
(2003) 04 AHC CK 0120
In the Allahabad High Court
Case No : C.M.W.P. No. 14178 of 2003

Dilbag Singh

APPELLANT

Vs

Deputy Registrar, Cooperative Societies and Others

RESPONDENT

Date of Decision : 02-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 AWC 1699 : (2003) 2 UPLBEC 1132

Hon'ble Judges : Prakash Krishna, J; M. Katju, J

Bench : Division Bench

Advocate : S.K. Yadav, for the Appellant; H.R. Misra, S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju and Prakash Krishna, JJ.—Heard learned counsel for the petitioner. Sri H. R. Misra has appeared for the respondents.

2. Against the impugned resolution of the Committee of Management of the Co-operative Societies dated 22.3.2003 the petitioner has an alternative remedy of filing a representation u/s 128 of the U. P. Co-operative Societies Act and/or to apply for arbitration under Rule 454 of the U. P. Cooperative Societies Rules.

3. Learned counsel for the petitioner submitted that when an order is wholly without jurisdiction or when there is violation of principles of natural justice a writ petition cannot be dismissed on the ground of alternative remedy. He has relied on the Division Bench decision of this Court in Jagat Narain Singh v. District Assistant Registrar 1995 (3) UPLBEC 1465 and the Supreme Court decision in Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, ; Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, and Sales Tax Officer, Jodhpur and Another Vs. Shiv Ratan G. Mohatta, etc.

4. In our opinion, the aforesaid decisions do not lay down any absolute proposition that a writ petition cannot be dismissed on the ground of alternative

remedy merely because it is alleged that there is violation of natural justice or that the impugned order was without jurisdiction vide M.K. Verma v. State 2001 (2) ESC 925. Writ is a discretionary remedy and alternative remedy is a ground for dismissing a writ petition by refusing to exercise such discretion.

5. No doubt despite the existence of alternative remedy, a writ petition is maintainable because alternative remedy is not an absolute bar. However, since writ is a discretionary remedy, the Court should not ordinarily exercise its discretion when an alternative remedy exists. The allegation of violation of natural justice or allegation that the Impugned order was without jurisdiction may be just one of the considerations which the Court can take into consideration in deciding whether to dismiss the writ petition on the ground of alternative remedy, but as already observed above, there is no absolute bar that writ petition can never be dismissed on the ground of alternative remedy merely because there is an allegation of violation of natural justice or that the impugned order was without jurisdiction.

6. At present in Allahabad High Court, about eight lacs cases or so are pending and this Court cannot indulge in the luxury to entertain writ petitions if alternative remedy exists, otherwise the Court will be flooded with more cases and arrears may further increase manifold. It is only in rare and exceptional cases that this Court should interfere when there is an alternative remedy exists. The present case does not fall in that exceptional category.

7. The petition is dismissed on the ground of alternative remedy. However, if the petitioner files a representation under Rule 454 or u/s 128, the same will be decided by the authority concerned very expeditiously preferably within six weeks of production of a certified copy of this order in accordance with law after hearing the parties concerned.