

Jagdamba Prasad Singh Vs. State of Up and Others

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SooperKanoon Citation : sooperkanoon.com/918592

Court : Allahabad

Decided On : Sep-29-2010

Judge : Sunil Ambwani, Kashi Nath Pandey, JJ.

Appeal No. : SPECIAL APPEAL NO. 1606 OF 2008

Appellant : Jagdamba Prasad Singh

Respondent : State of Up and Others

Advocate for Pet/Ap. : Shri. S.K. Mishra

Judgement :

1. We have heard Shri S.K. Mishra appearing for the petitioner-appellant. Shri J.K. Tiwari, Standing Counsel appears for the State respondents.

2. The petitioner-appellant-a confirmed Amin holding a regular post was dismissed from service three years before he was to retire on the charges, that he had wrongly calculated interest of Rs. 37,823.71 payable towards compensation for acquisition of land under the Land Acquisition Act to its owner. His appeal was dismissed after this Court issued a writ of mandamus to decide the matter. By this Special Appeal he has challenged the order of learned Single Judge dated 30.9.2008, and the orders of his dismissal dated 28.6.2001, by the District Magistrate, Jaunpur and the appellate order dated 19.8.2002 by the Commissioner, Varanasi under the U.P. Government Servants (Punishment and Appeal) Rules, 1999.

3. Learned Single Judge dismissed the writ petition by a short order as follows:

"Hon. Rajiv Sharma, J.

Heard learned counsel for the petitioner and learned Standing Counsel.

Petitioner has preferred the instant writ petition against the order of punishment of termination of service interalia on the ground that the punishment which has been awarded to the petitioner terminating his services is too harsh, but he could not point out any irregularity in the conduct of the enquiry or any illegality in the orders passed by the Disciplinary Authority. The Apex Court in the case of Anil Mishra vs. Union of India and others, (2008) 7 SCC 732 has held that scope of judicial review in the matter of Departmental proceedings is limited and the Courts could not sit as an appellate authority.

In view of the above, I do not find any illegality or infirmity in the order impugned. Writ Petition is accordingly dismissed.

Dated: 30.9.08

Sd/- Rajiv Sharma, J."

4. Brief facts giving rise to this writ petition are that Shri Jagdamba Prasad Singh petitioner-appellant was serving as a confirmed Amin on regular basis in the office of Special Land Acquisition Officer, Jaunpur. The land in plot No. 138 area .83 acres of one Tilakdhari Prajapati was acquired by the State Government for 220 KVA, Electricity Sub Station at Village Muradganj, Jaunpur, for which he was paid compensation of Rs. 20,025.61 by the Land Acquisition Officer, Jaunpur on 16.8.1984, vide his award dated 29.5.1985 of Rs. 2,97,507.58. The land owner filed a reference under Section 18 of the Land Acquisition Act, 1894 (LA Case No. 68/1985) decided by the Additional District Judge, Jaunpur on 31.5.1988. An appeal filed by State against the order of Additional District Judge, Eighth dated

16.8.84 was dismissed on 18.7.1992. The amount of compensation was substantially enhanced. The land owner filed an Execution Case No. 6/1996 and was paid an amount of Rs. 2, 99, 727.37 as compensation on 22.3.1997.

5. One Shri Ram Dawar Yadav filed an application on 5.2.1998 on the basis of a power of attorney dated 29.5.1997, seeking further payment of Rs. 2, 46, 177.57 for acquisition of the same land. The amount was paid over to him in Execution Case No. 6 of 1996, on behalf of Shri Tilakdhari Prajapati on the basis of power of attorney. When the fraud was detected, a first information report was lodged by Shri Mohan Lal son of Tilakdhari Prajapati against Shri Ram Dawar Yadav; Shri Devi Prasad Upadhyay, SLAO office, Jaunpur; Shri Om Shanker Srivastava, Clerk in the office of SLAO on 8.11.1999 registering Case Crime No. 751 of 1999 under Sections 419, 420, 467, 468, 471, 218, 120B IPC Police Station Line Bazar, District Jaunpur. On the basis of the complaint, a preliminary enquiry was initiated by the District Magistrate and was conducted by the Sub Divisional Magistrate. The Sub Divisional Magistrate in his report dated 8.4.2000 found the allegations made against Shri Ram Dawar Yadav; Shri Om Shanker and Shri Devi Prasad Upadhyay, SLAO of interpolation of Execution Case No. 5 to 6 of 1996 in which the payment was given all over again to Shri Ram Dawar Yadav. The petitioner was not found involved in the fraud. In this report the Sub Divisional Magistrate also observed, to the effect that Shri Tilakdhari Prajapati the land owner in the main execution case was paid by a calculation mistake an excess amount towards interest. The petitioner-appellant had prepared a note of payment of enhanced compensation in which he had, instead of deducting Rs. 20,025.61 already paid to the land owner in the calculation of the amount on the rate fixed by the Additional District Judge, deducted the amount at the end of the calculation, by which some amount was paid to the original land owner in excess towards the interest.

6. The Sub Divisional Magistrate observed in his report dated 8.4.2000 that the payment made to Shri Ram Dawar Yadav on the power of attorney of Shri Tilakdhari Prajapati of Rs. 2, 46, 177.57 was wrong and illegal and that the amount should be recovered from Shri Ram Dawar Yadav and that the departmental enquiry should be initiated against the employees, who were guilty, namely Shri Om Shanker Srivastava (Ahalmad), and Hari Shanker Yadav (Ahalmad/Accounts

Clerk).

7. The District Magistrate considered the report and while directing recovery from Shri Ram Dawar Yadav, instructed the Additional District Magistrate (Finance and Revenue) to seek explanation from the then Special Land Acquisition Officer Shri B.M. Singh. The Additional District Magistrate asked the Sub Divisional Magistrate to submit an enquiry report. The Sub Divisional Magistrate, Badlapur, in his report dated 5.6.2000 after narrating the facts of enhancement of compensation and payment of the enhanced compensation to the land owner, found that Shri Tilakdhari Prajapati has executed a registered power of attorney in favour of Shri Ram Dawar Yadav for receiving the amount. Shri Ram Dawar Yadav forged the document by changing the number of the execution case from 5/1996 to 6/1996 and made an application for payment of enhanced compensation on which the amount was paid over to him all over again without verifying that the earlier execution case was disposed of after paying the enhanced compensation.

8. In the criminal case the Chief Judicial Magistrate, Jaunpur had clearly observed that the Special Land Acquisition Officer was not involved in the case and that the fraud was played by Shri Ram Dawar Yadav, Shri Tilakdhari Prajapati and Shri Devi Prasad. He found that Shri Ganga and Shri Basant Lal Amins had prepared a separate report on 17.12.1998 and got permission from the then Special Land Acquisition Officer for payment to Shri Ram Dawar Yadav holding power of attorney of Shri Tilakdhari Prajapati. There was no budget for the amount. The amount was paid from the PLA account and thus Shri Basant Lal Amin was responsible for payment.

9. The Sub Divisional Magistrate mentioned in one of the paragraph that in the earlier calculation also the amount paid to the land owner of Rs. 20,025.61 on 16.8.1984 should have been adjusted from the total amount worked after the enhanced rate fixed by the Additional District Judge and thereafter the interest at 15% should have been worked. In this calculation Shri Jagdamba Prasad Singh, Amin (the petitioner-appellant) was guilty of making wrong calculations by which an amount of Rs. 37,823.71 was earlier paid in excess to the land owner.

10. The District Magistrate, on the basis of the report, apart from taking action against other employees, prepared a charge sheet against the petitioner on June 13, 2000. In this charge sheet the petitioner was charged only with making a wrong calculation in respect of the first payment of enhanced compensation to the land owner of an amount of Rs. 2,46,177.97 to Shri Tilakdhari Prajapati (land owner). In the report of Shri Ram Kewal Tiwari (SDO, Badlapur dated 5.6.2000) the calculation of 15% interest at Rs. 37,823.71 was added for the period from 16.8.1984 to 22.3.1997 of a total of Rs. 4596/- and the enquiry report of Shri S.P. Singh, Deputy Collector, Jaunpur dated 10.3.2000, and the power of attorney of Shri Tilakdhari Prajapati were proposed to be relied upon as documents in the departmental enquiry in proof of charges.

11. The petitioner took up a defence that the calculation made by him as Amin of the enhanced compensation after the judgment of the Additional District Judge was not final. It was only a proposed calculation for the purpose of drawing the amount, which was required to be verified by the Ahalmad and thereafter by the Special Land Acquisition Officer before the payment was made. In any case he had calculated the amount in accordance with the prescribed standard and had not calculated the amount of interest of 538 days from 29.5.1982 to October, 1996, giving benefit to the State. The petitioner denied that the charge was made out of over-payment against him.

12. In the enquiry report the petitioner was found to be guilty of wrong calculation of the amount. The District Magistrate in his show cause notice dated 8.2.2001 given to the petitioner, alleged that since the petitioner is guilty of making wrong calculation of the amount of Rs. 37,823.71 and since the charge is of embezzlement and is of serious nature, a major penalty is proposed to be imposed upon him.

13. The petitioner submitted a reply to the show cause notice and reiterated that he was not the person responsible, nor had the authority to pay the amount. He had simply made a calculation of enhanced compensation, after it was increased by the reference court, for which no standards are prescribed by any orders laying down any procedure. The proposals were made on the earlier instructions of the

concerned Land Acquisition Officer, or his Ahalmad and that the final calculation is made by the Ahalmad, and the Special Land Acquisition Officer. If the calculation was wrong, the Ahalmad, Accounts Officer and thereafter the Special Land Acquisition Officer were required to correct, it before preparing the cheque for payment. The petitioner, however, stated that in fact in the estimated interest the land owner was not paid 160 days interest from 14.10.1996 to 22.3.1997.

14. The District Magistrate by his order dated 28.6.2001 agreed with the report of the enquiry officer and concluded that the charged officer has in connivance with the parties made a wrong calculation for payment of higher amount illegally to land owner Tilakdhari Prajapati and has caused loss to the revenue, which is a misconduct under C.C.S. Rules, 1955 and calls for a major penalty. He passed orders of major penalty on 28.6.2001, of removing the petitioner from service.

15. In the appeal before the Commissioner of the Division, the petitioner once again reiterated that he was not responsible for making the higher payment. He had only calculated the interest on the note sheets, which were required to be checked up by the Ahalmad, Accounts Officer and thereafter by the Special Land Acquisition Officer. He also pleaded that Shri Basant Lal the amin responsible for the fraud in making the entire amount paid all over again to the person holding power of attorney by manipulating the execution case and was reinstated by the Finance and Revenue Officer, Jaunpur on 1.9.2001 in pursuance to the order of the Chairman, Board of Revenue dated 3.7.2001.

16. Learned counsel for petitioner has also brought on record the order of this Court dated 18.2.2005 allowing the writ petition filed by Shri Hari Shanker Yadav, Accounts Officer, who had prepared and paid over the amount to Shri Ram Dawar Yadav on the basis of the power of attorney, which started the enquiry in which the petitioner was charge sheeted. The Writ Petition No. 2898/2001 Hari Shanker Yadav vs. District Magistrate, Jaunpur and others was allowed on 18.2.2005, on the ground that adequate and sufficient opportunity of hearing was not given to the petitioner. He was not allowed to lead evidence, cross examination to witnesses and to examine documentary evidence of the department.

17. The appeal filed by the petitioner was dismissed by the Commissioner, Varanasi Region, Varanasi on 19.8.2002 without considering the grounds raised by the petitioner. The appellate authority has referred to the grounds but has mechanically without considering the defence of the petitioner concluded that the petitioner has caused loss to the revenue and has not satisfactorily denied the charges levelled against him.

18. It is submitted by learned counsel for petitioner that all the arguments were raised before learned Single Judge, but that without considering the submissions, the writ petition was dismissed by picking up only one ground from his argument that on the charges, even if it was found proved, the punishment was too harsh. Learned Single Judge has not considered the facts of the case and the grounds raised in the writ petition in deciding the matter.

19. We have considered the submissions and perused the entire record including the preliminary reports, the reply given by the petitioner, the enquiry report, the order of District Magistrate, the grounds of appeal, the appellate order and find that learned Single Judge has not considered the grounds and has decided the writ petition casually by a short order, without giving good and sufficient reasons. In fact he did not consider the merits of the case at all.

20. The enquiry was initiated, into the charge on a complaint made by the son of the land owner, alleging that his father was 72 year's old; he was hard of hearing and since his mother was also not keeping well, and his brother was not educated, Shri Devi Prasad, Advocate was engaged. His father executed a power of attorney in favour of Shri Ram Dawar Yadav for receiving the amount. He was informed, after the death of his mother and brother, as well as Shri Devi Prasad Upadhyay, Advocate died that some fraud has been played. He enquired about the payment of compensation. He was informed by Shri Ratnakar Shukla, Advocate, that Shri Ram Dawar Yadav has been paid the amount. He was advised to get the power of attorney annulled on which firstly he got the power of attorney cancelled by making application in the office of Sub Registrar (Sadar) Jaunpur on 7.10.1999. Thereafter when he came to Jaunpur from Surat (Gujarat), where he is working on a loom in Shiv Silk Company Ltd., on the enquiries made by him from the record,

he found that Ram Dawar had manipulated the power of attorney by changing the case number and with the connivance of clerk Shri Hari Shanker Yadav and Shri Om Shankar Srivastava and had received Rs. 2, 46, 177.97 from the Special Land Acquisition Officer on 19.2.1998. On the enquiries made from the office of Additional District Magistrate, he found that after changing the number of the execution case he made an application to the District Judge for transfer of the case. Since the payment was not made, he got a recovery certificate issued from the Court of Additional District Judge, VIIIth, Jaunpur and got the amount transferred with the influence of Shri Hari Shanker Yadav and Shri Om Shanker Yadav to his account. The Special Land Acquisition Officer did not issue any notice to the petitioner's father or his advocate Shri Devi Prasad Upadhyay and sent a report regarding payment six months later. The FIR does not disclose, but proceeds on the basis that his father did not receive the amount of enhanced compensation. He requested for taking action against the guilty persons.

21. In the fact finding enquiry it was found that the fraud was played on the record by Shri Ram Dawar Yadav along with Shri Basant Lal Amin and Shri Hari Shankar Yadav. During the course of enquiry, it was found that at the time of calculation of the revised amount to be paid a wrong calculation was made by the petitioner. In the report dated 8.4.2000 of the Deputy Collector, Jaunpur, the amount calculated by the petitioner is given as follows:-

"Rate per acre 96,296.30

0.83 acre 77,037.20

Soletiam charge 30% 23,111.16

Total 1, 00, 148.66

12% Addl. (440 days) 11,144.01

15% interest (5308 days) 1, 08, 460.61

Deduction of the amount previously made 20,025.61

Amount payable 1, 99, 727.37"

22. In the report and thereafter in the preliminary enquiry report dated 5.6.2000 on the directions of the District Magistrate, it was reported that at the time of making first calculation as above the amount of Rs. 20,025.61, already paid in the year 1984, to the land owner, was required to be deducted from the total amount excluding solatiam before calculating the interest. The wrong method of calculation resulted into over calculation of interest of 4596 days on Rs. 20,025.61 at 15% by the petitioner at Rs. 37,823.71.

23. Admittedly the petitioner was not the authority to make final calculations, to draw the amount and make the payment. As a lowest officer in the rung, the petitioner was required to make preliminary calculations. The calculations were thereafter required to be checked by the Ahalmad, Accounts Officer and finally by the Special Land Acquisition Officer before the compensation was actually paid. The fraud was played subsequently by Shri Ram Dawar Yadav alongwith Shri Om Shankar and Shri Hari Shanker in the office of Special Land Acquisition Officer by which an amount of Rs. 2, 46, 177.97 was paid to the person holding power of attorney and by changing the number of the execution case.

24. The record clearly demonstrates that the petitioner was neither responsible for making final calculations nor payment of the amount and that he had no concern with the fraud played upon by Shri Ram Dawar Yadav the power of attorney holder with other employees.

25. The petitioner had pleaded all these facts before the District Magistrate as well as the appellate authority. It appears that they had no time to go through the record, and without looking into the facts they found a scapegoat and punished the petitioner by removing him from service. They did not even care to find out whether the amount calculated by the petitioner was actually paid to the land owner, and whether there was any allegation against the petitioner for having misappropriated the amount for concluding that the State had suffered loss. The District Magistrate did not even wait for the conclusion of the criminal case and failed to notice that the other employees, who were involved in the fraud played subsequently on record, were either reinstated or the orders of their dismissal

were set aside by this Court.

26. We find that the petitioner was not the person responsible for making final calculations for drawing the amount, and for making payment. He had simply made calculations, which were required to be checked by the Ahalmad and the Accounts Officer and thereafter re-checked by the Special Land Acquisition Officer before the payment was made to the land owner. The Special Land Acquisition Officer was let off in the preliminary enquiry for having made false payment to Shri Ram Dawar Yadav. Only his clerk was found responsible. The calculation made by the petitioner, at the first instance in favour of the land owner was referred to in the preliminary enquiry, as a passing reference for incorrect calculation, by the Sub Divisional Magistrate and thereafter by the District Magistrate as a ground for levelling charges against the petitioner.

27. The anxiety of the Court to decide the cases quickly sometimes leads to gross injustice to the persons, who approach the Court giving all the required facts. In the present case, the District Magistrate, the Commissioner and thereafter learned Single Judge did not care to look into the facts of the case, in which no charge of embezzlement was alleged or established. The petitioner serving as Amin at the lowest level was found to have made incorrect calculation, which could have been made by any body by way of a bonafide mistake and could be corrected by the officer making payment. He was punished in the matter of a greater fraud played on the record subsequently by Shri Ram Dawar, the employees in the office of Special Land Acquisition Officer, and in which he was not involved.

28. We, therefore, find it just and proper to allow the Special Appeal and quash the orders of the District Magistrate dated 28.6.2001 removing the petitioner from service; the order of the Commissioner, Varanasi Division, Varanasi dated 19.8.2002 allowing the appeal and the order of the learned Single Judge dated 30.9.2008 dismissing the writ petition. The petitioner was to retire in the year 2003. He shall be treated to be in service till the date of his retirement and shall be paid the entire arrears of salary upto date of his retirement and the entire retiral benefits to be calculated, and paid to him within four months from the date a certified copy of the order is produced in the office of District Magistrate, Jaunpur.

