

Bechan Singh and anr. Vs. Prescribed Authority and ors.

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Court : Allahabad

Decided On : Apr-20-2007

Reported in : 2007(3)AWC2931

Judge : Prakash Krishna, J.

Appellant : Bechan Singh and anr.

Respondent : Prescribed Authority and ors.

Advocate for Pet/Ap. : Shri. W. H. Khan

Disposition : Petition dismissed

Judgement :

Prakash Krishna, J.

1. The present writ petition is directed against the order dated 4.4.1997, passed by the prescribed authority whereby It has set aside the ex parte release order passed under Section 21 (1) (a) of U. P. Act No. 13 of 1972 and directed the restitution of possession to the contesting respondent No. 5, Smt. Uma Sengar. It is not In dispute that the petitioners had obtained the possession of the disputed accommodation on 22.9.1996 In pursuance of the ex parte release order dated 1.4.1995, obtained by them in P.A. Case No. 39 of 1994. An application under Section 21 (1) (a) of U. P. Act No. 13 of 1972 was filed by the petitioners' against

three persons, namely, Rajesh Rat, Sanjai Shukla and Ajai Shukla, which was numbered as P.A. Case No. 39 of 1994, on the allegations that the applicant No. 2 (Bechan Singh who is petitioner No. 1 herein) is the owner and landlord of the accommodation in question which consists of two rooms, courtyard, kitchen, verandah, bath room, latrine, is in the tenancy of the aforesaid three persons on a monthly rent of Rs. 300 and they have not paid any rent since November, 1989 and the accommodation is bona fide required for their need and for their family members. The said release application was allowed ex parte as it was not contested. An affidavit on behalf of Rajesh Rai, who was arrayed as OP. No. 1 In the release application, was filed to the effect that the need of the landlord is bona fide and he is prepared to vacate the disputed accommodation. The prescribed authority by its order dated 1.4.1995, allowed the said application ex parte. The release order was put into execution and through Court Amin the possession was delivered to the petitioners on 22.5.1996. Smt. Uma Sengar was not alleged as a party in the release application.

2. Two applications, one by Sanjai Shukla and Ajai Shukla, who were opposite parties No. 2 and 3 in the release application and respondents No. 3 and 4 herein, was filed to recall the said release order on the ground that they were tenants of original owner, Smt. Champak Lata Bose upto April, 1994 and thereafter they vacated the disputed accommodation and handed over its vacant possession to Smt. Champak Lata Bose and they were unnecessarily Impleaded as tenants/ opposite parties No. 2 and 3 in the release application. It was numbered as M.P.A. Case No. 23 of 1996. Another application was filed by Smt. Uma Sengar, respondent No. 5 herein, on the pleas that the release order was obtained by the petitioners by playing fraud and in execution thereof, she has been evicted. Her case was that she has purchased the said property Jointly from Smt. Champak Lata Bose and her daughter by means of sale-deed dated 24.10.1994 and was in occupation thereof and it was being utilized by her on her visits to Allahabad. She had purchased the house looking to the fact of frequent visits to Allahabad. On 22.5.1996, the care taker, Brijesh Kumar Singh, on telephone, informed her about her dis-possession in pursuance of the release order passed on 1.4.2005 by the prescribed authority. She stated that she is owner in possession of the property in question and having been illegally dispossessed in pursuance of the release order

dated 1.4.1995, which was obtained by the petitioners herein by playing fraud, the possession may be restored back.

3. In response to the aforesaid two applications to recall the ex parte order dated 1.4.1995, Bechan Singh, the petitioner No. 1 and Rajesh Rai filed objections separately mainly on the ground that P.A. Case No. 39 of 1994 was filed on correct facts and as the opposite parties therein failed to contest the case, the release order was rightly passed on 1.4.2005. Besides the above, Bechan Singh sought to Justify the release order on the ground that he is the owner of the property in question in pursuance of the sale deed executed by one Ghanshyam in his favour who had purchased the property in question from Smt. Champak Lata Bose.

4. The prescribed authority heard the aforesaid two recall applications simultaneously and has disposed them by a common Judgment dated 4.4.1995, impugned in the present writ petition and has found that Bechan Singh, the petitioner No. 1 herein, had obtained the release order by playing fraud. He is a class-III employee (Clerk) in civil court, Allahabad and has manufactured forged documents in number of cases to grab the property in question. It has been further found that Alok Kumar Singh, the petitioner No. 2 herein, son of Bechan Singh, has not come forward to contest the said restoration application and Rajesh Rai was 'yes man' of the petitioner No. 1. The petitioners set up Rajesh Rai purposely and by impleading him as opposite party No. 1 in the release application and by getting a favourable affidavit filed through him, got the ex parte release order. The ex parte release order dated 1.4.1995 was set aside and the opposite parties No. 1 and 2 therein, namely, Bechan Singh and Alok Kumar Singh were directed to restore back the possession within 24 hours to Smt. Uma Sengar and restored the P.A. Case No' 39 of 1994 to its original number. Aggrieved by the aforesaid order, the present writ petition has been filed.

5. Sri W. H. Khan and Sri Vishnu Gupta, advocates were heard in support of the petition. The main thrust of the arguments of the learned Counsel for the petitioners is that the petitioners are the owners of the property in question. They submit that this Court should enter into the controversy and determine the

question of title to the disputed property. It was urged that on the facts, Smt. Uma Sengar, who was not a party in the release application, had no authority to file restoration/recall application and the title of the petitioners to the disputed property is established on the basis of certain decrees passed by civil court, though ex parte, in favour of the petitioners. It was also submitted that in any case, Smt. Uma Sengar cannot be said to be the owner of the property in question and as such, the order of restitution, directing the petitioners to restore possession back to Smt. Uma Sengar, is illegal.

6. In reply, Sri S.P. Singh and Sri Ajit Kumar, learned Counsel for the contesting respondents submit that as found by the prescribed authority as well as on the basis of attending facts and circumstances of the case, it is a case of fraud, manipulation of judicial record and civil court decree by the petitioner No. 1, Bechan Singh, who is a class III employee in the civil court as a Clerk, this Court should not interfere in the matter. They submit that the High Court after getting inquiry done, has already lodged F.I.R. against the petitioner No. 1 under various sections of the Indian Penal Code for fabrication and manipulation of civil court record, document, etc.

7. I have given careful consideration to the respective submissions of the learned Counsel for the parties.

8. It is a common case of the parties that one Smt. Champak Lata Bose was the original owner of the House No. 1A/2, Meerapur, Allahabad. According to the contesting respondent No. 5, she purchased the said house from Smt. Champak Lata Bose and her daughter, Smt. Jaya Das jointly on 24.10.1994.

9. To begin with, it is not in dispute that the petitioners got the possession of the disputed accommodation in pursuance of the ex parte release order dated 1st of April, 1995, on 22nd of May, 1996 and the said ex parte release order dated 1.4.1995 has been set aside.

10. The prescribed authority while setting aside the ex parte order dated 1st of April, 1995, has found in the impugned order that the persons who were arrayed as tenants in the release application as a matter of fact had already vacated the

disputed accommodation long ago and it was Smt. Uma Sengar who was in possession of the disputed accommodation when the delivery of possession was effected on 22nd of May, 1996.

11. The impugned order has been challenged only on the ground that it is bad because it directs the petitioners to hand-over the possession to Smt. Uma Sengar, who according to the petitioners is a third party in the release proceeding. It may be noted that the impugned order is in the nature of a restitution order and has not been challenged on any other ground. It necessarily follows that the petitioners have no grievance against the impugned order so far as it relates to recall/setting aside of the release order dated 1st of April, 1995, is concerned. The very fact that the petitioners filed the release application against three persons alleging them to be their tenants for release (eviction) which was granted ex parte on 1st of April, 1995 and the said order having been set aside on merits, the possession has to be restored back to the person who was dispossessed in pursuance of the ex parte release order. Ordering restoration of possession to Smt. Uma Sengar is the moot question presently involved in the writ petition.

12. One of the fundamental principles of administration of justice is that all Courts are dutybound to take care that the act of the Court does not injure to any body. Meaning thereby a person who has been deprived of any property on account of an order passed by a Court and the said order having been recalled or set aside, it is duty of the Court to restore back the property to that person. This is known as doctrine of restitution and has been incorporated under Section 144, C.P.C. Even otherwise also every Court or quasi-judicial authority possesses such power as part of administration of justice. The law places an obligation on a party who has received benefit under the erroneous Judgment to make restitution to the other party for what he had lost when the said judgment or order is set at naught. It is duty of Courts to enforce obligation on the party to receive benefit of the erroneous judgment to make restitution to the other party for what he had lost unless it is shown that the restitution would be clearly contrary to (the real justice of the case. (See Lal Bhagwant Das v. Kishen Das : [1953]4SCR559).

13. The above proposition of law was not even disputed by Shri W. H. Khan, the leaned counsel for the petitioners. His submission was that during the pendency of the restoration application and of the present writ petition, from other litigations in civil court it is now established that the petitioners are the owners of the disputed property and therefore the court below has exceeded in its jurisdiction in passing the impugned order for delivery of possession to the contesting respondent No. 5 Smt. Uma Sengar. He submits that this Court in the present writ petition should examine the question of title of the disputed property.

14. It is common case of the parties that Smt. Champak Lata Bose was the owner of the property in question. According to the petitioners she entered into an agreement to sell dated 28th of September, 1973, with Ghanshyam Das who filed a suit for specific performance of the said contract which was numbered as Suit No. 231A of 1974, Ghanshyam Das v. Champak Lata Bose. The said suit was decreed on January, 1977 and the sale deed in pursuance thereof was executed by the Civil Judge Allahabad, in favour of Ghanshaym in Execution Case No. 2 of 1987 on 23.2.1988. Ghanshyam Das sold the property to the petitioner No. 1 on 12th of October, 1989 for a sum of Rs. 32,000 and as such he has become the owner of the property in question. This is the main plank of the argument of the petitioners' counsel. The aforesaid plea has not been accepted by the prescribed authority on the ground that all these documents including sale-deed in favour of Ghanshyam Das are forged and fabricated documents and have been got prepared by the petitioner No. 1, Bechan Singh, who is a class III employee in Civil Court, Allahabad, who took undue advantage of an untoward incident.

15. It so happened that there was a fire in May, 1978, in the record room of the civil court, Allahabad and a large number of records/files were burnt, damaged and destroyed.

16. Taking advantage of the said fire, the allegation is that the petitioner No. 1 who was working as a clerk in civil court and was posted in the office of Additional Judge Small Causes, Allahabad, hatched an unholy and deep-rooted conspiracy to Illegally usurp house of Smt Champak Lata Bose who was an old and aged lady living all alone in her House No. 1 A/2, Meerapur which is in dispute, at that time.

Her only son who is a doctor, has been permanently residing at London and all the three daughters were married. Shri Bechan Singh fraudulently forged decree dated 8th of January, 1977 and it was put under execution after lapse of 10 years and got it registered in favour of Shri Ghanshyam. Under the said scheme Shri Bechan Singh got the said house transferred in his name on 12th of October, 1989. He subsequently filed J.S.C.C. Suit No. 90 of 1990, Bechan Singh v. Champak Lata Bose, in the Court of Judge Small Causes for ejectment of Smt. Champak Lata Bose treating her as tenant and got the suit decreed ex parte. On coming to know Smt. Champak Lata Bose made a complaint to the district court as well as to the Chief Justice High Court. A judicial enquiry was ordered and it was found that the petitioner No. 1, Bechan Singh, has forged the documents and as a matter of fact, no such Suit No. 231A of 1974 was filed nor any such decree in favour of Ghanshyam Das was passed. Ghanshyam Das, the alleged vendor of petitioner No. 1 and plaintiff of Suit No. 231A of 1974 gave his affidavit in Enquiry Case No. 9 of 1974 specifically stating that he has no concern with respect to House No. 1A/2, Meerapur, Allahabad, nor he filed any suit for specific performance on 5.12.1974, against Smt. Champak Lata Bose and Shri Vimal Chand Bose. A copy of the said affidavit has been annexed as Annexure-5 to the counter-affidavit.

17. The District Judge initiated enquiry vide enquiry No. 9 of 1994. The result of the enquiry is as under:

The decree is false, fictitious and fabricated one and shall be treated as non-existent.

Sd. Prem Mohan

Civil Judge, Allahabad.

19.12.1994

18. Another enquiry No. 14 of 1997 was instituted against the petitioner No. 1. The said enquiry was conducted by 12th Additional District Judge who vide his report dated 21st of April, 1997, found that a necessary action be taken against Shri

Bechun Singh and his son Alope Singh and others under Section 195, I.P.C. A copy of the said enquiry report has been annexed as Annexure-1 to the counter-affidavit.

19. There are other enquiry reports on the record wherein it has been found that the petitioner No. 1 Bechan Singh has been in habit of making fabricated documents, removing the Judicial record unauthorisedly with a design to grab property of others. First information report against the petitioners under various sections of Indian Penal Code including that of tampering with the judicial record and forging the documents including the fictitious filing of Suit No. 231A of 1974 and its record has been lodged by the High Court against the petitioner. It was not disputed by Shri W. H. Khan, learned Counsel for the petitioners about the factum of the various enquiries conducted against him and of lodging of First Information Report against the petitioners.

20. Pointedly a query was put by the Court as to what happened to these criminal cases to which no satisfactory reply was given except that they are pending. However, he submits that even if in enquiry it is found that the petitioner No. 1 is guilty of tampering with and forging documents including judicial records or pendency of criminal proceedings against his client which is going on it would not make any difference so far as the sale-deed executed in favour of Ghanshyam Das in pursuance of the decree passed in Suit No. 231A of 1974 stands. The contention is that the said sale-deed has not yet been cancelled and therefore, this Court should hold in this writ proceeding which arises out of restitution proceeding that the petitioners are the owners of the property in question. It is difficult to agree with him for the reasons more than one.

21. In the decree of said Suit No. 231A of 1974, the fact that the decree is false, fictitious and fabricated one and shall be treated as non-exist has been incorporated. The decree as stands now reads as follows:

Copy of order passed by G. S. Pandey Civil Judge, Allahabad on 8.1.1977 Plaintiff suit for specific performance Order passed by learned District of contract in terms of the agreement Judge, Allahabad, in enquiry No. dated 28.9.1973 is hereby decreed 9/94 dated 6.12.1994 reads as with costs. The defendants are hereby

under:directed to execute the sale-deed in The decree is false fictitious and respect of plot No. 316 alongwith fabricated one and shall be treated House No. 1A Meerapur Allahabad, in as non -existent.favour of the plaintiff within three months from today as the payment of Rs. 30,000 had already been paid by plaintiff and received by defendant Sd.No. 1 Smt. Champak Lata Bose at the Prem Mohan Srivastava time of agreement on 28.9.1973 and Civil Judge, Allahabad the defendants are further directed to 19.12.1994 deliver the possession after execution of sale-deed.In case of default it shall be done through the Court. C.F. To be paid on execution side.Sd.8.1.1977 Civil Judge.

22. It is an acknowledged legal position that fraud vitiates the transaction. It has been found that no such Suit No. 231A of 1974 was instituted by Ghanshyam Das nor any decree was passed by the civil court in that suit. If that is so, the sale-deed executed in pursuance thereof by civil court is of no value. The necessary corollary is that the petitioner has got no title to the disputed property on the basis of the sale-deed executed by Ghanshyam as Ghanshyam at no point of time was owner of the property in question. Secondly, question of title cannot be decided in writ petition. The scope of the present writ petition is limited one. The petitioner seeks to challenge the order of the prescribed authority ordering restitution of possession and setting aside the ex parte release order. The scope of the writ petition, therefore, cannot be widen and it is limited to the extent of the ambit of the order passed by the prescribed authority. It is equally settled that prescribed authority exercising its jurisdiction under the provisions of U. P. Act No. 13 of 1972, does not possess any power to adjudicate upon the question of ownership in respect of an immovable property. For the same reasons the other suits filed by the petitioners against Champak Lata Bose and others wherein the petitioner has succeeded in obtaining ex parte orders/decrees are of no consequence and are illegal and void and have no legal sanctity in view of the fact that the petitioner No. 1 has got no title in the disputed property as his vendor Ghanshyam was not owner of the property in question. A decree or order which is nullity can be challenged at any stage of proceeding and such orders and decrees are void and liable to be ignored.

23. The prescribed authority has noticed that the release application filed by the petitioners was also mala fide action of the petitioners to some how obtain the possession of the disputed accommodation which was in possession of Smt. Uma Sengar, respondent No. 5 herein, who got it purchased by means of the registered sale-deed from Smt. Champak Lata Bose and her daughter. In spite of the fact that Smt. Uma Sengar was in occupation of the disputed property, the petitioners filed release application impleading Rajesh Rai one of their 'yes man' as opposite party No. 1 and two persons namely Sanjai Shukla and Ajay Shukla erstwhile tenants who had already vacated the disputed accommodation and handed over its possession to Champak Lata Bose. On the date when release application was filed it was Smt. Uma Sengar who was in possession of the disputed property on the strength of the sale-deed dated 24.10.1994, in her favour. The filing of release application is, thus, surrounded by suspicious circumstances and the guilty mind of the petitioner is writ large.

24. It is interesting to note that in the release application, the petitioner No. 1, Bechan Singh impleaded his son Alok Kumar as applicant No. 1 and described himself as 'B. Singh' instead of Bechan Singh purposely. As by then on the complaint of Smt. Champak Lata Bose, it was a known fact, due to the proceedings and report of judicial inquiries and perhaps to the Judicial officials also about the manipulation and fabrication and creation of forged file of Suit No. 231A of 1994. In the release application the petitioners have not said even a word as to how they have become the owner and landlord of the disputed property. There is complete silence in this regard in their release application.

25. Plea in the release application dated 22.6.1994, is that the tenants are bad pay masters and they have not paid rent since 1989. It is normal thing that the person who has purchased a tenanted property gives a notice as required under law to tenant with a view to inform him that now rent is payable to him and not to the erstwhile owner. There is no such averment to this effect in the release application. Under Section 21 (1) (a) of the U. P. Act No. 13 of 1972, there is further requirement of giving six months' notice by such purchaser vide first proviso therein. But there is no such averment in this regard also in the release application.

26. There is no answer as to why the execution of the alleged decree passed in alleged Suit No. 231A of 1974 was applied for after ten years. Also there is no answer as to why execution for delivery of possession was not applied by Ghanshyam, the alleged decree holder of the said decree. How possession was delivered to Ghanshyam?

27. The prescribed authority in the impugned order has found, which has not been challenged in the writ petition, that Rajesh Rai, the opposite party No. 1 in the release application is 'yes man' of the petitioners and Sanjai Shukla and Ajai Shukla, the opposite parties No. 2 and 3, had already vacated the disputed accommodation prior to 30th of April, 1994.

28. The prescribed authority has found the following facts which have not been disputed or challenged in the present writ petition:

1. Rajesh Rai who was impleaded as opposite party No. 1 in the release application, as a matter of fact, was a 'yes man' of the petitioners.

2. Sanjai Shukla and Ajai Shukla had already vacated the disputed accommodation prior to 30th of April, 1994.

3. The possession was affected by the Amin by breaking the locks. In the disputed accommodation the Court Amin while affecting delivery of possession found number of articles which were handed over to a supurdgar. It is Smt. Uma Sengar, the respondent No. 5 alone who applied for the release of those goods. The petitioners did not apply for the release of those goods nor they claimed those goods belonging to them. Thus, it was Smt. Uma Sengar who was in the possession at the time when the Court Amin delivered the possession to the petitioners.

4. The release application in P.A. Case No. 39 of 1994 was instituted by the present petitioners with oblique motive to evict the respondent No. 5.

5. In judicial enquiry No. 9 of 1994 it has been found that the proceedings of alleged Suit No. 231A of 1974, Ghanshyam v. Champak Lata Base, were all forged and fabricated and as a matter of fact, no such suit was ever filed nor any

decree was passed. The documents and the institution register have been fabricated.

6. The prescribed authority has further held that the Suit No. 23 1 A of 1974 was not instituted by alleged Ghanshyam.

7. The release application in P.A. Case No. 39 of 1994 was filed by concealing material facts and the factum of Judicial enquiry No. 9 of 1994 was neither disclosed nor was mentioned before the Court. The petitioners by playing fraud upon the Court got the eviction order dated 1st of April, 1995 and the same is void and illegal.

29. As already pointed above, no arguments were advanced by the learned Counsel for the petitioner to challenge the aforesaid findings of the prescribed authority. The sole argument canvassed by the learned Counsel for the petitioners was that the petitioners being owners of the disputed property, they cannot be ordered to handover the possession to the respondent No. 5, Smt. Uma Sengar. In support of the above, the learned Counsel for the petitioners has relied upon the following rulings:

1. Smt. Kamla Devi v. Ind A.D.J. 2004 (3) AWC 2341;
2. P. Janardhana Rao v. Kantian and Ors. 2004 (4) AWC 3693 (SC);
3. Lalita Prasad Jaiswal v. Prescribed Authority ARC 1996 (1) 353;
4. Lalji Tandon v. Union of India ALR 1976 (2) 216; and
5. Smt. Ramti Devi v. Union of India : (1995)1SCC198 .

30. None of the above rulings, on a careful consideration has any application to the facts of the present case. It is a case of fraud committed by a civil court clerk who manipulated court record and took undue advantage and by abusing his position as a clerk in civil court fabricated and got manufactured file of fictitious Suit No. 231A of 1974. Time and again the Apex Court has held that if an order has been obtained by fraud, the same is null and void and its invalidity can be set up at any stage.

31. In *Indian Bank v. Satyam Fibres (India) Pvt. Ltd.* : AIR 1996 SC2592 , the Apex Court has held that fraud and justice never dwell together. Following the other Judgments it has been held that the effect of fraud would normally be to vitiate any act or order. It has referred the observation of Denning L.J. In *Lazarus Estate Ltd. v. Beasley* 1956 1 QB 702, that:

No Judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.

32. The above principle has been reiterated in *Indian National Congress (I) v. Institute of Social Welfare and Ors.* : [2002]3SCR1040 , wherein in para 34 of the report it has been stated that a power to cancel/recall an order which has been obtained by forgery or fraud applies not only to the courts of law but also statutory Tribunals which do not have power of review. In *Vijay Shekhar and Anr. v. Union of India and Ors.* JT 2004 (Suppl 1) SC 523, the effect of-fraud on judicial proceedings has been examined in detail and it has been held that a fraudulent act even in Judicial proceedings cannot be allowed to stand. While doing so it has quoted its observation made in the case of *Ram Chandra Singh v. Savitri Devi and Ors.* : (2003)8SCC319 . Further it has been held in the case of *Ram Chandra Singh (supra)* that once it is held that a judgment and decree has been obtained by practising fraud on the Court it is trite that principle of *res judicata* shall not apply.

33. Apart from the above, in view of the fact that the very object of the filing of the release application was ill motivated and the respondent No. 5 who was in peaceful possession was dispossessed in pursuance of an *ex parte* order which has been set aside subsequently, is entitled to the restoration of the possession forthwith. This Court exercises equitable jurisdiction under Article 226 of the Constitution of India and it is well-settled that a person who has not come to the Court with clean hands, the Court may refuse to grant any relief to such person. A person whose case is based on falsehood, has no right to approach the Court. Law courts are not meant for such person. In *S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and Ors.* : AIR 1994 SC853 . It has been held that the courts of law are meant for imparting Justice between parties. One who

conies to the Court must come with clean hands. A person, whose case is based on falsehood has no right to approach the Court. He may be summarily thrown out at any stage of the litigation.

34. This ground, thus, is sufficient to dismiss the writ petition.

35. It having been found that no such Suit No. 231A of 1974 was filed nor any such decree as alleged by the petitioners was passed in that Suit No. 231A of 1974, all proceedings subsequent thereto are null and void and cannot be pressed into service by the petitioners. Their possession also, therefore, on the disputed premises is unauthorized one and they are liable to be evicted therefrom. An unauthorized occupant cannot choose the manner of his eviction. Consequently, the petitioners are liable for eviction from premises No. 1A/2, Meerapur, Allahabad. The proceedings in P. A. Case No. 39/1994 have also become meaningless and the same is hereby rejected.

36. The petitioner has obtained a stay order from this Court and is continuing in possession on the strength of the said stay order dated 11.4.1997. Ten years have completed. The petitioner himself had claimed that the tenants were in occupation on a monthly rent of Rs. 300. The rent for the period of 10 years at that rate comes to Rs. 36,000. The petitioners have taken the law in their own hands and evicted the respondent No. 5 and obtained the possession by playing fraud upon the Court. The conduct of the petitioners is blameworthy.

37. The Apex Court in N.V. Srinivass Murthy and Ors. v. Mariyamma (dead) by proposed L.Rs. and Ors. : AIR 2005 SC2897 , following its earlier decision in the case of T. Arvindam v. T.V. Sutyapal : [1978]1SCR742 , has held that in such cases heavy costs should be imposed.

38. In Salem Advocate Bar Association, Tamil Naidu v. Union of India : AIR 2005 SC3353 , the Apex Court has observed that under Section 35B of C.P.C. an order may be made requiring the defaulting party to pay to other party such costs as wou'd, in the opinion of the Court, be reasonably sufficient to reimburse the other party in respect of the expenses Incurred by him in attending the Court on that dale, and payment of such costs, on the date next following the date of such order,

shall be a condition precedent to the further prosecution of the suit or the defence. It is observed that Judicial notice can be taken of the fact that many unscrupulous parties take advantage of the fact that either the costs are not awarded or nominal costs are awarded on the unsuccessful party. Unfortunately, it has become a practice to direct parties to bear their own costs. It has been further held that when Section 35(2) provides for cost to follow the event, it is implicit that the costs have to be those which are reasonably incurred by a successful party except in those cases where the Court in its discretion may direct otherwise by recording reasons thereof. The costs have to be actual reasonable costs including the cost of the time spent by the successful party, the transportation and lodging, if any, or any other incidental cost besides the payment of the court fee, typing, etc.

39. Taking into consideration the facts of the case, it is desirable that exemplary costs be imposed on the petitioners to compensate the respondent No. 5. The petitioners are hereby directed to pay a sum of rupees one lakh as cost which is compensatory in nature inclusive of Rs. 36,000 damages.

40. It is necessary in the present case to issue necessary direction to the prescribed authority as well as to the Senior Superintendent of Police, Allahabad, on the peculiar facts of the present case to evict the petitioners from the disputed accommodation (1A/2, Meerapur, Allahabad) forthwith and handover and deliver its vacant possession to the respondent No. 5, Smt. Uma Sengar, as soon as a certified copy of this order is produced before them but within three working days.

41. In view of the above discussion, the writ petition as also the P.A. Case No. 39 of 1994 are dismissed with costs of rupees one lakh to be paid by the petitioners to the contesting respondent No. 5. The District Magistrate shall recover the costs as arrears of land revenue if the same is not paid or deposited by the petitioners within fifteen days. The petitioners shall also be liable to pay damages at the rate of Rs. 1,000 per day till the date of their actual eviction, to the respondent No. 5.