

Court No. - 9

Case :- COMPANY PETITION No. - 35 of 2000

Petitioner :- Coates Of India Ltd.

Respondent :- M/S Mitra Prakash Ltd.

Counsel for Petitioner :- Gopal Chandra Saxena,A.N.

Mishra,A.N. Mitra,Aditya Pandey,Ajal Krishna,Ashwaini

Mishra,Ashwani Mishra,B. Raj,B.K. Jha,Brij Gopal

Tripathi,Brijesh Kr. Pandey,Jeetendra Pandey,Krishna

Mohan,Manish Goyal,Navin Kr. Srivastava,Nimai

Dass,Nirbhay Kumar,O.L. O.P. Sharma,P.K. Ganguly,P.K.

Sinha,Piyush Bhargava,Prakash Chandra Srivastav,Raj Nath N.

Shukla,Rajeev Gupta,Rakesh Chandra Tiwari,Rakesh Kr.

Pandey,Rakesh Kr. Yadav,Ram Kaushik,S. Jaiswal,S.R.

Yadav,Sachindra Mohan,Sundeep Agarwal,V.K.

Ganguly,Vishnu Kesarwani,Y.S. Saxena

Counsel for Respondent :- J. Nagar,Arun Kumar Singh,B.K.

Tewari,Binod Kumar Jha,C.B. Yadav,C.P.

Singh,C.S.C.,Diptiman Singh,Kushal Kant,Miss Bushra

Marium,Navin Sinha,O.L. M.K. Bagari,O.L.B.K.L.

Srivastava,P.K. Mukherji,Prateek Kumar,R.K. Pandey,Rahul

Sahai,Rajnath N. Shukla,Ram Krishna,S. Narain Sinha,S.S.

Yadav,Siddharth,T.P. Singh,Taria Naiyer,U.P. Singh,V.K.

Srivastava,V.K. Tiwari,V.V. Tiwari,V.V.Tiwari

Hon'ble Anjani Kumar Mishra,J.

M/s Mitra Prakash Ltd. is under liquidation, pursuant to the order of its winding up, passed on 23.05.2005, the Official Liquidator appointed its liquidator and the assets of the Company are in possession of this Court.

Official Liquidator filed Report (Judicial) No.170 of 2018 stating that he was being pressurized by the Municipal Commissioner to demolish the building, housing the machinery etc. of the Company (In Liquidation), annexing thereto a letter dated 24.07.2018 received by him from the Municipal Commissioner, Allahabad.

The Court, prima facie, finding that the Municipal Commissioner was under political pressure to effect demolition, directed him to appear in person on 16.08.2018 along with the material which indicated that the building needed to be demolished, forthwith.

On 16.08.2018, the Municipal Commissioner, Allahabad appeared in person and on his behalf, the Court was informed

that various orders and letters written by him regarding demolition of the structure of the Company (in Liquidation) would be withdrawn. Therefore, an order was passed in open Court, exempting further appearance of the Municipal Commissioner, Allahabad. However, a short while thereafter, a mention was made that the Official Liquidator had received an email that in fact demolition was being carried out on the spot.

Counsel for the Nagar Nigam was asked to be present after lunch, whereupon written instructions were furnished him, duly signed by the Municipal Commissioner, stating that the Nagar Nigam was in no way connected with the demolition being carried out on the spot.

This Court directed that the order passed on that date be communicated to the S.H.O. Mutthiganj for registering a case regarding illegal demolition and for ensuring that the demolition was stopped, immediately. He was required to remain present in person on the next date, namely, 17.08.2018 at 10 AM., along with his report.

Unfortunately, 17.08.2018 was declared a holiday on account of the death of former Prime Minister, Shri Atal Bihari Bajpayee.

The matter came up before the Court almost two weeks thereafter, on 31.08.2018. No report was furnished by the S.H.O., Mutthiganj as required by the order passed on 16.08.2018.

Shri Ajit Kumar Singh, who appeared on behalf of the State on that date, sought further time for filing the report. Hence, the matter was fixed for 04.09.2018.

On 04.09.2018, a report was furnished by S.H.O. Mutthiganj, Rishikant Rai. This report was silent about any arrest having been made, of persons responsible for the unauthorized demolition of property in the custody of the Court.

However, on a query by the Court, it was stated that one Robin Sharma had been arrested and subsequently let off on a personal bond. Robin Sharma was also stated to have informed that the demolition was carried out on the instructions of one Rakesh Kumar Gupta.

Since, despite the above information, the police had not been able to trace out or arrest Rakesh Kumar Gupta, who according to them, was responsible for the illegal demolition, the Court granted 48 hours time for the said purpose. The persons, who according to the police were responsible for demolition were

directed to be produced before the Court on the next date, namely, 06.09.2018.

On 06.09.2018, two persons, namely, Robin Sharma and Rakesh Kumar Gupta, who produced before the Court. Their statements made in Court are recorded in the order passed on the said date. More importantly, Rakesh Kumar Gupta had stated that he had never visited the site of demolition.

Since, certain photographs had been filed by the Official Liquidator showing persons carrying out demolition and the Court was also informed that the iron girders put in place to support the roof of the structure were missing, these photographs were directed to be supplied to the S.H.O., Mutthiganj and the case of theft of iron girders was also directed to be registered and investigated.

It was further directed that Robin Sharma and Rakesh Kumar Gupta be produced before the concerned Magistrate, their police remand be obtained for further investigation and for seeking to identify the persons seen carrying out demolition in the photographs filed on behalf of the Official Liquidator.

The Administration was also directed to place a police picket to protect the assets of the Company (In Liquidation), fixing the matter for 12.09.2018.

On the next date, the matter was adjourned for 14.09.2018, on which date, the SHO, Mutthiganj filed a report stating that when the aforesaid two persons were produced before the Magistrate, they were sent on judicial remand and therefore, no investigation could be carried out.

The S.H.O., Mutthiganj was directed to file a fresh application for obtaining remand along with copy of the order of the Court, passed that day

In pursuance of the said order, the Police did obtain remand and in the next report filed, it was stated that nothing had been divulged by the accused. A statement was also made that copy of the order dated 06.09.2018 had been produced before the concerned Magistrate and yet police remand had not been granted by the said Magistrate.

An explanation was, therefore, called for from the Magistrate concerned. This explanation has been received and is available on record. The Magistrate concerned has stated that the order dated 06.09.2018 was never produced before him. Neither any prayer was made for police remand and therefore, the persons

produced had been sent to jail on judicial remand.

On the next date i.e. 19.09.2018, on the request of Shri Nitil Agarwal, learned Standing Counsel, the matter was adjourned to 24.09.2018 after taking on record the report of the S.H.O., Mutthiganj and a CD, wherein he is seen questioning the two accused.

In the order passed on 19.09.2018, this Court had observed that no substantial progress had been made in the investigation. It was also observed that if this situation persisted, the Court would be constrained to summon the Principal Secretary (Home) to explain the lack of progress.

On 24.09.2018, the next date fixed, Shri Manish Goyal, Additional Advocate General appeared in the matter and sought an adjournment on the assurance that he would make efforts to ensure that a proper report was filed. This was so because the report submitted by the S.H.O. Mutthiganj on that date was found highly unsatisfactory, as it was almost entirely a narration of the history of the Company petition. The matter was accordingly adjourned for 27.09.2018.

On 27.09.2018, further time was sought for a report as the Court was informed by Shri Manish Goyal that he had held a conference with the concerned Officials till late the previous night and action in pursuance thereof was being taken. The matter was therefore, adjourned for 01.10.2018.

Since, the hearing could not be held on 1.10.2018, the matter was fixed for 03.10.2018, on which date, the matter was again adjourned for 04.10.2018 and then again to 05.10.2018.

On 05.10.2018, a reply was filed Shri Anoop Trivedi, Counsel for the Nagar Nigam, Allahabad and Shri Gopal Verma, Counsel for the Panchayati Akhada sought time to examine the same. The matter was therefore, ordered to be put up on 08.10.2018.

On 08.10.2018, Shri Anoop Trivedi, counsel for the Nagar Nigam, Allahabad was directed to produce the original record regarding the alleged inspection by the Nagar Nigam of the property, which had been demolished and for the purpose, the matter was ordered to be put up on 09.10.2018.

On 09.10.2018, Shri Gopal Verma, counsel appearing for the Akhada produced a pen drive containing photographs and video footage shot during the demolition of the property of the Company (In Liquidation) which in the custody of this

Company Court.

After viewing the photographs and video footage shot and upon finding that Rakesh Kumar Gupta one of the persons produced before this Court by the S.H.O., Mutthiganj and whose interrogation by the S.H.O., Mutthiganj revealed that he was taken a stand that he was totally unaware and had never visited the site of demolition and finding that his photograph was there among persons standing on the site of the demolition while demolition was taking place, this Court considered it appropriate to direct the Principal Secretary (Home), ADG(Zone), Allahabad, IG(Range) Allahabad and the Senior Superintendent of Police, Allahabad to appear before this Court, in person, on 11.10.2018.

On 11.10.2018, the Officials, who had been summoned appeared before the Court and after hearing the parties, the following order was passed reserving judgement on the submissions made by counsel for the parties especially, the Advocate General, U.P., wherein he has challenged the jurisdiction of this Court to monitor the investigation, ordered.

"In pursuance of the earlier order dated 09.10.2018, Mr. Arvind Kumar, the Principal Secretary (Home), Mr. Satya Narain Sabat, ADG (Zone), Allahabad, Mr. Mohit Agrawal, IG (Range), Allahabad and Mr. Nitin Tiwari, Senior Superintendent of Police, Allahabad have appeared in person, before this Court, today.

These officials were required to appear because part of the building of the Company (in Liquidation), M/S Mitra Prakashan Ltd. in the custody of the Company Court, was demolished, unauthorizedly, and a FIR was directed to be lodged in this regard vide order dated 16.08.2018. Subsequently, theft of iron girders also came to light and a direction was issued to incorporate appropriate sections of the IPC in the FIR.

However, from the various reports of the ensuing investigation filed, this Court could discern no progress in the investigation.

Learned Advocate General, UP, has appeared for the State. His first contention is that the Official Liquidator has failed to perform his duty of providing adequate security to protect the assets of the Company (in liquidation) and, therefore, demolition has been occasioned.

The second contention is that the Company Court exercising jurisdiction under the Companies Act, 1956 is only competent

to get an FIR lodged as has been done in the case at the hand. Thereafter, the Company Court has no role to play in the matter and it is for investigating agency to investigate the matter, in any manner, it thinks fit.

Reliance has been placed upon the decision of the Supreme Court in D. Venkatasubramaniam & Ors. vs. M.K. Mohan Krishnamachari & Anr. : 2010 (1) JIC148 (SC) especially in para 2 thereof.

The next contention of the Advocate General is that in the incident no offence has been committed against the Company (in Liquidation) and in case any offense has been committed, the jurisdiction lies with the Magistrate, concerned. The Company Court has no role to play in the matter. It cannot issue any directions as to how the investigation agency should proceed. This Court had directed to the SHO to obtain police remand of the persons allegedly connected with the demolition, which direction was totally without jurisdiction.

I have also heard Shri Rajnath N. Shukla, counsel for the Official Liquidator at length.

As regards, the Municipal Corporation, Shri Anoop Trivedi, its Counsel has stated that replies have already been filed by means of two affidavits of Mr. Raj Kumar Gupta, Assistant Municipal Commissioner and that he has nothing further to add.

In rejoinder, the contention of learned Advocate General is that admittedly the building which has been demolished was in dilapidated condition. Several incidents had occurred in the State UP where dilapidated buildings fell down resulting in loss of life. Therefore, directions have been issued at the highest level for demolition of such dilapidated buildings. Therefore, if any demolition has been done, the same cannot be faulted with. In any case large scale demolitions have been carried out in Allahabad.

In this regard, Shri Rajnath N. Shukla has pointed out that the letter of the Municipal Commissioner dated 23.07.2018 (wrongly mentioned in place of 24.07.2018) addressed to the Official Liquidator states that directions for demolition of the structure in question were continuously being issued from the office of the Chief Minister, UP and the District Magistrate, Allahabad.

I have also heard Shri Gopal Verma, counsel for the Akhada, who had submitted that the demolition was carried out by the

Nagar Nigam and the rubble was removed from the spot in vehicles belonging to the Nagar Nigam and now the Akhara is sought to be implicated on the reasoning that it alone is the beneficiary of the demolition. A large number of photographs have been filed along with the reply filed by the Akhara showing persons carrying out the demolition. None of these persons have been interrogated by the police. The police has also not made any attempt to collect the video footage available from various CCTV cameras installed in the area, including some petrol pumps and other business establishments due to ulterior motive and in an attempt to shield the real culprits.

He has also submitted that in the reply filed by the Nagar Nigam, any knowledge of the demolition has been denied but in the some breath it has been stated that the demolition was by the Akhara. Both stands cannot be taken concurrently.

Order reserved.

Put up for delivery of order on 22.10.2018 on which date, the Officers who are present in person shall again remain present, along with the report of the further investigations, for which time has been sought by the Principal Secretary.

His initial prayer was for the grant of two months further time for completing the investigations."

From the order quoted above, it emerges that the State of U.P., represented by the Advocate General, is aggrieved by the directions that have been issued by this Company Court through the various orders noticed above. It is his case that such directions cannot be issued by the Company Court and are wholly without jurisdiction.

The second limb of his argument is that the building in question, in any case, was in dilapidated condition and therefore, necessarily required demolition because several dilapidated buildings in the State of U.P. had fallen down resulting in loss of life and property requiring directions from the Highest Level for demolition of such dilapidated buildings.

Learned Advocate General by the above noted succinct argument is in effect justifying the demolition of the building, which is admittedly in the custody of the Company Court, which demolition has been effected without any direction or sanction having been obtained by this Court.

Before dealing with the arguments, this Court considers it appropriate to observe that on the previous hearings and for the

reasons given in the earlier orders, this Court was constrained to and in face forced to issue the directions, whereby State of U.P. and the learned Advocate General are highly aggrieved.

The starting point of the sequence of events, which have culminated in the instant proceedings before this court is an application dated 19.01.2018 made by the Secretary of Shri Panchayati Akhara Naya Udasin made to the Chief Minister, Uttar Pradesh.

In this application, it has been stated that part of the building of Maya Press, lay in the land of the Akhara and that its major portion fell down five years ago; the remaining portion is also likely to fall down. A prayer has been made that the dilapidated portion be demolished and the land of the Akhara be returned back to it.

The second prayer made in this letter is regarding the assessment of the House Tax upon the Akhara.

In response to the above, a letter was written by Ajay Kumar Singh, Officer on Special Duty in the office of the Chief Minister to the Commissioner, Allahabad.

This letter of the OSD, talks of illegal occupation of the land belonging to the Akhara. It has also been mentioned that instructions had been given by the Chief Minister earlier and therefore, urgent steps be taken and the Chief Minister be apprised, accordingly.

On receipt of the letter aforesaid, the Commissioner, Allahabad Division, Allahabad wrote a letter dated 06.03.2018 to the District Magistrate, Allahabad directing him to take effective steps to get the land of the Akhara rid from unauthorized occupation and also to get the house tax assessed, suitably modified.

The District Magistrate, Allahabad thereafter issued a letter dated 07.03.2018 to the Municipal Commissioner, Nagar Nigam, Allahabad requiring suitable action in the matter.

In the next letter available in the file summoned from the office of the Municipal Commissioner, Allahabad, is a letter dated 19.03.2018 written by the Additional City, Magistrate-III, Allahabad to the City Magistrate, Allahabad stating that Jagtar Mani, Secretary of Panchayati Akhara, Mutthiganj visited his office along with his Advocate and informed him that the dilapidated house of Maya Press is not sealed under the orders of the High Court and that a copy of the order in this regard

shall be produced within two days. Accordingly, a direction has been issued that the dilapidated structure of Maya Press, No.286, Mutthiganj, Allahabad be inspected and the Municipal Commissioner, Allahabad be requested to take suitable action in the matter.

There is yet another letter dated 22.03.2018 by the Chief Secretary of the Panchayati Akhara addressed to the Municipal Commissioner / Mayor, Nagar Nigam, Allahabad, wherein permission for demolition of House No.286 and 287 has been prayed for.

Thereafter on 12.04.2018, the Chief Engineer, Nagar Nigam, Allahabad wrote to the City Magistrate, Allahabad stating that an inspection was made by an Engineer of the Municipal Corporation whereupon, demolition of the structure is necessary as it is in dilapidated condition. The only material annexed with this letter are photo copies of two photographs, which only reveal that the roof of the structure has collapsed.

The Additional City Magistrate-III, Allahabad thereafter on 16.05.2018 has written a letter to the Chief Engineer, Nagar Nigam, Allahabad calling for action under the relevant provisions of the Municipal Corporation Act. A copy of this letter has been endorsed to the S.H.O., Muthhiganj, to provide adequate police force, in case, the same is demanded.

There is yet another letter of the Chief Secretary, Panchayati Akhara dated 20.06.2018, available in the file stating that in pursuance of the letter issued by the Chief Minister for removal of unauthorized occupation and for correction in the House Tax imposed upon the Akhara an inspection was made on 19.03.2018.

The fact in this letter and the date mentioned therein are contrary to the facts mentioned in the letter of the Chief Engineer, Nagar Nigam, Allahabad dated 12.04.2018, which states that inspection of the allegedly dilapidated structure was made in pursuance of the order dated 20.03.2018 passed by the City Magistrate, Allahabad.

In case, an order was passed by the City Magistrate, directing the Chief Engineer to inspect the property on 20.03.2018, it is not possible for such inspection to have been made on 19.03.2018. This fact by itself casts a very serious doubt upon the contents of the letter dated 12.04.2018 of the Chief Engineer, Nagar Nigam, Allahabad.

The date of inspection is stated to be 19.03.2018, also in the

letter dated 20.06.2018 written by the Assistant City Magistrate/ Zonal Officer, Zone-II, Mutthiganj to the OSD to the Chief Minister.

Thereafter on 23.06.2018, the Chief Engineer has written a letter to the Secretary, Panchayati Akhara to demolish the dilapidated structure of Maya Press.

Again on 15.06.2018, the Additional City Magistrate-III, Allahabad has written a letter to the Municipal Commissioner informing, him that required steps be taken in accordance with Section 331 of the Municipal Corporation Act and the owner of the building be directed to get it demolished.

A similar letter was written by the ADM(City), Allahabad to the Municipal Commissioner, Allahabad.

The Additional Municipal Commissioner/ Zonal Officer, Zone-II, Muthhiganj, on 20.06.2018, wrote a letter to the OSD to the Chief Minister, informing him that the house tax imposed is satisfactory and that the Akhara has no objection to it. Therefore, the application/ complaint dated 19.01.2018 addressed to the Chief Minister stands remedied.

Subsequently, there are letters on record showing the displeasure expressed by the Commissioner and the District Magistrate as the Assistant Municipal Commissioner had communicated with the Chief Minister's office, directly.

On 09.07.2018, the Commissioner, Allahabad wrote a letter to the Municipal Commissioner, Nagar Nigam, Allahabad stating therein that the issues raised by the complaint of the Secretary, Panchayati Akhara vide application dated 19.01.2018 have not been resolved completely. It states that it does not appear feasible that the building of Maya Press can be repaired. This building is alleged to have been leased out by the Akhara and since the lessee has become insolvent, the building has been sealed by the Official Liquidator and that this information displayed in front of the building.

This letter also states that the identical facts have been stated by Jagtar Muni in his application dated 19.01.2018. This letter also states that the Official Liquidator has been informed that he has stated that he has intimated the Company Court in this regard. As soon as, the orders are passed, the same shall be communicated. Finally, a direction has been issued that the dispute has not been resolved fully and that it should be resolved and a report be furnished, thereafter.

This letter was received in the office of the Nagar Nigam, Allahabad on 09.07.2018 itself and in pursuance thereof a letter has been written to the Official Liquidator on 24.07.2018 seeking his prompt action in this matter. This letter specifically mentions that the prompt action for demolition is being pressed for by the office of the Chief Minister, the Divisional Commissioner, Allahabad, as also the District Magistrate, Allahabad.

From the facts noticed above, it is writ large on the face of the record that the entire proceedings by the Administration on the directions of the Chief Minister's Office were initiated on a complaint regarding eviction of unauthorized occupants from the land of the Akhara and an objection regarding incorrect assessment of the House Tax.

Thereafter, the Akhara and its Counsel appear to have misled the City Magistrate, Allahabad, by stating that the premises was not sealed nor it was in the custody of the Company Court.

The authorities have proceeded to ask the Official Liquidator to get the structures demolished on the basis of an alleged inspection report, which for the reasons given herein-above, is not reliable and appears to be a mere eye-wash. Therefore, the authorities have proceeded on mere assumption and on the mere asking of the Akhara and to give undue benefit to the Akhara which is, *prima facie*, trying to get the structure demolished and to take possession of the vacated land, illegally, with the active connivance of the District Administration and under manifest and purported directions from the office of the Chief Minister.

In this connection, it would be relevant to note that a report was filed by the Official Liquidator that the door windows leading towards the portion, demolished, had been blocked by raising walls. This, in my considered opinion, is further evidence of an attempt to unauthorizedly occupy the land, of the Company (In Liquidation), after demolishing the structure, existing, thereon.

At this stage, it would also be relevant to note that Maya Press and Mitra Prakashan Ltd are two concerns having common Directors, belonging to one family. Orders have been passed to the effect that the assets of one are liable to be appropriated for liquidating the liabilities of the other. Therefore, even if, Maya Press is the original lessee, the Company (In Liquidation) has a lien over the property in accordance of judicial orders passed in this regard.

There is yet another next aspect of the matter. The Akhara

claims to have let out the land to Maya Press. However, when the Official Liquidator invited claims, no claims has been lodged by the Panchayati Akhara.

Even if, it is assumed and accepted that the Akhara had let out the land, its actions are geared towards getting back possession, illegally and in this endeavour, the District Administration and Municipal Corporation and the office of the Chief Minister have extended all possible help to the Akhara.

On receipt of the information that the demolition was actually being carried out, the F.I.R., as noticed above, was directed to be lodged and the police was asked to investigate.

The case of the Akhara, at best, is that it had let out the land. It is not their case that any structure had been let out. The structure therefore, necessarily, belongs to the Company (In Liquidation).

Not only has the structure been demolished, the rubble and steel girders have been removed, which were the property belonging to the Company (In Liquidation) and the same would have been sold to liquidate the Company and to clear the liabilities of the secured creditors and the dues of the workmen. By their demolition and theft, it is the interest of the secured creditors, who have an exposure in excess of several crores, as also workmen of the Company which has been jeopardized.

Under Section 466 of the Companies Act, the Company Court can recover assets of the Company (In Liquidation), which may be in the possession of any person. However, such recovery is possible only once, after investigation, it is established as to who in possession, of the stolen assets of the Company (In Liquidation).

In this factual backdrop and for determining as to who was responsible for the demolition and for removal of assets of the Company (In Liquidation) the investigation was being monitored by the Court. In the very first order, it had been recorded that, *prima facie*, the Official Liquidator was being pressurized to get the structures demolished and that political pressure was being exerted upon the District Administration as also the Official Liquidator for the purpose.

In case, the building was really in dilapidated condition, nothing prevented the administration from informing the Company Court and obtaining suitable directions. The actions of the administration therefore, smack of totally arbitrariness and highhandedness.

It has also come in the various reports submitted by the S.H.O., Mutthiganj that the illegal demolition continued from 27.07.2018 till 16.08.2018, when the Court first took cognizance and directed lodging of the F.I.R. This in itself shows that the structure could not be dilapidated, as it would not take almost 18 days to demolish a dilapidated structure.

In this context, I find substance in the submission that have been made on behalf of the State of U.P. that the beneficiary of the illegal demolition is the Akhara. However, the moot question, which begs for an answer, is the actual authority or person responsible for this illegal demolition and theft of the assets of the Company (In Liquidation).

However, this Court is also constrained to observe that from the sequence of events narrated above, as emerging from the material on record, the entire action which has culminated in illegal demolition is on account of the illegal stand of the Akhara with the tacit and overt support of the local administration as also the Chief Ministers' office and for this reason, the police has failed to act in the matter and has been adopting dilatory tactics.

The S.H.O. Mutthiganj had been directed to register an F.I.R. and to investigate the matter. He was required to produce the persons carrying out the demolition before the Court. Providence intervened and this situation did not arise because on the date fixed, the Court was closed.

The matter came up again before the Court, two weeks, thereafter. The investigating agency could identify only one person who is stated to have taken the name of another person, both of whom were produced before the Court on its direction. The persons were directed to be produced before the concerned Magistrate and the police was required to obtain their remand and to interrogate them. The police did produce these two persons before the concerned Magistrate, but did not pray for a police remand. Neither the order passed by this Court was produced before the concerned Magistrate and the S.H.O. had the guts to make a statement before this Court that the order passed on 06.09.2018 had been produced before the Magistrate concerned.

The S.H.O. therefore, is prima facie guilty of having made a false statement before this Court to mislead and also with a view to stifle the investigation.

As already noticed herein-above, the property demolished and stolen, belongs to the Company (In Liquidation) and was in the

custody of the Company Court to be used for liquidating the Company and for paying of the secured creditors and the workmen during the course of the winding up proceedings.

Under the circumstances, another question, which arises for consideration is whether, such interference by any person and the attempt of the investigating agency and its failure to investigate the matter, amounts to interference with the functioning of the Court and the administration of justice, amounting to criminal contempt.

In any case, since the S.H.O. Mutthiganj, Allahabad, who is stated to have since, been transferred, appears to have made a false statement before this Court. Therefore, notices under Section 340 Cr.P.C. to show cause why action be not taken against him for such false statement, is liable to be issued to him.

The stand of the Municipal Commissioner, Awinash Singh, that he had no knowledge about the demolition being carried out nor the Nagar Nigam, Allahabad, had any connection with the same, is also, *prima facie*, false.

The photographs and video footage, which have been produced by Shri Gopal Verma, counsel for the Akhada before this Court clearly show that officers of the Nagar Nigam were present on the site, while demolition was being carried out. Their presence is found on 27.07.2018, when, as per the report of the S.H.O., the demolition is stated to have commenced.

Despite such knowledge, the Municipal Commissioner, Nagar Nigam, Allahabad has given a letter under his own signature that the Nagar Nigam has no concern with the same.

On the previous occasion, when the Municipal Commissioner, Nagar Nigam, Allahabad had been summoned and had appeared before the Court, he had made a statement that the orders passed seeking regarding demolition would be withdrawn and if necessity arose, fresh proceedings under the relevant provisions of the Municipal Corporation Act would be initiated.

On the date, the above statement was made, ie. 16.8.2018, he was aware that the demolition was in progress for almost two weeks because various Officers of Nagar Nigam are to be seen in the video footage produced by Shri Gopal Verma, counsel for the Akhada.

In case, the Nagar Nigam had no role to play in the demolition, there is no justification why its officers were present on the site.

In this regard, there is a report made by the staff, employed in the office of the Official Liquidator, who visited the site after the order was passed on 16.08.2018 and questioned the persons carrying out demolition. They were informed that the demolition was being carried out at the instance of the Municipal Commissioner, Nagar Nigam.

Not only has the Municipal Commissioner tried to mislead the Court and has given a *prima facie*, false letter to the Court, his conduct also shows a totally lack of bona fide because he could have informed the Court that demolition was already being carried out. This would have indicated his bona fides regarding the stand that the Municipal Commissioner, Nagar Nigam, Allahabad or the Nagar Nigam itself was not involved in the demolition. The very fact that it was not brought to the notice of the Court, points to the complicity of the Nagar Nigam and the Municipal Commissioner, Nagar Nigam, Allahabad in the matter.

Under the circumstances, a notice is liable to be issued to Shri Awinash Singh, the Municipal Commissioner, Nagar Nigam, Allahabad under Section 340 Cr.P.C. as to why action should not be taken against him for having furnished a wrong fact in his own hand writing to the Court with the intention of misleading the Court.

This is so, also because it has been stated by Shri Gopal Verma that the entire rubble of the demolition was transported out, in vehicles belonging to the Nagar Nigam, Allahabad.

I also find substance in the submission of counsel for the Panchayati Akhard that the police have not made any attempt to collect evidence. It has neither tried to interrogate the persons, who are seen in the various photographs and video footage, brought on record by him as also by the Official Liquidator. The CD produced before this Court and the interrogation of the Robin Sharma and Rakesh Kumar Gupta seeks to given an impression that they have nothing to do in the matter or are not disclosing anything.

Shri Rakesh Kumar Gupta had stated before this Court that he had never visited the site of demolition. A similar statement has been made in the video supplied by the SHO Mutthiganj. but he is to be seen in the photographs produced by Shri Gopal Verma, which photographs are alleged to have been taken at the time demolition was taking place.

In the aforementioned background, it is appropriate to consider the objections raised by the Advocate General of U.P. and his

reliance upon the judgement in *D. Venkatasubramaniam & Ors. vs. M.K. Mohan Krishnamachari & Anr. : 2010 (1) JIC148 (SC)*, especially in para 2 thereof.

This Court does not find any merit in the submission of learned Advocate General that the directions issued by this Court are beyond its jurisdiction. The Court had issued only a minimal number of directions, one that a first information report be lodged and that an investigation be carried out. The other direction was that the persons, who had been produced before this Court be produced before the Magistrate and their remand obtained, by the Police for their interrogation. This direction has been issued because the S.H.O. concerned had been directed to receive the evidence regarding the demolition, which was available on record, having been filed by the Official Liquidator. This direction might not have been necessary, if the relevant evidence had been collected by the investigating agency itself.

The direction to obtain remand was necessary, also because from the various reports brought on record, it transpires that the investigating agency has only been issuing notices to various persons to get their statement recorded. No attempt was made and at least none has been reported that the investigating agency made any attempt on its own to interrogate anyone. The investigation therefore cannot be termed a proper investigation. The police made not attempt, even to interrogate the persons, who as per its own report were responsible for the illegal demolition. It is not their case that the direction to obtain police remand was unnecessary, because even if it was possible to interrogate the persons during his judicial remand, no such attempt has been made by the Investigating Agency. The direction regarding obtaining remand, therefore, cannot be said to be any interference by the Court in the investigation.

The only other direction, whereby, learned Advocate General of U.P. is aggrieved is the direction of the Court, upon receipt of information of illegal demolition and theft, issued to the administration to post a police picket to stop any further pilferage of the assets of the Company (In Liquidation). This direction in any case, cannot be construed as interference in the investigation.

The question as to whether, the Official Liquidator has failed to perform his duty in securing the assets of the Company (In Liquidation) is an entirely different aspect and one between the Court and the Official Liquidator. The investigating agency, once a F.I.R. has been lodged, cannot take the plea raised. There is not an iota of doubt that illegal demolition and theft has taken

place. Therefore, it does not lie in the mouth of the State to plead that since theft has been taken on account of any alleged lapse on the part of the Official Liquidator, the State and the Investigating Agency are absolved of the statutory duty to investigate the matter properly and diligently. The stand of the State and the learned Advocate General, who appears for the administration and the investigation agency is therefore, found to be an attempt to shield the culprits who appear to have conspired to demolish and thereafter obtain illegal possession of the property in the custody of the Company Court without following the due procedure of law and in total and complete violation, thereof. For the same reason, the investigating agency and the police is doing nothing in the matter because complicity of the entire local administration, as also the office of the Chief Minister, is manifest on the face of the record.

It would also be relevant to note that the judgment cited by learned Advocate General was passed in a case filed by a person, whose liberty was jeopardized on account of the directions issued by the Court while exercising jurisdiction under Section 482 Cr.P.C. In the case at hand, no such directions have been issued. The direction that has been issued is at best a direction to the Investigating Agency to also take into account certain evidence, which was in the custody of the Court and was directed to be made available to the Investigating Agency. The Investigating Agency cannot and has no right to dispute these directions because it is its bounden duty to investigate an offence after an F.I.R. has been registered.

The Court is also constrained to observe that by his arguments, specially the second limb of his argument, the Advocate General, has tried to justify the demolition, forcing this Court to take a view that the investigating agency, the administration and in general the entire State machinery is trying to dilute the investigation required in pursuance of the first information report, lodged on the directions of this Court. The attempt appears to be to prevent correct facts being brought forth.

On the question of jurisdiction, raised by learned Advocate General, suffice would be refer to the provisions contained in Rule 9 of the Company Court Rules, 1959, which reads as under -

"Rule-9- Inherent powers of Court -Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Court to give such directions or pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

As already noticed in the body of this order above, the investigation had been ordered because the Company Court found that not only property belonging to the Company (In Liquidation) had been demolished, it had also been stolen. The demolition has undoubtedly resulted in diminishing the value of the assets of the Company (In Liquidation), which will adversely effect the interest of the secured creditors as also the workmen.

It would also be relevant to refer to Section 456(2) of the Companies Act, which provides that all the property and assets of the Company (In Liquidation) shall be deemed in the custody of the Court from the date of the order of its winding up.

Section 456(2)(d), of the Companies Act, 1956, provides that the Company Court, notwithstanding anything contained in any other law for the time being in force, has jurisdiction to entertain, or dispose of, any question of priorities or any other question, whatsoever, whether of law or fact, which may relate to or rise in the course of the winding up of the Company. The question of illegal demolition and theft of the Company has arisen in the course of the winding up of the Company.

The objections of learned Advocate General are therefore, rejected out right, not only on the ground that they lack merit but also because, *prima facie*, they appear to have been raised, malafide, and only with a view to protect the perpetrators of the illegal demolition and theft

This Court also finds substance in the contention of Shri Gopal Verma that the police has failed to interrogate the persons, whose photographs were provided by the Official Liquidator. Various photographs have been provided by him to the Court also.

This Court also considers it necessary to note that the counsel appearing for the State have been consistently praying for further time. Even the Principal Secretary(Home) after being asked by the Court, as to whether, he was aware of the seriousness of the matter stated that he had been apprised of the situation. He thereafter made a prayer for two months further time for carrying out a proper investigation, which prayer for turned down because it was not found to be, bonafide.

As on date, more than three months have elapsed since lodging of the F.I.R. and the Court can perceive absolutely no progress in the investigation, as recorded above.

In this connection, it would also be relevant to refer to the

report of by the S.H.O. Mutthiganj (new S.H.O.), wherein he has reportedly send a letter to the Official Liquidator to depute somebody to identify the stolen property. In the same breath he has stated that the stolen items have not been located. This is clearly a contradictory stand and cannot be accepted as is nothing but an attempt to give an impression to the Court that the Investigating Agency is performing its duty, deligently.

There is also force in the submission of Shri Gopal Verma that in view of the allegations made that the rubble was removed in vehicles belonginig to the Nagar Nigam attempts should have been made by the Investigating Agency to obtain the vide footage from the CCTV's installed in the vicinity of the site of the demolition. This was clearly not done till 22.10.2018. The police cannot claim to be unaware that video footage from DVR's is to be procured promptly, failing which, it gets overwritten within a fortnight or at the most, after a month. The failure on the part of the investigating agency to act promptly was therefore only with a view to allow the evidence to be destroyed. This by itself show that complicity of the police in the matter. The SSP, Allahabad, on 22.10.2018, stated precisely this very fact before the Court.

Even though, right from the beginning, the Akhara was sought to be implicated by the police, no attempt was made to question Jagtar Muni on the specious reasoning that he was out of station. Why were the police personnel, including the SSP, shy of interrogating him, despite being fully aware of his whereabouts ? The only conclusion that can be draw from such failure is that the police is trying to prevent the truth from seeing the light of day. Such an approach cannot be permitted.

Under the circumstances the objections raised by the Advocate General U.P are repelled and this Court is issuing the following directions :

- I. Let notices under section 340 Cr.P.C be issued to Shri Ashwini Singh, Municipal Commissioner, Nagar Nigam Allahabad to show cause why action be not taken against him for having tried to mislead this Court by his letter in writing.
- II. Notice under section 340 Cr.P.C, be also issued to the erstwhile SHO, Muttiganj, Allahabad, Rishi Kant Rai, for having made a false statement in Court that he had produced the order passed by this Court on 06.09.2018 before the concerned Magistrate when in fact it was not produced by him nor any prayer was made before the Magistrate for obtaining police remand.

III.A current and up to date report regarding the current status of the investigation be filed within three days to enable the Court to decide whether there is any progress in the investigation and / or whether, in the facts, and circumstances of this case, the investigation needs to be handed over to an outside agency beyond the control of the local administration or for handing over the inquiry to a retired Judge of the High Court of the accused.

Put up this matter on 16.11.2018 for the above.

Order Date :- 12.11.2018

RKM