

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). OF 2011
[arising out of SLP(C)No.10636/2010]

RAM RATI AND OTHERS

...Appellant(s)

VERSUS

STATE OF U.P.AND OTHERS

...Respondent(s)

O R D E R

Leave granted.

This appeal is directed against order dated 25.2.2010 passed by the Division Bench of the Allahabad High Court, Lucknow Bench in Writ Petition No.1249(M/B) of 2008 whereby directions were given to the State Government and District Authorities to reconstruct the boundary wall of the disputed property and restore possession thereof to the writ petitioners (respondent No.11, who is now represented by his LRs. and respondent Nos.12 and 13).

We have heard learned counsel for the parties and perused the record.

Ordinarily, this Court is loath to interfere with the

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interlocutory orders passed by the High Court in exercise of jurisdiction under Articles 226 and 227 of the Constitution, but keeping in view the fact that the order under challenge was passed without giving effective opportunity of hearing to the appellants and also the fact that the High Court was misled in believing that stay order passed by Additional Commissioner, Lucknow Division in the appeal preferred by the contesting respondents against the decree passed by Deputy Collector (Revenue, Lucknow) was subsisting and they were dispossessed in

violation of the stay, we are inclined to set aside the impugned order.

The suit filed by the appellants under Section 229-B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1951 for grant of a declaration that they are bhoomidars and were having transferable rights in khasra Nos.203 and 205 situated at village Begaria was decreed by the Deputy Collector vide his judgment dated 12.5.2005 and direction was issued for recording the name of the appellants as transferable co-owners of the suit land.

As the concerned revenue authorities did not take action in furtherance of the decree passed by the Deputy Collector, the appellants filed Writ Petition No.1635(M/B) of 2007 for issue of a mandamus to the official respondents to take action in terms of the judgment of the Deputy Collector.

The same was

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disposed of by the Division Bench of the High Court on

16.3.2007 with a direction to District Magistrate, Lucknow and Senior Superintendent of Police, Lucknow to take appropriate

action on the grievance made by the appellants. Senior

Superintendent of Police was also directed to instruct the

Station House Officer, Police Station Kakori to register case against the private respondents.

After disposal of the writ petition filed by the

appellants, the respondents filed an appeal against the

judgment of the Deputy Collector, which prima facie appears to be time barred. Additional Commissioner, Lucknow issued notice

on 13.9.2007 and passed an interim order in favour of

respondent Nos.11 to 13. However when the matter was taken up

on 22.10.2007, the interim order was not extended and to this

effect, a specific order was recorded by the Additional

Commissioner. Thereafter, the District Magistrate and Senior Superintendent of Police took action to implement judgment dated 12.5.2005 and possession of the disputed land was delivered to the appellants.

The contesting respondents questioned the aforesaid action of the District Magistrate and the Superintendent of Police in Writ Petition No.1249(M/B) of 2008. In paragraphs 2, 3, 5, 17, 28(b), (c) and (i), they repeatedly mentioned that the judgment of the Deputy Collector had been stayed by the Additional

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Commissioner on 18.1.2008 and during the currency of the stay, the authorities had dispossessed them and demolished the wall.

In the counter affidavit filed by the appellants, it was categorically averred that the Additional Commissioner had passed interim order on 13.9.2007 but the same was vacated on 22.10.2007 and that no order was passed on 18.1.2008 for maintaining the status quo. Copies of orders dated 13.9.2007 and 22.10.2007 passed by the Additional Commissioner were annexed with the counter affidavit as Annexure Nos.CA-1 and CA-2. Shri Triveni Prasad Verma, Tehsildar, Sadar, Lucknow also filed affidavit dated 25.2.2008 stating therein that the interim order passed on 13.9.2007 had not been extended.

Paragraph 8 of his affidavit reads thus:

"8. That at this juncture it is noteworthy that the certified copy of the aforesaid order dated 13.9.2007 was issued on 18th January, 2008. However, the petitioners deliberately suppressing the correct fact have stated in the body of said petition as interim order was passed on 18th January, 2008 and not on 13.9.2007.

It is further stated here that on 13.9.2007 while passing the interim order the Additional Commissioner fixed 22.10.2007 as the next date in the Appeal. On the said date i.e. 22.10.2007 the interim order granted 13.9.2007 was not extended for the reason that the petitioners who are the Appellants before the Court of Additional Commissioner did not filed the copy of the decree. It is for this reason that the Additional

Commissioner, Lucknow Division, Lucknow on
22.10.2007 passed a specific order that the

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interim order is not extended the next date in the matter was fixed on 8.1.2008. A true copy of the said order dated 22.10.2007 passed by the Additional Commissioner, Lucknow Division, Lucknow is being annexed as Annexure No.SCA-1 with this Short Counter Affidavit."

The Division Bench of the High Court did not advert to the averments contained in the counter affidavit filed by the appellants and affidavit dated 25.2.2008 of Shri Triveni Prasad Verma but took cognizance of the statement made by the Principal Secretary, Home, who had been summoned by the Court and of the Additional Advocate General of the State and passed the impugned order whereby the concerned authorities were directed to reconstruct the demolished wall and deliver possession of the disputed property to the contesting respondents.

Learned counsel for the contesting respondents admitted that the Additional Commissioner had not passed any interim order on 18.1.2008 but stated that averments to this effect have been made in the writ petition due to inadvertence. However, he could not explain as to why his clients had suppressed orders dated 13.9.2007 and 22.10.2007 passed by the Additional Commissioner from the High Court. Not only this, he failed to justify passing of the impugned order without hearing the appellants, who were vitally affected by the direction given by the High Court. Therefore, we have no hesitation to set aside the directions given by the High Court.

In the result, the appeal is allowed, the impugned order is set

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aside and respondent Nos.11 to 13 are directed to redeliver the possession of the property to the appellants within a period of 15 days' from today.

.....J.
(G.S. SINGHVI)

