
(1998) 12 AHC CK 0089
In the Allahabad High Court
Case No : C.M.W.P. No. 3623 of 1996

Ganganagar Sahkari Avas Samiti Ltd.	APPELLANT
Vs	
State of U.P. and others	RESPONDENT

Date of Decision : 15-12-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : AIR 1999 All 105 : (1998) 4 AWC 652 : (1998) AWC 652

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : S.K. Singh and V.K. Singh, for the Appellant; S.C. and M.C. Chaturvedi, for the Respondent

Final Decision : Allowed

Judgement

O. P. Garg, J.

The petitioner is a registered housing society of which Ram Charan--respondent No. 4 is a member. By virtue of his membership, he was allotted land in plot No. 133 situate at Khyora Bangar in district Kanpur. A lease deed for a period of 99 years dated 25.4.1981 was registered on 7th July, 1981. Under the terms of the aforesaid lease, the respondent No. 4 was required to pay development charges and the lease rent, etc., to the petitioner-Samiti. The case of the petitioner-Samiti is that in spite of the repeated letters and reminders, the respondent No. 4 did not pay the development charges and consequently on 11.2.1990, the petitioner-Samiti adopted a resolution that if by 15th April, 1990, the respondent No. 4 does not pay the requisite amount, his lease shall be cancelled. Ultimately, on the failure of the respondent No. 4 to pay development charges, lease was cancelled. An application under Sections 70/71 of the U. P. Co-operative Societies Act, 1965 (hereinafter referred to as "the Act") was filed on the basis of which, respondent No. 3-Upper Zila Sahkari Adhikari (Banking)/Mukhya Vikas Adhikari, Lucknow was appointed as Arbitrator. An award was given in Arbitration case No. 146-E/1992 on 7.10.1993 maintaining that on account of the failure of the

respondent No. 4 to pay the development charges, his lease has been rightly cancelled. The respondent No. 4 preferred an appeal before the respondent No. 2- Assistant Housing Commissioner/Assistant Registrar, U. P. Avas and Vikas Parishad, Lucknow. This appeal No. 200-E/1995 was dismissed on 28.7.1995. The respondent No. 4 filed a review petition under the provisions of Section 99 of the Act on 11.8.1995. The review application has been allowed by respondent No. 2 by his order dated 11.10.1995, a copy of which is Annexure 8 to the writ petition whereby the order dated 28.7.1995 passed in Appeal No. 200-E/1995 was set aside and the respondent No. 4 was declared to be owner of the plot in question. The present writ petition under Article 226 of the Constitution of India has been filed with the prayer that the aforesaid order passed in the review petition be quashed.

2. A caveat was filed by Sri M. C. Chaturvedi, Advocate, on behalf of respondent No. 4, who also accepted the notice of this petition. He was granted three weeks time to file counter affidavit on 30.1.1996. The case is being listed right from the year, 1996 on various dates but no counter affidavit has been filed.

3. Heard Sri. S. K. Singh, learned counsel for the petitioner as well as learned Standing Counsel on behalf of the respondent Nos. 1 to 3.

4. The only point canvassed by Sri S. K. Singh, learned counsel for the petitioner is that the respondent No. 2 has allowed the review application on insufficient ground and that the order of review is wholly untenable in law as there was no error apparent on the face of record in passing the order dated 28.7.1995 dismissing appeal No. 200-E/1995. I have given thoughtful consideration to the matter and find that the submission of Sri S. K. Singh, learned counsel for the petitioner is not without force. At the outset, it may be mentioned that the provisions of Section 99 of the act are analogous to the provisions of Order XLVII Rule 1 of the CPC and, therefore, the principles of law laid down in the various decisions with reference to the provisions of Order XLVII Rule 1, C.P.C. shall be applicable to the power of review conferred u/s 99 of the Act. The provisions of Section 99 (1) of the Act read as follows :

"99. Review of order of appellate authority.--(1) The appellate authority u/s 97 or Section 98, as the case may be, may on the application of any party, review its order in any case and pass in reference thereto such order as it thinks fit :

Provided that no such application shall be entertained unless the appellate authority is satisfied that there has been a discovery of new and important matter of evidence which, after exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the order was made or that there has been some mistake or error apparent on the face of the record or for any other sufficient reason :

....."

There is no dispute about the fact that the respondent No. 2 who has exercised

the appellate power has the authority and competence to review its own decision provided the parameters laid down in the proviso to Section 99 (1) of the Act are fulfilled. It is well-settled proposition of law that the power of review is to be exercised in very exceptional and sparing circumstances and that an application for review cannot be entertained for reconsideration of a question of fact. The power of review cannot also be exercised on the ground that the earlier decision, which is sought to be reviewed was erroneous on merits as, a decision erroneous in law is certainly no ground for ordering a review. If a Court had decided a point, but decided it erroneously, the error cannot be said to be an error apparent on the face of record or even analogous to it. Review application can be entertained and allowed only for very weighty reasons and on the grounds of discovery of new and important evidence which after exercise of due diligence could not be produced at the time when the order sought to be reviewed was passed or where some mistake or error apparent on the face of record has crept in. If the review petitions are allowed to be entertained, as a matter of course, in that event, it would amount to reopening of the case which has already been decided. It is so easy to a party who has already lost his case to see what the weak part of his case was and temptation to try and procure evidence which will strengthen that weak part and put a different complexion upon that part of the case must be very strong. It is in the background of this fact that an order, which has already been passed and has become final should not be allowed to be reviewed for mere asking.

5. In the instant case, the appeal was dismissed by the respondent No. 2 by order dated 28.7.1995, a copy of which is Annexure 5 to the writ petition. The appeal was barred by time, inasmuch as the award which was made on 7.10.1993 came to be challenged by filing an appeal in the year 1995, i.e., after about 2 years. The allegation of the respondent No. 4 that he got the knowledge of the award only on 10.1.1995 is incorrect, inasmuch as, a copy of the award was sent to him by registered post on 7.12.1993. A finding of fact was also recorded that by executing an irrevocable power of attorney, the respondent No. 4 had transferred all his interests in the plot allotted to him in favour of Rakesh Kumar Ojha and, therefore, the appeal itself was filed in the name of respondent No. 4 by forging his signatures. Since the respondent No. 4 had lost interest in protecting his possession over the plot in dispute, he failed to pursue the appeal. All these points have been fully discussed and considered by the respondent No. 2 while deciding appeal No. 200-E/1995. In the order dated 28.7.1995 passed in appeal, there is no mistake or error apparent on the face of record, which required correction by means of review petition. It was also not a case where there has been a discovery of new or important evidence, which respondent No. 4 could not have filed or produced before passing of the order in appeal.

6. Review petition has been allowed by the respondent No. 2 by the impugned order dated 11.10.1995 on insufficient grounds. Under the garb of review petition, the respondent No. 2 has rewritten a Judgment in appeal, which is not permissible under the law. There was no sufficient ground to review the order

dated 28.7.1995 passed in appeal No. 200-E/1995. The fact that the respondent No. 4 has not filed counter affidavit in this writ petition or has taken care to oppose the same even though at the Initial stage, as said above, on his behalf, Sri M. C. Chaturvedi, advocate had appeared, gives an impression that he has lost interest in the land allotted to him.

7. In the result, the writ petition succeeds and is allowed. The impugned order dated 11.10.1995. Annexure 8 to the writ petition passed u/s 99 (1) of the Act on the review application filed by respondent No. 4 is hereby quashed. Parties shall bear their own costs.