

Court No. - 39

Case :- WRIT - C No. - 29714 of 2023

Petitioner :- Smt. Nirupama Saxena

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Siddharth Nandan, Sr. Advocate

Counsel for Respondent :- C.S.C., Shyam Mani Shukla

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Shiv Shanker Prasad, J.

1. Counter affidavit to the amendment application filed today is taken on record.
2. Heard Sri Siddharth Nandan, learned counsel for the petitioner, Sri Shyam Mani Shukla, learned counsel for respondent nos. 2, 3, 5 and 6 and Sri Ankit Gaur, learned Standing Counsel for the State.
3. At the outset, learned counsel for the petitioner states that he does not intend to press the amendment application as that pertains to a separate cause of action. He prays and is granted liberty to file a fresh petition to challenge the order dated 23rd September, 2023 passed by the Chief Medical Officer, Bareilly.
4. As to the original petition, it is noted that challenge has been raised to the orders dated 02.08.2023 and 05.04.2023 as also notice dated 02.06.2022 issued by the Nagar Nigam, Bareilly. In short the original lease granted in favour of Dr. Brij Kishore Saxena, Smt. Chandrakala Devi and Sri Jitendra Veer Saxena has been cancelled. That lease was with respect to Arazi No.4170, Muravva Gaj Tauseeh Shahxar Plot (C) Bareilly Mahaddajal Vakaiye Udaipur Khas, Khasra No. 369, Khewat No. 76, Muhal Safed Pargana and Tehsil Bareilly.

5. Primarily, it has been objected that Dr. Brij Kishore Saxena died on 30.12.1963. His wife Smt. Chandrakala Devi died subsequently in the year 1967 but in any case much before issuance of the impugned notice. As to the third joint lessee/ noticee Sri Jitendra Veer Saxena, he is disclosed to have died on 19th September, 2022.

6. In view of the above facts, it has been submitted that the respondent erred in issuing notice dated 02.06.2022 in the name of Dr. Brij Kishore Saxena and Smt. Chandrakala Devi, who were both dead on the date of issuance of that notice. Insofar as Sri Jitendra Veer Saxena is concerned, it has been submitted that though he was alive on the date of issuance of impugned notice and though it is true that the said notice was served on him, the said noticee had submitted a written reply dated 14.06.2022. It was duly received by the respondents. Therein he had prayed to be supplied copies of the documents being relied against the noticee and prayed for adjournment. Without passing any order on the application dated 14.06.2022 and without fixing any date to hear the objector/ noticee, the impugned orders came to be passed cancelling the lease and doing away with the valuable substantive rights under the original lease deed dated 19.02.1952, last renewed on 13.02.1989.

7. Learned counsel for the respondents contend that the noticees were given adequate opportunity of hearing and they did not file any objection (on merits), to the notice seeking cancellation of the lease.

8. At present it is not disputed that on the date of issuance of the notice dated 02.06.2022, two of the noticees namely, Dr. Brij Kishore Saxena and Smt. Chandrakala Devi were dead. It is also not disputed that no order came to be passed on the

adjournment application dated 14.06.2022 filed by the third noticee Sri Jitendra Veer Saxena. It is also not in dispute that the third noticee Dr. Jitendra Veer Saxena is now dead.

9. In view of the above, we find that the proceedings deal with the cancellation of the lease deed are riddled with defects as to service of notice on the interested parties or the persons aggrieved were not served and in any case the impugned order came to be passed in a hurry without allowing adequate opportunities to the third noticee (who was then alive) to object to the proceedings seeking cancellation of the lease deed.

10. Cancellation of lease deed has serious civil consequences. Even according to the respondents the possession has remained with the lessees for a long period of time. Seen in that light, no useful purpose may be served in seeking to adjudicate the dispute on merits. On the suggestion of the Court, learned counsel for the respondents states that fresh notices would be drawn up against the legal representatives of the original lessees, as last recorded in the lease deed renewed on 13.02.1985 and fresh proceedings would be conducted expeditiously.

11. Accordingly, the writ petition is **disposed of** with the following directions:-

(i). The impugned notices/ orders dated 02.08.2023 and 05.04.2023 are set aside. It is left open to the respondents to draw up fresh proceedings for cancellation of the lease deed, against the legal representatives of the original lessee as last recorded in the lease deed renewed on 13.02.1985. If such proceedings is drawn up within a period of one month from today, it is expected that the same would be conducted expeditiously in accordance with law and appropriate reasoned

order would be passed therein within a period of six months therefrom.

(ii). It may also remain open to the respondents to consider the application for renewal of lease deed on its own merits.

(iii) It is made clear that we have not adjudicated upon the dispute on merits.

Order Date :- 2.11.2023

Abhishek Singh

(Shiv Shanker Prasad, J.) (S.D. Singh, J.)