

CASE NO.:
Appeal (civil) 3033 of 2004

PETITIONER:
State of Uttranchal through Collector, Dehradun and Another

RESPONDENT:
Ajit Singh Bhola and Another

DATE OF JUDGMENT: 07/05/2004

BENCH:
N. SANTOSH HEGDE & B.P. SINGH.

JUDGMENT:
J U D G M E N T
(@ S.L.P. (C) No. 19475 of 2003)

WITH

CIVIL APPEAL No. 3034 OF 2004
(@ S.L.P. (C) No. 19476 of 2003)

State of Uttranchal through Collector, Dehradun and Another	\005	Appellants
Versus Smt.Prakashwati Bhola	\005	Respondent

B.P. Singh, J.

Special leave granted.

In both these appeals, the State of Uttranchal has challenged the interim order passed by the High Court of Uttranchal at Nainital in Writ Petition Nos. 217(M/B) of 2002 and 216 (M/B) of 2002 whereby in writ petitions filed by the respondents herein, the High Court noticing the facts of the case, passed an interim order directing the State of Uttranchal either to proceed under the Land Acquisition Act or vacate the premises within a week. The time granted to vacate the premises was extended by the Court, but the State is aggrieved by the interim order passed by the High Court. Its contention before us is that by the interim order, virtually the writ petitions themselves have been finally decided. We are informed that the writ petitions filed by the respondents are still pending before the High Court.

We wish to briefly narrate the facts of the case keeping in mind the fact that the writ petitions are still pending in the High Court and, therefore, any expression of opinion on the merit of the case may prejudice the case of the parties. However, some necessary facts must be noticed.

The premises in question belongs to respondents which had been leased out to Wadia Institute of Himalayan Geology, Dehradun on 7.2.1977 for use by them as Guest House. The said Wadia Institute is an autonomous institution of the Department of Science and Technology, Dehradun. The lease was initially for a period of 11 months, but later the tenure was extended by five years. In the year 1993, an eviction petition was filed by the

respondents on the ground of bona fide personal need. The said suit was partially decreed on 25.4.1995 and a decree for eviction in respect of a part of the premises (only ground floor) was passed. Aggrieved by the eviction order, Wadia Institute preferred RCA No.61/95, while the respondents aggrieved by a decree for partial eviction only, preferred RCA No.70/1995. While the said appeals were pending before the appellate Court, the District Magistrate of Nainital purported to allot the said premises for residence-cum-office of the Director General of Police of the newly created State of Uttranchal. No letter of allotment passed by the District Magistrate has been brought on record, but all that has been produced is a letter addressed by the District Magistrate to the Senior Superintendent of Police, Dehradun dated 7.11.2000 informing him that the Guest House of the Wadia Institute has been allotted to the Director General of Police for Camp office/residential purpose until further orders. From the material on record, it further appears that on 26.11.2000 possession of the premises was taken by use of police force. The said fact was intimated to the appellate court by the Wadia Institute by their application dated 1.12.2000 in which it was stated that on 26.11.2000, the police force got vacated the entire property and evicted the officials/employees of the Wadia Institute from the property. It appears that on 5.2.2001, the Wadia Institute filed an application before the appellate court that it did not wish to pursue its appeal and prayed for permission to withdraw the appeal. There is a dispute whether the Wadia Institute also prayed for allowing the appeal of the landlord. According to the respondents, such a prayer was made, which is denied by the appellant. It, however, appears from the counter-affidavit filed on behalf of the appellant before the High Court that such a request had been made to the appellate court by the Wadia Institute. In their counter-affidavit filed before the High Court in paragraph (xi), it was stated that the Wadia Institute had moved an application dated 5.2.2001 before the learned District Judge, Dehradun that they are no more interested in pursuing their Rent Control Appeal No.61 of 1995 or Appeal No. 70 of 1995 and prayed to pass suitable orders thereon. This, according to the appellant, was a collusive application and was a result of collusion between the Wadia Institute and the landlord. Be that as it may, the appeal preferred by the Wadia Institute was dismissed as withdrawn on 20th March 2001. Since the order of the Court is not before us, it is not clear whether the appeal preferred by the landlord was also allowed.

Pursuant to the eviction decree passed, an application for execution was filed on 23.4.2001. Objections filed by the appellant-State were overruled on 25.1.2002, aggrieved by which the State of Uttranchal filed a writ petition and obtained an order of stay on 30.1.2002.

A notice under section 3(1) of the Uttar Pradesh Accommodation Requisition Act 1947 was issued proposing to requisition the premises in question. Since, there was no response to the notice, the order of requisition was passed on 4.4.2002. However, in view of the order of requisition, the writ petition filed by the State was dismissed as infructuous on 22.5.2002.

Two writ petitions were filed by the landlady and her two sons challenging the order of requisition as well as the order dated 7.11.2000 pursuant to which possession of the premises was taken by the State. In the aforesaid writ petition, the impugned interim order was passed on 8.5.2003.

Mr. Ranjit Kumar, learned senior counsel appearing on

behalf of the State of Uttranchal submitted that by passing the interim order, the High Court has virtually allowed the writ petition. He further submitted that in any event, the eviction order only related to the ground floor premises and, therefore, eviction of the State from the remaining part of the premises is not justified.

Having noticed the facts and circumstances of the case, we do not consider it appropriate to pass an order interfering with the interim order passed by the High Court. We notice that possession of the premises was taken by use of police force by the State of Uttranchal under orders of the District Magistrate dated 7.11.2000. It is immaterial whether police force was or was not used for the purpose. The fact which is not disputed is that possession was taken over of the entire premises on 26.11.2000 purportedly for the residence-cum-office of the Director General of Police, Uttranchal. Since, the order issued by the District Magistrate dated 7.11.2000 was not placed before us, we adjourned the matter to enable the counsel for the State to seek instructions and to produce before us the formal order passed by the District Magistrate and also to bring to our notice any law or rule which authorized the District Magistrate to take possession of the premises in this manner. Learned counsel for the State has neither been able to produce the order passed by the District Magistrate in this regard nor has he been able to point out any law or rule which authorizes the District Magistrate to take possession of any premises in the manner it has been done in the instant case. We are really surprised that the District Magistrate chose to act in such a high-handed manner. Counsel for the State fairly stated before us that he is unable to produce any formal order passed by the District Magistrate in this regard and the letter dated 7.11.2000, which is in the nature of communication by the District Magistrate to the Superintendent of Police is the only document on which he can place reliance. He has also not shown us any law or rule which authorizes the District Magistrate to take over possession in the manner done in the instant case. We do not wish to say anything more at this stage because we are conscious of the fact that the writ petitions are still pending before the High Court. Having regard to the manner in which the District Magistrate took over possession of the premises, which appears to us as at present advised, to be high-handed, arbitrary and without any legal sanction we are not persuaded to exercise our discretion under Article 136 of the Constitution of India to set aside the interim order passed by the High Court. It is well-settled that this Court will not exercise its discretion and quash an order which appears to be illegal, if its effect is to revive another illegal order.

In the peculiar facts and circumstances, we refrain from exercising our discretion and dismiss these appeals. The interim order stands vacated.