

(2016) 08 AHC CK 0022
In the Allahabad High Court
Case No : First Appeal No. 818 of 2004

State of U.P.

APPELLANT

Vs

Khempal

RESPONDENT

Date of Decision : 09-08-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 4, 6

Citation : (2017) 2 ADJ 494 : (2016) 8 ADJ 262 : (2017) 169 AIC 941 : (2016) 119 ALR 665

Hon'ble Judges : Surya Prakash Kesarwani, J.

Bench : Single Bench

Advocate : S.C. Srinet, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Surya Prakash Kesarwani, J.— Heard Sri S.S. Srinet, learned standing counsel for the appellant.

2. This appeal was filed on 22.10.1990 challenging the judgment dated 31.05.1990 passed by the Court of 7th Additional District and Sessions Judge, Bulandshahr in L.A. Reference No. 155 of 1987 marginally enhancing the compensation.

3. About twenty six years have passed since the date of filing this first appeal involving valuation of merely Rs.1334.88. This court is frequently coming across several first appeals where the disputed amount is less than Rs. 1000/- or even less than Rs. 500/-.

4. Acquisition of land of farmers by Government, particularly small farmers, in the process of development not only deprives them of their fundamental right to cultivate their agricultural land as part of their right to livelihood (which is the foundation for their sense of economic security, peace, prosperity and social status) but also creates a difficult situation for them by dragging them in luxury litigation without realising that poor farmers can not afford the exorbitant cost of

litigation. Such litigations are also burden on public exchequer since cost of litigation for several years is much more than the valuation of appeal.

5. In the case of Mahanadi Coal Fields Ltd. & Anr. v. Mathias Oram & Ors. 2010 (11) SCC 269 (paras 10 and 11) after quoting the remarks of Dr. B.R. Ambedkar, the chief architect of the Constitution of India, Hon''ble Supreme Court while considering a land acquisition matter, observed that it is very often the process of development that most starkly confirms the fears expressed by Dr. Ambedkar about our democracy. A blinkered vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement of the laws lead to a situation where the rights and benefits promised and guaranteed under the constitution hardly ever reach the most marginalized citizens. Even when laws relating to land acquisition and resettlement are implemented perfectly and comprehensively which happens rarely, uncomfortable questions remain. For people whose lives and livelihoods are intrinsically connected to the land, the economic and cultural shift to a market economy can be traumatic.

6. In the case of Bhusawal Municipal Council v. Nivrutti Ramchandra Phalak and others, 2014(2) AWC 1407 (SC) (paras 16, 17, 18), Hon''ble Supreme Court considered the plight of farmers affected by land acquisition and creation of compulsive situation to indulge in luxury litigation and held as under :

16. The judicial process of the court cannot subvert justice for the reason that the court exercises its jurisdiction only in furtherance of justice. The State/ authority often drags poor uprooted claimants even for payment of a paltry amount upto this Court, wasting the public money in such luxury litigation without realising that poor citizens cannot afford the exorbitant costs of litigation and, unfortunately, no superior officer of the State is accountable for such unreasonable conduct. It would be apt to quote the well known words of Justice Brennan:

"Nothing rankles more in the human heart than a brooding sense of injustice. Illness we can put up with. But injustice makes us want to pull things down. When only the rich can enjoy the law, as a doubtful luxury, and the poor, who need it most, cannot have it because its expense puts it beyond their reach, the threat to the continued existence of free democracy is not imaginary but very real, because democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness."

17. The fundamental right of a farmer to cultivate his land is a part of right to livelihood "Agricultural land is the foundation for a sense of security and freedom from fear. Assured possession is a lasting source for peace and prosperity." India being predominantly an agricultural society, there is a "strong linkage between the land and the person's status in the social system." "A blinkered vision of development, complete apathy towards those who are highly adversely affected

by the development process and a cynical unconcern for the enforcement of the laws lead to a situation where the rights and benefits promised and guaranteed under the Constitution hardly ever reach the most marginalised citizens. For people whose lives and livelihoods are intrinsically connected to the land the economic and cultural shift to a market economy can be traumatic." (Vide: Mahanadi Coal Fields Ltd. & Anr. v. Mathias Oram & Ors., (2010) 11 SCC 269; and Narmada Bachao Andolan v. State of Madhya Pradesh & Anr., AIR 2011 SC 1989).

18. A farmer's life is a tale of continuous experimentation and struggle for existence. Mere words or a visual can never convey what it means to live a life as an Indian farmer. Unless one experiences their struggle, that headache he will never know how it feels. The risks faced by the farming community are many; they relate to natural calamities such as drought and floods; high fluctuation in the prices of input as well as output, over which he has no control whatsoever; a credit system which never extends a helping hand to the neediest; domination by middlemen who enjoy the fruits of a farmer's hard work; spurious inputs, and the recent phenomenon of labour shortages, which can be conveniently added to his tale of woes. Of late, there have been many cases of desperate farmers ending their lives in different parts of the country. The Principles of Economics provides for the producer of a commodity to determine his prices but an Indian farmer perhaps is the only exception to this principle of economics, for even getting a decent price for their produce is difficult for them. Economic growth through the 1990's had made India a more market-oriented economy, but had failed to benefit all Indians equally. The problems that plagued the farmers several decades ago are still glaringly present today; there is little credit available. What is available is very expensive. There is no advice on best practise in conducting agriculture operations. Income through farming is not enough to meet even the minimum needs of a farming family. Support systems like free health facilities from the Government are virtually non-existent. The drama of millions leaving their homes in search of jobs, which are non-existent in villages swiftly losing able-bodied adults, leaving behind the old, hungry and vulnerable. Families break up as their members head in diverse directions.

(Emphasis supplied by me)

7. Keeping in mind the afore-quoted observations of Hon'ble Supreme Court and the fact of routine filing of First Appeals by the State Government and its instrumentalities to challenge the judgment and decree passed by Reference Court, I proceed to discuss the facts and prevailing situation as well as the question "whether the State Government being an efficient and responsible litigant should file appeal against the judgment of Reference Court where the enhancement of compensation is marginal or valuation of the appeal is small?"

8. On marginal enhancement of compensation by Reference Court by few hundred or few thousand rupees, the State Government or its instrumentalities, in a routine manner; used to file first appeals before the High Court, compelling

poor farmers/claimants to indulge in litigation for several decades. It appears that in doing so the State Government feels it wise enough to spend an amount much more than the valuation of the appeal, as cost of litigation which includes cost of huge time of officers and employee in obtaining permission to file appeal, travelling allowance and daily allowance of gazetted officer in contacting Government counsel for preparation of appeal, typing expenses, court fees, process fee, expenses in preparation of paper book, affidavits and applications and cost of time spent by Government Officers, employees and counsels in doing "PAIRVI" of such appeals for fifteen, twenty or thirty years. Such an approach of the State Government in our sovereign Socialist Secular Democratic Republic, cannot be appreciated particularly in view of the National Litigation Policy, 2009 and the U.P. State Litigation Policy, 2011 whereby the State Government claims itself to be an efficient and responsible litigant with the declaration not to pursue cases like an ordinary litigant and not to resort to litigation for the sake of litigation. Objectives as mentioned in the policy includes expeditious disposal of cases, efforts to overcome the huge pendency of cases and mission to reduce average period of pendency of cases from 15 years to 3 years.

9. This Court takes judicial notice of a Government Order No. 1647/11-2-13-9(208)/2013 dated 02.01.2014 issued by the State Government under Section 58A of the U.P. VAT Act (inserted by U.P. Act No. 18 of 2013) taking decision not to file revision before the High Court where disputed tax or penalty is Rs. 1,00,000/- or below. But in the matter of small farmers who have been deprived of their source of livelihood by way of compulsory acquisition of their small holdings, the State Government finds it appropriate to compel them to indulge in long litigation for twenty years or thirty years or more and to spend as cost of litigation an amount much more than the amount received by them as compensation. This prevailing situation becomes more alarming when the State Government has framed its "State Litigation Policy -2011" but is acting in disregard of that policy.

10. Perusal of the aforesaid "State Litigation Policy" shows that it has been formulated with the purpose that the State Government should not involve in frivolous litigation, especially where the stakes are not high. The policy aimed to transform the Government into an efficient and responsible litigant. The underlying purpose of the policy is to reduce the Government litigation in Courts so that valuable court time is spent in resolving other pending issues to enable the average pendency of a case in a court reduced from 15 years to 3 years. The policy, therefore, provided that the Government would identify bottlenecks and that appeals would not be filed where stakes are not high. The policy also formulated that all pending cases involving the Government would be reviewed to filter frivolous and vexatious matters from the meritorious one. Cases so identified would be withdrawn, which would also include cases covered by previous decisions of Courts. Such withdrawal of the cases would be done in a time bound fashion. However, it appears that the State Government is not adhering to its own Policy.

11. In the case of *Dilbagh Rai Jerry v. Union of India and others*, (1974) 3 SCC 554, Hon^{ble} Krishna Iyer J. (concurring) considered that what should be the approach of Government in litigation and observed as under:

"The judgment just delivered has my full concurrence but I feel impelled to make a few observations not on the merits but on governmental disposition to litigation, the present case being symptomatic of a serious deficiency. In this country the State is the largest litigant to-day and the huge expenditure involved makes a big draft on the public exchequer. In the context of expanding dimensions of State activity and responsibility, is it unfair to expect finer sense and sensibility in its litigation policy, the absence of which, in the present case, has led the Railway callously and cantankerously to resist an action by its own employee, a small man, by urging a mere technical plea which has been pursued right up to the summit court here and has been negated in the judgment just pronounced. Instances of this type are legion as is evidenced by the fact that the Law Commission of India in a recent report on amendments to the Civil Procedure Code has suggested the deletion of Section 80, finding that wholesome provision hardly ever utilised by Government, and has gone further to provide a special procedure for Government litigation to highlight the need for an activist policy of just settlement of claims where the State is a party. It is not right for a welfare" State like ours to be Janus-faced, and while formulating the humanist project of legal aid to the poor, contest the claims of poor employees under it pleading limitation and the like. That the tendency is chronic flows from certain observations I had made in a Kerala High Court decision which I may usefully excerpt here "The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, Government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move, private parties to fight in court. The lay-out on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show-downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of Government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957. This second appeal strikes me as an instance of disregard of that policy."

(Emphasis supplied by me)

12. In the case of *Mundrika Prasad Singh v. State of Bihar*, (1979) 4 SCC 701 (para-5, 6, 7), Hon"ble Supreme Court held as under:

"5. The State of Bihar, like many other States in the country, has an enormous volume of litigation. Government litigation policy is vital for any State if resources are to be husbanded to reduce rather than increase its involvement in court proceedings. It is lamentable that despite a national litigation policy for the States having been evolved at an all-India Law Ministers' Conference way back in 1957 and despite the recommendations of the Central Law Commission to promote settlement of disputes where Government is a party what we find in actual practise is a proliferation of Government cases in courts uninformed by any such policy. Indeed, in this country where Government litigation constitutes a sizeable bulk of the total volume, it is important that the State should be a model litigant with accent on settlement. The Central Law Commission, recalling a Kerala decision, emphasised this aspect in 1973 and went to the extent of recommending a new provision to be read as Order 27, Rule 5B . The Commission observed:

27.9. We are of the view that there should be some provision emphasising the need for positive efforts at settlement, in suits to which the Government is a party.

27.10. With the above end in view, we recommend the insertion of the following rule :-

5-B(1) In every suit or proceeding to which the Government is a party or a public officer acting in his official capacity is a party, it shall be the duty of the Court in the first instance, in every case where it is possible to do so consistently with the nature of the circumstances of the case, to make every endeavour to assist the parties in arriving at a settlement in respect of the subject-matter of the suit.

(2) If, in any such suit or proceeding, at any stage it appears to the court that there is a reasonable possibility of a settlement between the parties, the court may adjourn the proceeding for such period as it thinks fit, to enable attempts to be made to effect such a settlement.

(3) The power conferred by Sub-rule (2) is in addition to any other power of the court to adjourn the proceedings.

6. The relevance of these wider observations is that avoidable litigation holds out money by way of fees and more fees if they are contested cases and this lures a lawyer, like any other homo economic us, to calculate income on a speculative basis, as this Government Pleader has done in hoping for a lakh of rupees.

7. We have been taken through the Bihar Government's rubs for fees of Government Pleaders in subordinate courts. Rule 115 appetises and is unrelated to the quantum or quality of work involved nor the time spent. Ad valorem

calculation in fixing fees for land acquisition cases has a tendency to promote unearned income for lawyers. The petitioner here has presumably fallen victim to this proclivity. The time has come for State Governments to have a second economic look not only at litigation policy but lawyer's fees rules (like Rule 115 in the Bihar instance) especially in mass litigation involving ad valorem enormity and mechanical professionalism. Even a ceiling on income from public sector sources may be a healthy contribution to toning up the moral level of the professional system. After all, the cost of justice is the ultimate measure of the rule of law for a groaning people. Government and other public sector undertakings should not pamper and thereby inflate the system of costs. May be, this petition would not have been filed had the prospect of income without effort not been offered by Government Rules."

(Emphasis supplied by me)

13. In the case of *Urban Improvement Trust, Bikaner v. Mohan Lal*, (2010) 1 SCC 512 (paras-10,11, 12), Hon'ble Supreme Court took notice of unwarranted litigation by Governments and State authorities and held as under:

"10. Unwarranted litigation by governments and statutory authorities basically stem from the two general baseless assumptions by their officers. They are:

(i) All claims against the government/statutory authorities should be viewed as illegal and should be resisted and fought up to the highest court of the land.

(ii) If taking a decision on an issue could be avoided, then it is prudent not to decide the issue and let the aggrieved party approach the Court and secures a decision.

The reluctance to take decisions, or tendency to challenge all orders against them, is not the policy of the governments or statutory authorities, but is attributable to some officers who are responsible for taking decisions and/or officers in charge of litigation. Their reluctance arises from an instinctive tendency to protect themselves against any future accusations of wrong decision making, or worse, of improper motives for any decision making. Unless their insecurity and fear is addressed, officers will continue to pass on the responsibility of decision-making to courts and Tribunals.

11. The Central Government is now attempting to deal with this issue by formulating realistic and practical norms for defending cases filed against the Government and for filing appeals and revisions against adverse decisions, thereby, eliminating unnecessary litigation. But, it is not sufficient if the Central Government alone undertakes such an exercise. The State Governments and the statutory authorities, who have more litigations than the Central Government, should also make genuine efforts to eliminate unnecessary litigation. Vexatious and unnecessary litigations have been clogging the wheels of justice, for too long making it difficult for courts and Tribunals to provide easy and speedy access to justice to bona fide and needy litigants.

12. In this case, what is granted by the State Commission is the minimum relief in the facts and circumstances, that is to direct allotment of an alternative plot with a nominal compensation of Rs. 5000/- But instead of remedying the wrong, by complying with the decision of the Consumer fora, the Improvement Trust is trying to brazen out its illegal act by contending that the allottee should have been protested when it illegally laid the road in his plot. It has persisted with its unreasonable and unjust stand by indulging in unnecessary litigation by approaching the National Commission and then this Court. The Trust should sensitise its officers to serve the public rather than justify their dictatorial acts. It should avoid such an unnecessary litigation."

14. In the case of Gurgaon Gramin Bank v. Khajani, (2012) 8 SCC 781 (para-2), Hon"ble Supreme Court considered the approach of Government to litigate in small and trivial matters and held as under:

"2. Number of litigations in our country is on the rise, for small and trivial matters, people and sometimes Central and State Governments and their instrumentalities Banks, nationalised or private, come to courts may be due to ego clash or to save the Officers" skin. Judicial system is over-burdened, naturally causes delay in adjudication of disputes. Mediation centers opened in various parts of our country have, to some extent, eased the burden of the courts but we are still in the tunnel and the light is far away. On more than one occasion, this Court has reminded the Central Government, State Governments and other instrumentalities as well as to the various banking institutions to take earnest efforts to resolve the disputes at their end. At times, some give and take attitude should be adopted or both will sink. Unless, serious questions of law of general importance arise for consideration or a question which affects a large number of persons or the stakes are very high, courts" jurisdiction cannot be invoked for resolution of small and trivial matters. We are really disturbed by the manner in which those types of matters are being brought to courts even at the level of Supreme Court of India and this case falls in that category."

(Emphasis supplied by me)

15. In the case of Punjab State Power Corporation Ltd. v. Atma Singh Grewal, (2014) 13 SCC 666 (paras 8 to 14), Hon"ble Supreme Court noted the fact that courts are burdened with unnecessary litigation primarily for the reason that the Government or P.S.Us., etc. decide to file appeals even when there is absolutely no merit therein. Hon"ble Supreme Court further observed as under:

"8. It is not the first time that the Court had to express its anguish. We would like to observe that the mind set of the Government agencies/undertakings in filing unnecessarily appeals was taken note of by the Law Commission of India way back in 1973, in its 54th report. Taking cognizance of the aforesaid report of the Law Commission as well as National Litigation Policy for the States which was evolved at an All India Law Ministers Conference in the year 1972, this Court had to emphasise that there should not be unnecessary litigation or appeals. It was

so done in the case of *Mundrika Prasad Singh v. State of Bihar*, 1979 (4) SCC 701. We would also like to reproduce the following words of wisdom expressed by Justice V.R. Krishna Iyer, who spoke for the Bench, in *Dilbagh Rai Jarry v. Union of India and Ors.* 1974 (3) SCC 554: (SCC p.562, para 25).

But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, Government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The lay out on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of Government some initiative and authority in this behalf.

9. In its 126th Report (1988), the Law Commission of India adversely commented upon the reckless manner in which appeals are filed routinely. We quote hereunder the relevant passage therefrom:

"2.5. The litigation is thus sometimes engendered by failing to perform duty as if discharging a trust. Power inheres a kind of trust. The State enjoys the power to deal with public property. That power has to be discharged like a trust keeping in view the interests of the cesti que trust. Failure on this front has been more often commented upon by the court which, if it was taken in the spirit in which it was made, would have long back energised the Government and the public sector to draw up its litigation policy. When entirely frivolous litigation reaches the doorsteps of the Supreme Court, one feels exasperated by the inaction and the policy of do nothingness evidenced by blindly following litigation from court to court. Dismissing a Special Leave Petition by the State of Punjab, the Court observed that the deserved defeat of the State in the courts below demonstrates the gross indifference of the administration towards litigative diligence. The court then suggested effective remedial measures. It may be extracted: (SCC p.69, para 4)

"4. We [would] like to emphasise that Government must be made accountable by parliamentary Social audit for wasteful litigative expenditure inflicted on the community by inaction. A statutory notice of the proposed action under Section 80 CPC is intended to alert the state to negotiate a just settlement or at least have the courtesy to tell the potential outsider why the claim is being resisted. Now Section 80 has become a ritual because the administration is often

unresponsive and hardly lives up to parliament's expectation in continuing Section 80 in the Code despite the Central Law Commission's recommendations for its deletion. An opportunity for setting the dispute through arbitration was thrown away by sheer inaction. A litigative policy for the State involves settlement of governmental disputes with citizens in a sense of conciliation rather than in a fighting mood. Indeed, it should be a directive on the part of the State to empower its law officer to take steps to compose disputes rather than continue them in court. We are constrained to make these observations because much of the litigation in which governments are involved adds to the case load accumulation in courts for which there is public criticism. We hope that a more responsive spirit will be brought to bear upon governmental litigation so as to avoid waste of public money and promote expeditious work in courts of cases which deserve to be attended to.

Nearly a decade has passed since the observations but not a leaf has turned, not a step has been taken, and the Law Commission is asked to deal with the problem!

2.6. A little care, a touch of humanism, a dossier of constitutional philosophy and awareness of futility of public litigation would considerably improve the situation which today is distressing. More often it is found that utterly unsustainable contentions are taken on behalf of Government and public sector undertakings.

10. Even when Courts have, time and again, lamented about the frivolous appeals filed by the Government authorities, it has no effect on the bureaucratic psyche. It is not that there is no realisation at the level of policy makers to curtail unwanted Government litigation and there are deliberations in this behalf from time to time. Few years ago only, the Central Government formulated National Litigation Policy, 2010 with the "vision/mission" to transform the Government into an efficient and responsible litigant. This policy formulated by the Central Government is based on the recognition that it was its primary responsibility to protect the rights of citizens, and to respect their fundamental rights and in the process it should become "responsible litigant". The policy even defines the expression "responsible litigant" as under:

"Responsible litigant" means-

- (i) That litigation will not be resorted to for the sake of litigating.
- (ii) That false pleas and technical points will not be taken and shall be discouraged.
- (iii) Ensuring that the correct facts and all relevant documents will be placed before the Court.
- (iv) That nothing will be suppressed from the Court and there will not attempt to mislead any court or tribunal.

2. That Government must cease to be a compulsive litigant. The philosophy that

matters should be left to the courts for ultimate decision has to be discarded. The easy approach, "Let the Court decide", must be eschewed and condemned.

3. The purpose underlying this policy is also to reduce Government litigation in courts so that valuable court time would be spent in resolving other pending cases so as to achieve the goal in the national legal mission to reduce average pendency time from 15 years to 3 years. Litigators on behalf of the Government have to keep in mind the principles incorporated in the national mission for judicial reforms which includes identifying bottlenecks which the Government and its agencies may be concerned with and also removing unnecessary Government cases.

Prioritisation in litigation has to be achieved with particular emphasis on welfare legislation, social reform, weaker sections and senior citizens and other categories requiring assistance must be given utmost priority."

11. This policy recognises the fact that its success will depend upon its strict implementation. Pertinently there is even a provision of accountability on the part of the officers who have to take requisite steps in this behalf. The policy also contains the provision for filing of appeals indicating as to under what circumstances appeal should be filed. In so far as service matters are concerned, this provision lays down that further proceedings will not be filed in service matters merely because the order of the Administrative Tribunal affects a number of employees. Also, appeals will not be filed to espouse the cause of one section of employees against another.

12. The aforesaid litigation policy was seen as a silver lining to curb unnecessary and uncalled for litigation by this Court in the matter of Urban Improvement Trust, Bikaner v. Mohan Lal 2010 (1) SCC 512 in the following manner:(SCC p. 516, para 11)

"11. The Central Government is now attempting to deal with this issue by formulating realistic and practical norms for defending cases filed against the Government and for filing appeals and revisions against adverse decisions, thereby eliminating unnecessary litigation. But it is not sufficient if the Central Government alone undertakes such an exercise. The State Governments and the statutory authorities, who have more litigations than the Central Government, should also make genuine efforts to eliminate unnecessary litigations. Vexatious and unnecessary litigations have been clogging the wheels of justice for too long, making it difficult for courts and tribunals to provide easy and speedy access to justice to bona fide and needy litigants."

13. Alas, in spite of the Government's own policy and reprimand from this Court, on numerous occasions, there is no significant positive effect on various Government officials who continue to take decision to file frivolous and vexatious appeals. It imposes unnecessary burden on the Courts. The opposite party which has succeeded in the Court below is also made to incur avoidable expenditure. Further, it causes delay in allowing the successful litigant to reap the fruits of the

judgment rendered by the Court below.

14. No doubt, when a case is decided in favour of a party, the Court can award cost as well in his favour. It is stressed by this Court that such cost should be in real and compensatory terms and not merely symbolic. There can be exemplary costs as well when the appeal is completely devoid of any merit. [See *Rameshwari Devi v. Nirmala Devi* (2011) 8 SCC 249]. However, the moot question is as to whether imposition of costs alone will prove deterrent? We do not think so. We are of the firm opinion that imposition of cost on the State/PSU's alone is not going to make much difference as the officers taking such irresponsible decisions to file appeals are not personally affected because of the reason that cost, if imposed, comes from the government's coffers. Time has, therefore, come to take next step viz. recovery of cost from such officers who take such frivolous decisions of filing appeals, even after knowing well that these are totally vexatious and uncalled for appeals. We clarify that such an order of recovery of cost from the officer concerned be passed only in those cases where appeal is found to be ex-facie frivolous and the decision to file the appeal is also found to be palpably irrational and uncalled for."

(Emphasis supplied by me)

16. It is relevant to mention that earlier also this Court considered the issue of dismissal of appeal on the ground of smallness of the amount involved in the appeal and dismissed the appeal by order dated 22.11.2012 passed in First Appeal Defective No.761 of 1991 (*State of U.P. through Collector v. Fateh Singh*) observing as under:

"No useful purpose is going to be served by again directing the appellant to take steps to serve the respondents in view of the fact that only a small amount of Rs. 9,288/- is involved in the appeal. Looking to the smallness of the amount involved in the appeal and the time already spent it would be travesty of justice by calling the respondents to come and contest the appeal itself on merits. The learned standing counsel could not state as to what happened in other similar matters."

(Emphasis supplied by me)

17. Learned standing counsel could not show that the aforequoted judgment and order has been either set aside or modified by any higher Court. It appears that the said judgment has been accepted by the State Government.

18. Above noted judgments of Hon"ble Supreme Court and the prevailing situation as afore noted clearly indicates that today State is the largest litigant. It appears to be acting as an ordinary litigant in contrast to a model litigant. It incurs huge public money on litigation which could have been avoided to a great extent if the State Government would have adhered to the National Litigation Policy 1957, National Litigation Policy 1972, its own litigation policy 2011 and directions/observations made by Hon"ble Supreme Court in the case of *Dilbagh*

Rai Jerry (supra), Mundrika Prasad Singh (supra), Urban Improvement Trust (supra), Gurgaon Gramin Bank (supra) and Punjab State Power Corporation Ltd. (supra). The Government must be made accountable for such wasteful litigation expenditure inflicted on the community by inaction. The State Litigation Policy emphasising the State Government to be an efficient and responsible litigant is based on the recognition of principles that its primary responsibility is to protect the rights of citizens, and to respect their fundamental rights. Therefore, State Government must take decisions to avoid unwarranted litigation which mainly flows on account of baseless assumptions of its officers that all claims against the Government/Statutory authorities should be viewed as illegal and should be resisted and fought up to the highest court. The reluctance to take decisions, and increasing tendency to challenge every order does not seem to be policy of the State Government in view of the litigation policy 2011 and, therefore such practise needs to be stopped. The state Government should make genuine efforts to eliminate unnecessary litigation which cloggs the wheels of justice making it difficult for courts to provide easy and speedy access to justice to bona fide and needy litigants. Because of prevailing situation of litigation by Governments, Hon"ble Supreme Court in the case of Punjab State Power Corporation Ltd. (supra) observed that time has, therefore, come to take next step viz. recovery of cost from such officers who take such frivolous decisions of filing appeals, even after knowing well that these are totally vexatious and uncalled for appeals.

19. This Court is conscious of the fact that ordinarily no mandamus can be issued in appeal but in the larger public interest and looking into the prevailing situations as afore noted, this Court deems it fit to issue certain directions to the State Government. In the case of Smt. Abida Begam v. R.C. & E. Officer AIR 1959 (ALLD) 675 (Para 27), a Division Bench of this Court has considered the question of issuing mandamus in appeal and held as under :

"27. It may not be possible for us to grant a decree in the suit, but, in spite of that fact, we think that this Court has a jurisdiction under Art, 226 of the Constitution to grant the relief as against the defendant No. 1, even though this matter had not come in its writ jurisdiction on an application under Article 226. This we think necessary because if in the office of the Rent Control Officer the allotment order continues in favour of Ram Khelawan and Ram Khelawan is restrained from taking possession, there is likely to be a conflict and it may be difficult for the Rent Control Officer to have any further allotment order."

(Emphasis supplied by me)

20. In Dr. Ravindra Kumar Goel v. State of U.P. 2004(5) AWC 4707 (para 19, 22, 23, 26, 29, 30) another Division Bench followed the law laid down in the case of Smt. Abida Begam (supra) and held that in exceptional cases a Judge sitting in a particular jurisdiction can issue a directive relating to another jurisdiction so as to do justice or if there is pressing urgency or alarming situation. It was further held that extra ordinary situation requires extra ordinary remedies.

21. Aforesaid two decisions were further followed by a Division Bench in the case of U.P. Nursing Home Association and others v. Rajesh Kumar Srivastava and others 2004(2) UPLBEC 1404.

22. In view of the above discussion, this court feels that it is now high time that the State Government should be directed and is hereby directed to implement forthwith in true sense its State Litigation Policy, keeping in view the observations/directions of Hon''ble Supreme Court in the judgments afore-noted, discourage unnecessary litigation, act as an efficient and responsible litigant and fix accountability of officers filing frivolous cases.

23. In view of the aforesaid, this appeal is dismissed on account of small disputed amount involved in the appeal. It is clarified that dismissal of this appeal on the ground of smallness of disputed amount shall not come in the way of the State Government to contest appeals of high valuation, if any, relating to the same acquisition and of the same area or where pure question of law is involved in the appeal.

24. Let a copy of this judgment be sent by the Registrar General of this Court to the Chief Secretary, Government of U.P. and Principal Secretary (Law), Government of U.P. for compliance.