

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 5101 OF 2007  
[Arising out of SLP [C] No. 6133 of 2005]

JALALUDIN & ORS.

...

Appellant(s)

VERSUS

STATE OF U.P. & ORS.

... Respondent(s)

ORDER

1. Leave granted

2. This appeal by way of special leave is against the final judgment and order dated 23rd of February, 2005 passed by the High Court of Judicature at Allahabad upholding the order dated 29th of December, 1994 passed in Case No. 1/M of 1992 (Vishwanath & Ors. Vs. Sanehi & Ors.) canceling the allotment of surplus land from ceiling in favour of the appellants and also upholding an order passed by the Commissioner, Gorakhpur

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Division, Gorakhpur on an application filed on 14th of November, 1994 by the appellants in case No 9/M of 1994.

3. Heard the learned counsel for the parties and considered the impugned judgment and order and the other materials on record. In this case, we are not inclined to go into the details of factual position of the appeal excepting that in an earlier round of litigation in the High Court, an allegation was made by the appellants that they were not given any opportunity of being heard before cancellation of allotment of the land in question and on that, the High Court had passed the following order: -

"I have considered the arguments advanced. When petitioner moved an application before disposal of the case that he has not been given any opportunity of hearing it was incumbent on the Commissioner, Gorakhpur to record the finding while passing final order if the petitioner had opportunity to contest the case which finding he has not recorded. The contention of the learned counsel for petitioners is that the application was moved when the judgment was reserved. From perusal of impugned order it appears that the Commissioner considered that Jalaluddin wanted the disposal of the case mainly on merits which is not correct. However, as the argument is that the petitioner

did not get an opportunity of hearing and it is a matter on

which the petitioner has a remedy before the Commissioner for setting aside of the impugned order on the ground of want of opportunity of hearing, I am not inclined to consider such an argument. It is open for the petitioners to move Commissioner, Gorakhpur Division, to set aside the order on the ground that he did not had the opportunity to defend himself. In case such an application is moved then it should not be dismissed on the ground that it has already been made on 08.09.1994 which has been rejected. If the petitioners move an application within 16 days, the Commissioner will dispose of the same on merits after recording necessary finding whether the order is liable to be set aside or not for want of proper opportunity of hearing. In case such an application is moved then the dispossession of petitioner shall remain stayed till the time of disposal of said application.

With the aforesaid observations, the writ petition is finally disposed of."

From the above order of the High Court, it is evident that it was open for the appellants to approach the Commissioner, Gorakhpur Division to set aside the order on the ground that the appellants had no opportunity to defend in the matter of cancellation of the land in question. The High Court had given liberty to the appellants to make an application to that extent saying that they had no opportunity to defend. Accordingly, an application was made before the

Commissioner in compliance with the order of the High Court but, unfortunately, in the said application, there was no averment that the appellant had no opportunity to defend himself before the Commissioner and accordingly, the order canceling the allotment in question was not recalled. Feeling aggrieved by the said order, a writ petition being Civil Misc. Writ Petition No. 787 of 1995 was filed by the appellants which was disposed of by a learned judge of the High Court against which the present appeal has been preferred. In view of the finding that no averment was made by the appellants in the application to the effect that no opportunity of hearing was afforded to them, we do not find any reason to differ with the views expressed by the Commissioner, Gorakhpur Division as well as by the High Court.

4. Accordingly, the appeal fails and is hereby dismissed without any order as to costs.

..... J  
[TARUN CHATTERJEE]

[P. SATHASIVAM]

New Delhi  
November 01, 2007.

ITEM NO.8                      COURT NO.10                      SECTION XI

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).6133/2005

(From the judgement and order dated 23/02/2005 in CMWP No. 787/1995 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

JALALUDDIN & ORS.    Petitioner(s)  
VERSUS  
STATE OF U.P. & ORS.    Respondent(s)

(With appln(s) for exemption from filing O.T. and permission to file additional documents and with prayer for interim relief and office report)  
(For final disposal)

Date: 01/11/2007 This Petition was called on for hearing today.

CORAM :  
HON'BLE MR. JUSTICE TARUN CHATTERJEE  
HON'BLE MR. JUSTICE P. SATHASIVAM

For Petitioner(s)  
Mr.K.K.Rai, Sr.Adv.  
Mr. Gopal Prasad,Adv.  
Mr.S.K.Pandey, Adv.

For Respondent(s)  
Mr. P.K. Jain,Adv.  
Mr.P.K.Goswami, Adv.  
Mr.K.K.Mishra, Adv.  
Mr.Amit P.Singh Rawat, Adv.  
Mr.R.S.Chauhan, Adv.

Mr.Shail Kumar Dwivedi, AAG  
Mr.T.N.Singh, Adv.  
Mr. Gunnam Venkateswara Rao,Adv.  
Mrs.Vibha Dwivedi, Adv.  
Ms.Vandana Mishra, Adv.  
Mr.Manoj Kr.Dwivedi, Adv.

UPON hearing counsel the Court made the following

ORDER

Leave granted.

The appeal is dismissed without any order as to costs in terms of the signed order.

( Satish K.Yadav )  
Court Master

( Phoolan Wati Arora )  
Court Master

( Signed Order is placed on the file )