
(2012) 07 AHC CK 0320

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37630 of 1995

Ravindra Nath Srivastava

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 38

Citation : (2013) 1 ADJ 518 : (2013) 2 AWC 1897

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : Shyamal Narain and Habib Ahmed, for the Appellant; Ajit Kumar, J.P. Pandey, Tarun Verma, Virendra Singh, R.B. Pandey, Shyam Singh, Ajit Kumar Singh and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

A.P. Sahi, J.—Heard Sri Shyamal Narain, learned counsel for the petitioner and learned Standing Counsel for the State.

This petition deserves to be disposed of on a very short ground and on a point which has been advanced by the learned counsel for the petitioner contending that the appellate authority has manifestly erred by not respecting the resolution of the Bar on account of the condolence due to the death of a senior lawyer practicing in the Bar Association in the Court of the Commissioner, Gorakhpur.

Sri Shyamal Narain submits that the appeal was filed by the petitioner's father and when he died the petitioner was substituted by the appellate authority on 21st October, 1995. Thereafter the next date fixed was 28th October, 1995 on which date an adjournment was sought which was granted and the date fixed was 31st October, 1995. Sri Shyamal Narain submits that the petitioner after his substitution had not sought any unnecessary adjournment and as a matter of fact on 31st October, 1995 the petitioner's counsel could not assist the appellate authority on account of the resolution of the Bar Association copy whereof has

been filed as Annexure-8 to the writ petition. He has invited the attention of the Court to the said document where it is recorded that the lawyers in order to attend the funeral of late Sri Vishwanath Tripathi were abstaining from work and as such the appeal be accordingly adjourned.

The appellate authority in stead of adjourning the matter recorded that the matter has been heard with the assistance of D.G.C. Revenue and that the counsel for the petitioner was avoiding hearing only with a view to linger on the matter. He described the adjournment sought as a devise to prolong and protract the hearing of the appeal. Accordingly, he proceeded ex parte and in a cryptic manner dismissed the appeal.

2. Aggrieved, the petitioner approached this Court through this petition and the operation of the impugned order was stayed vide interim order dated 31.12.1995.

The contesting respondents including the State have filed counter-affidavits and they contend that the appellate authority has not committed any error and has disposed of the appeal keeping in view its long pendency. In the circumstances they pray that the writ petition be dismissed as the petitioner himself was responsible for the delay caused in the hearing of the appeal.

3. Having considered the aforesaid submissions and having perused the records as well as the order sheet of the appellate Court, this Court finds that the appellate authority has committed a manifest error by showing disrespect to the resolution of the Bar Association for a genuine cause, namely, to attend the funeral of one the senior lawyers who had expired on that date. In the circumstances the request made by the counsel on behalf of the petitioner for adjournment was absolutely justified and could have been granted. The finding recorded that the petitioner was seeking unnecessary adjournments with a view to prolong the appeal, therefore, does not appear to be correct on the basis of the facts which have been brought on record.

4. The learned Standing Counsel and the learned counsel for the contesting respondents have not been able to justify the action of the appellate authority in dismissing the appeal cursorily without the assistance of the petitioner's counsel and in his absence. Apart from this Section 38 of the U.P. Imposition of Ceiling on Land Holdings Act requires that the procedure for hearing and deciding an appeal to be followed by the appellate authority shall be the same as that of a Civil Court and the procedure laid down in the CPC Code, 1908. Since the matter arose out of an appeal, therefore, the provisions of Order XXXI Rule 17(1) stood attracted. The Court, therefore, could have dismissed the case in default but not on merits in the absence of the counsel for the petitioner. On both counts, therefore, the order of the appellate authority is unsustainable. Accordingly, the order of the learned Additional Commissioner dated 31st October, 1995 is quashed. The appellate authority may now proceed to dispose of the appeal on merits in accordance with law.

The writ petition is allowed.