

Reserved

Court No. - 9

Case :- CONTEMPT APPLICATION (CIVIL) No. - 2339 of 2017

Applicant :- Smt. Manorama Kuchhal And Another

Opposite Party :- Brijesh Narain Singh D.M./Collector NIC Dist. Centre And 6 Ors

Counsel for Applicant :- Manish Goyal, Manish Goyal (Senior Adv.), Priyanka Midha, Ram M. Kaushik, Swati Agrawal Srivastava

Counsel for Opposite Party :- S.C., Anuj Srivastava, Kaushalendra Nath Singh, Ramendra Pratap Singh, Ravindra Kumar, Tanmay Sadh, Vijay Kumar Dixit

Hon'ble Rohit Ranjan Agarwal, J.

[Civil Misc. Application No. 08 of 2019]

1. Heard.
2. As the contempt application itself has been decided, the application for framing of charges and for determination of compensation has become infructuous.
3. Dismissed as infructuous.

[Civil Misc. Application No. 13 of 2020]

1. Heard.
2. This application has been filed for directing the opposite party to deposit the compensation amount within two weeks.
3. As the contempt application itself has been decided, present application has become infructuous.
4. Dismissed as infructuous.

[Civil Misc. Deletion Application No. 16 of 2021]

1. Heard.

2. It is contended that the applicant no. 1 Manorama Kuchhal had died and her name be deleted from the array of parties as the name of her sole legal heir Sunil Kuchhal is already on record.

3. Application is allowed.

4. In view of the said fact, the name of applicant no. 1 Manorama Kuchhal stands deleted from the array of parties.

[Civil Misc. Stay Application No. 20 of 2023]

1. Heard.

2. This application has become infructuous.

3. Dismissed as infructuous.

[Civil Misc. Application No. 25 of 2023]

1. Heard.

2. Application stands disposed off in terms of the judgment.

[Order on Contempt Application]

1. Heard Sri Ram Kaushik, learned counsel for the applicants and Sri Sanjiv Sen, learned Senior Counsel, assisted by Sri Love Kumar Gupta, Advocate, Sri Deepesh Raj, Advocate and Sri Tanmay Sadh alongwith Sri Amit Saxena, learned Senior Counsel, assisted by Sri Kaushlendra Nath Singh, Advocate for NOIDA and Sri P.K. Giri, learned Additional Advocate General for the State.

2. This contempt application under Section 12 of the Contempt of Courts Act has been filed for punishing the opposite party for not complying the order of writ Court dated 19.12.2016 passed in Writ Petition No. 24775 of 1990, having been confirmed by the Apex Court.

3. The facts, in nutshell, are that the original applicant late Manorma Kuchhal had purchased plot of land in Khasra No. 136 measuring 2915 square meter, Khasra No. 137 measuring 6571 square meter and in Khasra

No. 138 measuring 2186 square meter of land total area 11672 square meter through different sale deeds in the year 1985-86 respectively.

4. Late Manorma Kuchhal sold 1265 square meter of land on 12.06.1989 in Khasra No. 138 to one Bina Singh, Vijay Singh and Ishan Singh. Names of the purchaser were mutated in the revenue records on 24.09.2019 in Case No. 548/24.09.1990. Similarly, J.B. Kuchhal sold an area of 1771 square meter from Khasra No. 137 to one Smt. Renu Kaur and Smt. Baljit Kaur whose names were mutated in revenue records on 05.07.1990. The total area sold in Khasra No. 137M and 138M was 3036 square meter and total area left with the applicants in Khasra No. 136M, 137M and 138M was 8636 square meter.

5. The New Okhla Industrial Development Authority (NOIDA) on 30.11.1989 issued notification under Section 4 of the Land Acquisition Act for acquiring the land belonging to the applicants in Village Bhagel Begampur, Pargana Dadri, District Ghaziabad. The notification under Section 6/17 was published on 16.06.1990. J.B. Kuchhal husband of the applicant no. 1 filed Writ Petition No. 24775 of 1990 before this Court challenging the acquisition proceedings. The said writ petition was dismissed for want of prosecution on 05.12.1997. The possession was taken over by the Collector and transferred to NOIDA on 10.09.1999 for construction and development of the land for public purpose.

6. A recall application was moved in the year 2007 and the order was recalled on 01.05.2007. The writ Court on 19.12.2016 alongwith another connected Writ Petition No. 21643 of 1990 had allowed the writ petition of the applicants and quashed the notification. The Court, however, directed the respondents to determine the compensation of disputed land at twice market value which was to be determined in accordance with the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and the amount was to be paid within three months from the date of the judgment.

However, in case of default the possession of the land was to be restored back after removing the construction.

7. As the order of writ Court was not complied, contempt application being Contempt Application (Civil) No. 2339 of 2017 was filed. In the meantime, NOIDA preferred special leave petition before the Apex Court in the year 2018, however, the said special leave petition was dismissed on 05.03.2019. The review petition filed before this Court was also dismissed.

8. During the pendency of contempt application, the Chief Executive Officer, NOIDA wrote a letter to the District Magistrate for determining the compensation of area owned by the applicants and also to carry out identification, allocation and demarcation of the applicants' land.

9. The District Magistrate constituted a committee to finalize the rate of compensation on 08.05.2019. The compensation was assessed by the committee and a report was submitted on 10.05.2019 and it was informed to NOIDA authority on 17.05.2019. According to the said report, the compensation was determined at Rs. 2640 per square meter twice of which comes to Rs. 5280 per square meter which was offered to the applicants for the land measuring 2520 square meter utilized for construction of public road and rest of land measuring 6116 square meter was lying unoccupied and vacant.

10. On 25.06.2019 applicants were requested to come forward for collecting the compensation for the land which was utilized for construction of road and also for taking physical possession of the remaining area i.e. 6116 square meter. The land in question was identified, allocated and demarcated by the Sub Divisional Magistrate, Dadri on the orders of the District Magistrate. The Sub Divisional Magistrate had constituted a team and submitted a report to the District Magistrate.

11. The District Magistrate informed the NOIDA authority on 02.09.2019 that part of land forming Khasra No. 136,137 and 138 is 35,798 square

meter, while the land belonging to the applicants is 8636 square meter. After the calculation was done, the District Magistrate tried to deposit the amount of Rs. 1,33,05,600/-. As the amount of compensation which was refused by the applicants, hence, it has been kept in a fixed interest bearing account in a nationalized bank.

12. Sri Ram Kaushik, learned counsel appearing for the applicants, submitted that the authorities are deliberately tried to de novo start the case once the matter had attained finality after the report of the Tehsildar was submitted in the year 2012 wherein a total area of 10420 square meter of land has been shown to be that of the applicants and has been used for construction of bus terminal. He further contended that on the basis of said report the Division Bench had passed the judgment which has been upheld by the Apex Court, thus, no question arises in reducing the area of the land to 8636 square meter. He then contended that in all the affidavits which were filed before the writ Court the NOIDA authority had stated that it was planning to built a bus terminal on the land which was acquired in Khasra No. 136, 137 and 138 belonging to the applicants.

13. Reliance has been placed on plethora of judgments passed in cases of **Prithawi Nath Ram Vs. State of Jharkhand and others; AIR 2004 SC 4277: (2004) 7 SCC 261, Sushil Vasudeva vs M. George Ravishekar & Ors (2014) 3 SCC 373, Bihar Finance Service vs. Gautam Goswami (2008) 5 SCC 339, Ashok Paper Kamgar Union and Ors. Vs Dharam Godha And Ors. (2003) 11 SCC 16, Gayabai Digambar Puri (Died) Thr. LR vs The Executive Engineer & Others; Diary No.17566 of 2020: 2022 LiveLaw (SC) 15, R.Unnikrishnan and Another Vs. V.K. Mahanudevan and Others;(2014) 4 SCC 434, Daryao Vs. State of U.P. AIR 1961 SC 1457, Satyadham Ghosal Vs Deorajin Debi; AIR (1960) SC 941: (1960) 3 SCR 590, Dr. U.N. Bora, Ex. Chief Executive and others Vs. Assam Roller Flour Mills Association and another; 2022 (1) SCC 101, Reddy Veerena Vs. State of U.P. 2022 SCC Online**

562 and Lucknow Development Authority Vs. M.K. Gupta (1994) 1 SCC 243.

14. He lastly contended that the case of the applicants is distinguishable from other case of Rakesh Kumar Agrawal whose writ petition was decided alongwith the writ petition of the applicants as in the case of the applicants the land is identifiable and authorities have themselves accepted the fact that bus terminal was being built on Khasra No. 136, 137 and 138.

15. Sri Sanjiv Sen, learned Senior Counsel appearing for NOIDA, submitted that Khasra No. 136, 137 and 138 is a very big chunk of land measuring 35,798 square meter. While the applicants are just holding 8636 square meter of land and there has been no partition of the plots of other co-tenure holders, as such, it is wrong to say that the bus terminal exist on the land of the applicants. He further contended that the sale-deeds for the land purchased by the applicants does not contain any site plan indicating possession as a part of Khasra No. 136, 137 and 138. He then contended that the claim raised by the applicants as to 10420 square meter of land is factual incorrect as it does not take into account the land sold by J.B. Kuchhal measuring 1771 square meter of which mutation was already carried out in the year 1990. According to him, the applicants are claiming compensation over the land which they have sold in the year 1990.

16. It was then contended that the report which is alleged of the year 2012 was in fact the report of the Tehsildar prepared on the basis of documents submitted by the applicants and not after investigating the entire records. The documents as to the sale-deed executed by J.B. Kuchhal was never part of the report nor the document was handed over to the Tehsildar, as such, the said report cannot be relied upon.

17. Sri P.K. Giri, learned Additional Advocate General, submitted that Khasra No. 136M, 137M and 138M are in fact big plots consisting of

numbers of co-tenure holders and no division among co-tenure holders had ever taken place and the applicants have only 8636 square meter land in the said Khasras after they have sold the plots in the year 1989-90 for which the mutation had already been carried out. He then invited the attention of the Court to the report of the Sub Divisional Magistrate, Gautam Budh Nagar dated 01.07.2022 where the entire descriptions have been given and also it has been stated that the report of the year 2012 was in fact incorrect as calculation was wrongly done and the total land left with the applicants in Khasra No. 136, 137 and 138 is actually 0.863693 hectare. He also invited the attention of the Court to the letter dated 26.06.2023 written by Additional Chief Executive Officer, NOIDA to the District Magistrate, Gautam Budh Nagar.

18. I have heard learned counsel for the respective parties and perused the material on record.

19. This is a case where compensation is being sought on the basis of judgment rendered by the writ Court on 19.12.2016. The writ Court had found that as certain constructions were standing over the land which was acquired way back in the year 1990 after incurring huge amount in construction it would be appropriate to award compensation to the applicants on double market price and in case the compensation was not paid then the land was to revert back to the applicants after construction was removed.

20. In the instant case NOIDA authorities had written to the District Magistrate for getting the land identified and allocated and it was found that the area measuring 6116 square meter was not used for construction of bus terminal nor for construction of road and only an area of 2520 square meter land was used for construction of road which entitled the applicants for compensation. Both, the State Government and NOIDA are ready to pay the compensation for land measuring 2520 square meter which has been utilized for construction of public road and are ready to hand over 6116 square meter of land which is lying vacant. The applicants

are not ready to take back the land and are insisting for compensation amount and that too at the commercial market rate and not on the agricultural rate.

21. This Court finds that the order of writ Court was only to the extent to pay the compensation on double market price and in case it was not paid the land was to be returned back to the applicants after removing the construction. Here the authorities have come with a case that 6116 square meter of land is still lying vacant and they are ready to hand over the possession of the said land and 2520 square meter of land has been used for construction of road for which compensation is being paid to the applicants which they are refusing.

22. This Court while exercising contempt jurisdiction cannot decide the disputed question of facts as Apex Court in case of **Dr. U.N. Bora, Ex. Chief Executive Officer and others Vs. Assam Roller Flour Mills Association and another 2022 (1) SCC 101** has held as under:-

"8. We are dealing with a civil contempt. The Contempt of Courts Act, 1971 explains a civil contempt to mean a wilful disobedience of a decision of the Court. Therefore, what is relevant is the "wilful" disobedience. Knowledge acquires substantial importance qua a contempt order. Merely because a subordinate official acted in disregard of an order passed by the Court, a liability cannot be fastened on a higher official in the absence of knowledge. When two views are possible, the element of wilfulness vanishes as it involves a mental element. It is a deliberate, conscious and intentional act. What is required is a proof beyond reasonable doubt since the proceedings are quasi-criminal in nature. Similarly, when a distinct mechanism is provided and that too, in the same judgment alleged to have been violated, a party has to exhaust the same before approaching the court in exercise of its jurisdiction under the Contempt of Courts Act, 1971. It is well open to the said party to contend that the benefit of the order passed has not been actually given, through separate proceedings while seeking appropriate relief but certainly not by way of a contempt proceeding. While dealing with a contempt petition, the Court is not expected to conduct a roving inquiry and go beyond the very judgment which was allegedly violated. The said principle has to be applied with

more vigour when disputed questions of facts are involved and they were raised earlier but consciously not dealt with by creating a specific forum to decide the original proceedings."

23. Reliance placed by learned counsel for the applicants on various judgments of Apex Court are distinguishable in the present set of case, as such, they cannot be relied upon.

24. As the compensation has already been assessed by the authorities to the tune of Rs. 1,33,05,600/- no question arises for interfering in the matter for awarding higher compensation, as the applicants have remedy under the Act of 2013 to approach the authority concerned for enhancement of the compensation amount.

25. There is no deliberate disobedience of the order of writ Court as contemplated under Section 2 (b) of the Contempt of Courts Act, 1971 so as to invite the wrath of this Court for punishing the opposite party for not complying the orders of writ Court. The officers of the NOIDA authority are not in defiance of the order of writ Court and in fact they have calculated the compensation amount and are ready to pay the same which is deposited in a nationalized bank. Further, the land which has not been used is being returned back to the applicants.

26. At this juncture, it is necessary to further clarify that Khasra No. 136M, 137M and 138M are big plots and are having number of co-tenure holders and there having been no partition between the co-tenure holders, the applicants cannot stick to a particular place of land as the sale-deed also does not mention as to the exact portion of the Khasra of which the sale-deed was executed in favour of the applicants way back in the year 1985-86. As the applicants are having only 8636 square meter of land in a huge chunk of land of Khasra No. 136M, 137M and 138M, they cannot claim that the bus terminal has been constructed over their part of the land. Once the authorities have, after determination, found that the land of the applicants has been used to the extent of 2520 square meter for

construction of road, the said fact cannot be disbelieved and the contempt application filed by the applicants is not maintainable.

27. Thus, the applicants are only entitled for compensation for the land over which road has been constructed to the extent of 2520 square meter and remaining land which is being reverted by the authorities to the extent of 6116 square meter be taken back by them.

28. Contempt application stands dismissed.

29. Contempt notice stands discharged.

30. File consign to record.

Order Date :- 21.7.2023

Shekhar

[Rohit Ranjan Agarwal, J.]