

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

I.A. NOS.65-66 IN TRANSFER PETITION (C) NOS.438 & 440 OF 2008  
IN TRANSFER PETITION (C) NOS.435-444 OF 2008

STATE OF U.P.& ANR.ETC.ETC. Petitioner(s)

VERSUS

GOMTI NAGAR JAN KALYAN MAHA SAMITI & ANR.ETC.ETC. Respondent(s)

(For Directions and office report)

Date: 06/10/2009 These Matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL

HON'BLE MR. JUSTICE AFTAB ALAM

Mr. Gopal Subramaniam,SG. (A.C.)

For Petitioner(s)Mr. H.N. Salve,Sr.Adv.

Mr. Satish Chandra Mishra,Sr.Adv.

Mr. Mukul Rohatgi,Sr.Adv.

Mr. Shail Kumar Dwivedi,AAG.

Mr. Kapil Mishra,Adv.

Ms. Meenakshi Grover,Adv.

Mr. Manoj Kumar Dwivedi,Adv.

Mr. Ashutosh Sharma,Adv.

Ms. Vandana Mishra,Adv.

Mr. Saurabh Kirpal,Adv.

Mr. G. Venkateswara Rao,Adv.

For Applicant/Dr. A.M. Singhvi,Sr.Adv.

Respondent(s)Mr. M.C. Dhingra,Adv.

Mr. Gaurav Malhotra,Adv.

Mr. Gaurav Dhingra,Adv.

Ms. Shobha Gupta,Adv.

Mr. Anurag Verma,Adv.

Mr. Vikrant Yadav,Adv.

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Dr. A.M. Singhvi,Sr.Adv.

Mr. Siddharth Luthra,Sr.Adv.

Mr. C.D. Singh,Adv.

Mr. Gaurav Mehrotra,Adv.

Mr. Aditya Singh,Adv.

Mr. Sunny Choudhary,Adv.

Ms. Upasana Nath,Adv.

Mr. Gaurav Bhatia,Adv.

Mr. Rajiv Dalal,Adv.

Dr. A.M. Singhvi,Sr.Adv.

Mr. Prashant Chandra,Sr.Adv.

Mr. Gaurav Mehrotra,Adv.

Ms. Rekha Pandey,Adv.

Mr. Shiv P. Pandey,Adv.

For 'The Hindu':Mr. K.V. Viswanathan,Sr.Adv.  
Mr. Gagan Gupta,Adv.

For 'Times of India':Mr. Krishnendu Datta,Adv.  
Mr. Ashish Verma,Adv.  
Mr. Praveen Agarwal,Adv.

For NDTV 24X7:Mr. Subramonium Prasad,Adv.  
Mr. Vijay K. Sondhi,Adv.  
Mr. E. Bhattacharya,Adv.  
Ms. Jasneet Kaur,Adv.

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

Ten petitions bearing Transfer Petition Nos.435-444 of 2008 were filed before this Court for transfer of various writ petitions pending before the Allahabad High Court to this Court in which notices were issued and further proceedings in the writ petitions pending before the High Court were stayed.

Out of the aforesaid transfer petitions, in Transfer Petition Nos.438 and 440 of 2008, interlocutory applications were filed in the month  
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of July, 2009, on behalf of Respondent No.1- Mithilesh Kumar Singh, which were registered as I.A. Nos.65-66 of 2009, wherein prayer was made, inter alia, for restraining the State of Uttar Pradesh from raising construction of memorial, statues, smarak, parks, sthal and statues of election symbol [elephants] and the like on the Government land by spending public money. Those two applications were placed before us in the Mentioning Board on 1st September, 2009, on which date, it was ordered to place the same in the Mentioning Board on 8th September, 2009, to enable learned counsel appearing on behalf of Respondent No.1 to file further affidavit. On 8th September, 2009, the two applications were taken up at 1.30 p.m., Dr. A.M. Singhvi, learned senior counsel appearing on behalf of Respondent No.1 concluded his arguments whereafter Mr. S.C. Mishra, learned senior counsel appearing on behalf of the State of Uttar Pradesh was on his legs, when the court had to rise for the day. After hearing the matter for over two hours, we were inclined to pass some interim orders till the matter was next taken up on 29th September, 2009. At that time, however, Mr. S.C. Mishra, gave an undertaking that no further constructions will be carried on at the project sites covered by different writ petitions pending in the Allahabad High Court. In view of the clear and definite undertaking given on behalf of the State of Uttar Pradesh, there was no need for the court to pass any formal interim order.

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However, from the reports appearing in the print media ('The Times of India', New Delhi, Thursday 10th September, 2009, and 'The Hindu' city Edition, Delhi, Friday, 11th September, 2009) and the Electronic media (NDTV 24X7; Programme telecast in the evening of 10th September, 2009), it transpired that, despite the undertaking, there was no let up and the work was progressing in full swing on the project sites in question.

In view of the disquieting reports appearing in the media, we decided to take up the matter on 11th September, 2009, when this Bench was to assemble, as per the constitution of that day, in connection with some other case. Learned counsel for the parties were, accordingly, informed and asked to be present in court in connection with this case. Mr. Gopal Subramaniam, learned Solicitor General for India, was also requested to be present to assist the Court as amicus curiae.

On that day, the matter was taken up at 12.45 p.m. and the court recorded the following order, the relevant part of which reads thus:

Mr. S.C. Mishra, learned senior counsel is not present today. The State of Uttar Pradesh is represented by Mr. Shail Kumar Dwivedi, learned Additional Advocate General, and Mr. Harish N. Salve, learned senior counsel. Mr. Harish N. Salve, learned counsel, submitted that he has not been fully briefed in the matter and was not fully aware of the developments taking place after 8th September, 2009. Dr. A.M. Singhvi, learned counsel, stated that the

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reports appearing in the media were true and constructions were going on at the project sites in complete violation of the undertaking given to this Court. He also produced before the Court a bunch of photographs showing construction work going on at the project sites in question with the help of earth movers and other heavy machinery allegedly after 8th September, 2009.

The media reports, as already noted, disclose that construction work is going on in full swing on the different construction sites in question in violation of the undertaking given to this Court. We may note that there is a denial on behalf of the State Government that any construction is in progress and 'The Hindu' has been fair enough to publish the denial by the spokesperson of the Uttar Pradesh Rajkiya Nirman Nigam. In the news report, it is further stated that the spokesperson on behalf of the State Government admitted that only maintenance work was being carried out. But the news report in 'The Hindu' also carries a photograph and, unless it is of an earlier date, the photograph tells a different story and makes it clear that the construction activities are very much going on at the Kanshi Ram Sanskritic Sthal and other places in Lucknow as mentioned in the report, which are covered by the undertaking given to this Court.

Having regard to the way this matter has proceeded, we are unable to ignore or dismiss the media reports; more so, as the record of the State of Uttar Pradesh in adhering to its undertakings given to the Court in the past has not been exemplary.

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In view of the aforesaid developments, we direct the Chief Secretary of the State of Uttar Pradesh to file show cause stating in unambiguous terms the nature of work, if any, that was allowed to be carried on at the projects in question after 8th September, 2009.

'The Times of India, Delhi', 'The Hindu, Delhi', and 'NDTV 24X7' are directed to submit before the Court all materials in their possession along with affidavits in support of their reports that construction work was carried on at the project sites in question after 8th September, 2009.

It is further directed that all activities of all manner and kinds, whether construction, repair or maintenance, shall stop forthwith at all the construction sites covered by the previous order of this Court and all the construction sites shall be vacated of the entire workforce, excepting the watch and ward staff within six hours from now, i.e., by 7.00 p.m.

The show cause, as directed above, and the materials from the media should be filed before this Court by 17th September, 2009.

Let this matter be placed on 18th September, 2009, immediately after the Board of Court No.3 is over.

Let copies of the two newspaper reports, referred to above, be taken on record.

The Registry is directed to communicate this order to the offices of the 'The Times of India', 'The Hindu' and NDTV 24X7 by fax as well for compliance with the direction given to them.

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Pursuant to the aforesaid directions, the Chief Secretary, State of Uttar Pradesh, filed an affidavit. 'The Hindu', 'The Times of India' and 'NDTV 24X7' too filed their respective affidavits.

On 18th September, 2009, time till 29th September, 2009, was allowed to Respondent No.1, 'The Hindu', 'The Times of India' and 'NDTV 24X7' to file their responses to the affidavit filed by the Chief Secretary, State of Uttar Pradesh. The State of Uttar Pradesh was also permitted to file its response to the affidavits filed by the two newspapers and the T.V. Channel within the same time. Rejoinder to their responses, if any, was directed to be filed by 3rd October, 2009 and we directed the matter to be placed on 5th October, 2009. We also directed that further hearing of the interim matter would be taken up on 5th October, 2009, instead to 29th September, 2009.

Pursuant to the aforesaid order, responses were filed. In the meantime, an application was filed on behalf of Respondent No.1 which was registered as I.A. Nos.68-69 of 2009. In these applications, it is alleged and stated that the State of Uttar Pradesh in flagrant defiance of the restraint order dated 11th September, 2009, has not abated its construction activity and was continuing the same even after the passing of the restraint order by this Court. On the basis of the aforesaid statement, the prayer is made for directing Secretary [Home], Union of India, to deploy para-military force, like Central Reserve Police Force

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['CRPF', for short] or Central Industrial Security Force ['CISF', for short] or the like at the dispute sites of construction.

On 5th October, 2009, first the matter as to whether there was any violation of the undertaking given on behalf of the State of Uttar Pradesh before this Court on 8th September, 2009, and the restraint order passed by this Court on 11th September, 2009, was taken up for consideration. Dr. A.M. Singhvi, concluded his arguments in the said matter and when Mr. Harish N. Salve, learned senior counsel appearing on behalf of the State of Uttar Pradesh was on his legs, the court rose for the day and the case was directed to be placed today. Today, arguments on behalf of the State of Uttar Pradesh were concluded.

Mr. Harish N. Salve, learned senior advocate, representing the State of Uttar Pradesh plainly admitted that constructions were carried on at certain projects/sites after the undertaking was given to this Court on 8th September, 2009, and even after the Court passed the restraint order on 11th September, 2009. As a matter of fact, he accepted that constructions were taking place yesterday and might be going on even as of now. He, however, strenuously submitted that the projects/sites on which constructions were going on are not covered either by the undertaking given to the Court or the injunction granted by the Court on 11th September, 2009. Mr. Salve submitted that Respondent No.1 was trying to create a confusion by representing that

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constructions took place after the undertaking and the order of injunction passed by the Court on projects/sites that were covered by the undertaking and the injunction. We fail to see any scope for confusion. The restraint order passed by this Court on 11th September, 2009, is in clear and unambiguous terms. It also cannot be lost sight of that the restraint order was passed when the Court had felt that the undertaking given to it three days earlier was not being adhered to. In those circumstances, we, prima facie, see no scope for any confusion. Even assuming that there was any confusion in the minds of the concerned authorities of the State Government, the only course open to them was to approach the Court and seek clarifications. We are, therefore, prima facie, of the view that it is a case where the order of this Court was consciously flouted by resorting to devious afterthought. The admitted fact is that, notwithstanding the injunction order and the earlier undertaking, constructions have been going on at certain sites and projects. To our mind, this fact alone justifies this Court to proceed further with a view to go to the heart of the matter.

Having heard learned counsel appearing on behalf of the parties and perused the affidavits filed on behalf of the Chief Secretary, State of Uttar Pradesh, 'The Hindu', 'The Times of India', and 'NDTC 24X7', rejoinder affidavits filed on behalf of Respondent No.1 and 'The Hindu' to the

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affidavit filed on behalf of the Chief Secretary, reply thereto filed by the Chief Secretary and having given our anxious consideration to the entire matter, we have no option but to hold that a strong prima facie case is made out for initiating a contempt proceeding against the Chief Secretary. We, accordingly, proceed to do so.

Issue notice to the Chief Secretary, State of Uttar Pradesh, to show cause as to why he should not be proceeded against and punished for deliberate and conscious violation of the undertaking given to this Court on 8th September, 2009, and the restraint order passed by this Court on 11th September, 2009.

The Registry is directed to register a contempt petition on the basis of this order and thereupon issue notice in terms of Rule 6 of the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975 [for short, 'the Rules'].

In terms of Rule 10 of the Rules, Mr. Gopal Subramaniam, learned Solicitor General for India, who is present in Court, is requested to appear and assist this Court.

Place the contempt matter on 4th November, 2009, on which date, the alleged contemnor is directed to remain present in court in-person.

I.A. Nos.65-66:

Further hearing in the interim matter resumed and heard Mr. S.C. Mishra and Mr. Harish N. Salve, learned senior counsel, appearing on behalf of the State of Uttar Pradesh.

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Having heard learned counsel for the parties, we are of the view that it is a fit case for making the interim matter passed on 11th September, 2009, absolute. Accordingly, we make the aforesaid order absolute.

[ T.I. Rajput ][ Savita Sainani ]  
A.R.-cum-P.S. Court Master