

CASE NO.:
Appeal (civil) 1763 of 2007

PETITIONER:
Raj Kumar Soni & Anr

RESPONDENT:
State of U.P. & Anr

DATE OF JUDGMENT: 03/04/2007

BENCH:
P.K. Balasubramanyan & B. Sudershan Reddy

JUDGMENT:
J U D G M E N T
CIVIL APPEAL NOS. 1763 OF 2007
(Arising out of SLP(c) Nos. 18747-18748 of 2005)

B.SUDERSHAN REDDY, J.

Leave granted.

On 31-3-1993 the Sub-Divisional Officer, Kotdwar accorded approval to allot the land in question admeasuring Ac.0-053 hectare in Khasra No.1003 situated at village Jhonk, District Pauri Garhwal (Uttaranchal) to one Mahanth Govind Das. On the same day, the Sub-Divisional Officer executed a lease deed in favour of the allottee for a period of thirty years from the date of execution of the lease deed. The said Mahanth Govind Das is stated to have applied for and obtained a sanctioned plan for raising certain constructions from the Development Authority, Haridwar. The appellants herein purchased the constructions raised/Malwa under the registered sale deed dated 26-4-1995 from the said Mahanth Govind Das. The appellants claim to have purchased the land also, as is evident from their pleadings and contentions raised in the writ petition. Be it noted, the land admittedly belongs to Government.

The appellants, by their application dated 15-5-1995 requested the Collector to grant mutation in their favour, in which it is stated that they have purchased the debris and not the land from Mahanth Govind Das. The Deputy Collector, having considered the application so submitted by the appellants found "the holder of grant Mahant Govind Das sold the debris of residential building and the shops along with the possession through the registered sale deed in favour of the applicants on 2-5-1995. In case the debris is removed due to violation of the grant, then there is possibility of starting of unnecessary litigation and if Pakka houses are removed, then many legal hurdles might arise, which are not benefit the State government. Therefore it is not appear proper to dispossess them from the land. (sic)" The Deputy Collector however, disposed of the application directing the transfer of the land itself in the names of the appellants on payment of land revenue at Rs.157.50 paise.

The District Magistrate, Kotdwar Garhwal vide show-cause notice issued on 5-4-1999 required the appellants herein to show-cause as to why the grant of the land made in their favour by the Sub-Divisional Officer, Kotdwar should not be rescinded. In the show-cause notice, it is alleged that the Sub-Divisional Officer has unauthorisedly

granted/allotted the land in favour of the appellants. It is specifically alleged that the Sub-Divisional Officer is not authorized to grant land, inasmuch as the authority to grant the Government land for the residential purpose vests in the District Magistrate. The appellants submitted their detailed explanation to the said show-cause notice, inter alia, contending that the authority accorded grant only after lawful enquiry and they have spent considerable amount in renovating the existing building on the land and also made some new constructions in respect of which no objections have been raised at any point of time. It was contended that the proceedings initiated against them are not maintainable in law. It was also contended that they have acquired the status of tenure holders. The District Magistrate, having considered the explanation submitted by the appellants clearly found that the Sub-Divisional Officer had no authority to allot the land to Mahanth Govind Das in the year 1993. The Collector accordingly held that the order of allotment and lease executed by Sub-Divisional Officer did not confer any right, title and interest in the land in favour of Mahanth Govind Das. The said Mahanth Govind Das sold the said land to the appellants without any authority of law. The District Magistrate/Collector also found that the Sub-Divisional Officer abused his authority at every stage right from the commencement of grant of land to Mahanth Govind Das till the transfer of the land to the appellants. The order of transfer made in favour of the appellants by the Sub-Divisional Officer has been accordingly quashed and appropriate directions have been issued to make entries in the revenue records duly incorporating the name of the Government as the owner of the land.

The appellants challenged the order passed by the District Magistrate/Collector dated 10-5-1999 in Civil Misc. Writ Petition No. 20708 of 1999. It was sought to be contended as if the appellants have purchased the land itself from Mahanth Govind Das but appears to have given up the same during the course of hearing of the writ petition. It was asserted that the power to grant lease vests in the Assistant Collector, previously known as Sub-Divisional Officer and therefore, it cannot be said that the lease granted was without jurisdiction. The High Court found that the appellants did not purchase the land but what they have purchased under the registered sale deed was Malwa (debris of constructions). The Sub-Divisional Officer, according to the High Court, could not have passed any order directing transfer of the land in favour of the appellants based on the sale deed executed by Mahanth Govind Das. In terms of G.O.150/1/185(24)-6010, dated 09-10-1987, the Sub-Divisional Officer/Deputy Collector had no authority to accord approval of grant of land inasmuch as the authority stood vested only with the Collector of the District to accord approval up to certain limit for residential purpose. The High Court also found that the appellants' application for transfer was not made under the provisions of the U.P. Zamindari Abolition and Land Reforms Rules. The High Court further held that no foundational facts have been pleaded by the appellants that the conditions existed for securing allotment of land under the said provisions. The appellants' claim does not fall under any of the categories in respect of which an order of allotment could have been made under the provisions of the said Rules. The High Court took the view that in any event the Collector of the District is conferred with the power under Section 122(6) of the U.P. Zamindari Abolition and Land Revenue Act to cancel any irregular allotment made by the Assistant Collector in-charge

of such division. The High Court held the order of the Sub-Divisional Officer in allotting the land to Mahanth Govind Das and thereafter directing the transfer of the land in the name of the appellants is void and without jurisdiction.

These appeals are directed against the decision of the High Court, dismissing the appellants' writ petition.

Sri Sudhir Chandra, learned Senior counsel for the appellants submitted that the findings by the District Magistrate that the power of the Sub-Divisional Officer in the matter of allotment of land has been withdrawn on 9-7-1992 is absolutely baseless and in the absence of production of a copy of the proceedings thereof it has to be presumed that the Sub-Divisional Officer was competent to allot the land. The learned Senior counsel further submitted that in the show cause notice there was no mention about the withdrawal of the power conferred upon the Sub-Divisional Officer and in such view of the matter the order of the Sub-Divisional Officer could not have been set aside on the ground not mentioned in the show cause notice. The order according to the learned counsel is in violation of the principles of natural justice.

The learned counsel appearing on behalf of the State submitted that the proceedings right from the allotment of land up to the execution of lease deed are void ab initio. The Sub-Divisional Officer was not authorized to allot the Government land in favour of Mahanth Govind Das and thereafter transfer the same in favour of the appellants. The High Court rightly refused to interfere with the orders passed by the District Magistrate/Collector.

We have carefully considered the rival submissions and perused the entire material available on record. We are not required to consider the first contention seriously, for the simple reason that the appellants did not raise any issue whatsoever about this aspect of the matter in their writ petition. In their reply to the show-cause notice, they did not plead and explain as to under what authority the Sub-Divisional Officer allotted the land in favour of Mahanth Govind Das and thereafter transferred the same in favour of the appellants. It is only after the disposal of the writ petition and during the pendency of this appeal, the appellants addressed a letter to the District Collector requiring him to furnish information with regard to order passed by him withdrawing the powers of the Sub-Divisional Officer in the matter of allotment of lands. On consideration of the entire material available on record, it appears to us, that what has been withdrawn by the District Collector is obviously with reference to the power conferred upon the Sub-Divisional Officer to execute the lease deed for and on behalf of the Governor of the State. No provision of law is brought to our notice under which the Sub-Divisional Officer could have allotted the land initially to Mahanth Govind Das and thereafter transferred the same to the appellants.

The High Court, after an elaborate consideration of the matter, in clear and categorical terms, found that the Sub-Divisional Officer had no jurisdiction vested in him to grant/allot the Government land and the power vests only with the District Collector. The appellants did not plead and establish to the satisfaction of the Court that the Sub-Divisional Officer is conferred with the jurisdiction to allot/grant the Government land on the strength of applications by the interested parties. It is a fundamental principle of law that a person invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India must come with clean hands and must

make a full and complete disclosure of facts to the Court. Parties are not entitled to choose their own facts to put forward before the Court. The foundational facts are required to be pleaded enabling the Court to scrutinize the nature and content of the right alleged to have been violated by the authority.

The appellants in this case failed to establish that they have lawfully secured allotment of land. It is the duty casts upon the appellants to plead and establish that the order of allotment/grant by the Sub-Divisional Officer in favour of their predecessor-in-title created any legal right and also further establish the transfer of land in their favour has been validly made by the Sub-Divisional Officer. In such view of the matter we are of the opinion, justice has been done in the matter and the High Court rightly refused to resurrect or resuscitate the order of the Sub-Divisional Officer which is unenforceable in law.

The "Rules regarding Management of Government property", upon which strong reliance has been placed by the appellants, do not provide for and contemplate for making any such transfer of Government land from one person to another person. The Parganadhikari (Sub-Divisional Officer) has no authority whatsoever even under the said Rules to make any grant in favour of any individual or individuals. Rule 5, upon which reliance has been placed reads as under:

"5. Land will be allotted on lease under Government Grants Act on the format prescribed by Revenue Board. Parganadhikari is hereby authorized to sign this lease deed on behalf of His Excellency The Governor. No registration is required for such deeds."

A plain reading of the Rule clearly reveal that Parganadhikari is merely authorized to sign the lease deed on behalf of the Governor. The Rules nowhere confer power upon the Parganadhikari to allot Government land on lease in favour of any individual.

Yet another aspect of the matter: The Sub-Divisional Officer did not allot the land in favour of the appellants after canceling the grant made in favour of Mahanth Govind Das. Having found that Mahanth Govind Das violated the terms and conditions of grant, the Sub-Divisional Officer cancelled the grant of lease and imposed penalty of Rs.2000/- upon Mahanth Govind Das and simultaneously effected transfer of the land in favour of the appellants. Assuming that the Sub-Divisional Officer had the authority and jurisdiction to grant lease of the land for non-agricultural purposes, at the most he could have considered the application of the appellants on merits in order to decide as to whether they were entitled to grant of any Government land, but under no circumstances the Sub-Divisional Officer could have passed orders transferring the land in the names of the appellants. It is true in the show cause notice issued on 5.4.1999 by the District Magistrate there is no mention about the order dated 9.7.1992 withdrawing the powers conferred upon the Sub-Divisional Officer in the matter of according grant of lease of government lands. It is, however, stated that the Parganadhikari/Sub-Divisional Officer is not authorized to grant land, under the Government Grant Act, the authority to grant land to certain extent for residential purposes is vested in the District Magistrate. It is in the final order of the District Magistrate a mention is made about the proceedings under which the powers of the Sub-Divisional Magistrate had been withdrawn as early as on

9.7.1992 much prior to the Sub-Divisional Officer according grant on 20.5.1993. The appellants may be technically right in contending that the order of the District Collector is based on the grounds which were not specifically mentioned in the show cause notice issued to the appellants. But at the same time we are required to bear in mind that in the show cause notice it is clearly stated that the Parganadhikar/Sub-Divisional Officer is not authorized to grant land, under the Government Grant Act, the authority to grant land to certain extent for the residential purposes is vested in the District Magistrate. It was, therefore, incumbent upon the appellants to plead and establish that the Sub-Divisional Officer had the authority to grant the Government land on lease for residential purposes. The High Court while exercising the jurisdiction under Article 226 of the Constitution of India had come to the conclusion that the order of the Sub-Divisional Officer upon which the whole claim of the appellants rests was invalid and improper. The High Court itself could have set aside such invalid and improper order. Therefore, in our considered opinion nothing turns on this argument. Even if there was any technical violation of the rules of natural justice, this is not a fit case for interference, such interference would result in resurrection of an illegal, nay, void order.

In Venkateswara Rao v. Government of A.P., a Primary Health Centre was formerly inaugurated at a particular village subject to certain conditions. Since those conditions are not satisfied, the Panchayat Samithi resolved to shift it to another village. The Government, in exercise of its review jurisdiction, interfered with the resolution so passed by the Panchayat Samithi without providing any opportunity whatsoever to the Panchayat Samithi. The government's order was challenged in a proceeding under Article 226 of the Constitution of India. The A.P. High Court held, the order passed by the Government on the review to be bad, but did not interfere on merits. The Supreme Court, while confirming the order of the High Court observed that: "if the High Court had quashed the said order, it would have restored an illegal order; it would have given the Health Centre to a village, contrary to the valid resolutions passed by the Panchayat Samithi."

The Supreme Court opined that the High Court was right in refusing to exercise its extraordinary discretionary power under Article 226 of the Constitution of India. In M.C.Mehta v.Union of India, this Court, relying upon Venkateshwara Rao (1 supra) observed; "the above case is clear authority for the proposition that it is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The Court can under Article 32 of Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of principles of natural justice or is otherwise not in accordance with law."

In our view, on the admitted and indisputable facts set out above, any interference with the impugned order of the District Collector would result in restoration of orders passed earlier in favour of the appellants which are otherwise not in

accordance with law.

For all these reasons, we do not find any merit in the appeals. The appeals are accordingly dismissed. We make no order as to costs.

JUDIS