

(2020) 08 J&K CK 0019

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 1291 Of 2020, Civil Miscellaneous No. 3988,
3989 Of 2020

Lal Chand

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 18-08-2020

Acts Referred:

Land Revenue Act, 1996 — Section 11, 15, 32
Code Of Civil Procedure, 1908 — Order 41 Rule 33
Constitution Of India, 1950 — Article 226

Citation : (2020) 08 J&K CK 0019

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : A. K. Sawhney, S. S. Nanda

Final Decision : Dismissed

Judgement

Vinod Chatterji Koul, J

1. Impugned in this writ petition under Article 226 of the Constitution of India, is the Order dated 3rd January 2020, passed by Collector (Deputy Commissioner) Jammu - respondent no.3 herein, on a Suit of respondent no.2, on the grounds and submissions enumerated therein.

2. Heard and considered.

3. Perusal of the file reveals that a Suit titled Bhagwan Singh v. Lal Chand, was filed by respondent no.2 under Section 32 of the Land Revenue Act for correction of wrong entry made in the Record of Rights of Village Baspur Bangla Tehsil R. S. Pora. The said suit has been finally decided and disposed of by respondent no.3 vide order dated 3rd January 2020, impugned herein.

4. According to learned counsel for petitioner, alongside the suit, respondent no.2 had also filed an application for condonation of delay, which is not permissible under Limitation Act, 1995 or for that matter any other law governing the field.

However, respondent no.3 without appreciating the fact that the suit was filed beyond the prescribed time and there was no reason to allow the suit of respondent no.2 and therefore impugned order is liable to be quashed.

5. First and foremost, the suit, filed by respondent no.2 before respondent no.3, was under and in terms of the provisions of the Land Revenue Act. It is pertinent to mention here that if an order is made by Collector, an Appeal, as provided under Section 11 of the Land Revenue Act, shall lie to Divisional Commissioner and in the event order is made by Divisional Commissioner, an Appeal shall lie before Financial Commissioner. Not only this Section 15 of the Land Revenue Act provides revising of the order. Divisional Commissioner can call for the record of any case pending before or disposed of by any Revenue Officer subordinate to him, and Financial Commissioner can as well call for the record of any case pending before or disposed of by any Revenue Officer under his control. In that view of matter efficacious and alternate remedy is available to assail order of Collector before Divisional Commissioner in an Appeal. Yet, petitioner straightway knocked at doors of this Court with instant writ petition under Article 226 of the Constitution of India seeking quashment of Order of Collector.

6. In the above backdrop, it would be appropriate to say that the jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to writ jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily, the Court will not entertain a petition for a writ under Article 226, where petitioner has an alternative remedy, which provides an equally efficacious remedy. Again, the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not, therefore, act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.

7. In the present case, glance of impugned order divulges that the Collector (respondent no.2), while passing impugned order, has mentioned that breach of technical/procedural requirements cannot override the basic requirement of rehearing of a grievance by a higher authority and refusing to condone delay can

result in meritorious matter being thrown out at the very threshold and cause of justice would be defeated and as against this when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties. It is in this context that learned counsel for petitioner has vehemently stated that the suit filed by respondent no.2 before the Collector (respondent no.3) was accompanied by a vague condonation of delay application, which is nowhere available or provided under Limitation Act 1995. His next submission is that suit cannot be entertained beyond limitation period and no application for condonation of delay is maintainable under law for extension of suit period and therefore, impugned order is liable to be quashed.

8. It may not be out of place mention here that petitioner, as noted above, has alternative and efficacious remedy available under the Land Revenue Act. An Appeal, as provided under Section 11 of the Land Revenue Act, can very well be filed by petitioner. The power of Appellate Court is very vast. As can be gathered from Order XLI Rule 33 of the Code of Civil Procedure that the "Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties". The expression "which ought to have been passed" means "which ought in law to have been passed". If the Appellate Court is of the view that any decree, which ought in law to have been passed, but was in fact not passed by subordinate court, it may pass or make such further or other decree or order as the justice of the case may require. [See: Panna Lal v. State of Bombay & others, (1964) 1 SCR 980; Rameshwar Prasad & others v. Shambhari Lal Nagannath and another (1964) 3 SCR 549; Giani Ram & others v. Ramji Lal & others 1979 AIR SC 1144; and Samundra Devi and others v. Narendra Kaur and others (2008) 9 SCC 100].

9. In Vanarsi v. Ramphal, AIR 2004 SC 1989, the Supreme Court construing the provisions of Order XLI Rule 33 has held that this provision confers powers of the widest amplitude on appellate court, so as to do complete justice between the parties. The Supreme Court further held that such power was unfettered by considerations as to what was the subject matter of appeal or who had filed the appeal or whether the appeal was being dismissed, allowed or disposed of while modifying the judgments appealed against. It was also held that one of the objects in conferring such power was to avoid inconsistency, inequity and inequality in granting reliefs and the overriding consideration was achieving the ends of justice.

On the other hand, in writ proceedings, as are present one, the High Court does not act as a court of appeal against the decision of a court or tribunal, to correct errors of fact and also does not by assuming jurisdiction under Article 226 of the Constitution of India, to trench upon an alternative remedy provided by statute for obtaining the relief. Where it is open to aggrieved petitioner to move another

tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.

10. The Supreme Court in *Punjab National Bank v. Atmanand Singh* 2020 SCC Online SC 433, while setting-aside the judgements of both the learned Division Bench and Single Bench of the High Court of Judicature of Patna, and after referring to various judgements on alternate and efficacious remedy, held that High Court should be loath in entertaining a writ petition and should have relegated writ petitioner to appropriate remedy for adjudication of all contentious issues between the parties and direct the party to take recourse to other alternative remedy as may be permissible in law. In the present case

11. petitioner has alternative and efficacious remedy available to avail of and the authority, to whom petitioner may approach with appropriate motion, can very well take care of all that has been said and stated by petitioner in writ petition on hand or projected by him before the Collector (respondent no.3), more particularly with respect to the plea of condonation of delay. In that view of the matter, writ petition on hand is not maintainable and is liable to be dismissed.

12. For the reasons discussed above, writ petition is devoid of any merit and is, accordingly, dismissed with connected CM(s).

13. Needless to say that petitioner is free to avail alternative remedy as may be permissible in law. The same be decided on its own merits in accordance with law uninfluenced by the observations on factual matters made in impugned order or, for that matter, this judgment.