

(2007) 03 AHC CK 0067
In the Allahabad High Court

Ajab Lal

APPELLANT

Vs

Rakesh Kumar Mishra and Others

RESPONDENT

Date of Decision : 30-03-2007

Acts Referred:

Constitution of India, 1950 — Article 215
Limitation Act, 1963 — Section 5

Citation : (2007) 4 ADJ 225 : AIR 2007 All 158 : (2007) 3 AWC 2783 : (2007) 102 RD 852 : (2007) 3 UPLBEC 84

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Judgement

A.P. Sahi, J.—This contempt petition has been filed alleging disobedience of the orders passed by the Board of Revenue, U.P. in Second Appeal No. 48 of 1995-96 and it is alleged that in spite of the restraint order, and the subsequent orders passed by the Board, the opposite party Nos. 4 and 5 in particular have proceeded to raise construction over the land in dispute. It is further alleged that the other opposite parties, have abetted the same by permitting the raising of such constructions hence a clear case of contempt is made out making the opposite parties liable for the same and therefore, this Court should proceed in exercise of its power under Article 215 read with the Contempt of Courts Act, 1971 to punish the opposite parties for wilfully and deliberately defying the orders passed by the Board of Revenue.

2. Notices were issued by this Court on 9-4-04 calling upon the opposite party Nos. 1, 4 and 5 to answer this contempt petition. The opposite party No. 1 who is the Sub-Divisional Magistrate, Phoolpur, Allahabad had filed a counter affidavit stating therein that the said opposite party has not permitted the raising of any constructions and, rather to the contrary, has passed orders on 27-11-03 to stop any constructions which were being attempted by the opposite party Nos. 4 and 5. It is urged that the said orders are already contained in Annex-ure 4 to the application.

3. A rejoinder affidavit has been filed to the said counter affidavit of the opposite party No. 1 and the report of the office dated 27-5-04 indicates service on the opposite parties Nos. 4 and 5 through the brother-in-law of the opposite party No. 4. However neither any counsel has put in appearance nor opposite parties Nos. 4 and 5 are represented.

4. Learned Counsel for the applicant contends that this matter should proceed further as this Court has already taken cognizance and issued notices on 9-4-04, vide order dated 20-3-07 it was pointed out to the learned Counsel for the applicant that keeping in view nature of the litigation and the provision applicable, the applicant should move an appropriate application alleging the disobedience before the Board of Revenue, instead of filing this application before this Court. Arguments were invited on this and Sri Kesari learned Counsel for the applicant has submitted that the applicant cannot move any such application before the Board of Revenue and in the absence of any such remedy this Court has rightly issued notices. He has further urged that even assuming for the sake of the arguments that such an application alleging contempt would be maintainable before the Court concerned, then too once this Court has taken cognizance, there is no justification for relegating the applicant to approach the same court at this juncture.

5. Before proceeding to consider the arguments in detail, it is necessary to mention that these proceedings arise out of an order passed by the Board of Revenue in exercise of its power while entertaining a second appeal under Sub-section (4) of Section 331 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. The applicant Ajab Lal is the son of late Krishan Lal who had instituted a suit u/s 229-B of the aforesaid Act for declaration of his rights which was claimed on the basis of a lease executed in the year 1951. It is alleged that the said lease was executed in favour of the grand-father of the applicant, late Satya Narain (father of Krishan Lal) by the predecessor in interest of Ram Nagina Singh, who was the then Zamindar of the area in question. The land is in occupation since the time of his grand-father on the basis of the said lease. It was executed prior to the Abolition of Zamindari and after abolition, the applicant's grand-father and subsequently his father acquired rights under the aforesaid Act who became tenure holders of the property in question. It is alleged that Ram Nagina Singh During the pendency of second appeal before the Board of Revenue, has proceeded to execute a sale deed in favour of the opposite party Nos. 4 and 5 who have commenced constructions in violation of the order passed by the Board of Revenue which still continues to operate. It needs to be mentioned that the suit which had been filed, was dismissed by the trial Court against which an appeal was filed before the learned Additional Commissioner, Allahabad who also dismissed the same on 11-1-96 against which the second appeal has been filed.

6. The issue which has been raised and requires to be considered is the nature of the proceeding and the powers conferred on the Court in this matter. It is undisputed that the present proceedings relate to a declaratory suit filed u/s 229-

B of U.P.Z.A. and L.R. Act, 1950. This specific provision has been made in respect of suits that relate to declaration of rights in agricultural holdings and tenures as provided for under the said Act. The Act also specifically bars the jurisdiction of civil courts u/s 330 thereof Section 331 enumerates the Courts which have the power to take cognizance of such suits mentioned in the schedule referred to therein. Sub-section (3) of the said Section, provides for an appeal against such an order and Sub-section (4) for a second appeal against the Judgment of the First Appellate Court. Section 341 of the said Act applies the provisions of the CPC as well to the proceedings under the Act. Section 341 is quoted below for ready reference.

341, Application of certain Acts to the proceeding of this Act : Unless otherwise expressly provided by or under this Act, the provisions of the Indian Court Fees Act, 1870 (VII of 1870), the Code of Civil Procedure, 1908 (V of 1908), and the Limitation Act, 1963 (XXXVI of 1963), (including Section 5 thereof) shall apply to the proceedings under this Act.

7. While entertaining a suit u/s 229-B the Court also has been conferred with the power to grant temporary injunction. Section 229-D is quoted below.

229-D. Provision for injunction. (1) If in the course of a suit under the provisions of Sections 229-B and 229-C, it is proved by an affidavit or otherwise-

(a) that any property, trees or crops standing on the land in dispute is in danger of being wasted, damaged or alienated by any party to the suit; or

(b) that any party to the suit threatens or intends to remove or dispose of the said property, trees or crops in order to defeat the ends of Justice, the Court may grant a temporary injunction, and where necessary, also appoint a receiver.

8. This power conferred on the Court to grant a temporary injunction pendente lite has been specifically incorporated in the 1950 Act to make provision for protecting the rights of the parties through an interim arrangement pending litigation. Thus according to the aforesaid provision, the Courts trying a suit u/s 229-B are empowered to grant temporary injunction and even otherwise the provisions of C.P.C. have been made applicable to all such proceedings under the Act as per Section 341.

9. The injunction order in the present case granted by the Board of Revenue while exercising its appellate authority under Sub-section 4 of Section 331 is traceable to the powers conferred under the aforesaid provisions.

10. The question that has arisen for consideration is that in the event a breach of such an order is complained of, can the Court below proceed to punish the erring party for a breach of the said order. This is with specific reference to the revenue Courts constituted and empowered under the U.P.Z.A. and L.R. Act, 1950.

11. This issue was raised and a decision has been taken answering this question affirmatively in favour of the Courts holding that an application for contempt

would lie before the concerned Court in view of the application of the provision of Order 39, Rule 2-A C.P.C. by virtue of Section 341 of U.P.Z.A, and L.R. Act, 1950. The said decision was rendered in the case of State of U.P. v. Bihari Lal and Ors. reported in 2002 RD 741 : 2002 (2) ACR 1582 : 2002 All LJ 2393. The relevant portion of the judgment contained in para 4 thereof, is quoted here-in below.

4. The second question being significant one having bearing on the other two questions, I propose to deal with it for proper appreciation of the other two questions. By virtue of Section 341 of the U.P.Z.A, and L.R Act, the provisions of the C.P.C. it is well established by catena of judicial precedents, are attracted for application. Section 341 of the U.P.Z.A. and L.R Act are excerpted below for ready reference.

It brooks no dispute that the proceedings u/s 229D have the complexion of temporary injunction and by virtue of Section 341 of the U.P.Z.A. and L.R. Act, provisions of the CPC are intended for application inasmuch as the U.P.Z.A. and L.R. Act, does not have any independent provision to deal with the situation such as the situation emerging from of Order 39. Rule 2A C.P.C. can be invoked in aid to deal with the situation such as emerging from disobedience of the orders. My view receives reinforcement from a decision of this Court in Nepal Sing v. Board of Revenue reported in 1994 Prayag Nirmal Patrika at p. 205 in which it has been held that the procedure prescribed for temporary injunction in the C.P.C. will be applicable to the proceeding under the U.P.Z.A. and L.R. Act. In the light of the above discussion, it thus crystallises that the situation emerging from disobedience of the order can be dealt with by application of the provisions contained under Order 39, Rule 2A, C.P.C. and by the reckoning, the matter can, by way of alternative remedy, be relegated to the Court initiating reference to deal with the matter resulting from disobedience of its orders, the contempt proceeding, instituted in the Court under the Contempt of Courts Act by Reference, is not maintainable.

12. Sri Kesari has urged that the provisions of Order 39, Rule 2A would not automatically apply in such proceedings inasmuch as Order 39, Rule 1 and Rule 2 are not applicable to suits u/s 229B. For this, he contends that the opening words of Section 341 clearly states that unless otherwise expressly provided under the 1950 Act the provisions of CPC would apply. He contends that Section 229D is an express provision made by the Legislature in respect of the powers of the revenue Court for granting temporary injunction pending trial of a suit. In such a situation Sri Kesari contends that the Legislature once having expressly provided for grant of injunction u/s 229D it has to be presumed that the applicability of the provisions of Rules 1 and 2 of Order 39 stand excluded from application by virtue of the opening sentence of Section 341. Once the provisions of Order 39, Rules 1 and 2 are not applicable, he contends that Rule 2A cannot be applied because Rule 2A can only be pressed into service provided orders are passed under Rules 1 and 2. In respect of injunctions granted u/s 229D of the 1950 Act, he further contends, that had the Legislature intended to apply Rule

2A, it would have specifically mentioned such powers while framing the provisions u/s 229D. It is, therefore, urged that in the absence of any express intention of the legislature to confer such powers on the revenue Courts it should be presumed that they do not have any power to proceed for contempt in the event any breach is complained of in respect of the orders passed u/s 229D of the 1950 Act. He relies on the decision of Manmohan Das Shah and Ors. v. Bishun Das reported in Sukh Lal and Others Vs. State Bank of India and Others, to buttress his submissions to the effect, that such an interpretation should be avoided which was never intended by the legislature. Relying on the other decision of Dr. Ranjana Tiwari Vs. Director of Higher Education and Others, he contends that what has specifically not been included and provided for by the legislature, cannot be added or subtracted by this Court. He repeats that even otherwise assuming that the Court below could have entertained such an application, this Court is not precluded from proceeding to take cognizance under the powers conferred under Article 215 of the Constitution of India read with the provisions of the Contempt of Courts Act, 1971. According to him this Court has already taken cognizance and therefore, there is no occasion for this Court to relegate the applicant to the Court concerned at this stage.

13. Having heard Sri Kesari for the applicant and the learned standing counsel for the opposite party No. 1, this Court finds that the proceedings u/s 229-B are proceedings in a declaratory suit to be tried by the revenue Courts defined under the U.P.Z.A. and L.R. Act, 1950 to the complete exclusion of the civil Court. The exclusive jurisdiction, therefore, in such disputes, has been conferred on the revenue Courts. It is for this reason that the power to grant temporary injunction u/s 229D has also been conferred on the revenue Courts. This is supplemented with the application of all such provisions contained in the CPC for which there is no express provision made in the 1950 Act. The application of the provisions of Code of Civil Procedure, were applied with full force in respect of proceeding arising out of a declaratory suit u/s 229B to the extent indicated in Section 341.

14. Once a suit is decreed, the same can be enforced and executed under the provisions of Order 21 contained in Civil Procedure Code. One such provision is contained in Order 21, Rule 32 which empowers the Court to execute the decree and also take recourse to coercive method of attachment, arrest and imprisonment of three months in order to ensure the execution of the decrees. The Court while proceeding to execute a decree u/s 229B therefore, can exercise the powers referred to in Order 21, Rule 32.

15. Applying the aforesaid analogy, what has already been provided for u/s 229D, cannot exclude the applicability of the provision of Rule 2A of Order 39. Section 229D is analogous to the provision of Order 39 Rules 1 and 2 which in sum and substance empowers the Court to grant temporary injunction pending trials. The word "unless otherwise expressly provided" is a phrase which connotes a limitation to restrict the applicability of such provisions which are otherwise provided for in 1950 Act. It is evident from a bare perusal of Section

229D that it does not by itself provide for any action empowering the Court to proceed in the event a breach is complained of in respect of an injunction granted u/s 229D. At the same time it does not restrict the applicability of the other provisions including Order 39, Rule 2A C.P.C. read with Section 341 of the 1950 Act. The entire scheme does not prohibit the application of the mandate contained in Order 39, Rule 2A. As a matter of fact the provisions of Order 39 C.P.C. are supplemental to Section 229D of the 1950 Act. A Division Bench of this Court in the case of Smt. Urmila Devi Vs. Pooran Chand Dabar and others, had the occasion to hold that Order 39 C.P.C. does not stand excluded in its applicability by virtue of Section 229-D of the 1950 Act.

16. The contention of the learned Counsel for the applicant that in the absence of any express provision Rule 2A cannot be pressed into service, is unacceptable also because of the reason that proceedings u/s 229D are proceedings in a declaratory suit to the total exclusion of civil Courts. In such a situation the revenue Courts have to be possessed of powers to give effect to their orders. The legislature never intended the revenue Courts to be toothless and therefore, suitably empowered the revenue Court with the applicability of provisions of Civil Procedure Code. There is no reason to presume that the legislature did not intend to empower the revenue Courts for taking action for breach of its order in respect of injunctions granted u/s 229D. No intention to the contrary has been expressed by the legislature disempowering the Court from taking any such action.

17. The interpretation which deserves acceptance is that such a course would advance the cause of justice and would further aid the Courts in achieving the object for which they have been constituted, namely, to exclusively try and decide suits arising out of claim of tenures under the U.P.Z.A. and L.R. Act, 1950. It would help the Courts in providing ample protection to the litigants during the course of litigation. This interpretation does not lead to any absurdity as suggested by the learned Counsel for the applicant. The attempt should be to acknowledge the power of the Courts to give effect to their orders. To read otherwise would amount to stultifying and depriving the Courts of enforcing their own orders.

18. The provisions of Section 341 of the 1950 Act applies the CPC in its entirety unless otherwise expressly provided for.

19. This in my considered opinion is what is known as legislation by reference. For this it will be appropriate to trace the introduction of the provisions under consideration into the respective statutes.

20. Section 229-B and D were incorporated by way of an amendment through U.P. Act No. 20 of 1954. The unamended CPC was then in force, and without burdening this judgment by quoting them, a reference to the said provisions can be made by perusing it as contained in Vol. 3 of the AIR Manual 3rd Edition published in 1969. It is to be found that through an High Court amendment of

27-9-1941, Rule 2-A in Order 39 has been inserted as follows:

Rule 2A (Allahabad)

Add the following as Rule 2A:

2A. (1) In the case of disobedience to an injunction issued under Rule 1 or Rule 2, Sub-rule (2) or of breach of any terms of any such injunction, the Court in which the suit is proceeding may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding six months unless in the meantime the Court directs his release.

(2) No attachment under this rule shall remain in force for more than one year at the end of which time, if the disobedience or breach continues the property attached may be sold, and out of the proceeds the Court may award such compensation as it thinks fit and shall pay the balance, if any, to the party entitled thereto. (27-9-1941).

21. This provision with its modifications has now been incorporated as Rule 2A of Order 39 by the CPC (Amendment) Act, 1976 enforced w.e.f. 1-2-1977. Thus the said provisions were in existence through a High Court amendment at the time when the U.P.Z.A. and L.R. Act was enacted and was later on incorporated by a Central Act of 1976. The provisions therefore were clearly available right from the time of enactment of the U.P.Z.A. and L.R. Act, 1950 perforce of the provisions of Section 341 thereof.

22. The Sub Divisional Magistrate who is ordinarily the Prescribed Authority to try such suits is also the sub divisional head of the entire revenue territory under his jurisdiction. He is Incharge and is in direct control over all such matters and all litigations concerning agrarian disputes. The nature of the power conferred on such a authority, therefore, makes it imperative to clothe him with such powers as are necessary to give effect to his orders.

23. For the reasons as indicated herein above, I am of the firm opinion that the provisions of Rule 2A of Order 39 C.P.C. clearly apply in respect of injunctions granted u/s 229D of the U.P.Z.A. and L.R. Act, 1950 and therefore, the contention raised by the learned Counsel for the applicant that such an application would not be maintainable deserves to be rejected. I find myself in full agreement with the judgment of this Court rendered in the case of State of U.P. v. Bihari Lal 2002 All LJ 2393 (supra).

24. Coming to the next question raised by Sri Kesari that this Court has already taken cognizance by issuing notices and therefore, the applicant should not be relegated to the Court below. Suffice it to say that the Court which has passed the order of injunction is in a better position to appreciate the facts of the case and the records are also available in order to deal with a situation of the breach complained of. The Court below would be better equipped to deal with such a situation and get its orders enforced. Therefore, keeping in view the law laid

down in the case of Smt. Indu Tewari Vs. Ram Bahadur Chaudhari and Others, it will be appropriate that the applicant approaches the same Court for the enforcement and compliance of the injunction order granted by the Board of Revenue. This also necessary in this case, in particular, inasmuch as a further injunction has been granted restraining the opposite parties Nos. 4 and 5 from making any construction. This order is dated 19-1-2004. It goes without saying that the Court has the power to take action against a third party as well in the event a breach is complained of keeping in view of the law laid down by the Full Bench of the Madras High Court reported in Vidya Charan Shukla Vs. Tamil Nadu Olympic Association and another, However, keeping in view the fact that the matter has remained pending in this Court for almost two and half years without any progress, the applicant is permitted to move an application complaining of the alleged breach before the Board of Revenue and the Court shall proceed to take action in respect thereof in accordance with law as expeditiously as possible without any further delay in the matter.

25. With the aforesaid observations, the matter is consigned to records.