(2009) 03 AHC CK 0174

In the Allahabad High Court

Saraya Sugar Mills Limited — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 20-03-2009

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2009) 03 AHC CK 0174

Hon'ble Judges : Rajiv Sharma, J;P.C. Verma, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Heard Sri Pinaki Misra, Senior Advocate duly assisted by Mr. Piyush Kumar Agarwal, learned Counsel for the appellant, learned Chief Standing Counsel appearing for the State, learned Assistant Solicitor General of India appearing for the Union of India and Mr. Kesari Nath Tripathi, Senior Advocate duly assisted by Mr. Mukesh Prasad appearing for the respondents.

2. With the consent of counsel for the parties, the appeal is being disposed of at the admission stage itself.

3. In the instant appeal, the appellant has assailed the order dated 24.2.2009 passed in Regular Suit No. 1192 of 2008 pending in the Court of Civil Judge (Senior Division), Mohanlalganj, Lucknow.

4. Undisputed facts are that the appellant-company is a registered company under the Companies Act and is engaged in the business of manufacture of sugar by Vacuum Pan Process at at Sardar Nagar, Tehsil Ghauri Chaura, District Gorakhpur since 1933. On coming into force the policy of delicensing the sugar industries in the year 1998, defendant No. 4 moved an application for starting a sugar factory for which necessary distance certificate from Survey of India was obtained and thereafter, permission was granted by the Commissioner, Gorakhpur for purchase of land in excess of 12.5 acres on 21.9.2005. Subsequently, Sugarcane Control (Amendment) Order, 2006 was notified and it

inter alia provides for radial distance of 15 kms. between two sugar factories and other stipulations and conditions. The said amendment in the Sugarcane Control Order was assailed in the SLP before the Apex Court and the Apex Court declared the distance as binding, mandatory and sacrosanct. It also provides that the Sugarcane Control (Amendment) Order, 2006 is retrospective and applies to those cases where milling has not commenced or permitted to commence. Thus, though the Distance Certificate has been in possession of the Defendant No. 4, but the production has not commenced and as such, the said amendment also applies in the case of the opposite party No. 4.

5. As the Sugarcane Control (Amendment) Order, 2006 is also applicable on the factory of the defendant No. 4 and as such, on an application, the Cane Commissioner issued the Distance Certificate in favour of defendant No. 4 simply relying on the earlier Certificate dated 19.4.2005 issued by the Survey of India.

6. On coming to know about the issuance of Distance Certificate, the appellant/ plaintiff approached the Survey of India for measurement of distance and the Survey of India issued the Certificate of measurement to the plaintiff on 2.9.2008 and according to it, the distance between the factories is 13.91 and 13.97 kms. Thus, the plaintiff brought to the notice of the Cane Commissioner by means of a representation but the said representation was kept pending by the Cane Commissioner and as such in order to safeguard its rights and interest the appellant has filed a Regular Suit for declaration, mandatory and permanent injunction which was numbered as Regular Suit No. 1192 of 2008. As the respondents in the Regular Suit were Government Officers, in view of provisions of Section 80 C.P.C. notices have to be issued, but leave was granted u/s 80(2) C.P.C. Notices were issued, but no temporary injunction was granted.

7. Being aggrieved the Civil Revision was preferred in this Court and this Court has passed an order on 23.9.2008 for maintaining the status quo against which SLP was preferred by the defendant No. 4. Subsequently, the said SLP was withdrawn and the Civil Revision was dismissed as not maintainable, but the trial Court was directed to decide the application under Order XXXIX Rules 1 and 2 C.P.C. within two months. As the application was not disposed of, as directed by this Court, he filed a Writ Petition in this Court, which was numbered as Writ Petition No. 1 (MS) of 2009 and this Court directed for deciding the said application. On 14.1.2009, this Court also directed for deciding the application moved under Order VII Rule 11 C.P.C. by the defendant No. 4 on the date fixed, i.e. 28.1.2009.

8. Defendant No. 4-factory starts operation. Though the hearing of the arguments on applications under Order XXXIX Rules 1 and 2 C.P.C. and Order VII Rule 11 C.P.C. starts on 28.1.2009, but it could only be concluded only on 12.2.2009 and 18.2.2009 fixed for orders, but before the order could be passed, on an application moved by the plaintiff-appellant, this Court vide order dated 20.2.2009 extended the time and permitted the appellant for advancing further arguments. In compliance thereof, arguments were concluded by all the parties

and 24.2.2009 was fixed for orders. An application for transfer of the case was moved on 24.2.2009, which was rejected, but subsequently, the matter was transferred to Civil Judge (Senior Division), Mohanlalganj, Lucknow, who has fixed for 2.3.2009. As the time which has been granted by this Court in deciding the applications lapsed, another application has been moved for extension of time.

9. Being aggrieved by the order dated 24.2.2009, the instant F.A.F.O. has been filed.

10. Since the matter is pending since 18.9.2008 and is lingering on account of filing of one application or the order, no orders could be passed either on the application under Order XXXIX Rules 1 and 2 C.P.C. or on the application under Order VII Rule 11. Therefore, this F.A.F.O. has been filed.

11. Counsel for the plaintiff/appellant submits that the Cane Commissioner be directed to decide the application preferred by the appellant for reconsidering the issuance of Distance Certificate on the basis of the Certificate of measurement issued to him on 2.9.2008.

12. Learned Counsel for the defendants/respondents contested this fact and submitted that the certificate has already been granted on the basis of the certificate of measurement dated 19.4.2005 issued by Survey of India.

13. We find that the measurement of distance in the said certificate is on the basis of aerial distance while under the Rules it should be radial distance, which means that the distance should be measured from the Centre of the factory. Therefore, in order to settle the dispute, without entering into the merits of the case we direct the concerned cane Commissioner to issue a fresh certificate after measurement from the centre in their presence within a period of one month from the date of production of a certified copy of this order. It is needless to say that the certificate earlier issued by the Cane Commissioner has gone in abeyance in view of our order for re-measurement for distance. The trial Court is directed to decide the suit expeditiously, in accordance with law.

14. The F.A.F.O. is disposed off finally in the aforesaid terms.

