



2026:AHC-LKO:20879

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW A.F.R.**

WRIT - C No. - 1001905 of 2014

State Of U.P. Thru Prin.Secy.Stamp And
Registration Deptt.Andors

.....Petitioner(s)

Versus

District Judge Lucknow And Others

.....Respondent(s)

Counsel for Petitioner(s) : C.S.C.

Counsel for Respondent(s) : Surya Kant, Himanshu Hemant Gupta,
Udit Kumar

Court No. - 4

HON'BLE IRSHAD ALI, J.

1. Heard learned Standing Counsel for the petitioner - State and Sri Sudeep Seth, learned Senior Counsel assisted by Sri Himanshu Hemant Gupta, learned counsel for respondent Nos.2 & 3.

2. By means of present writ petition the petitioner is challenging the order dated 18.11.2013 passed by learned District Judge Lucknow in Execution Case Nos.63 & 64 of 2011 contained as Annexure-1 to the writ petition.

3. The writ petition has been filed in exercise of power under Article 226 Constitution of India.

4. Factual matrix of the case is that two agreements to sell were executed between the respondent Nos.2 & 3 and Sri Roop Chand in respect of half portion of khasra plot Nos.416 and 417, Mohibulla Ward, Faizullaganj, Lucknow on 06.04.1974. Out of total sale consideration of Rs. 40,000/-, an advance amount of Rs. 30,000/- was paid to Sri Roop Chand.

5. The land having been acquired by the State Govt. for L.D.A. project but neither improvement made on the spot nor possession taken over. Respondent Nos.2 & 3 resorted to arbitration proceedings before the Sole Arbitrator, Mohd. Tariq Khan, and requested for issuance of direction to the legal heirs of Mr. Roop Chand to execute sale deeds in respect of half portion of Khasra Plot Nos. 416 and 417. A compromise was entered into between the parties that in case land was not released from acquisition,

then respondent Nos.2 and 3 would be entitled to get their advance back along with usual bank interest but in case land was released by State Govt./LDA, respondent Nos. 2 and 3 would pay Rs.10,50,000/- to Gopal Das, s/o Late Roop Chand and Rs. 10,50,000/-to rest of legal heirs of Late Roop Chand. The compromise was verified before the Arbitrator and award was made in terms of the said compromise.

6. After release of the land from acquisition proceedings u/S 17 of the U.P. Urban Planning and Development Act, 1973, since respondent Nos.4 to 8 failed to execute the sale deed, respondent Nos.2 and 3 filed two Execution Cases bearing No. 63 and 64 of 2011 before learned District Judge for execution of award u/S 36 of 1996 Act.

7. On 18.11.2013 after hearing decree holder and the DGC (Civil) on the point of affixation of stamp duty on the sale deed to be executed and after considering the report of Sub Registrar, Lucknow, as well as the law laid down by the Hon'ble Apex Court in the case of **Residents Welfare Association, NOIDA Vs State of U.P.** and other judgments, Ld. District Judge recorded a finding that as parties to the award arrived at a compromise and award delivered on 20.12.2008 for sale of property. Subject matter of proposed sale deed for a total sale consideration of Rs. 21,00,000/-, stamp duty should be levied on the market value of property that existed on the date 20.12.2008 since delay in registration of sale deed was not caused intentionally on behalf of decree holder and the delay had occurred only on the part of respondents and due to land previously acquired by LDA.

8. On 26.11.2013 a letter sent by District Judge to Sub Registrar, intimating the order dated 18.11.2013 passed in the Execution Case about stamp duty on market value leviable as on date of award. On 28.11.2013 Sub Registrar sent a report to the effect that stamp duty would be determined on the market value existing on the date of execution of the instrument. Since report dated 28.11.2013 of the Sub Registrar was in teeth of the judicial order dated 18.11.2013, Ld. District Judge directed Sub Registrar either to appear in person or get the sale deed registered as per Court Order 18.11.2013 charging stamp duty in terms with the said order, on failure to comply the order, Sub Registrar was required to show

cause as to why the matter should not be referred to Hon'ble High Court for initiating contempt proceedings.

9. On 12.12.2013 the Sub Registrar intimated the Ld. District Judge about market value of property as on 20.12.2008 and the stamp duty payable thereon to the extent of Rs. 95,89,230/-. It was further intimated that the jurisdiction to determine proper stamp duty vests in Collector u/S 31 of the Indian Stamp Act; as per various authorities of Hon'ble High Court and Apex Court, it is a settled principle that the stamp duty determination is made on the basis of market value assessed on the date of execution of the instrument. However, the Deputy Registrar conveniently side tracked the Apex Court Judgment in the case of **Resident Welfare Association, NOIDA V State of U.P., 2009 (14) SCC 716 (Pg 35)**.

10. The Sub Registrar further apprised that pursuant to order dated 18.11.2013 of the Ld. District Judge, instrument had not been presented for registration; in future, if instrument was presented, same would be registered without any delay as per the order of Ld District Judge. Administrative Officer of the District Judge, Judgeship, Lucknow executed the sale deed, duly presented for registration and the sale deed was duly registered. Hence, order dated 18.11.2013 implemented and given effect to.

11. Submission of learned Additional CSC for the petitioner - State is that the stamp duty payable on the instrument is on the market value when the instrument is registered. He submitted that the District Judge has committed manifest error of law in passing the impugned order, therefore, the order is not sustainable in the eyes of law.

12. He next submitted that the impugned order has been passed in two execution cases by means of common judgment, therefore, the writ petition challenging the same is maintainable and cannot be dismissed on the ground that two orders of execution has been challenged in one petition.

13. On the other hand, learned Senior Counsel for respondent Nos.2 & 3 submitted that two execution cases decided by means of common

judgment cannot be challenged by means of one writ petition. In support of his submission, he placed reliance upon an order in the case of **Amit Kumar Gupta and others Vs. State of U.P. through Addl. Chief Secretary, Deptt. of Home Lko and others**; Special Appeal No.1 of 2020 decided on 03.02.2026.

14. He next submitted that the order of Civil Court is not amenable in writ petition in exercise of power under Article 226 Constitution of India. In support of his submissions, he placed reliance upon a judgment in the case of **Radhey Shyam and another Vs. Chhabi Nath and others; (2015) 5 Supreme Court Cases 423** and submitted that the writ petition can only be filed in exercise of power under Article 227 Constitution of India.

15. I have considered the submissions advanced by learned counsel for the parties and perused the material on record as well as law reports cited by learned Senior Counsel for respondent Nos.2 & 3.

16. To resolve the controversy involved in the matter, relevant portion of the judgments relied upon by learned Senior Counsel for respondent Nos.2 & 3 are being quoted below:

a) Amit Kumar Gupta and others (Supra):

"2. After hearing the parties and perusing the record, we find that the judgment impugned in special appeal, is a common judgment. Several writ petitions including Writ Petition No.14066 (S/S) of 2019 were decided by it. While challenging the judgment, petitioners of all the writ petitions joined together and became appellants herein. An application was filed along with the appeal for permitting the appellants to prefer a single appeal against the common judgment passed in several writ petitions. It is informed that pleadings had been exchanged only in Writ Petition No.14066 (S/S) of 2019 therefore, this procedure was adopted by the appellants on their own or on the advice, as the case may be.

7. Having heard the learned counsel for the parties including the Standing Counsel, we find ourselves unable to accept this contention. The practice and procedure settled in this Court is that if there are several writ petitions which are decided by a common judgment then if a challenge is to be raised by way of an intra-court appeal, separate

appeals have to be filed under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952. There is no such provisions in the Rules of 1952 which permits filing of a single appeal in respect of all the petitioners of all the writ petitions which may have been decided by a common judgment. This may also lead to several practical difficulties based on the array of parties in separate writ petitions as also pleadings etc. Moreover, in this case, though an application for permitting filing of a single appeal was filed but the same was never considered. No such rule or law has been shown under which such an application could have been preferred. While we appreciate and empathize with the predicament being faced by the appellants herein, we are unable to review our judgment and make it applicable to all the appellants of the writ petitions which were decided by a common judgment dated 27.11.2019. The joining of the other writ petitioners as appellants in this appeal itself was impermissible. Nevertheless, we are of the opinion that to balance the equities and to prevent a situation of irreparable loss to the appellants, it needs to be clarified that the appeal i.e. Special Appeal No.1 of 2020 and judgment dated 28.01.2023 passed herein, review/modification of which has been sought, shall be treated as an appeal and judgment which has only been passed in respect of the petitioners of Writ Petition No.14066 of 2019, irrespective of the fact that there were other appellants also who were not petitioners in the said petition but were petitioners in the connected matters, with liberty, as far as otherwise permissible in law, to the remaining appellants i.e. those who were not petitioners in Writ Petition No.14066 (S/S) of 2019, to prefer separate appeals against judgment of the writ court dated 27.11.2019 qua their writ petitions."

b) Radhey Shyam and another Vs. Chhabi Nath and others (Supra):

"27. 27. Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226.

29. Accordingly, we answer the question referred as follows:

29.1. Judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution.

29.2. Jurisdiction under Article 227 is distinct from jurisdiction under Article 226.

29.3. Contrary view in Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] is overruled."

17. On perusal of aforesaid judgments, it is apparent on the face of it that if there are two orders in any case and decided by common judgment, the writ petition can be filed separately as per order in the case of **Amit Kumar Gupta and others (Supra)**. The judgment in the case of **Radhey Shyam and another (Supra)**, clearly demonstrates that the orders of civil court can only be challenged in writ petition in exercise of power under Article 227 Constitution of India.

18. In view of reasons assigned above, the writ petition is liable to be dismissed on the ground that two execution order have been challenged in the present writ petition in exercise of power under Article 226 Constitution of India. The writ petition is also not maintainable in view of challenge of civil court's order in exercise of power under Article 226 Constitution of India. It can only be challenged in exercise of power under Article 227 Constitution of India.

19. Therefore, the writ petition is **dismissed** with liberty to the petitioner to file separate writ petitions challenging the orders passed in Execution Case Nos.63 & 64 of 2011 in exercise of power under Article 227 Constitution of India.

(Irshad Ali,J.)

March 23, 2026

Adarsh K Singh