

A.F.R.

Court No. - 51

Case :- MATTERS UNDER ARTICLE 227 No. - 9021 of 2024

Petitioner :- The Sinha Development Trust And Another

Respondent :- State Of Up And 15 Others

Counsel for Petitioner :- Nipun Singh, Sumit Suri

Counsel for Respondent :- Dharmendra Singh

Chauhan, C.S.C., Krishna Mohan Asthana

Hon'ble Neeraj Tiwari, J.

1. Supplementary affidavit filed today be taken on record.
2. Heard learned counsel for the petitioner, learned standing counsel for the respondent no.1 and Sri D.S. Chauhan, learned counsel for the respondent no.2.
3. Present petition has been filed for setting aside the impugned order dated 9.2.2024 passed by the learned Additional Civil Judge, S.D., New Court No.1, Moradabad in Original Suit No. 288 of 1991.
4. Learned counsel for the petitioner submitted that earlier petitioners have filed Original Suit No. 288 of 1991 before the trial Court for return of land and payment of compensation. He next submitted that at the stage of final hearing, they have filed amendment application on 17.1.2024 for formal amendment to ensure the return of land and compensation in favour of trust and not the private person, which was rejected vide order dated 9.2.2024 on the ground that it has been filed at very belated stage. He further submitted that though the due diligence of Order 6 Rule 17 of CPC inserted through amendment in 2002 has not been referred to any of the order, but the crux of impugned order is based upon the lack of due diligence.
5. He firmly submitted that in light of judgment of Apex Court in the case of *State Bank of Hyderabad vs. Town Municipal Council* reported in *(2007) 1 SCC 765*, amended provision of Order 6 Rule 17 of CPC shall not be applicable to a suit, which was instituted prior to which pleadings have been exchanged.
6. He also pointed out that from the proposed amendment

application, nature of suit would not be changed and in case suit is decreed, land or compensation whatsoever is the case, be vested in the trust and not in the hands of ancestors of R.A.N. Sinha, who has created the trust, therefore, on both the grounds, impugned order is bad and liable to be set aside.

7. Sri D.S. Chauhan, learned counsel for the respondent no.2 could not dispute the legal as well as factual submissions so raised by the learned counsel for the petitioner.

8. I have considered the rival submissions advanced by the learned counsel for the parties and perused the record.

9. There is no dispute on the point that Mr. R.A.N. Sinha has created the trust in the year 1973. Now the trust is having dispute with the respondent no.2 with regard to excess land acquisition. After amendment, in case suit is decreed either land or compensation as the case may be would be vested with the trust and not with the individual persons. Therefore, intention of filing of amendment is bonafide

10. I have perused the judgment of ***State Bank of Hyderabad (Supra)***. Relevant paragraph of the said judgment is quoted hereinbelow:-

"8. In view of the said provision there cannot be any doubt whatsoever that the suit having been filed in the year 1988, proviso to Order 6 Rule 17 of the Code shall not apply.

9. The High Court relied upon the said proviso and opined that having regard thereto the plaintiff was obligated to establish that in spite of due diligence it could not have raised the matter before commencement of the trial of the suit. The High Court evidently committed an illegality in relying upon the said provision."

11. From perusal of the aforesaid judgment, it is apparently clear that proviso of Order VI Rule 17 of CPC inserted through amendment in 2002, would not be applicable to the suits, which are pending prior to the date of amendment, therefore, this cannot be ground to reject the amendment application.

12. Therefore, under such facts and circumstances as well as law laid down by the Apex Court, the impugned order dated 9.2.2024 passed by the learned Additional Civil Judge, S.D., New Court No.1, Moradabad is hereby quashed and petition is **allowed**.

Petitioners are directed to carry out necessary amendment within two weeks from today. Further, trial Court is also directed to decide the suit in accordance with law.

Order Date :- 28.8.2024

Junaid