

Court No. - 9

Case :- WRIT - C No. - 1305 of 2025

Petitioner :- Shivali

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Rajeev Kumar, Vijay Tripathi

Counsel for Respondent :- C.S.C., Nipun Singh

Hon'ble Rohit Ranjan Agarwal, J.

1. On 13.02.2025, following order was passed:-

"1. On 17.01.2025 instructions were sought from U.P. Awas Evam Vikas Parishad pursuant to which instructions have come today, which are taken on record.

2. Learned counsel appearing for Awas Avam Vikas Parishad states that a special leave petition is pending consideration before Hon'ble Apex Court being S.L.P. No.22621 of 2017.

3. Let an affidavit be filed by respondent to this effect within a period of three weeks.

4. Put up as fresh after three weeks."

2. Thereafter, on 01.04.2025, following order was passed:-

"Counsel appearing for U.P. Awas and Vikas Parishad has filed an affidavit of compliance, which is taken on record.

It is contended by learned counsel that the matter is engaging attention of Hon'ble Apex Court in Special Leave to Appeal (C) No(s). 5178 of 2020 in which an interim order has been passed by Hon'ble Apex Court on 18.05.2022, copy of which has been brought on record as annexure-1 to compliance affidavit.

In view of said fact, the prayer made in the writ petition cannot be granted. However, learned counsel for the petitioner states that he may be granted some time to verify the said fact.

In view of above, put up as fresh after two weeks."

3. This Court, on 16.04.2025, had required the U.P. Awas Evam Vikas Parishad to disclose the status of SLP No.3263 of 2013 filed before Hon'ble Apex Court and following order was passed:-

"Today, when the case was taken up, learned counsel for the petitioner submitted that the First Appeal No. 348 of 2009 was decided by co-ordinate Bench on 30.04.2012 and appeal filed by U.P. Awas and Vikas Parishad was dismissed. According to him, the said judgment was challenged by U.P. Awas and Vikas Parishad before Hon'ble

Apex Court but no interim order was granted by Hon'ble Apex Court. He further informs that the order of the Apex Court which has been filed in affidavit of compliance is of the year 2020 passed in SLP No. 5178 of 2020 arising out of judgment and order dated 19.11.2019 passed in L.A. No. 30383 of 2019 by Lucknow Bench of this Court. According to him, statement of U.P. Awas and Vikas Parishad is totally false and no interim order is operating in the case of petitioner and execution proceedings need to proceed in the matter.

U.P. Awas and Vikas Parishad is granted two weeks time to file a fresh affidavit disclosing as to status of SLP No. 3263 of 2013 which was filed against the judgment rendered in the year 2012 in the matter of petitioner and disclosing the correct fact to the extent that whether the interim order is operating in that SLP filed by U.P. Awas and Vikash Parishad or not.

Put up as fresh after two weeks. "

4. Today, when the matter was taken up, an additional affidavit has been filed on behalf of respondents no.1 and 3, which is taken on record. In the said affidavit, paragraphs no. 3, 4, 5, 6 and 7 are relevant, which are extracted hereas under:-

"3. That the present writ petition is liable to be dismissed on the ground of concealment and suppression as the petitioner has not disclosed about the objection dated 18.07.2019 filed by the answering respondent u/s 47 CPC in respect to the applicability of section 28A of the Land Acquisition Act upon the answering respondent, which is pending till date. A copy of the objection filed by the answering respondent dated 18.07.2019 is being annexed as Annexure No.1 to this Affidavit.

4. That the petitioner has also filed its reply to the aforesaid objection on 08.08.2019, which has also not been disclosed by the petitioner in the present writ petition. A copy of the reply dated 08.08.2019 filed by the petitioner to the objection filed by the answering respondent is being annexed as Annexure No.2 to this Affidavit.

5. That this Hon'ble Court vide order dated 16.04.2025 was pleased to direct the answering respondent to disclose the status of SLP No.20739/2013 (Diary No.3263/2013) filed against the order dated 30.04.2012 passed by this Hon'ble Court in First Appeal No.348/2009.

6. That it is pertinent to mention over here that initially, an interim order dated 01.07.2013 was passed in the aforesaid SLP filed by the answering respondent by staying the payment of compensation u/s 28A of the Land Acquisition Act by further, connecting the aforesaid SLP with SLP (C) No.34392/2012 (U.P. Awas Evam Vikas Parishad Vs. Premwati and others). A copy of the order dated 01.07.2013 passed by the Hon'ble Supreme Court is being annexed as Annexure No.3 to this Affidavit.

7. That vide order dated 15.04.2015, the Hon'ble Supreme Court dismissed the aforesaid SLP No.34392/2012 (U.P. Awas Evam Vikas Parishad Vs. Premwati and others) alongwith connected SLPs including SLP No.20739/2013. A copy of the order dated 15.04.2015 passed by the Hon'ble Supreme Court in SLP No.34392/2012 (U.P. Awas Evam Vikas Parishad Vs. Premwati and others) is being annexed as Annexure No.4 to this Affidavit."

5. From perusal of the affidavit filed today, it is clear that the SLP filed by the U.P.

Awass Evam Vikas Parishad being SLP No.20739 of 2013 against the judgment of the Co-ordinate Bench of this Court was dismissed by the judgment dated 15.04.2015. The judgment of this Court in the First Appeal No.348 of 2009 has been confirmed by Hon'ble Apex Court.

6. This writ petition has been filed seeking a direction upon the Executing Court to expedite the Execution Case No.53 of 2008.

7. Once, it is an admitted case that the matter in regard to the compensation has already attained finality by the orders of Hon'ble Apex Court, the Executing Court should proceed in the matter.

8. Learned counsel appearing for Awass Evam Vikas Parishad submits that his objections under Section 47 CPC are pending consideration before Executing Court, and the same may also be decided, once the Execution Case No.53 of 2008 is decided.

9. Recently, the Apex Court, on 06.03.2025, in **Periyammal vs. V. Rajamani, 2025 SCC OnLine SC 507** had held that the execution proceedings should be concluded expeditiously considering the earlier judgment of the Apex Court rendered in case of **Rahul S. Shah v. Jindendra Kumar Gandhi reported in (2021) 6 SCC 418**. Relevant paragraphs are extracted hereunder:-

72. Before we close this matter, we firmly believe that we should say something as regards the long and inordinate delay at the end of the Executing Courts across the country in deciding execution petitions.

*73. It is worthwhile to revisit the observations in **Rahul S. Shah (supra)** wherein this Court has provided guidelines and directions for conduct of execution proceedings. The relevant portion of the said judgment is reproduced below:*

42. All courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions:

*42.1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third-party interest and further exercise the power under Order 11 Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third-party interest in such properties.****

42.5. The court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

42.8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such

application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

42.9. The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

42.10. The court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of Order 21 as well as grant compensatory costs in accordance with Section 35-A.

42.12. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

(Emphasis supplied)

74. The mandatory direction contained in Para 42.12 of *Rahul S. Shah (supra)* requiring the execution proceedings to be completed within six months from the date of filing, has been reiterated by this Court in its order in *Bhoj Raj Garg v. Goyal Education and Welfare Society, Special Leave Petition (C) Nos. 19654 of 2022*.

10. In view of the said fact, Executing Court is hereby directed to proceed with the Execution Case No.53 of 2008 and decide the same, after hearing all the concerned parties, in the light of the dictum of Hon'ble Apex Court within a period of six months from the date of production of certified copy of this order, considering the objections filed under Section 47 CPC by U.P. Awas Evam Vikas Parishad.

11. With the aforesaid observations, writ petition stands **disposed of**.

Order Date :- 7.5.2025

SK Goswami