

A SUBHASH CHANDRA CHAUDHARI AND ORS.

v.

RAM MILAN AND ORS.

JANUARY 31, 1997

B [K. RAMASWAMY AND G.T. NANAVATI, JJ.]

C *Lease—Grant of—Cancelled by the Commissioner—Government setting aside the Commissioner order—But order of Government set stayed by High Court—Pursuant to High Court's directions auction conducted—Third parties inducted—Plea of appellants to work out the lease for residual period—Such direction could not be given in the absence of the third parties who are not before the Court—Respondent Government offering to refund the amount deposited by appellants—Direction issued for refund.*

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 694 of 1997.

From the Judgment and Order dated 24.5.96 of the Allahabad High Court in C.M.W.P. No. 8654 of 1995.

E Anis Ahmed Khan and W.A. Nomani for the Appellants.

Yogeshwar Prasad, R.C. Verma, R.B. Misra and Anil Kr. Gupta-II for the Respondents.

The following Order of the Court was delivered :

F Leave granted. We have heard learned counsel on both sides.

This appeal by special leave arises from the judgment dated May 24, 1996 passed by the High Court of Allahabad in W.P. No. 8654/95.

G The admitted position is that though lease was granted to the appellants on December 5, 1994 for one year and was executed, as admitted by the respondents, on the said date, it expired on December 5, 1995. It is contended that the lease granted to the appellants was cancelled by the Commissioner on February 17, 1995 and on a revision filed by the appellants to the State Government, by order dated March 23, 1995, the order

H of the Commissioner was set aside. But unfortunately the operation of the

order of the Government was stayed by the High Court on May 21, 1995 and it set aside the order of the Government by the impugned order. It is not in dispute that pursuant to the direction of the High Court the auctions were conducted and third parties have been inducted to work out the excavation of the sand; but they are not before us. Though there is some force in the argument of the learned counsel for the appellants that since the working of the period of the lease granted to the appellants was not allowed to be fully utilised on account of the orders passed by the courts or the Commissioner, the time may be extended for the appellants to execute the lease and work out the lease for the residue period, as stated earlier, since the third party rights have already been intervened, in their absence we cannot give the direction as sought for. Under these circumstances, it is stated in the affidavit itself that the respondent-Government have offered refund of the amount deposited by the appellants as directed by the High Court. The respondents are directed to refund the amount of Rs. 6,30,000.

We are constrained to dismiss the appeal. No costs.

G.N.

Appeal dismissed.