

ITEM NO.1

COURT NO.6

SECTION XVI

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

IA 42/2006 in CIVIL APPEAL NO. 5168 OF 2000

SANCHAYANI SAVINGS INVESTMENT(I) LT.&ORS

Appellant (s)

VERSUS

STATE OF WEST BENGAL & ORS

Respondent(s)

(With appln(s) for intervention and office report)

Date: 21/09/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P. SINGH

HON'BLE MR. JUSTICE ALTAMAS KABIR

For Appellant(s)

Mr. S.V. Deshpande, Adv.

Mr. Anoop G. Chowdhry, Sr. Adv.

Mr. June Chowdhury, Adv.

Mr. Sidharth Chauhan, Adv.

Mr. Ashish Sethi, Adv.

Mr. Ugra Shankar Prasad, Adv.

For Applicant/

Mr. C.A. Sundram, Sr. Adv.

Intervenor in

Mr. Vishal Anand, Adv.

I.A.No.42/06

Mr. Shyam Dewan, Adv.

Mr. Manish P.S. Chouhan, Adv.

Mr. Deba Prasad Mukherjee, Adv.

Mr. Avinash Gupta, Adv.

Ms. Sarmila Upadhyay, Adv.

For Special Officer

Mr. L.Nageswara Rao, Sr.Adv.

Mr. C.K.Sasi, Adv.

For Respondent

Mr. A.N. Bardiyar ,Adv

Mr. Arun K. Sinha ,Adv

Mr. C.L. Sahu ,Adv

Mr. G.S. Chatterjee ,Adv

Mr. G.K. Bansal ,Adv

Ms. Indra Sawhney ,Adv

M/S Suresh A. Shroff & Co. ,Adv

Mr. S.N. Bhat ,Adv

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Mr. Goodwill Indeevar ,Adv

Mr. Shivaji M. Jadhav ,Adv

Mr. B.S. Banthia ,Adv

Mr. Mukesh K. Giri ,Adv

Mr. Ramesh Babu M.R. ,Adv

Mr. T.Raja ,Adv

Mr. Prashant Kumar ,Adv

Mr. D. Mahesh Babu ,Adv

Mr. Vishwajit Singh ,Adv

Mr. Ashiesh Kumar ,Adv

Mr. Varinder Kumar Sharma ,Adv

Mr. Ajit Kumar Pande ,Adv

Mr. Ajay Choudhary ,Adv

Mr. P.V. Dinesh ,Adv

Mr.Gaurav Agrawal ,Adv

UPON hearing counsel the Court made the following

O R D E R

We have heard counsel for the parties.

The property herein is a plot of land measuring 35243.21 Sq.Mtrs. (3.68

Hectres) bearing Survey No.122/1 (Old) 152 (New) Mouza Waddhamana, Amravati

Road, Nagpur. The applicant claims to be the daughter of the original owner of the

property represented by her guardian, who happens to be the brother of her father, the

deceased owner. It is not disputed that originally a Development Agreement was entered

into between the deceased owner and M/s Sanchayani Savings Investment (I) Ltd.

(hereinafter referred to as the 'Company') on 4th September, 1992 for the development of

the land in question. The said Agreement has been placed before us for our perusal. It

appears that the land was the subject matter of a proceeding under the Urban Land and

(Ceiling & Regulation) Act, 1976 and vide orders of the competent authority, U.L.C.

Nagpur, a large part of the aforesaid land was declared surplus. The owner obtained an

order of exemption under Section 20(i)(a) of the U.L.C. Act on the condition that he shall

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execute a scheme on the Talegaon Dabhade pattern. Under the said Agreement, the

owner agreed to accept Rs.28 lacs in all and to execute agreements for sale/transfer of

plots/flats etc. constructed by the developer Company on the land in question, and to

execute the Power of Attorney in favour of the nominee of the Company for the said

purpose. It is not disputed before us that exemption was in fact, granted

anted by the

concerned authority. The Company claims that it was put in possession of the land in

question pursuant to the Agreement and relies upon the relevant clause in the

Agreement and the Power of Attorney which entitled the Company to take possession of

the land.

The said plot of land was seized pursuant to Order of this Court dated

11.5.2006. The Panchnama shows that when the plot of land was seized by the

concerned authorities, it was found that there was a structure of two rooms in which one

Prakash Jangluji Khadse was residing claiming to be a chowkidar of the original owner.

The Panchnama is of 6th July, 2006 and on the basis of said Panchnama, the claim of the

Company, that it is in possession of the land in question, has been disputed by the

applicant.

Be that as it may, the claim of the applicant before us is that since the Company

was unable to execute and implement the Agreement within the time stipulated, the

Development Agreement was cancelled by the owner on 13.9.2002. It is also the case of

the applicant that she has entered into another Development Agreement with a third

party in August, 2004. It is also the case of the applicant that necessary extension for

execution of the scheme has been obtained from the concerned authorities and the lay

out has been sanctioned by the Nagpur Improvement Trust.

On the other hand, the Company claims that under the Agreement, the amount

which was required to be paid to the owner had been paid to him and therefore, the owner was bound by the terms and conditions of the Agreement. It is further contended that pursuant to the Agreement, the Power of Attorney holder is authorised to execute sale deeds/transfer deeds in respect of plots/flats developed by the Company. It is submitted before us that in view of the various terms and conditions of the Agreement and the Power of Attorney, virtually no right is left with the applicant. The Company also contends that it is in a position to execute the scheme by assigning its rights under the agreement in favour of another person.

In a proceeding of this nature we cannot adjudicate upon the rights of the parties because there is considerable dispute between the parties as to the rights acquired by the Company as also the effect of cancellation of the Development Agreement by the applicant. The parties are also disputing each other's claim of possession of the land in question. Under these circumstances, it is not possible for us to entertain a controversy of this nature in the instant proceeding, and the parties therefore must be left to work out their rights in accordance with law in a duly constituted proceeding before the Court of Competent Jurisdiction.

We have briefly noticed the facts only to give a very broad picture as to the circumstances in which we are passing this order.

We have not examined the rival claims of the parties before us, nor have we expressed any opinion on the matters in controversy. Nothing said in this order shall be construed as expression of opinion on the merit of the case or factual controversies that

arise in this case. We however, direct that any of the parties may approach a Court of competent jurisdiction claiming such relief as it may be advised. Such party must

approach the Court within a period of eight weeks from today and seek further orders

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from the Court concerned. It will be open to the Court to pass such orders as it may consider just and appropriate in the facts of the case without being influenced by

anything said in this Order.

For a period of eight weeks from today, the seizure of the property shall

continue, and thereafter the parties will abide by such order as the Court may pass. If

no party approaches a Court of competent jurisdiction within the period prescribed in

this order, the property shall stand released from seizure.

In case any of the parties approaches a Court seeking relief, we request the

Court concerned to take up the matter expeditiously and pass appropriate orders.

I.A.No.42 is disposed of in the above terms.

The matters relating to Sachayani Savings Investment (I) Ltd. which were

directed to be listed on 12th October, 2006 shall be listed on 2nd November, 2006.

(Sukhbir Paul Kaur)

Court Master

(Vijay Dhawan)

Court Master