criminal Procedure Code. That will attract the jurisdiction of the Court at Allahabad or Lucknow. In some cases depending on the facts and the provision regarding jurisdiction, it may arise in either place.

In view of the position clarified by Hon'ble the Apex Court vide the aforesaid judgment, learned senior counsel submitted that since prayer no.1 relates to an order passed by the U.P. Awas Evam Vikas Parishad on the permission granted by the State Government of Uttar Pradesh, this Bench can exercise jurisdiction over the entire dispute.

Hence, issue notice. Dasti as well.

Moreover, property no.6 is the subject matter of the order of exchange which has been passed by the U.P. Awas Evam Vikas Parishad, opposite party no.1, on the permission granted by the State Government of Uttar Pradesh with Headquarters at Lucknow. We thus direct that further proceedings in respect thereof shall remain in abeyance till the next date of hearing. However, demarcation, if any, pending, or likely to start on application, if any, to be made by the parties, shall continue.

We also clarify that this order shall not create any bar in implementing the directions in respect of property nos. 1 to 5, as contained in the order dated 06.09.2011, Annexure 6, passed by the Recovery Officer.

List on 15.12.2011."

2. Thus, the aforesaid order was passed in the presence of learned Standing Counsel for the State as well as learned counsel for U.P. Awas Evam Vikas Parishad on the ground that the property in question is situated in Ghaziabad and the order of exchange was passed by U.P. Awas Evam Vikas Parishad, opposite party no.1 on the permission granted by the State Government.

3. However, we are surprised and feel anguished that the Housing and Urban Development Corporation Limited has filed an affidavit through one Shri Jai Prakash Nahar, Deputy General Manager(Law) with contemptuous averments vide paragraph 2 which on reproduction reads as :

2. That the present petition has been filed in this Court with ulterior motive knowingly well that Delhi High Court may not grant any relief in such cases. It is important to note that the petitioner has its registered office at Delhi and is operating from Delhi, the answering respondent has its office at Delhi, RO, DRT Delhi is taking steps as per law for recovery of the debts of the answering respondent and all proceedings prior to this petition was filed before RO & DRT, Delhi which are within overall supervision and superintendence of Delhi High

Court. The petition smells malafide and as such is liable to be dismissed with costs.

4. Needless to say that we are not infallible and if the deponent felt aggrieved by this order, he could have argued the matter on merit or challenged the order before Hon"ble the Supreme Court in stead of making contemptuous and offensive averments against this High Court which constitute contempt on the face of this court.

5. Thus, this Court in exercise of its powers u/s 14 of the Contempt of Courts Act read with Article 215 of the Constitution of India direct the Director General of Police, State of U.P. to take deponent Shri Jai Prakash Nahar with the help of Commissioner of Police, Delhi, in custody forthwith for production before this Court on 09.01.2012.

6. As the affidavit has been vetted, settled and filed by Shri A.K. Singh and Shri Vibhu Shankar, Advocates, from Delhi, let a notice issue to them to show cause as to why proceedings for committing criminal contempt not be initiated against them in terms of judgments in re : Sanjiv Datta and two others reported in In Re: Sanjiv Datta and Others, and Shamsher Singh Bedi Vs. High Court of Punjab and Haryana, .

Later on:

7. At this stage, a hand written unconditional apology on behalf of HUDCO and its learned counsel as aforesaid is filed in Court. We take the apology on record and defer the implementation of earlier part of the order till 18.1.2012.

8. We, however, direct the Chairman, HUDCO and Shri Jai Prakash Nahar, Deputy General Manager(Law) to remain present in Court on 18.1.2012 with affidavits to show cause as to why they should not be proceeded against for making contemptuous and offensive averments in affidavit.

9. Let this order be communicated by learned counsel for HUDCO to the officers as aforesaid for compliance.

10. Interim order to continue till next date of listing.