
(2004) 08 AHC CK 0254

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 34099 of 2004

Lal Harsh Deo Narain Singh and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 24-08-2004

Acts Referred:

Advocates Act, 1961 — Section 35

Constitution of India, 1950 — Article 226

Taxation on Income (Investigation Commission) Act, 1947 — Section 8(5)

Citation : (2004) 5 AWC 4961 : (2005) 1 UPLBEC 944

Hon'ble Judges : D.P. Gupta, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : Sita Ram Singh and D.K. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This writ petition has been filed for directing the respondents not to interfere with the shop and plot of the petitioners and further prohibit the respondents not to trespass into the possession of the petitioners' plot without having any right.

2. Petitioners' grievance is that the respondent No. 5 who is his cousin brother, has executed an agreement with the respondent No. 4, the Managing Director of Reliance India, Lucknow in respect of the property in dispute and the respondent No. 4 to start with the construction over the said land with the collusion of respondent No. 5, though the respondent No. 5 did not have any authority to transfer the rights in favour of the respondent No. 4.

3. The learned Standing Counsel appearing for respondents has submitted that as a suit between the parties is pending and against the order passed therein a F.A.F.O. No. Nil of 1984, has been filed in which this Court vide order dated 10.5.1984, stayed the further proceedings in the Civil Court, Gyanpur, District Varanasi, this would not be desirable for this. Court to interfere in the matter as the petitioners, raise the dispute questions of fact, particularly, regarding the title

etc., and in case petitioners are aggrieved, they should file a suit or should make a prayer in the earlier suit after getting the disposal of the aforesaid F.A.F.O.

4. We have considered the rival submissions made by the learned Counsel for the parties and perused the record.

5. Admittedly, suit is pending between the parties regarding the title over the property in dispute; and the petition raises the disputed questions of fact in respect of the title etc. and the competence of the respondent No. 5 to transfer the Fights in favour of the respondent No. 4. Thus, we are not inclined to interfere in the matter and petition is liable to be dismissed.

6. In *K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc.*, , a Constitution Bench of the Hon''ble Supreme Court considered the issue involved herein that when the remedy u/s 8(5) of the Taxation of Income Tax (Investigation Commission) Act, 1947 has been pending whether the High Court could entertain the writ petition. The Hon''ble Apex Court held that a person may choose/effect where it will proceed with the alternative remedy or with the writ petition, but both cannot be perused simultaneously.

7. A similar view has been reiterated by another Constitution Bench in *Trilok Chandra Moti Chandra and Ors. v. H.B. Munshi* AIR 1990 SC 898, however, the Hon''ble Apex Court cautioned that a Writ Court should entertain a writ petition in rare case''s, where the ordinary process of law appears inefficacious that the Writ Court interferes even where other remedies are available.

8. In *G.B. Gosain v. State of Orissa* (1963) 2 SCR 879, the Hon''ble Supreme Court held that even where an alternative remedy has been exhausted by a party, but that party could pursue any proceeding under Article 226 of the Constitution for the same relief.

9. A Constitution Bench of the Hon''ble Supreme Court in *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another*, , held that even where a party has approached the alternative forum, the Court should entertain a writ petition of not, a straight jacket formula cannot be formulated. The Court may examine the facts and circumstances of the case and decide as to whether it was to entertain the petition or not. However, where the petitioner has already approached the alternative forum for appropriate relief, it is not appropriate that the writ petition should be entertained. The rule is passed on public policy and motivating factor is that of existence of the parallel jurisdiction in another Court.

10. In *S.J.S. Business Enterprises (P) Ltd. v. State of Bihar and Ors.* JT 2004 (Supp 2) SC 601, the Court held that mere availability of alternative forum for appropriate relief does not impinge upon the jurisdiction of the High Court to deal with the matter. Even if it is not a position to do so on the basis of the affidavits filed, however, if a party has already availed the alternative remedy while invoking the jurisdiction under Article 226 of the Constitution it will not be

appropriate to the Court to entertain the writ petition.

11. In *Jai Singh Vs. Union of India and Others*, , the Hon''ble Supreme Court considered a case wherein the petitioner filed a writ petition which was dismissed in limine. Subsequently, he filed a suit agitating the same subject matter. The Court held that suit was not maintainable as a person cannot be permitted to pursue two parallel remedies in respect of the same subject matter at the same time.

12. In *Bombay Metropolitan Region Development Authority, Bombay Vs. Gokak Patel Volkart Ltd. and Others*, , the petitioner therein had filed a writ petition during the pendency of the appeal before the Statutory Authority. The Hon''ble Apex Court held that such a writ was not maintainable.

13. Thus, in view of the above, the law can be formulated that the public policy demands that a person has a right to choose the forum for redressal of his grievance, but he cannot be permitted to choose two forums in respect of the same subject matter for the same relief. There may be a case of forum hunting that a party who filed a suit, may not be able to get the interim relief. It may abandon the remedy before the Civil Court and approach the remedy of filing the writ petition. Thus, it will amount to abuse of the process of the Court by forum hunting.

14. As the dispute regarding the title of the suit premises is pending before the Civil Court and petitioner cannot be permitted to agitate the issue simultaneously at another forum. More so, the facts of this case attract the doctrine of lis pendens it is not desirable to interfere with in the facts and circumstances of the case.

15. In *Dr. Buddhi Kota Subbarao Vs. K.Parasaran and others*, , the Hon''ble Supreme Court has observed as under :

"No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner he wishes. However, access to justice should not be misused as a licence to file misconceived and frivolous petitions."

16. Similar view has been reiterated by the Supreme Court in *K.K. Modi Vs. K.N. Modi and Others*, .

17. In *Tamil Nadu Electricity Board and another Vs. N. Raju Reddiar and another*, , the Hon''ble Supreme Court held that filing successive misconceived and frivolous applications for clarification, modification or for seeking a review of the order interferes with the purity of the administration of law and salutary and healthy practice. Such a litigant must be dealt with a very heavy hand.

18. In *Sabia Khan and Others Vs. State of U.P. and Others*, , the Hon''ble Apex Court held that filing totally misconceived petition amounts to abuse of the process of the Court and such litigant is not required to be dealt with lightly.

19. In *Abdul Rahman v. Prasoni Bai and Anr.* AIR 2003 SCW 14, the Hon''ble Supreme Court held that wherever the Court comes to the conclusion that the process of the Court is being abused, the Court would be justified in refusing to proceed further and refuse the party from pursuing the remedy in law.

20. At this juncture, Shri Sita Ram Singh, learned Counsel for the petitioners submitted that the Civil Courts are presided over by thoroughly the corrupt, incompetent and inefficient judicial officers; and they are saleable commodities. Shri Anil Ambani, the Proprietor of the Reliance India Mobile (not a party before us) is a powerful person. He keeps the Government of Uttar Pradesh in his pocket. Therefore, the Civil Court cannot pass any order in favour of the petitioners.

21. We tried to explain him that he should not make such allegations, he told us that he had never seen this Court passing any order in favour of any petitioner; it is nothing but a slaughter house; and his case should be transferred to some other Court where he can get appropriate relief. He has wasted his life and reached the old age studying the constitutional law. He could not imagine that he has to make submissions before the Court where the Judges did not understand what is the constitutional law. In case, his matter is not released and is dismissed, he would go to the Hon''ble Supreme Court against the judgment and would expose the Judges.

22. As a rule an Advocate, being a member of the legal profession, has a social duty to show the people a beacon light by his conduct and actions, rather than being adamant on an unwarranted and uncalled for issue.

23. In *R.D. Saxena v. Balram Prasad Sharma* AIR 2000 SC 2912, the Hon''ble Supreme Court held as under :--

"In our country, admittedly, a social duty is cast upon the legal profession to show the people beckon (sic beacon) light by their conduct and actions. The poor, uneducated and exploited mass of the people need a helping hand from the legal profession, admittedly, acknowledged as a most respectable profession. No effort should be made or allowed to be made by which a litigant could be deprived of his rights, statutory as well as constitutional, by an Advocate only on account of the exalted position conferred upon him under the judicial system prevalent in the country."

24. Thus, in view of the above, the Bench as well as the Bar has to avoid unwarranted situation or trivial issues, as it hampers the cause of justice and interest of none.

25. Shri Sita Ram Singh seems to the habitual in making the scandalous allegations sparing none, as he considers it as a part of his profession, which cannot be justified by any standard.

26. In view of the above, we are not inclined to interfere in the matter as the petition raises on the disputed questions of fact of title etc.

27. Petition is, accordingly, dismissed with liberty to the petitioners to approach the appropriate forum.

28. Considering the gravity of mis-behaviour of Shri Sita Ram Singh, Advocate we are of the considered opinion that it is a fit case which requires to be referred to the Bar Council of Uttar Pradesh u/s 35 of the Advocates Act and the reference is made accordingly. A copy of this judgment and order be sent to the Secretary of the Bar Council of Uttar Pradesh by the Registry forthwith for appropriate action.