(2005) 01 AHC CK 0092

In the Allahabad High Court

Case No : C.M.W.P. No. 9045 of 1985

Rama Kant APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 31-01-2005

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 209, 229B

Citation : (2005) 1 AWC 929 : (2005) 98 RD 389 : (2005) 1 RD 389

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Advocate : P.K. Misra, for the Appellant; Sabha Pati Tiwari, Shiv Dayal Tiwari, Faujdar Rai Advs. and C.K. Rai, S.C., for the Respondent

Final Decision : Allowed

Judgement

Krishna Murari, J.—Heard Sri P.K. Misra learned counsel for the petitioner and Sri Faujdar Rai appearing for the contesting respondent Nos. 6 to 11.

2. Shorn of unnecessarily details, the facts relevant for the purpose of the case are that suit filed by the contesting respondents u/s 229B read with Section 209 of the U.P.Z.A. & L.R. Act was decreed by the trial court on 7.12.1977, against which the petitioner preferred an appeal. The appellate court vide judgment dated 22.11.1979, allowed the appeal and remanded the case back to the trial court. The findings of the trial court on issue Nos. 1 and 2 were set aside. The appellate court reframed the said two issues and directed the trial court to hear and decide the case afresh after recording the findings on the reframed Issue Nos. 1 and 2. The finding of the trial court on issue Nos. 3, 4, 5 and 6 were confirmed.

3. After remand, the trial court instead of deciding the two issues reframed by the appellate court framed as many as 12 issues and decreed the suit on 28.4.1984. The appeal filed by the petitioner was dismissed by the court of first appeal on 2.8.1984. The second appeal filed by the petitioner also came to be

dismissed by the Board of Revenue on 3.5.1985.

4. It has been urged by the learned counsel for the petitioner that trial court failed to comply with the order of remand inasmuch as the findings on issue Nos. 3 to 6 were confirmed by the first appellate court and the case was remanded back to hear and decide the suit afresh on two issues reframed by it. The said order became final and the trial court could not have gone beyond the directions contained in the order of remand made by the first appellate court. It has further been urged that though specific ground in this regard was taken in the first appeal as well as second appeal filed by the petitioner but both the courts below have failed to consider the same.

5. In reply, it has been contended that no prejudice has been caused to the petitioner by framing fresh issues by the trial court inasmuch as the two issues reframed by the first appellate court were included by the trial court in the issues framed by it. It has further been urged that as entire dispute has been decided on merits and substantial justice has been done between the parties and as such there should be no interference by this Court. I have considered the arguments advanced by the learned counsel for the parties and perused the records.

6. The trial court had initially framed 7 issues. On appeal filed by the petitioner, the findings of the trial court on issue Nos. 3 to 6 were confirmed. However, the first appellate court reframed issue Nos. 1 and 2 and directed the trial court to decide the suit afresh after recording findings on the said two issues. Issue No. 7 was with regard to entitlement of the plaintiff for any other relief. It was held by the appellate court that since the judgment of trial court was being set aside plaintiff was not entitled to any relief at this stage. However, on remand trial court framed as many as 12 issues and decreed the suit on the basis of findings arrived at on the said issues. It is clear that the direction contained in the remand order was not followed by the trial court and it proceeded to decide the case on the issues framed afresh by it in utter disregard to the directions contained in the order of remand. The decree of the trial court was challenged by the petitioner in first appeal and thereafter, a second appeal was also filed by him. A perusal of the judgment of two courts below goes to show that both of them have failed to consider this vital aspect of the matter. The learned counsel for the petitioner has pointed out from the memo of second appeal filed as Annexure-4 to the writ petition that ground No. 6 was specific ground in this regard before the Board of Revenue.

7. It is not open to an inferior Court or Tribunal to refuse to carry out the directions or to act contrary to directions issued by a superior Court or Tribunal. Such refusal to carry out the directions or to act in defiance of the directions issued by the superior Court or Tribunal is in effect denial of justice and is destructive of the basic principle of the administration of justice based on hierarchy of Courts in our country. If a subordinate Court or Tribunal refuses to carry out the directions given to it by a superior Court or Tribunal in exercise of its appellate power, the result would be chaos in the administration of justice.

8. The order of remand dated 22.11.1979, became final between the parties an same was not challenged. Thus, it was not open to the trial court being an inferior court to reframe fresh issues and to record fresh findings. The only course open to the trial court was to give finding on the two issues reframed by the first appellate court and decide the suit accordingly as directed in the order of remand. The trial court exceeded its jurisdiction by travelling beyond directions contained in the remand order and this vital aspect have been illegally ignored by the court of first appeal as well as second appeal.

9. The arguments advanced by the learned counsel for the respondents that no prejudice has been caused and substantial justice has been done between the parties cannot constitute a ground to affirm an order passed in disregard of the directions issued by the higher court. In the case of The Bhopal Sugar Industries Ltd. Vs. The Income Tax Officer, Bhopal, where the Income Tax Officer refused to carry out the directions issued by Income Tax Appellate Tribunal in exercise of its appellate power in respect of an order of assessment made by him the Hon''ble Apex Court has observed as follows :

"In such a case a writ of mandamus should issue ex debito justiciae to compel the Income Tax Officer to carry out directions given to him by the Income Tax Appellate Tribunal. The High Court would be clearly in error if it refuses to issue a writ on the ground that no manifest injustice has resulted from the order of the Income Tax Officer, in view of the error committed by the Tribunal itself in its order. Such a view is destructive of one of the basic principles of administration of justice."

10. The counsel for the parties have also advanced arguments touching the merits of the case. However, since in view of the aforesaid discussions the orders impugned in the writ petition cannot be sustained and matter is to be remanded back to the trial court for fresh decision, I do not feel appropriate to consider the case on merits.

11. The result is the writ petition stands allowed.

12. The impugned judgments dated 28.4.1984, 22.8.1984 and 3.5.1985, passed by respondent Nos. 3, 2 and 1 respectively, are hereby quashed.

13. The case is remanded back to the trial court for fresh decision strictly in accordance with the direction contained in the remand order dated 22.11.1979, passed by Additional Commissioner, Gorakhpur Division, Gorakhpur.

14. Since, the dispute has remained pending for a long period the trial court is further directed to decide the case expeditiously preferably within a period of six months from the date of production of certified copy of this judgment before him.

15. No order as to costs.

