
(2012) 08 AHC CK 0160
In the Allahabad High Court
Case No : Writ - A No. 50100 of 2006

Safiullah @ Mohd.Safi

APPELLANT

Vs

A.D.J., Court No.4 Deoria and Others

RESPONDENT

Date of Decision : 09-08-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2012) 08 AHC CK 0160

Hon'ble Judges : Sudhir Agarwal, J

Final Decision : Dismissed

Judgement

Sudhir Agarwal,J

1. Heard Sri H.P. Mishra, learned counsel for the petitioner and Sri P.K. Jain, Senior Advocate assisted by Sri Amitabh Agarwal, Advocate for respondents no. 3 and 4.
2. The petitionertenant is aggrieved by decree of eviction passed by Civil Judge (Senior Division), Court No. 18, Deoria dated 07.12.2005 and revisional order dated 12.07.2006 whereby petitioner"s revision has been dismissed.
3. Learned counsel for the petitioner submitted that there was a sale deed executed in favour of petitioner"s sons on 01.01.1996 by Smt. Geeta Devi wife of Ram Nagina and Smt. Anusuiya Devi wife of Ram Pravesh Pandey and, therefore, petitioner"s sons having become owner of property in question, the impugned orders are wholly illegal since respondents no. 3 and 4 were not the owner of accommodation in question so as to entitle them to file the suit in question.
4. It is alleged that property in dispute was auctioned by B.N.W. Railways on 07.11.1934 to one Habibullah son of Hafizdin. Habibullah executed a sale deed on 18.06.1992 in favour of Amirullah son of Abdul Shakur, who executed another sale deed dated 27.09.1993 in favour of Smt. Geeta Devi wife of Ram Nagina and Smt. Anusuiya Devi wife of Ram Pravesh Pandey from whom petitioner"s sons, namely, Abdullah Qurashi, Abdul Karim Qurashi, Abdul Mazid Qurashi,

Abdul Wahid Qurashi and Abdul Hakim Qurashi purchased vide sale deed dated 01.01.1996, hence respondents no. 3 and 4 have no right on the shop in question. However, this submission of petitioner has been negated by courts below observing that all the alleged sale deed show a vacant land, subject matter of transaction therein, and there was no transfer of any building by anyone. On the contrary, the suit in question relates to a shop in which admittedly petitioner had entered into as a tenant of respondents no. 3 and 4 and had paid rent also in past. At no point of time the aforesaid shop was ever sold by respondents no. 3 and 4 to anyone.

5. Considering the definition of "landlord" under Section 3(j) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 since the shop was never subject matter of any transaction of sale and petitioner was a tenant in the said shop, it cannot be said that regarding shop in question there were any dispute relating to its ownership. It was never shown to have been transferred to petitioner's sons. This finding that various sale deeds relied by petitioner relates to a vacant land and there was no transaction of any building therein, has not been challenged in the entire writ petition as incorrect or perverse. The courts below have held that dispute relates to shop in which petitioner has entered as tenant of respondents no. 3 and 4 and he failed to make payment of rent and committed default. These findings are not shown perverse or incorrect. Therefore, I do not find any error apparent on the face of record in the two judgments assailed in this writ petition warranting interference under limited scope of judicial review under Article 226/227 of the Constitution.

6. The scope of judicial review in such matters where the orders of courts below are assailed before this Court in a writ petition under Article 226/227 of the Constitution is very limited.

7. This power involves a duty on the High Court to keep the inferior courts and tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes.

8. In *D. N. Banerji Vs. P. R. Mukherjee* 1953 SC 58 the Court said:

"Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under articles 226 and 227 of the Constitution to interfere."

9. A Constitution Bench of Apex Court examined the scope of Article 227 of the Constitution in *Waryam Singh and another Vs. Amarnath and another* AIR 1954 SC 215 and made following observations at p. 571 :

"This power of superintendence conferred by article 227 is, as pointed out by Harries, C.J. in *Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee* AIR 1951 Cal. 193, to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors".

10. In *Mohd. Yunus v. Mohd. Mustaqim and Ors.* AIR 1984 SC 38 the Apex Court held that this Court has very limited scope under Article 227 of the Constitution and even the errors of law cannot be corrected in exercise of power of judicial review under Article 227 of the Constitution. The power can be used sparingly when it comes to the conclusion that the Authority/Tribunal has exceeded its jurisdiction or proceeded under erroneous presumption of jurisdiction. The High Court cannot assume unlimited prerogative to correct all species of hardship or wrong decision. For interference, there must be a case of flagrant abuse of fundamental principles of law or where order of the Tribunal, etc. has resulted in grave injustice.

11. For interference under Article 227, the finding of facts recorded by the Authority should be found to be perverse or patently erroneous and de hors the factual and legal position on record. (See: *Nibaran Chandra Bag Vs. Mahendra Nath Ghughu*, AIR 1963 SC 1895; *Rukmanand Bairoliya Vs. the State of Bihar & ors.*, AIR 1971 SC 746; *Gujarat Steel Tubes Ltd. Vs. Gujarat Steel Tubes Mazdoor Sabha & ors.*, AIR 1980 SC 1896; *Laxmikant R. Bhojwani Vs. Pratapsing Mohansingh Singh Pardeshi*, (1995) 6 SCC 576; *Reliance Industries Ltd. Vs. Pravinbhai Jasbhai Patel & ors.*, (1997) 7 SCC 300; *M/s. Pepsi Food Ltd. & Anr. Vs. SubJudicial Magistrate & ors.*, (1998) 5 SCC 749; and *Virendra Kashinath Ravat & ors. Vs. Vinayak N. Joshi & ors.* (1999) 1 SCC 47).

12. It is well settled that power under Article 227 is of the judicial superintendence which cannot be used to upset conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them. (See: *Rena Drego Vs. Lalchand Soni & ors.*, (1998) 3 SCC 341; *Chandra Bhushan Vs. Beni Prasad & ors.*, (1999) 1 SCC 70; *Savitrabai Bhausaheb Kevate & ors. Vs. Raichand Dhanraj Lunja*, (1999) 2 SCC 171; and *Savita Chemical (P) Ltd. Vs. Dyes & Chemical Workers" Union & Anr.*, (1999) 2 SCC 143).

13. Power under Article 227 of the Constitution is not in the nature of power of appellate authority enabling reappreciation of evidence. It should not alter the conclusion reached by the Competent Statutory Authority merely on the ground of insufficiency of evidence. (See: *Union of India & ors. Vs. Himmat Singh Chahar*, (1999) 4 SCC 521).

14. In *Ajaib Singh Vs. Sirhind Coopeative Marketing cum Processing Service Society Ltd.*, (1999) 6 SCC 82, the Hon"ble Apex Court has held that there is no justification for the High Court to substitute its view for the opinion of the Authorities/Courts below as the same is not permissible in proceedings under

Articles 226/227 of the Constitution.

15. In *Mohan Amba Prasad Agnihotri Vs. Bhaskar Balwant Aheer*, AIR 2000 SC 931, the Hon"ble Supreme Court held that jurisdiction of High Court under Article 227 of the Constitution is not appealable but supervisory. Therefore, it cannot interfere with the findings of fact recorded by Courts below unless there is no evidence to support findings or the findings are totally perverse.

16. In *Indian Overseas Bank Vs. Indian Overseas Bank Staff Canteen Workers" Union* (2000) 4 SCC 245, the Court observed that it is impermissible for the Writ Court to reappreciate evidence liberally and drawing conclusions on its own on pure questions of fact for the reason that it is not exercising appellate jurisdiction over the awards passed by Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the purpose ordinarily should be considered to have become final. The same cannot be disturbed for the mere reason of having based on materials or evidence not sufficient or credible in the opinion of Writ Court to warrant those findings. At any rate, as long as they are based upon some material which are relevant for the purpose no interference is called for. Even on the ground that there is yet another view which can reasonably and possibly be taken the High Court can not interfere.

17. In *Union of India Vs. Rajendra Prabhu*, (2001) 4 SCC 472, the Hon"ble Apex Court held that the High Court, in exercise of its extraordinary powers under Article 227 of the Constitution, cannot reappreciate the evidence nor it can substitute its subjective opinion in place of the findings of Authorities below.

18. Similar view has been reiterated in *State of Maharashtra Vs. Milind & ors.*, (2001) 1 SCC 4; *Extrella Rubber Vs. Dass Estate (P) Ltd.*, (2001) 8 SCC 97; and *Omeph Mathai & ors. Vs. M. Abdul Khader*, (2002) 1 SCC 319.

19. In *Surya Dev Rai Vs. Ram Chander Rai and others* (2003) 6 SCC 675, it was held that in exercise of supervisory power under Article 227, High Court can correct errors of jurisdiction committed by subordinate Courts. It also held that when subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or jurisdiction though available is being exercised in a manner not permitted by law and failure of justice or grave injustice has occasioned, the Court may step in to exercise its supervisory jurisdiction. However, it also said that be it a writ of certiorari or exercise of supervisory jurisdiction, none is available to correct mere errors of fact or law unless error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or disregard of the provisions of law; or, a grave injustice or gross failure of justice has occasioned thereby.

20. In *Jasbir Singh Vs. State of Punjab* (2006) 8 SCC 294, the Court said:

"...while invoking the provisions of Article 227 of the Constitution, it is provided that the High Court would exercise such powers most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of

their authority. The power of superintendence exercised over the subordinate courts and tribunals does not imply that the High Court can intervene in the judicial functions of the lower judiciary. The independence of the subordinate courts in the discharge of their judicial functions is of paramount importance, just as the independence of the superior courts in the discharge of their judicial functions."

21. In *Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil* (2010) 8 SCC 329, the Court said that power of interference under Article 227 is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court. The above authority has been cited and followed in *Kokkanda B. Poondacha and others Vs. K.D. Ganapathi and another* AIR 2011 SC 1353 and *Bandaru Satyanarayana Vs. Imandi Anasuya* (2011) 12 SCC 650.

22. In *Abdul Razak (D) through Lrs. & others Vs. Mangesh Rajaram Wagle and others* (2010) 2 SCC 432, Apex Court reminded that while exercising jurisdiction under Article 226 or 227, High Courts should not act as if they are exercising an appellate jurisdiction.

23. In *T.G.N. Kumar Vs. State of Kerala and others* (2011) 2 SCC 772, the Court said that power of superintendence conferred on the High Court under Article 227 of the Constitution of India is both administrative and judicial, but such power is to be exercised sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority.

24. In *Commandant, 22nd Battalion, CRPF and others Vs. Surinder Kumar* (2011) 10 SCC 244, Apex Court referring to its earlier decision in *Union of India Vs. R.K. Sharma* (2001) 9 SCC 592 observed that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Articles 226 or 227.

25. In view thereof, I find no justification warranting interference with the orders impugned in this writ petition.

26. Dismissed.