
(2012) 08 AHC CK 0161
In the Allahabad High Court
Case No : Writ - A No. 37112 of 2012

Kavita Dhanak (Smt.) and Anr.

APPELLANT

Vs

Dinesh Kumar Gupta and Others

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 5

Citation : (2012) 08 AHC CK 0161

Hon'ble Judges : Sudhir Agarwal, J

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Writ petition is directed against the order dated 24.4.1991 passed by Civil Judge, Meerut in P.A. Case No. 185 of 1988 allowing application of respondentlandlord under Section 21 (1) (a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act, 1972"), releasing accommodation in dispute and directing ejectment of tenant from premises in dispute; and, the order dated 19.5.2012 passed by Addl. District Judge/Special Judge, E.C. Act in Misc. Case No. 16 of 2002.

2. From record, it appears that after the judgment dated 24.4.1991, predecessor in interest of petitioner namely Jagdish Prasad Dhanak filed Misc. Appeal No. 139 of 1991 which was dismissed in default on 22.11.2000 i.e. for not taking steps. He filed restoration application no. 59 of 2000 which was allowed on 22.11.2000 and applicant Jagdish Prasad Dhanak was allowed to take steps. He failed to take steps. Again Misc. Appeal No. 139 of 1991 was dismissed in default on 8.8.2002 for not taking steps for service of summons. He then filed Misc. Case No. 16 of 2002 which was dismissed for want of prosecution on 2.11.2006.

3. It is admitted that Sri Jagdish Prasad Dhanak died only on 10.4.2010 i.e. after more than four years from the date when his restoration application was dismissed for want of prosecution. It is when the respondentlandlord proceeded for execution vide execution case no. 39 of 2009, petitioner filed Misc.

Application No. 1 of 2012 along with an application under Section 5 of Limitation Act, 1963 (hereinafter referred to as "Act, 1963") seeking condonation of delay which has been dismissed by means of impugned order dated 19.5.2012.

4. The applications filed by predecessor in interest of petitioner having been dismissed for want of prosecution and petitioner having not taken any effective step for almost ten years thereafter, I do not find it a fit case warranting interference with the orders impugned in this writ petition in exercise of supervisory jurisdiction under Article 227 of Constitution.

5. Under Article 227 of the Constitution, in supervisory jurisdiction of this Court over subordinate Courts, the scope of judicial review is very limited and narrow. It is not to correct the errors in the orders of the court below but to remove manifest and patent errors of law and jurisdiction without acting as an appellate authority.

6. This power involves a duty on the High Court to keep the inferior courts and tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes.

7. In *D. N. Banerji Vs. P. R. Mukherjee* 1953 SC 58 the Court said:

"Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under articles 226 and 227 of the Constitution to interfere."

8. A Constitution Bench of Apex Court examined the scope of Article 227 of the Constitution in *Waryam Singh and another Vs. Amarnath and another* AIR 1954 SC 215 and made following observations at p. 571 :

"This power of superintendence conferred by article 227 is, as pointed out by Harries, C.J. in *Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee* AIR 1951 Cal. 193, to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors".

9. In *Mohd. Yunus v. Mohd. Mustaqim and Ors.* AIR 1984 SC 38 the Apex Court held that this Court has very limited scope under Article 227 of the Constitution and even the errors of law cannot be corrected in exercise of power of judicial review under Article 227 of the Constitution. The power can be used sparingly when it comes to the conclusion that the Authority/Tribunal has exceeded its jurisdiction or proceeded under erroneous presumption of jurisdiction. The High Court cannot assume unlimited prerogative to correct all species of hardship or wrong decision. For interference, there must be a case of flagrant abuse of

fundamental principles of law or where order of the Tribunal, etc. has resulted in grave injustice.

10. For interference under Article 227, the finding of facts recorded by the Authority should be found to be perverse or patently erroneous and de hors the factual and legal position on record. (See: Nibaran Chandra Bag Vs. Mahendra Nath Ghughu, AIR 1963 SC 1895; Rukmanand Bairoliya Vs. the State of Bihar & ors., AIR 1971 SC 746; Gujarat Steel Tubes Ltd. Vs. Gujarat Steel Tubes Mazdoor Sabha & ors., AIR 1980 SC 1896; Laxmikant R. Bhojwani Vs. Pratapsing Mohansingh Singh Pardeshi, (1995) 6 SCC 576; Reliance Industries Ltd. Vs. Pravinbhai Jasbhai Patel & ors., (1997) 7 SCC 300; M/s. Pepsi Food Ltd. & Anr. Vs. SubJudicial Magistrate & ors., (1998) 5 SCC 749; and Virendra Kashinath Ravat & ors. Vs. Vinayak N. Joshi & ors. (1999) 1 SCC 47).

11. It is well settled that power under Article 227 is of the judicial superintendence which cannot be used to upset conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them. (See: Rena Drego Vs. Lalchand Soni & ors., (1998) 3 SCC 341; Chandra Bhushan Vs. Beni Prasad & ors., (1999) 1 SCC 70; Savitrabai Bhausahab Kevate & ors. Vs. Raichand Dhanraj Lunja, (1999) 2 SCC 171; and Savita Chemical (P) Ltd. Vs. Dyes & Chemical Workers' Union & Anr., (1999) 2 SCC 143).

12. Power under Article 227 of the Constitution is not in the nature of power of appellate authority enabling reappraisal of evidence. It should not alter the conclusion reached by the Competent Statutory Authority merely on the ground of insufficiency of evidence. (See: Union of India & ors. Vs. Himmat Singh Chahar, (1999) 4 SCC 521).

13. In Ajaib Singh Vs. Sirhind Coopeative Marketing cum Processing Service Society Ltd., (1999) 6 SCC 82, the Hon'ble Apex Court has held that there is no justification for the High Court to substitute its view for the opinion of the Authorities/Courts below as the same is not permissible in proceedings under Articles 226/227 of the Constitution.

14. In Mohan Amba Prasad Agnihotri Vs. Bhaskar Balwant Aheer, AIR 2000 SC 931, the Hon'ble Supreme Court held that jurisdiction of High Court under Article 227 of the Constitution is not appealable but supervisory. Therefore, it cannot interfere with the findings of fact recorded by Courts below unless there is no evidence to support findings or the findings are totally perverse.

15. In Indian Overseas Bank Vs. Indian Overseas Bank Staff Canteen Workers' Union (2000) 4 SCC 245, the Court observed that it is impermissible for the Writ Court to reappraise evidence liberally and drawing conclusions on its own on pure questions of fact for the reason that it is not exercising appellate jurisdiction over the awards passed by Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the purpose ordinarily should be considered to have become final. The same cannot be disturbed for the mere reason of

having based on materials or evidence not sufficient or credible in the opinion of Writ Court to warrant those findings. At any rate, as long as they are based upon some material which are relevant for the purpose no interference is called for. Even on the ground that there is yet another view which can reasonably and possibly be taken the High Court can not interfere.

16. In *Union of India Vs. Rajendra Prabhu*, (2001) 4 SCC 472, the Hon'ble Apex Court held that the High Court, in exercise of its extraordinary powers under Article 227 of the Constitution, cannot reappreciate the evidence nor it can substitute its subjective opinion in place of the findings of Authorities below.

17. Similar view has been reiterated in *State of Maharashtra Vs. Milind & ors.*, (2001) 1 SCC 4; *Extrella Rubber Vs. Dass Estate (P) Ltd.*, (2001) 8 SCC 97; and *Omeph Mathai & ors. Vs. M. Abdul Khader*, (2002) 1 SCC 319.

18. In *Surya Dev Rai Vs. Ram Chander Rai and others* (2003) 6 SCC 675, it was held that in exercise of supervisory power under Article 227, High Court can correct errors of jurisdiction committed by subordinate Courts. It also held that when subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or jurisdiction though available is being exercised in a manner not permitted by law and failure of justice or grave injustice has occasioned, the Court may step in to exercise its supervisory jurisdiction. However, it also said that be it a writ of certiorari or exercise of supervisory jurisdiction, none is available to correct mere errors of fact or law unless error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or disregard of the provisions of law; or, a grave injustice or gross failure of justice has occasioned thereby.

19. In *Jasbir Singh Vs. State of Punjab* (2006) 8 SCC 294, the Court said:

"...while invoking the provisions of Article 227 of the Constitution, it is provided that the High Court would exercise such powers most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority. The power of superintendence exercised over the subordinate courts and tribunals does not imply that the High Court can intervene in the judicial functions of the lower judiciary. The independence of the subordinate courts in the discharge of their judicial functions is of paramount importance, just as the independence of the superior courts in the discharge of their judicial functions."

20. In *Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil* (2010) 8 SCC 329, the Court said that power of interference under Article 227 is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court. The above authority has been cited and followed in *Kokkanda B. Poondacha and others Vs. K.D. Ganapathi and another* AIR 2011 SC 1353 and *Bandaru Satyanarayana Vs. Imandi Anasuya* (2011) 12 SCC 650.

21. In Abdul Razak (D) through Lrs. & others Vs. Mangesh Rajaram Wagle and others (2010) 2 SCC 432, Apex Court reminded that while exercising jurisdiction under Article 226 or 227, High Courts should not act as if they are exercising an appellate jurisdiction.

22. In T.G.N. Kumar Vs. State of Kerala and others (2011) 2 SCC 772, the Court said that power of superintendence conferred on the High Court under Article 227 of the Constitution of India is both administrative and judicial, but such power is to be exercised sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority.

23. In Commandant, 22nd Battalion, CRPF and others Vs. Surinder Kumar (2011) 10 SCC 244, Apex Court referring to its earlier decision in Union of India Vs. R.K. Sharma (2001) 9 SCC 592 observed that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Articles 226 or 227.

24. In view of the above discussion, I find no justification warranting interference with the orders impugned in this writ petition.

25. Dismissed.