State Of Uttaranchal & Anr vs Sunil Kumar Vaish & Ors on 16 August, 2011

Equivalent citations: (2012) 1 SCT 470, 2011 (8) SCC 670, 2011 AIR SCW 5486, 2012 (2) AIR JHAR R 233, 2011 (6) ALL LJ 497, AIR 2011 SC (CIVIL) 2425, (2011) 5 MAD LW 886, (2011) 88 ALL LR 452, (2011) 106 ALLINDCAS 180 (SC), (2011) 5 ALL WC 5390, (2011) 4 RAJ LW 2851, (2012) 2 SERVLR 395, (2011) 9 SCALE 131, (2011) 3 ALL RENTCAS 359, 2011 (3) SCC (CRI) 542

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Bench: K.S. Radhakrishnan, G.S. Singhvi

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5374 OF 2005

State of Uttaranchal & Anr. ... Appellants

Vs

Sunil Kumar Vaish & Ors. ...Respondents

J U D G M E N T

K.S. RADHAKRISHNAN, J.

1. We are, in this appeal, concerned with the legality of the direction given by a Division Bench of the High Court of Uttaranchal at Nainital to the State Government to pay an amount of Rs.70,99,951.50 with interest to the respondents, placing reliance on an inter-departmental communication sent by the District Magistrate, Haridwar to the Secretary, Government of Uttar Pradesh.

2. The State of Uttaranchal (the State which has interest now) submits that the above direction was given overlooking several important and vital documents which have considerable bearing for a proper and just determination of the dispute. Further, it was also pointed out that the High Court had failed to notice that even the inter- departmental communication was found to be improper by

the Government of Uttar Pradesh.

3. Mr. S.S.Shamshery, learned counsel appearing for the State of Uttaranchal referred to the pleadings of the parties, documents produced and submitted those relevant facts were not taken into consideration by the High Court while granting relief to the respondents causing serious prejudice to the State.

4. Mr. Rakesh Khanna, learned counsel appearing for the respondents, submitted that there is no legality in the order passed by the High Court warranting interference by this Court and that no substantial questions of law arise for consideration and the appeal deserves dismissal. FACTS:

5. Plot No. 1008 measuring 7 Bighas, 14 Biswas situated at Rampur Colony, Roorkee, originally belonged to the grand-father of the respondents Late Ram Rattan Lal, was acquired for rehabilitation of refugee camp at Roorkee and the amount of compensation for the acquisition was paid to Ram Rattan Lal on 13.3.1952. On 14.9.1962 Ram Rattan Lal made a request to the Government to lease out the said land for agricultural purposes. Request was considered favourably by the Government and a grant/lease deed was executed on 14.9.1962 in favour of Ram Rattan Lal on certain terms and conditions, which are extracted hereinbelow:

> 1. In consideration of the sum of Rs.2742.00 (two thousand and seven hundred and forty two only) paid by the Grantee to Grantor, the receipt of which the Grantor hereby acknowledges, and of the covenants on the part of the Grantee hereinafter contained, the Granter hereby demises to the Grantee.

All the land described in the Scheduled hereto to hold the said land with only the rights and obligations akin to a Bhumidhar as defined in the U.P. Zamindari Abolition and Land Reforms Act, 1950 or any statutory notification thereof, subject to such conditions, restrictions and limitations as are imposed under this deed.

2. The Grantee hereby covenants with the Grantor as follows:-

> (1) The Grantee shall use the land granted to him only for the purposes of cultivation and purposes incidental thereto, and for no other purpose whatsoever.
>
> (2) The Grantee's rights in the said land shall be heritable but he shall not be entitled to alienate the said land without the previous permission in writing of the Grantor.
>
> (3) The Grantee shall pay the rent in accordance with the hereditary rates applicable and shall also pay taxes or cesses that may be imposed on the said land.
>
> (4) In the event of any rent payable hereunder, whether lawfully demanded or not, remaining in arrears for months or in the event of the Grantee not at any time cultivating the said land for two successive years, or if there shall be any breach of any covenant by the Grantee herein contained, the Grantor may notwithstanding the

> waiver of any previous right or cause for re-entry, re-entry upon the said land or any part thereof in the name of the whole and thereafter the whole of the said land shall remain to the use of and be vested in the Grantor and this grant shall absolutely determine, and the Grantee shall not be entitled to any compensation therefore or for any improvement made on the said land.

Provided always that should the State Government at any time require the said land, or any part thereof for any public purpose, the Grantor may determine the same in whole or part and may also take possession of the whole or part, as the case may be, and in such a case the Grantee shall be entitled to such compensation as the District Officer of Saharanpur may in his discretion assess.

(5) Notwithstanding anything herein before contained the Grantor shall be entitled to recover the arrears of rent due as arrears of land revenue.

(6) The stamp duty and registration charges on this deed shall be borne by the Grantee."

6. Apprehending forcible dispossession, Ram Rattan Lal filed Civil Misc. Writ No. 1974 of 1967 before the Allahabad High Court. The High Court allowed the writ petition on 26.8.1982 restraining the State Government from forcibly dispossessing him, though it was found that the land in question was acquired by the Government under Section 9 of the U.P. Land Acquisition (Rehabilitation of Refugees) Act, 1948.

7. The District Magistrate, Saharanpur accordingly vide his proceeding dated 24.12.1971 determined the lease as per Clause 4 of the lease deed dated 14.9.1962 stating that the land was required by the Government for a public purpose i.e. for construction of a building for the use of a Government Litho Press at Roorkee. Ram Rattan Lal was, therefore, directed to vacate the premises within a period of thirty days from the date of receipt of notice. Ram Rattan Lal did not vacate the premises within the stipulated time and was found to be in unauthorised occupation of the land since 27.1.1972. The State of Uttar Pradesh then initiated ejectment proceedings under the U.P. Public Premises (Eviction of Unauthorised Occupants) act, 1972 [for short U.P. Act XXII of 1972] before the Sub Divisional Magistrate (Prescribed authority) by filing case No. 1227 of 1972 under Section 4 of the U.P. Act XXII of 1972. It was pointed out that the State was entitled to possession since 27.1.1972 and was suffering a loss of Rs.500/- per month from that date and that Ram Rattan Lal was liable to pay damages of Rs.3,000/- and also the damages till the date of delivery of possession.

8. Ram Rattan Lal filed a detailed written statement before the Prescribed authority. Both the parties also adduced oral as well as documentary evidence before the Prescribed authority and, after detailed examination of the contentions, the prescribed authority passed an order dated 13.9.1973, the operative portion of which reads as follows:

> "As provided in grant-deed dated 14.9.1962 the O.P. was bound to give possession to the granter in response to notice dated 24.12.71 which was served upon him on 27.12.71 with in a period of 30 days but he did not do so any by violating the condition of the grant deed he remained in unauthorised occupation over the

> disputed land after 27.1.72 for which he is liable to pay the damages to the applicant. The applicant has demanded Rs.500/- P.M. from the O.P. which seem to be excessive and in my opinion the damages at the rate of Rs.150/- per month will be reasonable and the opposite party is therefore, liable to pay Rs.150/- as damages per month with effect from 27.1.72 upto the date of delivery of possession."

9. Aggrieved by the above-mentioned order Ram Rattan Lal preferred Misc. Appeal No.335 of 1973 before the 1st Additional District and Sessions Judge, Saharanpur and the Court held that the land was a public premises and Ram Rattan Lal was in unauthorised occupation after the determination of grant and action for his eviction under the U.P. Act No. XXII of 1972 was fully justified. However, the rate of damages fixed by the prescribed authority was reduced to Rs.60/- per month. Aggrieved by the said order Ram Rattan Lal filed Civil Misc. Writ No.12304 of 1975 before the High Court of judicature at Allahabad. Before the High Court, the contention was raised that Ram Rattan Lal should be treated as Bhumidar under the U.P. Zamindari Abolition and Lad Reforms Act. High Court rejected all those contentions and held that Ram Rattan Lal had not acquired the rights of a Bhumidar under any of the provisions of the U.P. Zamindari Abolition and Land Reforms Act and was not a tenure holder under any of the clauses mentioned in Section 129 of the aforesaid Act and held that the step taken for eviction in respect of Ram Rattan Lal was fully justified under U.P. Act XXII of 1972. The writ petition was accordingly dismissed with costs.

10. Aggrieved by the said order of the High Court Ram Rattan Lal approached this Court and filed SLP(C) No.6851 of 1979 and the same was also dismissed by this Court on 23.12.1981

11. District Magistrate, Haridwar, without referring to any of those facts, sent a communication dated 17.9.1993 to the Secretary, Government of Uttar Pradesh stating as under:

> "As per the conditions mentioned in the Patta, Pattedar was dispossessed from the land under the provisions of Section 4 of the Public Premises Act, but whatever payment as per allowance had to be made to the farmer was not made. Therefore the Pattedar is entitled to receive the compensation of the land. But by not paying the compensation amount under the Land Acquisition Act no policy for payment of compensation to the Patta holder with regard to the said land is given in the Patta and for determination of the same it would be proper to hold the stamp duty prevailing for the year 1987 in the area in question as the basis of determination of compensation amount. Hence the compensation towards the said land admeasuring 6-14-0 Bighas i.e. 15777.67 Sq.mts. @ Rs.450/- per sqm. As per the prescribed stamp duty for the year 1987 comes to Rs.70,99,951.50, in which arrangement would have to be made by the Government Photo Litho Press, Roorkee and the same could be demanded from the concerned department."

12. The Government of Uttar Pradesh considered the communication received from the District Magistrate, Haridwar and took the view that it was not proper on the part of the District Magistrate in recommending payment of compensation for the following reasons:

1. "The Hon'ble Courts in its judgments under the cases in question, especially in the judgment dated 26.2.79 of the Hon'ble High Court, Patta holder has been declared in unauthorised possession of the land in question from 27.1.72 and compensation amount of Rs.60/- per month has been granted to the State Government. Therefore, payment of compensation amount by the State Government to the persons in unauthorised possession of the land is not proper.

2. Under the provisions of Section 108(Q) of the Transfer of Property Act, within the prescribed period of notice of completion of Patta i.e. upto 27.1.72, Patta holder had to hand over the possession of land in question to the State Government, which was not given by them upto 6.6.87 and during that period debarred the State Government from the use of land in question and themselves took the benefit of the same. In this way this rule has been violated and the condition mentioned in para 4 of the Patta dated 14.9.62 has also been violated and hence Patta Holder is not entitled to receive the compensation amount.

3. As per the judgment of the Hon'ble High Court the Patta holders have to pay compensation amount at the rate of Rs.60/- per month to the State Government for the period they were in unauthorised possession of the land. In such circumstances, payment of compensation amount to them by the State Government, when conditions of Patta dated 14.9.62 has been violated, is not proper.

4. Land in question was acquired in the year 1948. Payment of compensation in regard to the land acquired was made by the State Government at that time itself and this compensation was paid to one of the members of Patta holder family as per the condition then was. Hence for the second time payment of compensation amount pertaining to the same land on the same basis is not as per the law.

5. Under the condition mentioned in para 4 of the Patta deed dated 14.09.1962 payment of compensation amount had to make upto 27.1.1972 then the Patta would be as per condition, but the Patta Holders had to hand over the possession of land to the State Government upto 27.1.1972 but the same was not given upto 6.6.87 and situation changed and responsibility of this fault was on the patta holders and the guilty person could not take benefit of its own wrong.

Hence the payment of compensation amount as has been proposed by you is not proper.

6. In the aforesaid circumstances payment of compensation amount to the Patta holders is neither lawful not logical. Therefore, it is requested to take action for recovery of compensation amount of Rs.11,062/- which has to be paid by the Patta holdes @ 60/- per month for the period from 27.1.1972 to 6.6.1987 to the State Government under the provision of point No.1 of said para 1 and accordingly acknowledge the government with the action taken."

13. We are surprised to note that the Division Bench of the High Court had overlooked the above mentioned vital facts while deciding the lis between the parties. Non-application of mind is writ large in the order of the High Court, not even an attempt or effort has been made to refer to the pleadings of parties or examine the documents produced, in spite of the fact that those materials were on record.

14. Of late, we have come across several orders which would indicate that some of the judges are averse to decide the disputes when they are complex or complicated, and would find out ways and means to pass on the burden to their brethren or remand the matters to the lower courts not for good reasons. Few judges, for quick disposal, and for statistical purposes, get rid of the cases, driving the parties to move representations before some authority with a direction to that authority to decide the dispute, which the judges should have done. Often, causes of action, which otherwise had attained finality, resurrect, giving a fresh causes of action. Duty is cast on the judges to give finality to the litigation so that the parties would know where they stand.

15. Judicial determination has to be seen as an outcome of a reasoned process of adjudication initiated and documented by a party based, on mainly events which happened in the past. Courts' clear reasoning and analysis are basic requirements in a judicial determination when parties demand it so that they can administer justice justly and correctly, in relation to the findings on law and facts. Judicial decision must be perceived by the parties and by the society at large, as being the result of a correct and proper application of legal rules, proper evaluation of the evidence adduced and application of legal procedure. The parties should be convinced that their case has been properly considered and decided. Judicial decisions must in principle be reasoned and the quality of a judicial decision depends principally on the quality of its reasoning. Proper reasoning is an imperative necessity which should not be sacrificed for expediency. The statement of reasons not only makes the decision easier for the parties to understand and many a times such decisions would be accepted with respect. The requirement of providing reasons obliges the judge to respond to the parties' submissions and to specify the points that justify the decision and make it lawful and it enables the society to understand the functioning of the judicial system and it also enhances the faith and confidence of the people in the judicial system.

16. We are sorry to say that the judgment in question does not satisfy the above standards set for proper determination of disputes. Needless to say these types of orders weaken our judicial system. Serious attention is called for to enhance the quality of adjudication of our courts. Public trust and confidence in courts stem, quite often, from the direct experience of citizens from the judicial adjudication of their disputes. CONCLUSION

17. We have gone through the writ petition filed before the High Court, counter affidavit filed by the State Government and the oral and documentary evidence adduced by the parties before the prescribed authority and before the higher forums. Facts would clearly indicate that Ram Rattan Lal was an unauthorised occupant of the land since 27.11.1972 and that finding had attained finality and the Judges of the High Court had failed to note the following relevant documents, apart from the pleadings of the parties:

1. The order of the Prescribed authority in case No. 12272 dated 13.9.1973, wherein there was a clear finding that Ram Rattan Lal was an unauthorised occupant of the disputed land from 27.11,1972.

2. Judgment of the Court of 1st Additional and Sessions Judge, Saharanpur dated 8.11.1975 in Misc.

Appeal No. 335 of 1973 affirming the finding that Ram Rattan Lal was an unauthorised occupant after determination of the grant and the action for his eviction was fully justified.

3. Judgment of the High Court of Allahabad in Civil Misc. Writ No. 12304 of 1975 affirming the above mentioned orders.

4. Order of this Court in SLP) No. 6851 of 1979 dated 22.3.1981.

5. Letter of the Special Secretary, State of Uttar Pradesh bearing No. 1251 PS/18-8-21 (10) PS/93 dated 25.6.1994, stating that the reasons stated in inter-departmental communication dated 17.9.1993 was improper.

18. In our view, the State Government had rightly rejected the recommendations made by the District Magistrate for payment of Rs.70,99,951.50 because while doing so, the concerned officer conveniently ignored the fact that Ram Rattan Lal had already been declared as unauthorised occupant of the land in question. In the face of the decision taken by the State Government, the High Court could not have relied upon the recommendations made by the District Magistrate by treating the same as an order of the State Government. It is settled law that all executive actions of the Government of India and the Government of a State are required to be taken in the name of the President or the Governor of the State concerned, as the case may be [Articles 77(1) and 166(1)]. Orders and other instruments made and executed in the name of the president or the Governor of a State, as the case may be, are required to be authenticated in the manner specified in rules made by the President or the Governor, as the case may be [Articles 77(2) and 166(2)]. In other words, unless an order is expressed in the name of the President or the Governor and is authenticated in the manner prescribed by the rules, the same cannot be treated as an order on behalf of the Government.

19. A nothing recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier

noting or decision for exercise of the power of judicial review. - State of Punjab v. Sodhi Sukhdev Singh AIR 1961 SC 493, Bachhittar Singh v. State of Punjab AIR 1963 SC 395, State of Bihar v. Kripalu Shankar (1987) 3 SCC 34, Rajasthan Housing Board v. Shri Kishan (1993) 2 SCC 84, Sethi Auto Service Station v. DDA (2009) 1 SCC 180 and Shanti Sports Club v. Union of India (2009) 15 SCC 705.

20. We, therefore, set aside the judgment of the High Court in Writ Petition No. 401 of 2002 expressing our strong disapproval. Appeal is, therefore, allowed with costs, which is quantified as Rs.10,000/- .

.....J. (G.S. Singhvi) .....J. (K.S. Radhakrishnan) New Delhi August 16, 2011.