

CASE NO.:
Appeal (civil) 64 of 2007

PETITIONER:
RAKESH KUMAR JAIN & ANR

RESPONDENT:
STATE OF U.P.THR.COLLECTOR & ANR

DATE OF JUDGMENT: 05/01/2007

BENCH:
Dr.AR.LAKSHMANAN & ALTAMAS KABIR

JUDGMENT:
J U D G M E N T

(Arising out of SLP(C) No.2502/2006)

Dr.AR.LAKSHMANAN, J.

Leave granted.

Heard Mr.Rajiv Dutta, learned senior counsel appearing on behalf of the appellants and Mr.Rakesh Uttamchandra Upadhyay, learned counsel appearing on behalf of the respondent No.2 (Agra Development Authority).

This appeal is directed against the final judgment and order dt.20.10.2005 passed by the High Court of Judicature at Allahabad in Civil Misc.Writ Petition No.15903/2002 whereby the High Court has dismissed the Writ Petition filed by the present appellants/land owners. The appellants were the owners of land of Khasra No.111A and 112B measuring 7-6 Bighas situated at Mauza Lakhanpur Tehsil and District Agra. The respondent No.2 without following the procedure for acquiring the land under the Land Acquisition Act took forcible possession of land in question on 31.08.2000. It is not in dispute that respondent No.2 had not resorted to the provisions of Land Acquisition Act. Being aggrieved by the arbitrary action of respondent No.2, the appellants filed an Original Civil Suit No.358 of 2000 before the learned Civil Judge (Junior Division), Agra for injunction to restrain the respondent No.2 from encroaching and trespassing or taking, in any manner, the possession of the land, by raising any construction of laying road on the land of the appellants. The trial court issued notice to the respondent Nos. 1 and 2. After the service of notice, the Civil Court passed an order of injunction for maintaining the status quo with respect to the land in question and the said order was extended from time to time. Since an interim order was passed, the respondent No.2 gave an undertaking to pay compensation to the appellants for their land of Khasra Plot No.111 at Mauza Lakhanpur Tehsil and District Agra and that the said compensation shall be paid within a period of two months from the date of the said undertaking i.e. 31.08.2000. This undertaking was filed before the Vth Addl.Civil Judge, Junior Division, Agra in Suit No.358 of 2000 which is marked as Annexure P-5 in the SLP paperbook. The Vth Addl.Civil Judge, Junior Division, Agra, on the basis of the above undertaking passed an order on 02.09.2000 disposing of the injunction application on the basis of the undertaking given by the respondent No.2 to pay compensation to the appellants. According to the second respondent, the amount of compensation comes to Rs.17,84,974.50 which they have calculated @ 225/- per sq.meter. The said amount, admittedly, as per the undertaking, was not deposited within two months. However, a cheque for the amount of Rs.17,84,974.50 dt.14.02.2002 drawn on Union Bank of India, Agra was issued to the appellants. However, the appellants refused to the receive the same since the said amount was not tendered as per the undertaking. While tendering the Cheque dt.14.02.2002, the respondent

No.2 called upon the appellants to convey their consent for withdrawal of Suit No.358/2000 and also signifying their consent in writing that they will not prefer any other claim in this regard so that the payment made by the cheque can be given to them. Thereafter, the money was deposited with the Vth Addl.Civil Judge, Junior Division, Agra. The amount deposited is still lying in the said court.

The High Court while disposing of the Writ Petition filed by the owners of land permitted the appellants herein to withdraw the entire amount including interest, if any, which may have accrued thereon if the same had been kept in some interest bearing account on furnishing the certified copy of the said order before the court concerned. The High Court has also observed that insofar as the claim of the appellants herein regarding interest on delayed payment is concerned, the same has no basis as the Agra Development Authority (respondent No.2) had prepared the cheque and offered the same to the appellants herein within the stipulated period and had deposited the said amount with the Civil Court in the pending suit.

We have carefully perused the Annexures and the judgment rendered by the High Court and also heard the arguments advanced by learned counsel for the parties. In our opinion, the findings recorded by the High Court in regard to the claim of interest by the appellants is absolutely incorrect. Though the Agra Development Authority (respondent No.2) had agreed to deposit the money within two months, they had not done so. Admittedly, they had issued a cheque after one year and five months and when the cheque was refused to be received by the land owners, they deposited the same in the Civil Court which does not carry any interest. Admittedly, the land owners have been denied the beneficial use of the money. In our opinion, the appellants have wrongly deprived of the beneficial use of their money. Therefore, they are entitled to interest. We, therefore, set aside the order passed by the High Court and award simple interest at the rate of 18% p.a. The possession of the land was taken on 31.08.2000. Therefore, the Agra Development Authority (Respondent No.2) is liable to pay simple interest @ 18% on the sum of Rs.17,84,974.50 from 31.08.2000 till the date of actual payment. In the meanwhile, the appellants are at liberty to withdraw the sum of Rs.17,84,974.50 which is in deposit with the Civil Court without furnishing any security and on production of a copy of this Order. The said court is directed to refund the said amount to the appellants on production of copy of Order of this Court.

We direct that the Agra Development Authority (respondent No.2) shall not take any further time and pay the interest on or before 10.02.2007.

We hope and trust that the Agra Development Authority (respondent No.2) shall strictly and punctually obey this Order.

The appeal stands disposed of in the above terms.

No costs.