

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 12001 of 2023

Petitioner :- Chandra Shekhar Sharma

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Devansh Misra,Raghuvansh Misra

Counsel for Respondent :- C.S.C.,Suresh C. Dwivedi,Tanisha Jahangir Monir

Hon'ble Ashutosh Srivastava,J.

Supplementary affidavit filed by learned counsel for the petitioner is taken on record.

Heard Sri Devansh Mishra, learned counsel for the petitioner, Sri Akhileshwar Singh for respondent nos. 1 and 4, Ms. Tanisha Jahangir Monir for respondent No. 2, Sri S.C. Dwivedi, Advocate, has accepted notice on behalf of respondent no. 3.

The present petition under Section 227 of the Constitution of India, has been filed for seeking direction to the Uttar Pradesh Awas Evam Vikas Tribunal, Agra, to proceed with and dispose of Execution Case No. 96 of 2022, arising out of Land Acquisition Case No. 12 of 2016 (Chandra Shekhar Sharma vs. State of U.P. and others), within the time frame fixed by this Court.

The petitioner is a claimant. His land has been acquired under the road widening scheme of Agra Development Authority for inner ring road. The notification for acquisition of the land in question under Section 4 (1)/17 of the Land Acquisition Act was published on 24.08.2009 and, thereafter, Section 6 of the Act was published on 13.10.2010 and Award under Section 11 of the Land Acquisition Act was pronounced on 20.12.2013. Against the said Award, the petitioner filed Reference under Section 18 of the Land Acquisition Act 1894, which was registered as Land Acquisition Case No. 12 of 2016. The reference in question came to be decided by judgment and decree dated 06.09.2021 by the Presiding Officer, U.P. Awas Evam Vikas Parishad/Nagar Mahapalika Tribunal/Additional District Judge, Agra. The said judgment and decree dated 06.09.2021 was challenged before this Court in First Appeal No. 46 of 2022 (Agra Development Authority vs. Chandra Shekhar Sharma and 2 others). The Division Bench of this Court vide order dated 18.02.2022 while connecting the First Appeal

Nos. 46 of 2022 with First Appeal Nos. 138 of 2020 and 27 of 2020, stayed the operation of the impugned judgment and decree dated 06.09.2021 provided the appellant/ Development Authority deposited the entire decretal amount along with the interest accrued thereon within a period of one month from the date of the order. It was also provided that the petitioner herein would be entitled to withdraw half of the amount after furnishing security other than bank guarantee and cash to the satisfaction of the concerned Authority and remaining balance amount was directed to be invested in maximum interest bearing fixed deposit in a nationalized Bank renewed from time to time. In the event, the amount is not deposited within the stipulated period, the interim protection would stand automatically vacated and the judgment and decree dated 06.09.2021 would be executable forthwith.

Sri Devansh Mishra, learned counsel for the petitioner submits that the respondent Development Authority, the appellant in the First Appeal No. 46 of 2022 failed to comply with the direction of the Division Bench order dated 18.02.2022 and in such circumstances, the petitioner preferred an application dated 30.10.2022 before the Uttar Pradesh Avas Evam Vikash Tribunal, Agra, with a prayer to attach the account of the judgment debtor (J.D) (Development Authority) for payment and satisfaction of the decree passed in Land Acquisition Case Reference No. 12 of 2016. In the application an averment was made that the judgment and decree dated 06.09.2021 have been assailed before the Hon'ble High Court in First Appeal No. 46 of 2022 and that the judgment debtor has not complied with the interim order passed by this Hon'ble Court by not depositing the decretal amount and in such circumstances, the account of the judgment debtor was liable for attachment. The application was registered as Execution Case No. 96 of 2022.

Learned counsel for the petitioner submits that by order dated 12.10.2022 though the execution case has been registered and notices have been issued requiring presence of the judgment debtor only dates are being fixed but the execution case has not proceeded any further. It is submitted that the judgment debtor has already put in appearance but till date has not filed any objection. It is further submitted that since the judgment debtor has not complied with the conditions as laid down by the Division Bench while entertaining the appeal of the judgment debtor, the execution proceedings are required to be proceeded with and brought to its logical end.

I have heard learned counsel for the petitioner as well as learned

counsel appearing for respondents.

Admittedly, an execution application to execute the judgment and decree passed in the Land Acquisition Reference No. 12 of 2016 is pending consideration before the executing court. The question whether the condition as laid down by the First Appellate Court in First Appeal No. 46 of 2022 have been complied with or not has to be gone into by the executing court. The judgment debtor has already appeared in the proceedings. This Court is of the opinion that ends of the justice shall be served if direction is issued to the Executing Court to proceed with the matter expeditiously, in terms of the directions as laid down by the Apex Court in the case of **Rahul S. Shah vs. Jitendra Kumar Gandhi and others, (2021) 6 SCC 418**. The Executing Court shall examine as to whether the conditions laid down by the Division Bench of this Court in its order dated 18.02.2022 have been complied with or not. If, it find that the condition has not been complied with it shall proceed to pass final order on the Execution Application expeditiously.

Sri S.C. Dwivedi, learned counsel appearing for the judgment debtor/respondent authority submits that the development authority has preferred an application dated 31.03.2022 seeking modification of the order passed by the Division Bench dated 18.02.2022. The said modification application is pending consideration and has not been disposed of. It is submitted that without disposal of the said modification application the execution case may not be directed to be proceed with.

In response to the said submission Sri Devansh Mishra vehemently contends that similar modification application has been filed in connected appeals and have been rejected and, therefore, there is no impediment for the execution court to proceed in the matter.

Be that as it may, the executing court may look into all these aspects of the matter and proceed accordingly. The entire exercise shall be completed by the executing court within a period of three months.

With the aforesaid observation, the petition is disposed of.

Order Date :- 11.12.2023

v.k.updh.