Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10061 OF 2010
[Arising out of SLP [C] No.29901/2010]

State of U.P. & Ors. … Appellants

Vs.

Jasvir Singh & Ors. … Respondents

O R D E R

R.V.RAVEENDRAN, J.

Leave granted. Heard.

2. In regard to acquisition of the lands of respondents under notifications dated 18.8.1981 and 14.11.1981 issued under section 4(1) and section 6 of Land Acquisition Act, 1894 ('Act' for short), the LAO had made an award offering a compensation of Rs.12000/- per acre which was increased to Rs.17000/- per acre by the Reference Court, and to Rs.30,000/- per acre by the Allahabad High Court. On further appeal by the respondents, this Court by order dated 12.9.2005 set aside the judgment dated 29.1.2004 of the High

Court and remanded the matter to the High Court for fresh decision on merits in regard to quantum and statutory benefits, in accordance with law. This Court also observed that since the appeals were old, the High Court will have to take steps to dispose the appeals expeditiously. We are informed that the appeals (FA No.880 of 1993 and FA No.401 of 1998) are still pending consideration by the High Court.

3. The respondents thereafter filed a writ petition (No.77449 of 2005) seeking a direction for issue of a fresh notification under sections 4 and 6 of the Act, after setting aside the notifications dated 18.8.1981 and 14.11.1981 under sections 4(1) and 6 of the Act. They also sought a direction to the appellant to pay mesne profits and damages with interest, after adjusting the amount under the award already made, from the date of taking possession (19.9.1986) till date of issuance of fresh notification under Section 4(1) of the Act. The respondents thereafter filed two applications for amendment of prayers seeking a direction for determination of market value as on the date of final award after a fresh notification and not with reference to the notification dated 18.8.1991.

4. In the said writ proceedings, the Division Bench of the High Court apparently suggested to the state government that it should settle the claim

of the respondents. There was resistance from the state government. This led to series of interim orders by the High Court. We may refer to them to understand the background in which the impugned order was made.

4.1) We may begin by extracting the directions issued on 19.5.2010.

> "The grievance of the petitioners is that possession over the land of the petitioners has been taken over by the respondents authority without authority of law.
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> *This Court had directed to settle the matter outside the Court*. In compliance of the Court's order, the State Government constituted two committees of which first was headed by the Collector of the district concerned, who after determining gave his report and has recommended a rate, which was acceptable to the petitioner. The second committee which was headed by Divisional Commissioner of the division concerned also gave his report and has recommended a rate, which too was acceptable to the petitioner. Thus, it is contended that the rate recommended by both the committees is acceptable to the Petitioner.
>
> We, however, *direct the Respondents-State Government to take a decision on the report as recommended by both the committee within a period of one month from the date of presentation of a certified copy of this order."*
>
> *(Emphasis supplied)*

4.2) When the matter thereafter came up on 5.7.2010, the High Court made the following order :

> "List/put up on 12.7.2010.
>
> On that day, *the Principal Secretary, Public Works Department, Govt. of U.P. Lucknow shall appear to show cause as to why our order dated 19.5.2010 has not been complied with by accepting the rates given by the*

> *Collector and Divisional Commissioner.* An affidavit shall also be filed by him by that date."
>
> *(Emphasis supplied*)

In compliance with the said order, an affidavit was filed on behalf of Principal Secretary, P.W.D. explaining that as the District Magistrate and the Commissioner had arrived at the rate on the basis of sale deed dated 25.09.2008 by ignoring the fact that the notification under Section 4(1) of the Land Acquisition Act had been issued on 18.08.1981, the said reports were not accepted by the Government. It was also stated that the State Government has taken a decision to pay compensation for the land at the rate of Rs.30,000/- per acre with solatium and interest, in all Rs.10,99,853-75, and that had been communicated to the Respondents. It may be noted that the District Magistrate had approved the report of the District Land Acquisition Officer dated 17.2.2009 working out the amount due as Rs.29,86,99,086/- (at the rate 84,74,760/- per acre worked out on the basis of a sale deed 25.9.2008 in regard to a small plot measuring 240 sq.m.).

4.3) When the matter came up on 12.7.2010, the High Court recorded the presence of Sri Ravindra Singh, Principal Secretary, Public Works Department, Govt. of U.P., Lucknow, and exempted his personal attendance

and adjourned the matter by twenty days. When the matter came up on 5.8.2010, the following order was made by the High Court:

> "Upon hearing the learned counsel for the petitioner, Senior Advocate Shri V.K.S. Chaudhary and the Advocate General, (it is directed that the) Government shall file an affidavit within two weeks as to why the rate recommended by the Collector has not been accepted.
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> List after two weeks for further hearing."

4.4) Thereafter the appellant filed an affidavit dated 19.8.2010 submitting that the matter was re-examined and found that the recommendations of District Magistrate as well as of Commissioner were not binding on State Government; that this Court (in *Swarna Lata Vs. State of Haryana* - (2010) 4 S.C.C. 532) has held that a writ petition challenging the notifications under Section 4 and 6 of the Land Acquisition Act was not maintainable after lapse of several years; and that therefore the writ petition was liable to be dismissed. The matter again came up on 30.8.2010 and the division bench perused the said affidavit and requested the Advocate General to be available at the next hearing on 7.9.2010. When the matter came up on 22.9.2010, the division bench made the impugned order which is extracted below :

> *"Upon hearing learned counsel for the parties, we direct the Principal Secretary (Finance) and Principal Secretary (Revenue) Govt. of U.P.*

> *Lucknow to appear in person before this Court on the next date fixed in this case to show cause as to why the interest at the rate of 9% be not charged on the delayed payment which has occurred on account of them and the recovery thereof be not made from their personal salary to the extent of 50% each respectively.*
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> List this case for further orders/hearing on 20.10.2010. The copy of this order be sent to the Principal Secretary (Finance) and Principal Secretary (Revenue) Govt. of U.P. Lucknow through FAX by tomorrow."
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> *(Emphasis supplied*)

5. Aggrieved by the said order dated 22.9.2010 directing the Principal Secretary (Finance) and Principal Secretary (Revenue) of the Government of U.P., to appear in person and the direction to show cause as to why interest at the rate of 9% per annum shall not be charged and the same be recovered from their personal salary to the extent of 50% each on the payments allegedly delayed by them, the State has filed this appeal by special leave, raising the following questions :

(a) Whether the High Court while hearing a writ petition challenging a land acquisition can force the State Government to settle the matter outside the Court?

(b) Whether the High Court was justified in calling the senior officers of the state government and directing them to settle the matter, when the writ petition filed by Respondents is being resisted by the state government (by contending that the writ petition itself was not maintainable as it purported to challenge the land acquisition proceedings 24 years after the issuance of notifications under Sections 4 and 6 of the Act and 19 years after taking of the possession)?

(c) Whether the High Court was justified in repeatedly directing the senior officers of the rank of Secretaries to Government to be present in court, when the state government refused to settle the matter, and pressurize them to settle the disputed claim, by threatening to recover the entire interest from their salaries?

6. The fact that the issue relating to increase of compensation is pending in appeals before the High Court in pursuance of the order of remand by this Court, is not in dispute. The quantum of compensation will have to be decided in those appeals and not in a writ petition. As on date, there is no order either in the appeal or the writ petition determining any amount (other than what was awarded by the Reference Court) as due to the respondents. The contention and prayer of the respondents in the writ petition that fresh notifications should be issued regarding the acquisitions and the compensation should be determined with reference to the current rates as on the date of such fresh notification and not as on 18.8.1981, is a matter that is yet to be decided in the writ petition. As both the writ petition and the appeals are pending, it cannot be said that there is any delay on the part of the state government or its officers in effecting payment of compensation. The delay at present is in fact on account of the pendency of the matters before the High Court. If the High Court was of the view that the matter was getting unnecessarily delayed, or that any injustice had been caused to the land

owners, it ought to have heard the writ petition finally and decided the dispute on merits instead of listing the matter on several days and asking different senior officers of the state government to be present and virtually intimidate them to agree for a settlement by paying compensation at current market value instead of with reference to 18.8.1981. The procedure and method adopted by the Division Bench of the High Court, to say the least, is improper and requires to be deprecated.

7. It is a matter of concern that there is a growing trend among a few Judges of the High Court to routinely and frequently require the presence, in court, of senior officers of the government and local and other authorities, including officers of the level of Secretaries, for perceived non-compliance with its suggestions or to seek insignificant clarifications. The power of the High Court under Article 226 is no doubt very wide. It can issue to any person or authority or government, directions, orders, writs for enforcement of fundamental rights or for any other purpose. The High Court has the power to summon or require the personal presence of any officer, to assist the court to render justice or arrive at a proper decision. But there are well settled norms and procedures for exercise of such power.

8. This court has repeatedly noticed that the real power of courts is not in passing decrees and orders, nor in punishing offenders and contemnors, nor in summoning the presence of senior officers, but in the trust, faith and confidence of the common man in the judiciary. Such trust and confidence should not be frittered away by unnecessary and unwarranted show or exercise of power. Greater the power, greater should be the responsibility in exercising such power. The normal procedure in writ petitions is to hear the parties through their counsel who are instructed in the matter, and decide them by examining the pleadings/affidavit/evidence/documents/material. Where the court seeks any information about the compliance with any of its directions, it is furnished by affidavits or reports supported by relevant documents. Requiring the presence of the senior officers of the government in court should be as a last resort, in rare and exceptional cases, where such presence is absolutely necessary, as for example, where it is necessary to seek assistance in explaining complex policy or technical issues, which the counsel is not able to explain properly. The court may also require personal attendance of the officers, where it finds that any officer is deliberately or with ulterior motives withholding any specific information required by the court which he is legally bound to provide or has misrepresented or suppressed the correct position.

9. Where the State has a definite policy or taken a specific stand and that has been clearly explained by way of affidavit, the court should not attempt to impose a contrary view by way of suggestions or proposals for settlement. A court can of course express its views and issue directions through its reasoned orders, subject to limitations in regard to interference in matters of policy. But it should not, and in fact, it cannot attempt to impose its views by asking an unwilling party to settle on the terms suggested by it. At all events the courts should avoid directing the senior officers to be present in court to settle the grievances of individual litigants for whom the court may have sympathy. The court should realize that the state has its own priorities, policies and compulsions which may result in a particular stand. Merely because the court does not like such a stand, it cannot summon or call the senior officers time and again to court or issue threatening show cause notices. The senior officers of the government are in-charge of the administration of the State, have their own busy schedules. The court should desist from calling them for all and sundry matters, as that would amount to abuse of judicial power. Courts should guard against such transgressions in the exercise of power. Our above observations do not of course apply to summoning of contemnors in contempt jurisdiction.

10. We have made the above observations rather reluctantly. Our observations should not be construed as restricting or limiting the exercise of the extraordinary jurisdiction of High Courts under Article 226 of the Constitution of India. The observations are intended to be guidance for self-regulation and self-restriction by courts. It became necessary as we have noticed that the learned Presiding Judge of the Bench has been frequently making such orders directing senior officers of the Government to be present and settle claims. It is a coincidence that another case where a similar procedure was adopted by the learned Presiding Judge of the bench, came up before us today – *Lake Development Authority, Nainital vs. Heena Khan* (CA No.10087-10090 of 2010 decided on 26.11.2010). We have no doubt that the learned Judge bona fide believes that by requiring the presence of senior officers, he could expedite matters and render effective justice. But it is not sufficient that the object of the Judge is noble or bonafide. The process of achieving the object should be just and proper, without exceeding the well recognised norms of judicial propriety.

11. In this context we may refer to the following observations of this court in *State of Gujarat vs. Turabali Gulamhussain Hirani* - 2007 (14) SCC 94 :

> "A large number of cases have come up before this Court where we find that learned Judges of various High Courts have been summoning the Chief Secretary, Secretaries to the Government (Central and state), Directors General of Police, Director-CBI or BSF or other senior officials of the Government. There is no doubt that the High Court has power to summon these officials, but in our opinion that should be done in very rare and exceptional cases when there are compelling circumstances to do so. Such summoning orders should not be passed lightly or as a routine or at the top of a hat.
>
> Judges should have modesty and humility. They should realize that summoning a senior official, except in some very rare and exceptional situation, and that too for compelling reasons, is counterproductive and may also involve heavy expenses and valuable time of the official concerned. The judiciary must have respect for the executive and the legislature. Judges should realize that officials like the Chief Secretary, Secretary to Government, Commissioners, District Magistrates, senior police officials, etc. are extremely busy persons who are often working from morning till night."

12. On the facts and circumstances, the interim directions of the Division Bench of the High Court, issued while dealing with a writ petition challenging the acquisition, requiring the Principal Secretary (PWD), Principal Secretary (Finance) or Principal Secretary (Revenue) to be present on different dates, are improper and are liable to be interfered.

13. We, therefore, set aside the impugned order of the High Court and request the High Court to dispose of the pending appeal expeditiously on merits. To avoid any impression of bias or prejudice, we request the Hon'ble

Chief Justice of the High Court to assign the matter to some other bench. All questions are left open.

…….J.
(R.V. Raveendran)

New Delhi;
November 26, 2010.

…….J.
(A.K. Patnaik)