

[Reserved]

Court No. - 3

Case :- WRIT - C No. - 5145 of 2011

Petitioner :- Raja Rukmangad Singh Inter College R.R. Inter College

Respondent :- State Of U.P. Thru. Prin. Secy. Housing And Urban Planning And

Counsel for Petitioner :- Rajeev Srivastava Raja, Sharad Pathak

Counsel for Respondent :- C.S.C., Ajai Kumar Singh, Mahesh Chandra, Virendra Singh

with

Case :- WRIT - C No. - 4693 of 1999

Petitioner :- Guardians Teachers Association

Respondent :- State Of U.P. Through Secretary Avas Lucknow And Others

Counsel for Petitioner :- Manik Sinha, Sanjay Kumar Rao

Counsel for Respondent :- Chief Standing Counsel, Ajai Kumar Singh, N.K. Seth, Nakul Dubey, U.C. Pandey

Hon'ble Vivek Chaudhary, J.

Hon'ble Manish Kumar, J.

Order on C.M. Application No. NIL of 2011- Delay Condonation Application filed alongwith C.M. Application No. 3611 of 2011- Recall Application in Re: Writ-C No. 4693 of 1999 (Guardians- Teachers Association of R.R. Inter College, Hardoi, through Secretary, Jai Singh Trivedi and another vs. Secretary to the Government, Department of Avas, Secretariat, Lucknow and others).

Along with

(Order on C.M. Application No. 3611 of 2011- Recall Application in Re: Writ-C No. 4693 of 1999).

Cause shown is sufficient.

Delay is condoned.

Recall Application is allowed.

Order dated 11.10.2010 passed in Writ-C No. 4693 of 1999 (Guardians- Teachers Association of R.R. Inter College, Hardoi, through Secretary, Jai Singh Trivedi and another vs. Secretary to the Government, Department of Avas,

Secretariat, Lucknow and others) is recalled.

Petition is restored and being decided on merit.

Order on I.A. No. 22 of 2023- Application for Recall and Restoration in Re: Writ-C No. 5145 of 2011 (Raja Rukmangad Singh Inter College (R.R. Inter College) vs. State of U.P. and others.

Recall application is allowed.

Order dated 21.02.2023 passed in Writ-C No. 5145 of 2011 (Raja Rukmangad Singh Inter College (R.R. Inter College) vs. State of U.P. and others) is recalled.

Petition is restored and being decided on merit.

Order on Writ-C No. 5145 of 2011 (Raja Rukmangad Singh Inter College vs. State of U.P. and others):-

1. Heard Shri Sharad Pathak, learned counsel assisted by Sri Piyush Pathak, learned counsel for the petitioner, Sri Ajay Kumar Singh, learned counsel for the respondent Awas Evam Vikas Parishad and learned standing counsel for respondent State and perused the materials available on record.

2. Brief facts of the case are that the petitioner, an Intermediate College situated in the District Hardoi is run by a registered society. It is stated by the petitioner that it has acquired permission to run agricultural courses at its institution in the year 1987. Before the said permission was granted to the petitioner, certain land belonging to the parent society including land of the college was notified for acquisition under section 28 of the Awas & Vikas Parishad Adhiniyam on 17.11.1979 by respondent No. 2. Management of the college challenged the land acquisition proceedings before this Court by filing Writ Petition No. 633 (M/B) of 1984 (Raja Ruk Mangad Inter College Mashal Singh High School Society and another versus State of U.P. and two others) praying for cancellation of the acquisition proceeding and a direction to the respondents not to disposes the

petitioners from the land in question. The said petition was dismissed by this Court by its order dated 03.09.1996 with an observation that more than 15 bighas of land including the college building, playground and some land for the purposes of agriculture are left out of the acquisition proceeding, and it should be enough for the petitioner to impart learning in agricultural science. Against the dismissal order, petitioner filed a Special Leave Petition before the Supreme Court which was also dismissed by order dated 22.01.1997. Thereafter, another writ petition was moved by the Guardians and teachers Association of the College before this Court bearing Writ-C No. 4693 of 1999 (Original Number being- Writ Petition No. 4693 (M/B) of 1999) (Guardians- Teachers Association of R.R. Inter College, Hardoi, through Secretary, Jai Singh Trivedi and another vs. Secretary to the Government, Department of Avas, Secretariat, Lucknow and others) with prayers to (i) quash oral order dated 05.10.1999 and order dated 29.07.1999 whereby the petitioner institution was asked to remove unauthorised occupation from the land acquired by the Awas Ewam Vikas Parishad in the land acquisition proceeding and (ii) issue a writ for mandamus commanding the respondents not to evict or disturb the possession of the college management over land in question. This Court by its order dated 03.11.1999, granted interim protection from any coercive action. That petition was dismissed for want of prosecution by order dated 11.10.2010. An application bearing number C.M. Application No. 3611 of 2011 for recall of order dated 11.10.2010 was filed but no orders on the same have been passed and it has remained pending. On 31.03.2011 petitioner institution was served with a notice to remove illegal construction from the acquired land. Thus, Writ C No. 5145 of 2011 is filed by Raja Rukmand College through its Manager challenging the order dated 31.03.2011.

3. Sri Sharad Pathak, learned counsel for the petitioner challenges the impugned orders on the ground that as per Section 33 of the Uttar Pradesh Avas Evam

Vikas Parishad Adhiniyam, 1965, the Parishad may alter or cancel the Housing Scheme at any time before it is fully executed, therefore, the objection of the petitioner institution should be decided first and then only the Parishad may proceed for acquisition. Another ground of challenge is that the petitioner institution is a recognised agricultural institution and infact it is the sole institution running a course in agriculture upto Class-XII (Intermediate) in the entire district of Hardoi. Being an agricultural institution up to intermediate level it is required to maintain a minimum of 10 acres of cultivable land as per conditions laid out in Intermediate Education Act, 1921. If the land in dispute is taken away by the respondent Parishad, it will be a huge blow to about a thousand students pursuing courses under it.

4. Sri Ajay Kumar Singh, learned counsel for the respondent Parishad challenges the contention of the counsel for the petitioner on the ground that the aforesaid issues have already been decided against the petitioner by this Court in Writ Petition No. 633 (M/B) of 1984 (Raja Ruk Mangad Inter College Mashal Singh High School Society and another versus State of U.P. and two others) by its judgment and order dated 03.03.1996 and SLP filed against the same was also dismissed by the Supreme Court on 22.01.1997. Guardians and Teachers' Association has also filed a writ petition before this Court bearing Writ Petition No. 4693 (M/B) of 1999 seeking similar relief. This Court granted interim protection in the said petition by its order dated 03.11.1999. After getting interim protection the petitioner did not pursue it any further and ultimately it was dismissed for want of prosecution by order dated 11.10.2010. This is the third petition filed seeking similar relief. Therefore both the second and the third petition are barred by the principle of Res Judicata. Furthermore, he submits that plots in question are acquired and compensation for the same has already been fixed by the award dated 22.09.1986. He further submits that the possession of the plots in question was also transferred to the Awas Evam Vikas Parishad by

acceptance letter dated 19.08.1983 filed as Annexure No. A-6 along with I.A. No. 25 of 2023 dated 16.07.2023 filed by the petitioner institution in Writ-C No. 5145 of 2011. Counsel for the respondent Parishad also draws attention to paragraph 6 of the Writ-C No. 4693 of 1999, wherein the petitioner-guardians and teachers association has admitted that the Deputy Collector Hardoi is the owner of plot in question. Since the petitioner institution is no more the owner of the plots in question therefore it can not raise objections under Section 33 of the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965. Even otherwise the issue related to Section 33 of the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 is already decided in Writ Petition No. 633 (M/B) of 1984 by this Court by its judgment and order dated 03.03.1996 and thus raising the same ground again by filing a second petition is barred by Res Judicata. He further submits that under the garb of interim order, the institution is blocking the implementation of the housing project for which the land was acquired.

5. A perusal of Annexure No. CA 1 filed alongwith Counter Affidavit dated 02.08.2011 shows that the first issue regarding applicability of Section 33 of the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 has already been considered by this Court by its judgment and order dated 03.09.1996 passed in Writ Petition No. 633 (M/B) of 1984 (***Raja Ruk Mangad Inter College Mashal Singh High School Society and another versus State of U.P. and two others***). The entire judgment and order dated 03.09.1996 is reproduced here:-

“This writ petition has been filed by Raja Ruk Mangal Inter College and its Manager with a prayer that the opposite parties be directed not to disposses the petitioners from the land in question and to quash acquisition proceedings. The land, it appears, was notified under section 28 of the Aavas & Vikas Parishad Adhiniyam on 17.11.1979.

We have heard the learned counsel for the petitioners as well as counsel for the Avas Evam Vikas Parishad.

On one of the dates earlier it was indicated on behalf of the petitioners that College imparts education in the subject of Agriculture. The land belonging to the College which was sought to be acquired be left out for the purposes

of play-ground and for imparting practical lesson in subject of Agriculture. It was also submitted that the land sought to be acquired falls in the middle of College complex. Keeping it in view, this Court provided that the petitioners could approach the Avas Evam Vikas Parishad, indicating these facts who may consider the case of the petitioners under Section 33 of the U.P. Avas Evam Vikas Parishad Adhiniyam. The decision taken was required to be placed before the Court. The learned counsel for the Parishad has placed before us the decision taken by which the request of the petitioner was rejected. The decision is stated to be in public interest.

We have also perused the averments made in the counter affidavit as well as in the rejoinder affidavit indicating that land measuring about 15 Bighas had been left out of acquisition over which the college building, play-ground and land for the purposes of agricultural use are situated. In the rejoinder-affidavit the above averments have been replied by stating that the plot numbers have not been indicated by the opposite parties. It has not been categorically denied that such land has been left for the use of the college. That being the position in our view, as stated in the counter-affidavit there would be enough land with the College for the use of the play-ground and for imparting lesson in the subject of Agriculture. As indicated earlier this request was again considered in pursuance of the order passed by this Court but the Board has found that it was not possible to accede the request made by the petitioner. The Notification for acquisition was issued in the year 1979. On looking to the averments made in the supplementary affidavit filed alongwith application for vacation of the interim order, it appears that in view of the interim order granted by this Court there was difficulty in completing the project for the purpose of which the land was acquired.

The learned counsel for the petitioners then submitted that the objection filed by the petitioners had not been considered by the Niyojan Samiti. This fact has however been denied by the opposite parties. It has been stated and submitted that the Niyojan Samiti has considered all the objections filed and the Manager of the Institution was also provided personal hearing. It was after consideration of all the objections that the Niyojan Samiti has passed the resolution.

No other point has been pressed before us on behalf of the petitioners. We find no merit in the petition. It is accordingly dismissed.”

6. Since first issue is already considered and dismissed by this Court the same can not be raised again by filing another writ petition. This Court would like to point out that the petitioner has concealed, to his convenience, the fact that the same issue has already been considered by this Court by only stating the following in paragraph 21 of the Writ-C No. 5145 of 2011:-

*“That it is relevant to point out here that in the year 1984, the then Management had preferred a writ petition before this Hon’ble Court having Writ Petition No.633 (M/B) of 1984 and thereafter Special Leave Petition was also preferred before the Hon’ble Supreme Court but no order on merit was passed in that matter in the knowledge of the present petitioner. **As the Management has been changed and no record is available to the present petitioner in hand at present and as soon as the same will be available, the details will be provided before this Hon’ble Court.**”*

As such the issue number one is barred by Res Judicata from being raised again in the present petition.

7. So far as second ground is concerned, notification for acquisition of land was issued by respondent No. 2 under Section 28 of the Awass Evam Vikas Parishad Adhiniyam, 1965 on 19.07.1979 whereas as per admission of the petitioner and Annexure No. 9 contained in the Writ Petition No. 5145 (M/S) of 2011, Agricultural Course at Intermediate level is being taught only from the year 1987, i.e., 9 years after the Land Acquisition proceedings were initiated and three years after the first petition was filed and pending before this Court. Condition of cultivable land for running an agricultural course upto class 10th is only 5 Acres, which is much lower than the 15 Bighas of land already left with petitioner post acquisition proceedings. It appears that petitioner acquired recognition/permission for running Intermediate Courses knowing fully well about the land acquisition proceedings in the area and the minimum requirement for running Intermediate Course. The aforesaid plea could have been taken in the earlier petition as all these facts were well within the knowledge of the petitioners before the judgment and order dated 03.09.1996 was passed in the Writ Petition No. 633 (M/B) of 1984 (Raja Ruk Mangad Inter College Mashal Singh High School Society and another versus State of U.P. and two others). Since no further grounds were taken in that petition and no liberty was granted to the petitioner, therefore, raising it in successive petitions is barred by the principle of constructive res judicata.

Order on Writ-C No. 4693 of 1999 (Guardians- Teachers Association of R.R. Inter College, Hardoi, through Secretary, Jai Singh Trivedi and another vs. Secretary to the Government, Department of Avas, Secretariat, Lucknow and others)”-:

8. Writ-C No. 4693 of 1999 is filed by the Guardians-Techers Association of R. R. Inter College (for brevity referred from hereon as “Association”). The association was constituted in 1995 under the provisions of Abhibhavak Adhyapak Association Niyamawali, 1986 (hereinafter referred to as ‘the Niyamawali’). This petition has been filed against oral order dated 05.10.1999 and order dated 29.07.1999 whereby the the agriculture college was asked to remove unauthorised occupation from the land acquired by the Awas Ewam Vikas Parishad in the land acquisition proceeding. This Court by its order dated 03.11.1999 granted interim protection to the petitioner association. A counter affidavit has been filed on behalf of Awas Evam Vikas Parishad on 01.08.2003. No rejoinder to the same has been filed by the petitioner association. This petition has been lying as dismissed for want of prosecution since 11.10.2010.

9. Sri Sharad Pathak, advocate submits that he will be arguing this petition also alongwith Writ-C No. 5145 of 2011 (Raja Rukmangad Singh Inter College vs. State of U.P. and others). Learned counsel for the petitioner association challenges the impugned order on the same grounds as in Writ-C No. 5145 of 2011.

10. Learned counsel for the Awas Evam Vikas Parishad at the very outset has raised preliminary objections on the maintainability of this writ petition on behalf of the Guardians and teachers Association of the R.R. Inter College. He submits that as per the Niyamawali, office bearers and members of the Association are also drawn from the staff of the college as well as board of the management of the college, therefore, this petition by the association is filed

under a representative capacity for the same cause of action and on the same ground and thus is barred by the principles of res judicata. Counsel for the Parishad also points out the fact that there is not even a whisper of previous litigations by the college in this petition and therefore it should be dismissed at the outset on grounds of concealment.

11. A perusal of the Rule 4 of the 1986 Niyamawali contains provision regarding composition of the Association. It shows that the school principal shall be the ex-officio vice-president of the association, one of the teachers shall be the secretary of the association and two teachers shall be the member of the association, one of the members of the management of the school shall also be included as the member of the association among other officials and members of the association.

12. Even though teachers and management of the School/College are officers and members of the association, the association in the petition filed by it has nowhere provided any information with regard to Writ Petition No. 633 (M/B) of 1984 (Raja Ruk Mangad Inter College Mashal Singh High School Society and another versus State of U.P. and two others), though same relief is being claimed by the association. To distinguish itself from the interest of the college and attempting to raise a flimsy cause of action, the association has averred in paragraph 18 of its writ petition that the college is not seriously pursuing the matter. Paragraph 18 of the Writ-C No. 4693 of 1999 reads:-

“18. That it is also pertinent to mention here that for some reason or other the college authorities are not taking the matter seriously and it appears that the College Management is hand in glove with the other respondents in glove in hands with them by delivering the possession of the property. Petitioner no. 2 by means of his letter dated 25.09.1999 short clarification regarding the aforesaid matter of forceable ejection and expressing his anxiety of about the future of hundreds of students of the Institution of Agriculture subjects would be at stake there would be no future of them if the Agriculture Farm was taken away by Avas Evam Vikas Parishad

resulting into the derecognition of Agriculture subject in High School and Intermediate Agriculture subject.”

13. It is surprising to note that despite containing members of the management, the principal and teachers from the college as its officials and members, the association is unaware of the dismissal of the Writ Petition No. 633 (M/B) of 1984 by order dated 03.09.1996 of this Court and dismissal of the SLP by the Supreme Court on 22.01.1997. Petitioner Association filed Writ-C No. 4693 of 1999 concealing to its convenience the fact, that, similar petition by the parent society was already rejected by both this Court as well as the Supreme Court. This petition has been filed with malicious intention to keep the Awas Evam Vikas Parishad from implementing its housing project and keep the issue alive in the garb of interim orders. There is not even a whisper of the previous litigation by the college and its management in the petition filed by the association. It is also pertinent to note that once the interim order dated 03.11.1999 was granted in its favour, the association has not been contesting the matter seriously. After the interim order dated 03.11.1999 was granted, this petition has been dismissed thrice for default and the petitioner has only filed applications for restoration and has not contested the matter. A counter affidavit was filed on 01.08.2003 by Sri Ramayan Saran, Executive Engineer, U.P. Awas Evam Vikas Parishad, containing parawise reply to writ petition and detailing previous litigation on the same issue and even questioning the maintainability of the petition filed by the association, but till date the association has not even bothered to file its rejoinder to the said counter affidavit. When this Court by its order dated 11.10.2010, dismissed this petition for want of prosecution, the association did not file any restoration application and when the Awas Evam Vikas Parishad began their project, the College filed Writ-C No. 5145 of 2011. This goes to show the malafide committed by filing vexatious litigations by both the association as well as the college and not letting the housing project completed under the garb of interim orders. At this point it would not be too far fetched to conclude that

the petitioners in both these writ petitions are in collusion and have misled this Court to secure interim protections.

14. In light of the aforesaid, both the writ petitions are accordingly **dismissed.**

15. Any interim orders in favour of the petitioners are vacated.

16. The Guardians and Teachers Association as well as the R. R. Inter College are directed to pay a cost of Rs. 25,000 each to the respondent Awas Evam Vikas Parishad for filing successive petitions by concealing relevant facts.

Order Date :- 7.11.2023

Arti/-

[Manish Kumar,J.]

[Vivek Chaudhary,J.]