

(2012) 06 AHC CK 0072

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 30214 of 2012

Shivraj Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-06-2012

Acts Referred:

Citation : (2012) 8 ADJ 334 : (2013) 1 AWC 309

Hon'ble Judges : Sudhir Agarwal, J;P.K.S. Baghel, J

Bench : Division Bench

Advocate : Usha Srivastava and Vinod Kumar Srivastava, for the Appellant; K. Shahi, Om Subhash Tripathi, Addl. C.S.C. and S.C., for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner has sought a mandamus commanding the respondents to stop construction of Primary Pathshala over Gata Nos. 2172 Ga, 2172 Kha, 2172 Ka and 2171, measuring area 0.0410, 0.0410, 0.0400, 0.190 hectare situated Mazra Rampur Majhgaon, Post Bhojpur, Tehsil Sadar, District Farrukhabad. We find that the order stopping construction was already passed by the Sub-Divisional Magistrate, Sadar, Farrukhabad, as is evident from Annexure-"5" at page 27 of the writ petition, which is an application said to have been signed by the petitioner and five others on 30.5.2012. On the said application there was an endorsement by one Raj Kumar Singh Rathore, Advocate, President, Samajwadi Parti, Farrukhabad addressed to Sub-Divisional Magistrate requiring him to stop constructions forthwith and thereupon an order for stopping construction was passed by the Sub-Divisional Magistrate on the same date i.e. 30.5.2012. There was, thus, no reason to pursue this writ petition further but then what this Court find disturbing is that on a direction/instruction of an Advocate, who simultaneously has put in his seal mentioning his status as President of a political party, the Sub-Divisional Magistrate without any enquiry and without any application of mind on his own, straight way, on the same day, passed order dated 30.5.2012 in the terms he was so required by the said Advocate claiming

to enjoy a political status also. It is in this circumstances, we required the Sub Divisional Magistrate to explain the position by our order dated 13.6.2012.

2. Today, Sri Om Subhash Tripathi, learned Additional Chief Standing Counsel has placed before us a copy of the letter dated 14.6.2012 of the District Magistrate, Farrukhabad appending therewith the explanation submitted by the Sub-Divisional Magistrate/Deputy Collector, Sadar, Farrukhabad dated 14.6.2012. Sri B.D. Verma, the concerned Sub Divisional Magistrate is also present.

3. The aforesaid letter also contained certain documents including the alleged enquiry report of Revenue Inspector and Tehsildar, which are dated 14.6.2012, These documents make it very clear that on 30.5.2012 when the order was passed by the Sub-Divisional Magistrate even a preliminary enquiry or a fact finding enquiry was not conducted by any of the authorities. The Sub-Divisional Magistrate straight way passed order in terms an endorsement was made by Sri Raj Kumar Singh Rathore, Advocate showing his political status also in the seal affixed on the application of the petitioner. These documents produced today leave no doubt that on 30.5.2012 when the Sub-Divisional Magistrate passed the order he has no record, no material and nothing before him justifying the said order except the fact that the complaint of the petitioner was persuaded by a person claiming a political status in the party, presently ruling the State.

4. We are painful to record our displeasure and the manner in which an Administrative Officer has surrendered to a person having some political patronage or clout. In this democratic country governed by Rule of Law having a written Constitution, the Executive is not supposed to work with surrender, full or partial, to the political persons. A confidence has been reposed in the Executive that they shall act strictly in accordance with law that shall prevail and maintain Rule of Law in the country and no person howsoever high or enjoying political patronage or otherwise, would be able to influence such Executive.

5. The total surrender on the part of the Sub-Divisional Magistrate in the present case is really disturbing and deserves to be condemned in strongest words. Time and again, the Courts have reminded the Executive of their obligations and pious duty to people of this country. Being holder of civil posts they are custodians of public faith and trust. The people of this country believe that a strong permanent Executive will not allow any one to deviate rule of law. The vested interest like attractive posting and other financial allurements shall not move them. Unfortunately some of the Executives are trying to identify themselves with political people enjoying power and that is why the rule of law is becoming casualty. This Court in strongest words censure the conduct and attitude of Sri B.D. Verma, Sub-Divisional Magistrate, Sadar, Farrukhabad, who is also present in the Court and has been heard through learned Additional Chief Standing Counsel.

6. The Chief Secretary and Secretary (Karmik) of the State shall take care of this observation and communicate the same to the concerned authorities for

appropriate further action.

7. With the aforesaid observations, the writ petition is dismissed for the reason that the relief sought herein has already been granted by the Sub Divisional Magistrate, Sadar, Farrukhabad on an application submitted by the petitioner.

8. The writ petition is accordingly dismissed. The Registrar General is directed to send a copy of this order to the Chief Secretary and Secretary (Karmik), U.P. Government for information and compliance of the directions as above.