
(2018) 04 UK CK 0064

In the Uttarakhand High Court

Case No : Civil Revision No. 21 of 2016

UP AWAS EVAM VIKAS PARISHAD

APPELLANT

Vs

MOHD. AHMED AND ANOTHER

RESPONDENT

Date of Decision : 17-04-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 115

Uttar Pradesh Awas Evam Vikas Parishad Act, 1965 — Section 28, 32

Land Aquisition Act, 1894 — Section 18, 23(1A)

Citation : (2018) 04 UK CK 0064

Hon'ble Judges : MANOJ K. TIWARI, J

Bench : Single Bench

Advocate : B.S. Adhikari, M.S. Pal, Vinod Nautiyal,

Final Decision : Dismissed

Judgement

Manoj K. Tiwari, JÂ

1. By means of this civil revision, under Section 115 of the Code of Civil Procedure, Uttar Pradesh Awas Evam Vikas Parishad (from hereinafter

referred to as "UPAEVP") has challenged the order dated 19.01.2016 passed by the learned Additional District Judge II, Haldwani, District

Nainital in Civil Execution Case No. 2 of 2013. By the said order, execution application, filed by respondent No. 1 "Mohd. Ahmed, was allowed for

the balance amount of compensation i.e. 30% of the amount in terms of the decree passed in Land Acquisition Case No. 210 of 1986, amounting to

`20,24,888/- (Rupees Twenty lacs twenty four thousand eight hundred and eighty eight only).Â It was further provided that the applicant/respondent

will be entitled to get interest @ 6% per annum from 13.04.2011 upto the date of realization.Â Â

2. Brief facts of the case are as follows:-

Revisionist/UPAEVP proposed to acquire 72.2 bighas land, belonging to respondent No. 1 â?" Mohd. Ahmed, situate within municipal limits of

Gadarpur, District Nainital (now in District Udham Singh Nagar) for the purpose of developing a Housing Scheme.Â Consequently, a notification

under Section 28 of the U.P. Awas Evam Vikas Parishad Act, 1965 was issued by the State Government on 04.10.1980 and subsequently, notification

under Section 32 of the said Act was issued on 23.10.1984 and simultaneously possession of the land was also taken.Â The Special Land Acquisition

Officer, Nainital gave his award on 08.02.1985, whereby he determined the amount of compensation, payable to Mohd. Ahmed, as `5,64,385/-

(Rupees Five lacs sixty four thousand three hundred & eighty five only), which was deposited on 18.02.1985.Â Mr. Mohd. Ahmed â?" claimant,

dissatisfied with the award, sought reference, as contemplated under Section 18 of the Land Acquisition Act.Â Learned District Judge, Nainital vide

judgment dated 12.09.1989 decided the reference and enhanced the amount, payable as compensation to the claimant.Â Operative portion of the said

judgment rendered by learned District Judge in Land Acquisition Case No. 210 of 1986 is extracted below:-

â??The petitioner Mohd. Ahmad is hereby awarded compensation for the first belt of his 72-2-0 bighas land upto a depth of 50 ft. from the main

Gadarpur-Gularbhoj road at the rate of Rs. 60/- per sq. yard and he is awarded compensation for the remaining land of the said total 72-2-0 bighas

land at the rate of Rs. 40/- per sq yard.

The petitioner is also awarded additional solatium at the prescribed rate of 30% on the enhanced amount of compensation besides he is awarded

interest on the said compensation at the rate of 12% per annum under Section 23(1-A) of the Land Acquisition Act.

The total amount of compensation worked out as aforesaid shall also carry interest at the rate of 6% per annum from the date of delivery of

possession till payment.Â

The amount of compensation already paid to the petitioner shall, however, be deducted from the total amount awarded hereby.â??

3. Revisionist challenged the judgment rendered by learned District Judge, Nainital by filing appeal before this Court, which was registered as FA No.

352 of 2001.Â A Division Bench of this Court vide judgment and order dated 25.09.2004 dismissed the appeal.Â Thereafter, revisionist challenged

the order passed by this Court in his appeal by filing SLP No. 4114 of 2005 before Honâ??ble Supreme Court, which was converted to Civil Appeal

No. 5144 of 2005.Â Honâ??ble Supreme Court dismissed the said civil appeal vide judgment and order dated 13.04.2011.

4. Needless to mention here that Honâ??ble Supreme Court had granted leave to appeal in the SLP, filed by revisionist, vide order dated

16.08.2005.Â In that order, Honâ??ble Supreme Court had provided that 70% of the total amount, awarded as compensation, may be withdrawn by

the claimant.Â The said order passed by the Honâ??ble Supreme Court in SLP, filed by the revisionist, is extracted below:-

â??Special Leave granted.

On the prayer for stay it is directed that 70% of the total amount awarded may be withdrawn by the respondents.Â However, it is not known what is

the exact amount deposited in the Court.

Counsel for the petitioner will file an affidavit giving the particulars as regards deposit made so far and the total amount to be deposited.â??

5. It is the contention of the revisionist that although Honâ??ble Supreme Court had provided for releasing only 70% of the total awarded amount,

however, the entire awarded amount was erroneously released in favour of the claimant. In support of his contention, learned counsel for the

revisionist refers to office report dated 16.05.2006, submitted by the office of District Judge, Nainital.Â By the said office report, permission was

sought from learned District Judge to issue notice to the claimant for depositing 30% of the awarded amount, which was wrongly released in his

favour. Learned counsel for the revisionist thereafter refers to the notice issued by learned District Judge, Nainital on 16.05.2006, whereby the

claimant was asked to deposit `8,06,138/- (Rupees Eight lacs six thousand one hundred & thirty eight only) as 30% of the awarded amount, in view of

the order passed by Honâ??ble Supreme Court.Â This order dated 16.05.2006, passed by the learned District Judge, was challenged by the claimant

by filing Civil Revision No. 10 of 2006 before this Court. A coordinate Bench of this Court disposed of the said revision vide order dated 14.11.2006

with liberty to claimant (Mohd. Ahmad) to file objection against the notice dated

16.05.2006 and with a direction to the learned District Judge to decide objection, after hearing the parties, before passing any further order in the matter.

6. Pursuant to the order dated 14.11.2006 passed by this Court in Civil Revision No. 10 of 2006, the claimant filed objection before learned District

Judge and ultimately, learned District Judge vide order dated 13.07.2007 dropped the proceedings initiated vide notice dated 16.05.2006 by recording a

finding that the claimant has received only 70% of the awarded amount. In the said order, learned District Judge has relied upon another office report

submitted by Munsarim of the court, wherein it was stated that only 70% of the awarded amount was released in favour of the claimant.Â Thus it

can be safely inferred that the earlier report, which resulted in issuance of notice dated 16.05.2006, was found to be not correct.

7. This order passed by learned District Judge on 13.07.2007 was not challenged by UPAEVP before higher forum, thus it attained finality.Â After

dismissal of Civil Appeal No. 5144 of 2005 on 13.04.2011 by Honâ??ble Apex Court, the claimant moved another execution application, which was

numbered as Civil Execution Case No. 2 of 2013 for enforcement of the judgment dated 12.09.1989 passed by District Judge in Land Acquisition

Case No. 210 of 1986.Â UPAEVP objected to the said execution application on various grounds.Â The executing court vide order dated 11.10.2013

with consent of both parties, called upon a Chartered Accountant to calculate the remaining amount which was payable to the claimant as

compensation in terms of the decree passed by learned District Judge.Â The Chartered Accountant, after making calculation, submitted a report,

according to which, the balance amount payable to the claimant as on 16.01.2006 was `20,24,888/- (Rupees Twenty lacs twenty four thousand eight

hundred & eighty eight only).Â The learned executing court in para 11 of the order impugned has placed reliance upon the order dated 13.07.2007

passed by the learned District Judge, wherein it was held that the claimant/decree holder has received only 70% of the awarded amount.Â The

executing court accepted the report of the Chartered Accountant and passed order on 19.01.2016 for payment of `20,24,888/- (Rupees Twenty lacs

twenty four thousand eight hundred & eighty eight only) to the claimant/decree holder with 6% interest from 13.04.2011 to date of payment.Â Â

8. UPEAVP has challenged this order dated 19.01.2016 passed in Civil Execution Case No. 2 of 2013 only on the ground that since the

claimant/decreed holder had withdrawn the entire awarded amount from the court of learned District Judge in the year 2006, as mentioned in the office

report dated 16.05.2006 and subsequent notice of even date, issued by the learned District Judge, Nainital directing the claimant/decreed holder to

deposit the excess amount withdrawn by him, therefore, the order passed by the executing court directing the judgment debtor/revisionist to pay the

balance 30% amount of `20,24,888/- (Rupees Twenty lacs twenty four thousand eight hundred & eighty eight only) to the claimant is unsustainable.

9. Thus, the only question which falls for consideration in this civil revision is whether only 70% of the awarded amount was earlier released in favour

of the claimant/decreed holder in terms of the interim order dated 16.08.2005 passed by Hon^{ble} Supreme Court in Civil Appeal No. 5144 of

2005 or whether the entire awarded amount was released in favour of the claimant/decreed holder.

10. This question is basically a question of fact which cannot be decided in a civil revision under Section 115 of the Code of Civil Procedure.

11. Even otherwise also, the reference court i.e. court of learned District Judge, Nainital in its order dated 13.07.2007 has recorded a finding that only

70% of the awarded amount was released in favour of the claimant/decreed holder. This order dated 13.07.2007 was not challenged by UPAEVP

before any higher forum, therefore, the finding recorded in the said order has attained finality.

12. In such view of the matter, it is not open to the UPAEVP to contend that the entire awarded amount was released in favor of the claimant.

Therefore, learned Additional District Judge was justified in allowing the execution application of the claimant in respect of balance 30% of the

awarded amount. Under the aforesaid circumstances, there is no scope for interference in this civil revision.

13. Accordingly, the civil revision fails and is hereby dismissed.

14. It is made clear that, the amount deposited by UPAEVP in the Registry of this Court, in terms of the order dated 08.03.2016, may be released

in favour of the legal representatives of the claimant. Mohd. Ahmed. Revisionist is directed to deposit the balance amount, after adjusting the

amount already deposited in the Registry of this Court, before the executing court, within two months from today.Â