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ITEM NO.3

COURT NO.3

SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)...../2013

CC 11875/2013

(From the judgement and order dated 03/01/2013 in CWMP No.8061/2008, of
The HIGH COURT OF JUDICATURE AT ALLAHABAD)

MOHD. SABIR

Petitioner(s)

VERSUS

STATE OF U.P. & ORS.

Respondent(s)

(With appln(s) for c/delay in filing SLP and office report)

Date: 09/07/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Petitioner(s)

Mr. E.C. Agrawala, Adv.
Mr. J.N.S. Tyagi, Adv.
Mr. Amit Kumar Sharma, Adv.

For Respondent(s)

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

Delay condoned.

The petitioner owned land measuring 2 bighas, 14 biswas and 13 biswansis in Village Kharauli Pargana, Tehsil and District Meerut. On coming into force of U.P. Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'the 1976 Act'), he filed statement under Section 6(1) of that Act. The Prescribed Authority passed order dated 28.11.1980 under Section 8(4) and declared an area measuring 5481.53 sq.mtrs. to be surplus. The petitioner challenged that order by filing an appeal under Section 33 of the 1976 Act, which was dismissed in default by the District Judge vide order dated 17.9.1993. After more than eight years, the petitioner applied for restoration but his application was dismissed by the District Judge vide order dated 31.10.2002.

Civil Miscellaneous Writ Petition No. 15112 of 2001 filed by the petitioner for setting aside the dismissal of his appeal was disposed of by the High Court on 11.1.2007 by giving a direction to the petitioner to file representation with a further direction to the competent authority to decide the same within four months. The representation of the petitioner was rejected by District Magistrate, Meerut vide order dated 19.7.2007.

The petitioner challenged the order of the District Magistrate in Civil Miscellaneous Writ Petition No.8061/2008. The Division Bench of the High Court allowed the writ petition and declared that the petitioner is entitled to the benefit of Section 2(3) of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for

short, 'the 1999 Act'). The order of the High Court was set aside by this Court in Civil Appeal No.662/2012. The relevant portions of order dated 18.1.2012 passed by this Court reads as under:

"The appellants are aggrieved by order dated 18.8.2010 of the Division Bench of the Allahabad High Court whereby it was declared that the writ petitioner (respondent no.1 herein) is entitled to the benefit of Section 2(3) of the Urban Land (Ceiling & Regulation) Repeal Act, 1999.

The appellants' grievance is that even though they had produced documents before the High Court to prove that possession of the surplus land had been taken in 1997, the same have not been considered and the impugned order has been passed on the assumption that possession of the surplus land continued with the respondent no.1.

Learned counsel for respondent no.1 fairly admitted that the impugned order does not reflect consideration of the documents produced by the appellants but submitted that the record produced by his client clearly depicted that possession continued with him till the coming into force of the 1999 Act.

In our opinion, while disposing of the writ petition filed by respondent No.1, the High Court was duty bound to consider the record produced by the parties, which it has failed to do.

Since the issue of possession of the surplus land was crucial for deciding the entitlement of respondent's claim/benefit under the 1999 Act, the High Court's failure to consider the relevant documents will be deemed to have caused injustice to the appellants.

In the result, the appeal is allowed, impugned order is set aside and the matter is remitted to the High Court for fresh disposal of the writ petition filed by respondent no.1."

After remand, the Division bench of the High Court scrutinised the entire record and held that possession of the land, which was declared surplus on 28.11.1980, had been taken by the State Government and Meerut Development Authority, to whom the land was transferred, had allotted a portion thereof to Hindustan Petroleum Corporation. The Division Bench rejected the petitioner's plea for grant of benefit of Section 2(3) of the 1999 Act by recording the following observations:

"The factual matrix of the case from the prolix discussion transpires that the petitioner was not in physical possession on the date of coming into existence of Repeal Act, 1999. After issuance of notice under Section 10(5) of the Act possession of the land in question was taken by the competent authority on 4.6.1997 and the land was duly mutated in favour of the State Government on 19.7.1997 much prior to the coming into force of Repeal Act, 1999. The appeal of the petitioner was moved in the year 2011, i.e. after eight years. The petitioner had also filed the Original Suit No. 271 of 2001 wherein amendment application under Order VI Rule 17 Civil Procedure Code was moved rescinding the claim with respect to the land allotted to the respondent no.4. The possession of the land was given by the State government to the Meerut Development Authority on 2.9.1997 much prior to the Repeal Act, 1999.

Having regard to the overall factual and legal position of this case and also considering the arguments of learned counsel for the parties, we are not inclined to interfere with the order dated 19.7.2007 passed by the respondent no.2. This writ

petition has no substance and is accordingly dismissed."

Shri E.C. Agrawala, learned counsel for the petitioner vehemently argued that physical possession of the surplus land remained with his client and the Division Bench of the High Court committed serious error by not giving him the benefit of Section 2(3) of the 1999 Act.

In our opinion, there is no merit in the submission of the learned counsel. The petitioner has not controverted the finding recorded by the High Court that after taking possession of the surplus land, the State Government had transferred the same to Meerut Development Authority and the latter allotted a portion thereof to Hindustan Petroleum Corporation. This being the position, it is not possible to find any fault with the view taken by the High Court on the issue of applicability of Section 2(3) of the 1999 Act.

With the above observation, the special leave petition is dismissed.

For filing a frivolous petition, the petitioner is saddled with cost of rupees fifty thousand which he shall deposit with the Supreme Court Legal Services Committee within a period of two months from today.

| (Parveen Kr.Chawla)
| Court Master
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| | (Usha Sharma)
| | Court Master
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