

[A.F.R.]

Court No. - 3

Case :- WRIT - C No. - 3990 of 2014

Petitioner :- Prem Prakash Yadav

Respondent :- Union Of India Thru Secy.Min.Of Urban Planning And Development

Counsel for Petitioner :- Chandra Kala Pandey,Prince Verma,Ravi Shanker Tewari,Santosh Kr. Yadav Warsi

Counsel for Respondent :- C.S.C.,A.S.G.,Amarjeet Singh Rakhra,Gaurav Mehrotra,Maria Fatima,V.K. Dubey

Hon'ble Vivek Chaudhary,J.

Hon'ble Manish Kumar,J.

1. Heard learned counsel for parties.

2. Petitioner, a practicing advocate claims himself to be a tenant of House No. 23, Stanley Road, Allahabad (new number being 85) built upon Nazul land bearing Nazul Plot No. 22 AA situated at Civil Station, Allahabad. The said plot was registered under the name of Smt. Chandrakala Devi. On 16.06.2001, approval was granted for conversion of the said Nazul Land into freehold in favour of legal heirs of late Smt. Chandrakala Devi. A sale deed was executed by legal heirs of Late Smt. Chandrakala Devi on 18.08.2001 in favour of respondent Nos. 8 to 10. By the present petition, petitioner is praying for the quashing of a government policy decision dated 26.02.2014 whereby approval was given to revise rates for conversion of Nazul property into freeholds and change in Nazul policy. He is also challenging Clause 10 of Notification dated 04.03.2014. A prayer for quashing of deed dated 07.07.2001 whereby in pursuance of order dated 16.06.2001, a sale deed was executed by the State in favour of legal heirs of Late Smt. Chandrakala Devi. A prayer seeking mandamus commanding the respondents to not interfere in petitioner's possession over House No. 23, Stanley Road, Allahabad (built on Nazul Plot No. 22AA).

3. Sri Gaurav Mehrotra, assisted by Ms. Maria Fatima, learned counsel for respondent Nos. 8 to 10 questions the maintainability of present petition at Lucknow. He submits that petitioner has previously filed a writ petition bearing number **Civil Misc. Writ Petition No. 17060 of 2002 (R. S Yadav and Anr. v. State of U.P. and Ors.)** at Allahabad praying for mandamus commanding respondents therein to execute sale deed in favour of petitioner for the same Nazul property, which was disposed of by its judgment and order dated 19.02.2009, with observation that State is not duty bound to execute a sale deed in favour of any individual. Another writ petition bearing number **Writ- C No. 15798 of 2010 (Prem Prakash Yadav v. Union of India and Ors.)** is also filed by the present petitioner at Allahabad wherein he has prayed for essentially the same reliefs with regard to same property. This is the third petition filed by the petitioner now at Lucknow with regard to the same property. He submits that filing of third petition at Lucknow, after filing two earlier petitions at Allahabad amounts to forum hunting and is against the settled principle of law that once a forum has been chosen by a party he should stick with the same forum with regard to all future litigation in the said matter. In support of his submissions, learned counsel for the petitioner has placed reliance upon a reported judgment of the Supreme Court in the case of **Kusum Ingots & Alloys Ltd. vs Union of India and Another;**(2004) 6 SCC 254.

4. Counsel for the petitioner insists that cause of action in the present petition has arisen within the territorial jurisdiction of Lucknow as well as Allahabad and thus present petition is maintainable at Lucknow also. Petitioner had earlier filed two petitions bearing numbers Civil Misc. Writ Petition No.15798 of 2010 and Civil Misc. Writ Petition No. 17060 of 2002 at Allahabad. Learned counsel for petitioner submits that he does not know whether Civil Misc. Writ Petition No.17060 of 2002 is pending or disposed of. Filing of present petition at Lucknow is only an exercise of forum conveniens. He further states that in paragraph-68 and 85 of writ petition, petitioner claims that he has already

disclosed filing of earlier writ petitions. Paragraph 68 of the writ petition reads-

"68. That consequently, the petitioner along with another had filed writ petition before this Hon'ble Court on 29.04.2002 challenging the grant of free-hold rights which was made in illegal and fraudulent manner. This was numbered as Civil Misc. Writ Petition No.. 17060 of 2002 where in the following order was passed:-

"Hon'ble M. Katju, J.

& Hon'ble Rakesh Tiwari, J.

Connect with Writ Petition No. 7478 of 2000. Standing Counsel may file counter affidavit within the weeks. In the mean time, status quo as regards possession, shall be maintained till further orders.

Sd./- M. Katju.

Sd./- Rakesh Tiwari"

Paragraph 85 of the writ petition reads-

*"85. That thereafter the petitioner had filed a writ petition before this Hon'ble Court challenging the legality & validity of the order dated 5.6.2009 passed by the Principal Secretary, Deptt. of Housing & Urban Planning, Govt. of U.P. This was numbered as Civil Misc. Writ Petition No. 15798 of 2010. This Hon'ble Court was pleased to pass order on 1.4.2010 directing the counsel for Union of India and the State of U.P. to file the counter affidavits. A look at the order dated 1.4.2010 also reveals that the decision or the order making the conversion of the land in question into freehold were directed to be not affecting the petitioner's rights which would obviously be the right of tenant & also to seek the conversion of the nazul land into free-hold. Thus the petitioner's rights were not affected or prejudiced in any manner. The photo copy of the order of this Hon'ble Court dated 1.4.2010 is being filed herewith and is marked as **Annexure No. 28** to this writ petition."*

5. A perusal of the paperbook shows that the petitioner has stated in his first paragraph of the writ petition that this is his first writ petition with regard to the present cause of action. Petitioner failed to disclose whether he has filed any writ petition earlier or not in paragraph-1 of writ petition as is mandatorily required by Chapter 22, Rule 1 of Allahabad High Court Rules, 1952. The said disclosure was mandatorily required to be made in first paragraph of writ petition and not in later paragraphs. He ought to have disclosed in first

paragraph itself that earlier petitions were filed at Allahabad.

6. Petitioner insists that the present petition is filed against a cause of action that arises within Lucknow. However, he has admitted in paragraph 68 and 85 that he has earlier filed two petitions at Allahabad with regard to same property. Filing of present petition at Lucknow amounts to forum hunting and not forum conveniens. Supreme Court has settled law with regard to *forum conveniens* in the case of ***Kusum Ingots & Alloys Ltd. (supra)***, the relevant paragraph-30 of the same reads:-

"Forum conveniens

30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. [See Bhagat Singh Bugga v. Dewan Jagbir Sawhney [AIR 1941 Cal 670 : ILR (1941) 1 Cal 490] , Madanlal Jalan v. Madanlal [(1945) 49 CWN 357 : AIR 1949 Cal 495] , Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd. [1997 CWN 122] , S.S. Jain & Co. v. Union of India [(1994) 1 CHN 445] and New Horizons Ltd. v. Union of India [AIR 1994 Del 126]."

7. In ***Krishna Veni Nagam (supra)***, the Supreme Court in Para 13 held:

"13. We have considered the above suggestions. In this respect, we may also refer to the doctrine of forum non conveniens which can be applied in matrimonial proceedings for advancing interest of justice. Under the said doctrine, the court exercises its inherent jurisdiction to stay proceedings at a forum which is considered not to be convenient and there is any other forum which is considered to be more convenient for the interest of all the parties at the ends of justice. In Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd. [Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd., (2003) 4 SCC 341] this Court observed : (SCC pp. 356-57, para 19)

"19. In Spiliada Maritime case [Spiliada Maritime Corpn. v. Cansulex Ltd., (1986) 3 All ER 843 : 1987 AC 460 : (1986) 3 WLR 972 (HL)] the House of Lords laid down the following principle : (All ER p. 844a)

‘The fundamental principle applicable to both the stay of English proceedings on the ground that some other forum was the appropriate forum and also the grant of leave to serve proceedings out of the jurisdiction was that the court would choose that forum in which the case could be tried more suitably for the interests of all the parties and for the ends of justice....’

The criteria to determine which was a more appropriate forum, for the purpose of ordering stay of the suit, the court would look for that forum with which the action had the most real and substantial connection in terms of convenience or expense, availability of witnesses, the law governing the relevant transaction and the places where the parties resided or carried on business. If the court concluded that there was no other available forum which was more appropriate than the English court, it would normally refuse a stay. If, however, the court concluded that there was another forum which was prima facie more appropriate, the court would normally grant a stay unless there were circumstances militating against a stay. It was noted that as the dispute concerning the contract in which the proper law was English law, it meant that England was the appropriate forum in which the case could be more suitably tried.”(emphasis in original)

Though these observations have been made in the context of granting anti-suit injunction, the principle can be followed in regulating the exercise of jurisdiction of the court where proceedings are instituted. In a civil proceeding, the plaintiff is the dominus litis but if more than one court has jurisdiction, court can determine which is the convenient forum and lay down conditions in the interest of justice subject to which its jurisdiction may be availed [Kusum Ingots & Alloys Ltd. v. Union of India, (2004) 6 SCC 254, para 30].” (emphasis added)

8. In *Kusum Ingots & Alloys Ltd. (supra)* and *Krishna Veni Nagam (supra)*, Supreme Court has held that plaintiff/petitioner alone does not have exclusive discretion to choose jurisdiction when the same lies at multiple places. In appropriate cases, Court can exercise its inherent jurisdiction and fix jurisdiction taking into consideration the convenience of parties, witnesses, Court and any other relevant factors, which would impact the proceedings.

9. No doubt petitioner is master of his petitions. In case jurisdiction partially

falls at Lucknow in appropriate case a petition can be filed at Lucknow also. But in the present matter earlier repeatedly petitioner chose to file petitions at Allahabad and some of them are pending at Allahabad. The said fact ought to have been disclosed by the petitioner in the very first paragraph of his writ petition. The same was not done. Even otherwise, the unique position with regard to Allahabad High Court is that under Clause-14 of United Provinces High Court (Amalgamation) Order, 1948 the petitions can be transferred by the Chief Justice while sitting at Lucknow to Allahabad but same can neither be transferred by him from Allahabad to Lucknow nor any Court can summon them. The matters at Allahabad can only be heard at Allahabad. Therefore, in the given circumstances, this Court can not summon the records from Allahabad. It creates a unique difficulty. Thus, in this peculiar situation it is necessary that once petitioner chooses between Lucknow or Allahabad for filing his petitions the same is a judicial discipline and ought to be followed in later petitions, if any filed. In absence of the same it becomes difficult for Courts at Allahabad and Lucknow, to have all the matters together and decide the same. Petitioner in garb of his power to chose forum can not cause inconvenience to Court and keep list pending unnecessary in bifurcated manner.

10. This type of disputes are frequently occurring before this Court. The difficulty faced by the Court, in the aforesaid circumstances, where a case cannot be transferred from Allahabad to Lucknow while they can be transferred from Lucknow to Allahabad only when Chief Justice of High Court sitting at Lucknow passes an order under Clause 14 of the United Provinces High Court (Amalgamation) Order, 1948, creates unnecessary hurdle in disposal of cases, if jurisdiction is changed from one place to another by the parties to the dispute. It needs to be solved.

11. Merely because petitioner has a right to file writ petition before any Court of their choice either at Allahabad or Lucknow, it does not give them a kangaroo right to hop around jurisdiction on whims. It is not only his convenience, which

is to be looked into, but convenience of all related is also relevant, including that of Court. Facts of this case are a glaring example of the same. The difficulty being faced by this Court is created by petitioner only.

12. A party has a choice to invoke jurisdiction of this Court either at Allahabad or at Lucknow and once they have exercised the said choice, parties should restrict themselves to their initial choice of forum while filing later petitions. Hopping around forums would be highly inconvenient to the working of the Court as in the present case. Once petitioner chooses a jurisdiction, out of many available, in normal course, he should stick with the same, unless he can provide cogent reasons for his hopping around. In the present case the petitioner has not provided any such reasons.

13. In view thereof, the writ petition is **dismissed** with liberty to petitioner to file the same at Allahabad.

14. Interim order, if any, stands vacated.

Order Date :- 21.11.2023

Arti/-

[Manish Kumar,J.]

[Vivek Chaudhary,J.]