
(1995) 05 AHC CK 0041

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1630 of 1995

Krishna Ashram Educational Trust and others

APPELLANT

Vs

District Judge, Allahabad and others

RESPONDENT

Date of Decision : 18-05-1995

Acts Referred:

Societies Registration Act, 1860 — Section 5A

Citation : AIR 1995 All 415 : (1995) 3 AWC 1427

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : G.K. Singh and R.N. Singh, for the Appellant;

Final Decision : Allowed

Judgement

1. In the instant petition the petitioner, a registered Trust, is seeking the quashing of the order passed by the District Judge, Allahabad, respondent No. 1, dated 2-1-1995 (Annexure 6 to the writ petition) passed in misc. case No. 725 of 1994 by which the learned District Judge, respondent No. 1, has modified his earlier order dated 29-10-1994 passed in Misc. Case No. 113 of 1994 (Annexure 4 to the writ petition).

2. The petitioner-society holds perpetual lease rights in plot No. 35, Old Civil Station, 6 Bund Road, Allahabad, measuring 8 acres 3 rods and 2! poles. In the aforesaid land the Society runs a school namely Annuie Besent School for last 50 years. There had been encroachment on the part of the land and in order to prevent further encroachment and for repairing of the School building the Society was in need of money which the Society could not collect by any other means. Thus, in order to remove the financial constraints, the Society in its meeting held on 10-10-1992 resolved to sell a part of the said measuring 12000 sq. Yards and to utilise that amount for constructing the boundary wall and for repairing the building. In pursuance of the said resolution, Misc. Application No. 113 of 1994 (Anexure 2 to the writ petition) was filed on 21-7-1994 by the petitioner-Society before the respondent No. 1 under the provisions of Section 5A of the Societies

Registration Act, 1860, seeking the permission for the transfer/sale of the aforesaid part of the land.

3. The learned District Judge vide his order dated 26-9-1994 granted the permission to sell the part of the aforesaid land as under:--

"Having heard the learned counsel for the petitioner and perusing the documents brought on record, I find that there is no impediment in the grant of the permission to sell 12000.sq. Yards of land out of property No. 35, Old Civil Station, 6 Bund Road, Allahabad, shown by red colour in the plan paper No. 4A/6 (which has been signed by me today). The above property in respect of which permission to sell has been granted shall be sold by public auction under the personal supervision of Shri S. P. Goel, Advocate and Shri Gopal Das Sinha, Advocate. The fact of publication shall be notified in at least two local daily newspapers. one in English and the other in Hindi besides other publicity measures. The property shall be sold to the highest bidders. The minimum amount of bid shall not be less than Rs. 500/-per Sq. Yards of the land. Therefore, proposal for sale of the land shall be submitted to this Court for final approval. The land shall be sold only after approval is accorded by this Court.

It is also made clear that the sale proceeds shall be deposited in a separate account to be opened in the name of the petitioner-Society in State Bank of India, main branch Allahabad. The amount so deposited shall be defrayed on the construction of the boundary-wall and the maintenance and preservation of the old school building in respect of which proper audited account shall be maintained."

4. After obtaining the permission the land in question was auctioned and the highest bid was made by Kartikey Sahkari Avas Samili @ Rs. 512/- per Sq. Yard and thereafter the matter was placed before the District Judge again for his approval, who vide his order dated 29-10-94 (Annexure-4 to the writ petition) accorded his approval as under:--

"The public auction has been carried out after due notice published in two local newspapers, one in English and other in Hindi. The hand bills were also distributed. I do not find any ground to reject the offer of the highest bidder. I hereby accord my final approval for the sale of the property to the highest bidder Kartikey Sahkari Avas Samiti at the rate of Rs. 512/- per Sq. Yard. The amount of sale proceed shall be deposited and spent in view of my order dated 26-9-94."

5. Subsequently the Addl. District Magistrate, Allahabad, filed Misc. Application No. 725 of 1994 (Annexure-5 to the writ petition) on 11-11-94 before the District Judge, respondent No. 1, praying the setting aside of this earlier orders dated 26-9-1994 and 29-10-1994 (Annexures-3 & 4 to the writ petition) on the ground that the transfer of the lease hold rights was not permissible in view of the Government Order dated 23-5-1992 (Annexure-7 to the writ petition) till the acquisition of free hold rights. The learned District Judge vide his order dated 2-1-1995 (Annexure-6 to the writ petition) modified his earlier order dated

26-9-1994 (Annexure-3 to the writ petition) to the extent that the said order shall be subject to the condition that the petitioner shall sell the aforesaid piece of land after acquiring free hold rights in the Nazul land, in respect of which the petitioner holds perpetual case, after complying with the requirement contained in the Government Order dated 23-5-1992 (Annexure-7 to the writ petition). The District Judge further observed that in case the petitioner fails to obtain the free hold rights as aforesaid, the application for permission to sell (Misc. Case No. 113 of 1994) (Annexure-6 to the writ petition) shall stand dismissed.

6. Being aggrieved, petitioner filed the writ petition No. 1630 of 1995 on 17-1-1995 before this Court contending that the District Judge failed to appreciate the contents enshrined in Clause 7 of the Government Order dated 23-5-1992 (Annexure-7 to the writ petition) which provides for exemption of the petitioner's land. Clause-7 of the said Government order provided that where as per the terms of the lease the lease holder can transfer the lease hold rights without permission of the lessor, the said Government Order shall not be applicable. In support of his case the petitioner's counsel refers to the contents of the lease deed dated 2-2-1987 (Annexure 1 to the writ petition) contending that it does not contain any clause requiring the lessee to obtain the prior permission of the lessor for transferring the land in dispute. On the other hand, the State, respondent No. 2, has vehemently argued that the provisions of Clause J(a) of the said Government Order should have been complied with prior to making the application for permission. Clause 1(A) provides that the Nazul land given on lease can be converted into free hold on depositing the amount stipulated in the given schedule and the division or fragmentation of the plot shall not be permissible from the date of enforcement of the said Government Order. Thus, according to the State, respondent No. 2, transfer without acquiring the free hold rights was not permissible at all.

7. Apart from the above submissions it is contended on behalf of the petitioner that once the District Judge, respondent No. 1, accorded the permission u/s 5A of the Societies Registration Act, 1860, vide his order dated 29-10-1994 (Annexure 4 to the writ petition), District Judge became functus-officio and in the absence of any provision enabling the District Judge to review his earlier order, the order dated 2-1-1995 (Annexure 6 to the writ petition) is nullity for want of jurisdiction.

8. Learned counsel for both sides prayed to dispose of the petition finally at the admission stage and it was proceeded accordingly.

9. It is settled law that there is no inherent power given to the Courts to reconsider their order once passed, unless the power of review is granted expressly under the provisions of the statute. The statute which confers the right to review itself indicates the limitation under which the power is to be exercised. But in the absence of any such power the Court cannot review its order on the mere ground that at a later stage it considers that its previous order was wrong. In the case of S.P. Awate Vs. C.P. Fernandes and Another, , Chagla, C.J., made the following observations :--

"It is always wrong for any Judge to assume infallibility for his judgment and every Judge must be prepared to consider that his judgment is erroneous. This is exactly why higher Courts of appeal exists in a country. Whether a Court, has or has not jurisdiction, does not depend upon how strong or how meritorious the case of a party is....."

10. Similarly In Re: Sanjiv Datta and Others, the Supreme Court has observed as under:-

It is truly said that a Judge who has not committed a mistake is yet to be born. Our legal system in fact acknowledges the fallibility of the Courts and provides for both internal and external checks to correct the errors. The law, the jurisprudence and the precedents, the open public hearings, reasoned judgments, appeals, revisions, references and reviews constitute the internal checks while objective critiques, debates and discussions of judgments outside the Courts, and legislative correctives provide the external checks. Together, they go a long way to ensure judicial accountability. The law thus provides procedure to correct judicial errors."

11. The proposition of law propounded by the petitioner's counsel stands fortified by the judgment of the Supreme Court in the case of Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, wherein the Supreme Court has said that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication.

12. In the case of Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, the Supreme Court held that a review application cannot be entertained unless the power of review is expressly conferred on the authority by the statute under which it derives its jurisdiction and if review is made it would be nullity being without jurisdiction.

13. In the instant case the learned Standing Counsel failed to draw my attention to any provision under the Societies Registration Act, 1860, under which the application dated 11-11-1994 (Annexure-5 to the writ petition) could have been entertained and the impugned order dated 2-1-1995 (Annexure-6 to the writ petition) could have been passed. I am in full agreement with the averment of Shri R. N. Singh, learned counsel for the petitioner that after granting the approval u/s 5A of the Act, vide his order dated 29-10-1994 (Annexure-5 to the writ petition) the District Judge respondent No. 1 became functus-officio and had no competence to entertain the application (Annexure-5 to the writ petition). As the petition succeeds only on this ground, the issue of applicability of the said Government Order dated 23-5-1992 was not agitated by the parties.

14. The writ petition succeeds and is allowed. The impugned order dated 2-1-1995 (Annexure-6 to the writ petition) is quashed.

15. Looking, however, to the facts and circumstances of the case, there shall be no order as to costs.

16. Petition allowed.