
(1995) 11 PAT CK 0031
In the Patna High Court
Case No : C.W.J.C. No. 11540 of 1994

Rishabh Chandra Jain and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-11-1995

Acts Referred:

Citation : (1995) 11 PAT CK 0031

Final Decision : Allowed

Judgement

A.K. Ganguli, J.—A somewhat interesting question of law has been raised in this case which falls for consideration before this Court. Such questions arise out of the following facts of the case.

2. The Petitioners are admittedly owners of the premises being holding No. 384 situated in C.S. Plot Nos. 829, 830 and 831 in Ward No. 12, Mohalla-Pakari, Arrah Town, P.S. Nawadah, Arrah, District-Bhojpur (hereinafter referred to as the said premises) in the year, 1970 the said premises was let out to the District Commandant Home Guards, Arrah (Respondent No. 3) at a monthly rental of Rs. 300/- Considering the rent to be rather low, on 22nd January, 1987 Petitioner No. 1 wrote a letter to Respondent No. 3 requesting him to enhance the rent of the said premises in accordance with the provisions of Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as the said Act). On receipt of the said letter, Respondent No. 3 the tenant in his turn, wrote a letter dated 23rd February, 1987 to the Respondent No. 6, the Sub-Divisional Officer, Arrah requesting him to fix the fair rent of the said premises. As nothing happened, Respondent No. 3, the tenant further wrote a letter dated 3rd April, 1987 to Respondent No. 6 for fixation of fair rent of the said premises. Thereafter, on the basis of those letters Respondent No. 6 initiated a proceeding being Case No. 6 of 1987 u/s 5 of the said Act for fixation of the fair rents, of the said premises. In that proceeding the fair rents of the said premises was fixed at Rs. 2000/- per month by an order dated 20th November, 1987.

3. Section 24 of the said Act provides for appeal against such orders Section 24

of the said Act is set out below:

24. Appeal.

(1) Any person aggrieved by an order passed by the Controller may, within fifteen days from the date of receipt of such order by him, prefer an appeal in writing to the appellate authority.

(2) On such appeal being preferred, the appellate authority, may-

(a) after perusing the memorandum of appeal and hearing the Appellant, if necessary, summarily dismiss the appeal, or

(b) call for the records of the case from the Controller and after examining such records and, if necessary, making, such further enquiry as he thinks fit decide the appeal.

(3) Subject to the provision of Section 26 of the decision of the appellate authority and subject only to such decision where an appeal lies, an order of the Controller shall be final, and shall not be liable to be questioned in any Court of Law whether in suit or other proceeding by way of appeal or revision.

4. From a perusal of the said section it appears that the appeal has to be filed within a period of fifteen days from the date of receipt of the order against which such appeal has to be filed. In this case much after fifteen days, almost after more than two years, an appeal being appeal No. 4 of 1990-91 was filed before the Collector, Bhojpur at Arrah. It is the positive case of the Petitioner that the said appeal was filed without any application u/s 5 of the Limitation Act for condonation of delay.

5. Be that as it may the appellate authority, without admitting the same, dismissed it at the admission stage by an order dated 20th July, 1992. The said appeal was dismissed inter alia on the ground that the initial order for fixation of rent was passed with the consent of the tenant. Against the said order of dismissal of appeals, a revisional proceeding was initiated u/s 26 of the said Act before the Commissioner. Section 26 of the said Act is set out below-

26. Power of revision of Commissioners. -Subject to such rules as may be prescribed and reasons to be recorded in writing, the Commissioner may, either of his own motion or on application made to him in this behalf revise any order passed by the Controller or by the appellate authority on appeal under this Act.

6. In the rules framed under the said Act, it is made clear that such revisional application can only be filed within fifteen days from the date of order of the appellate authority. In this petition in paragraph 17 it has been stated that the revision application was filed by Respondent Nos. 1 and 2 along with a limitation petition u/s 5 of the Limitation Act for condonation of delay.

7. From the impugned order which has been passed by the revisional authority dated 20th September, 1994 it does not appear that the delay in filing the

revision application was condoned by him. The fact that the said revisional application was filed with an application u/s 5 of the Limitation Act has not been controverted in the counter-affidavit filed by the State.

8. The revisional authority, has however, set-aside the order passed by the appellate authority inter alia on the following grounds that the right to appeal has been provided in the Act as "should not be denied unless there are strong reason".

9. While giving such reasons the revisional authority fell into an obvious error by holding that the right of appeal was denied. In fact the right of appeal in this case has not been denied. The right of appeal was exercised by the concerned party but said appeal was dismissed at the admission stage by the appellate authority on certain grounds. If an appeal is dismissed on certain grounds, the dismissal order can be examined by the appropriate authority to find out if there are errors in it but it cannot be said that by dismissing the appeal, the appellate authority has denied the Appellant its right of appeal.

10. It is well settled that the right of appeal is always a creature of statute. It is equally beyond controversy that while conferring such a right the statute may hedge it with certain riders. The same has been done u/s 24 of the Act, namely in as much as the said right of appeal has to be exercised within a certain period. Here the Appellant has exercised its right of appeal in clear defiance of the statutory condition and while exercising such right it did not even file an application for condonation of delay.

11. In this factual background the revisional authority after setting-aside the appellate order remitted the matter before the appellate authority with a direction to admit the appeal and dispose it of on merits. By the said order the revisional authority also condoned the delay in filing the appeal even though no written application with such a prayer was made before the appellate authority.

12. Learned Counsel appearing on behalf of the Respondents while supporting the revisional order placed reliance on the decision in the case of Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker,

13. Relying on the said decision the learned Counsel for the Respondents submits that even though u/s 24 of the said Act there is no provision for condonation of delay in filing the appeal but provision of Section 29(8) of the Limitation Act are attracted and it must be construed that the provisions of Section 5 of the Limitation Act are attracted in condoning the delay in filing an appeal u/s 24 of the said Act. In the course of advancing the aforesaid submissions the learned Counsel placed reliance on Section 18 of the Karnataka Building (Lease, Rent and Control) Act, 1965 and contended that the said Section 18 of Karnataka Act is substantially similar to the provision of Section 24 of the said Act.

14. In so far as the aforesaid contentions of the learned Counsel is concerned, this Court has no hesitation in accepting them. But the difficulty is about the

application of those principles to the facts of this case.

15. In the instant case appeal has been filed more than two years beyond the period of limitation and the Appellant while filing the appeal did not file any application with a prayer for condonation of delay. Therefore, assuming Section 5 of the Act applies to an appeal filed u/s 24 of the said Act, but it does not mean that the delay will be condoned not by the appellate authority But by the revisional authority and that too without any application. In the instant case the revisional authority who has no jurisdiction u/s 24 of the said Act has allegedly condoned the delay in filing the appeal before the appellate authority and while doing so no regard has been given to the fact that there is no application praying for such condonation. This act on the part of the revisional authority cannot be approved by this Court. Even in the said decision of Mukri Gopalan (*supra*) in para 22 it has been observed as follows.

As a result of the aforesaid discussion it must be held that appellate authority constituted u/s 18 of the Kerala Rent Act, 1965 functions as a Court and the period of limitation prescribed therein u/s 18 governing appeals by aggrieved parties will be computed keeping in view the provisions of Section 4 to 24 of the Limitation Act, 1963. Such proceedings will attract Section 29(2) of the Limitation Act and consequently Section 5 of the Limitation Act would also be applicable to such proceedings. The proceedings are remanded to the Court of the appellate authority, that is, District Judge, Thalassary Rent Control Appeal No. 9 of 1994 filed before the said authority by the Appellant is restored to its file with a direction that the appellate authority shall consider IA No. 56 of 1994 filed by the applicant for condonation of delay on its own merits and then proceed further in accordance with law.

The aforesaid excerpts from the said judgment of Supreme Court in the case of Mukri Gopalan (*supra*) show the circumspect manner in which Supreme Court deals with matter namely by sending the matters before the appellate authority to consider the condonation petition on merits. But here the revisional authority in a rather wanton abuse of his jurisdiction under the statute has condoned the delay himself. This is really a situation which reminds one of the oft-quoted saying "Fools rush in where angels fear to tread".

16. There is Anr. aspect of the matter. Here the revisional authority certainly comes under the category of an inferior tribunal and is a Court of limited jurisdiction having been created under an act. It is not a Court in the sense that it is exercising sovereign power of the State. As a Court of limited jurisdiction it has to Act within the four corners of its province u/s 26 of the said Act in dealing with (sic) revisional power. While exercising such power it cannot wander outside its designated area" and must not outstep the confines of its territory. Therefore, it is whole misconceived to contend that the revision authority here passed the order of condonation in exercise of its inherent power. In fact, it has no such power. The crisp observation of Lord Pearce in the decision of the House of Lord in *Animic Ltd. and v. Foreign Compensation Commission* and Anr. reported in

1969 (2) App. Cas. 147 of the report are very apt in this connection and are set out below.

It is a contradiction in terms to (sic) ate a tribunal with limited jurisdiction and unlimited power to determine such line at its own will and pleasure. Such tribunal would be autocratic, not limited.

17. In view of the aforesaid reasons the impugned order passed by the revision authority is unsustainable in the eye of (sic) and as such it is quashed. The Annexure (sic) is, thus quashed and the writ petition succeeds. There will be no order as to costs.