
(1980) 11 AHC CK 0048

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2419 of 1980

Lala Shanti Swamp and Another

APPELLANT

Vs

The District Judge and Others

RESPONDENT

Date of Decision : 18-11-1980

Acts Referred:

Uttar Pradesh Regulation of Cold Storages Act, 1976 — Section 1, 2, 24, 25, 25(1)

Citation : (1980) AWC 726

Hon'ble Judges : K.M. Dayal, J

Bench : Single Bench

Advocate : B.D. Mandhyan, for the Appellant; Sunil Ambwani, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Dayal, J.—The present petition has been filed by the Defendant in a suit for recovery and compensation. The Defendant was the owner of the Cold Storage and the Plaintiff stored his potato in his cold storage. The potatoes were damaged and thereafter they were sold after giving notice to the Plaintiff. The Plaintiff filed a suit claiming that the Defendant be directed to return the potatoes and a mandatory injunction be issued to it for that purpose. During the pendency of the suit an application for amendment of the plaint was made and it was claimed by the Plaintiff that instead of returning the potatoes a decree for damages for the price of the goods be passed. The suit was filed on 11th September, 1974 and the amendment was allowed on 10th November, 1976. The cause of action, as claimed in para 12 of the plaint vide annexure-1 to the writ petition, was from 21st February, 1974 to 8th September, 1974. After amendment was allowed an application was made by the Defendant that the matter was cognizable by the licensing authorities u/s 25 of the U. P. Regulations of Cold Storage Act, 1976. That application has been refused and the present petition has been filed against that order refusing the Defendant's application.

2. After hearing the counsel for both the parties, I find that the petition has to be

dismissed: firstly on the ground that there is no provision u/s 25 of the U. P. Regulations of Cold Storage Act, 1976 for referring the matter by the civil court to the licensing authorities. Independent proceeding can be taken u/s 25 of the said Act, if any, but the civil court cannot refer any matter to the licensing authorities. The second ground is that in the entire Act there is no provision by which the matters pending before any other court were to be dealt with and the matter was to be decided u/s 25 of the Act. u/s 1, the Act shall be deemed to have commenced on 30th September, 1975. The dispute arose prior to that period. A licensee is defined in Clause (f) of Section 2. It reads as under:

Licensee means any person to whom a licence is granted under this Act." Section 7 deals with the renewal of the licence and shows that the licence is to be issued periodically for one year and subsequently renewed. Section 25 deals with the dispute regarding the compensation between hierer and the licensee. Sub-section (1) of Section 25 which is relevant in the present case reads as under:

Every dispute regarding compensation payable by licensee u/s 24 shall be referred to the Licensing Officer and subject to the result of the appeal, if any, u/s 36, the order of the Licensing Officer shall be final.

3. The reference in such case can be made either by the hierer or by the licensee but that must be between a hierer and licensee. In the instant case the suit was filed in respect of the act done by the Defendant when he was not a licensee under the Act. As he was not covered by any licence in September, 1974, the matter could not have been referred to the Licensing Officer nor Licensing Officer could have had any authority to determine the same.

4. In the circumstances the present petition has no force. It is accordingly dismissed. Parties are directed to bear their own costs. Respondent No. 2 is directed to decide the suit expeditiously as the matter is quite old. Stay order dated 17-3-80 confirmed on 27-9-80 is vacated.