

(2011) 08 AHC CK 0154

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44255 of 2011

Triveni Engineering Industries Ltd.

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 115F

Citation : (2011) 08 AHC CK 0154

Hon'ble Judges : A.P.Sahi, J

Final Decision : Allowed

Judgement

A.P. Sahi, J.—Heard learned counsel for the petitioner Sri Yashwant Varma.

2. A notice was issued to the petitioner calling upon it to show cause as to why a penalty of Rs. 50 Lacs be not imposed for unauthorized and illegal occupation of the land in dispute. The petitioner did not appear and an exparte order came to be passed on 19.4.2010. The order passed on 19.4.2010 is quoted below:

3. The petitioner moved a restoration application immediately thereafter on 28.4.2010 where a request was made to recall the order and hear the matter on account of ailment of the pairokar of the petitioner. This application was rejected on 6.1.2011 without advertng to the stand taken in the restoration application and treating the occupancy of the petitioner to be unauthorized and illegal. The revision preferred against the same has also failed. Hence this writ petition.

4. Two submissions have been raised, namely that the restoration ought to have been allowed in view of the application having been filed within 9 days of the passing of the order; secondly, on merits if the conclusion drawn that the occupancy was illegal then to the provisions of Rule 115F have not been taken into account and a lump sum imposition of penalty of Rs. 50 Lacs is without any justification and against the aforesaid Rule.

5. Having considered the aforesaid submissions, Sri Rajesh Kumar, learned Standing Counsel for Respondent Nos. 1 to 3, submits that the matter can be

remitted back for decision keeping in view the provisions of Rule 115F inasmuch as the occupancy of the petitioner has been found to be illegal.

6. Having heard learned counsel for the petitioner, learned Standing Counsel and Sri Anuj Kumar for Respondent No.4, the impugned orders are unsustainable inasmuch as admittedly the order dated 19.4.2010 was passed without there being any evidence and was ex parte. The restoration was filed shortly within a span of 9 days and, therefore, the authority ought to have proceeded on merits after giving an opportunity to the petitioner. The order of the Tehsildar is laconic and it has proceeded in the absence of material evidence.

7. The revising authority committed the same error and did not advert to the provisions of Rule 115F for affirming the order. Rule 115F (2) is quoted herein below:

"Rule 115F. (2) If the damage or loss caused through misappropriation is of such a nature as is not capable of being repaired or made good, (as in the case of cutting of trees, or grazing of plants or grass) the Collector shall assess the amount of damage or loss in terms of money at the prevailing market rate in the locality. In case of wrongful occupation of land, the damage caused to the Gaon Sabha or the local authority, as the case may be, shall be assessed for each year of such wrongful occupation or any part thereof, at 100 times the amount of rent computed at the sanctioned hereditary rates applicable to the plots concerned. In case the occupation of land continued to remain in such wrongful occupation, he shall be further liable to pay oneeighth of the damages so assessed for every month of the continued occupation after the date of the order."

8. A perusal of the said Rules clearly indicates that the calculation has to be carried out in terms of the said Rules and an arbitrary imposition of penalty is not contemplated therein on a lump sum basis.

9. For the aforesaid two reasons, the order of the revising authority is also unsustainable. The writ petition is, therefore, allowed. The orders dated 19.4.2010, 6.1.2011 and 25.1.2011 are quashed. The matter is remitted back to the respondent No.3 to proceed to pass fresh order, treating the restoration application to have been allowed by this Court, on merits of the claim of the parties after providing an opportunity of hearing to the petitioner.