

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).2475 OF 2016
(@ SLP(C) NO(S).34977 OF 2010)

STATE OF U.P. & ANR.

APPELLANT(S)

VERSUS

VISHAL SAHKARI AWAS SAMITI LTD. & ORS.

RESPONDENT(S)

WITH

CIVIL APPEAL NO(S).2476 OF 2016
(@ SLP(C) NO(S).30836 OF 2013)

O R D E R

Heard learned senior counsel/learned counsel for
the parties.

Correctness of the impugned judgment and order
dated 21.09.2010 passed by the High Court of
Judicature at Allahabad in Civil Misc. Writ Petition
NO. 47679 of 2008 in allowing the writ petition filed

by the respondents where the claim was preferred by the respondents on the property in question, is under challenge in the instant proceedings.

Leave granted.

The High Court has gone into the disputed questions of fact and recorded a finding of fact solely on the basis of the agreement for registering the sale deed with the appellants and the sale deed dated 24.12.1897 was executed in favour of the respondents. A copy of the sale deed is in record as Annexure-4. Further, the High Court after extracting the contents of letter dated 13.12.1985, written by the Deputy Inspector General of Police (DIG), Agra Range, Agra, has determined the disputed questions of fact, which is certainly not the jurisdiction of the High Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. On this short point, the appellants must succeed in these appeals.

We are shocked to notice from the impugned judgment and order that the claim of the

respondent-Vishal Sahkari Awas Samiti Ltd. (for short 'the Samiti') with regard to the property in question was seriously contested by the appellants in the writ petition proceedings, however, instead of asking the respondents to work out their remedy before the appropriate forum, namely, the civil court, in a properly framed suit, on the basis of the title to the property in question, the High Court after placing strong reliance on the sale deed without going into the details whether the person who has sold the property in favour of the Samiti, had title upon the property in question and on the basis of the aforesaid letter of DIG stating that the Department would like to purchase the property in question, held that the Society/Samiti had a right to ownership of the property in question, which, in our considered opinion, cannot be the basis for determining the title and ownership of the property in question in favour of the Samiti.

In view of the above, the findings and reasons recorded by the High Court are patently erroneous. In our considered view, the High Court could have declined to pronounce its judgment and order on the

disputed question of fact particularly having regard to the fact that the claim with respect to immovable property is disputed by the appellants. Therefore, the impugned judgment and order is liable to be set aside and is set aside accordingly. The appeals are allowed.

Pending application(s), if any, stand(s) disposed of.

.....J.
(V. GOPALA GOWDA)

.....J.
(ARUN MISHRA)

NEW DELHI,
MARCH 03, 2016

ITEM NO.1

COURT NO.9

SECTION XI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 34977/2010

(Arising out of impugned final judgment and order dated 21/09/2010 in CMWP No. 47679/2008 passed by the High Court Of Judicature at Allahabad)

STATE OF U.P. & ANR.

Petitioner(s)

VERSUS

VISHAL SAHKARI AWAS SAMITI LTD.& ORS.

Respondent(s)

(with interim relief and office report)

WITH

SLP(C) No. 30836/2013

(With Office Report)

Date : 03/03/2016 These petitions was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. GOPALA GOWDA

HON'BLE MR. JUSTICE ARUN MISHRA

For Petitioner(s)

Mr. Irshad Ahmad, AAG,
Mr. Vijay Bahadur Singh, AAG
Mr. Abhishth Kumar, Adv.
Mr. Anurag Rawat, Adv.
Ms. Archana Singh, Adv.

Mr. Abhinav Kr. Malik, Adv.
Mr. Ashutosh Kr. Sharma, Adv.
Mr. Ravi Prakash Mehrotra, Adv.

For Respondent(s)

Mr. Lakshmi Raman Singh, Adv.

Mr. Rakesh K. Sharma, Adv.

Mr. S.R. Singh, Sr. Adv.
Mr. Manoj Swarup, Adv.

Ms. Lalita Kohli, Adv.
Mr. Abhishek Swarup, Adv.
Ms. Malvika Biswas, Adv.
Mr. Ujjwal Pandey, Adv.
Mohd. Muztaba, Adv.
For M/s Manoj Swarup & Co.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are allowed in terms of the signed
order.

Pending application(s), if any, stand(s) disposed
of.

(VINOD KUMAR)
COURT MASTER

(MADHU NARULA)
COURT MASTER

(Signed order is placed on the file)