

ITEM NO.29

COURT NO.2

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) No(s).22321/2008

(From the judgement and order dated 29/02/2008 in CMWP No.11790/2008  
of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

A.B.LALL SRIVASTAVA

Petitioner(s)

VERSUS

STATE OF U.P.& ORS.

Respondent(s)

(With appln(s) for permission to file additional documents and  
office report)

Date: 12/09/2011 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ALTAMAS KABIR  
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR  
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Petitioner(s) Mr. Nagendra Rai, Sr. Adv.  
Mr. Yunus Malik, Adv.  
Mr. Ekansh Agarwal, Adv.  
Mr. Prashant Chaudhary, Adv.

For Respondent(s) Mr. Rakesh Uttamchandra Upadhyay, Adv.  
  
Mr. T.N. Singh, Adv.  
Mr. Vikas K. Singh, Adv.  
Mr. Vikram Singh, Adv.  
  
Ms. Sandhya Goswami, Adv.  
  
Mr. Pramod Swarup, Sr. Adv.  
Ms. Pareena Swarup, Adv.  
Mr. Gunnam Venkateswara Rao, Adv.

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

This special leave petition is directed against the final judgment and order dated 29th February, 2008, passed by the Allahabad High Court, dismissing the petitioner's writ petition, being Writ Petition No.11790 of 2008, in which he had prayed for setting aside the order dated 5th November, 2007, passed by the Commissioner, Allahabad Division, Allahabad, allowing Appeal No.18 of 2007, filed by Jugal Kishore Sinha, the respondent No.5 herein, against an order of demolition passed by the Zonal Officer, Allahabad Development Authority on 6th November, 2003.

The petitioner herein and the respondent No.5 are

neighbours and there has been a long-standing rivalry between the parties with regard to the occupation and/or possession of certain portions of certain lands, which according to the petitioner herein belong partly to the Municipality and partly to him. The petitioner also filed a suit, being Suit No.336 of 1999, before the Civil Judge, Junior Division, Allahabad West, inter alia, for a mandatory injunction for demolition of certain structure, which the petitioner claimed to be of his. In fact, according to Mr. Nagendra Rai, learned senior counsel appearing for the petitioner, the suit property involves land over which the petitioner claims title and also the public road and drain alongside the houses of the two parties.

Appearing for the respondent No.5, Ms. Sandhya Goswami, learned Advocate, submitted that during the proceedings in the suit, it had come to the knowledge of the respondent No.5, that an order of demolition had been passed

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by the Municipality in respect of the boundary wall, which had been constructed by him over his property. As pointed out by Mr. Rai, in the appeal preferred by the respondent No.5 before the Commissioner, Allahabad Division, against the said order of demolition, it had been indicated differently that it was when some of the officers of the Allahabad Development Authority had come to give effect to the demolition order of the boundary wall that the respondent No.5 had come to learn of the order and, accordingly, filed the appeal. Be that as it may, the matter was remitted by the Commissioner to the Zonal Officer and, as submitted by Mr. Rai, the matter stood closed before the Commissioner. However, thereafter, the matter appears to have been reopened by the Commissioner on a representation made on behalf of the respondent No.5 and on the basis of the inquiry report of the Zonal Officer, which has been referred to in the impugned judgment of the High Court, the Commissioner found that there was no encroachment by the respondent No.5 on any Municipality land. Accordingly, the order directing demolition of the boundary wall was set aside.

The petitioner herein is aggrieved by the fact that the order of demolition was initially set aside and remitted to the Zonal Officer and, thereafter, once again heard and decided after the matter was reopened by the Commissioner, without giving the petitioner an opportunity of hearing and in view of the failure of natural justice as far as he is concerned, and since he is a vitally interested party, the order of the Commissioner was not proper and the High Court ought to have interfered in the matter.

Learned counsel appearing for the Municipality has  
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also categorically indicated that, as it appears from the report of the Zonal Officer and as endorsed by the Commissioner, no part of the Municipal property had been encroached upon by the respondent No.5.

Having heard learned counsel for the parties, we are of the view that, as far as the complaint made by the petitioner to the Municipality regarding encroachment of Municipality land, is concerned, the same appears to have been concluded by the finding of the Commissioner on the

basis of the report and the detailed inquiry, which had been made by the Zonal Officer. However, the other part of the petitioner's claim regarding encroachment by the respondent No.5 of his property, still remains to be decided in the suit filed by him.

Accordingly, we are not inclined to entertain the present special leave petition and the same is dismissed. However, we also make it clear that any of the observations made herein should not, in any way, influence the outcome of the suit, which is being heard by the Trial Court.

There will be no order as to costs.

(Chetan Kumar)  
Court Master

(Juginder Kaur)  
Assistant Registrar