

(1994) 09 DEL CK 0035

In the Delhi High Court

Case No : Civil Miscellaneous Appeal No. 2541 of 1990 and Civil Writ Appeal No. 295 of 1988

Scindia Potteries and Services Ltd.

APPELLANT

Vs

Deputy Land and Devolpment Officer

RESPONDENT

Date of Decision : 29-09-1994

Acts Referred:

Citation : (1994) 4 AD 221 : (1994) 31 DRJ 233 : (1995) 213 ITR 260 : (1994) RLR 543

Hon'ble Judges : Jaspal Singh, J

Bench : Single Bench

Advocate : P.N. Lekhi, M.K. Garg, K.K. Lahiri, Jayant Nath and P.K. Behl, for the Appellant;

Judgement

Jaspal Singh, J.

(1) In Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, the Supreme Court tells us that a High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually. However, Mr.P.N.Lekhi, Senior Advocate tells me that no person, even necessary, can be imp leaded as a party to a writ petition for the reason that Order I Rule 1.0 of the CPC is not applicable to any proceeding under Article 226. And, in support he relies not only upon section 141 of the CPC but also upon two judgments namely. Rev. Fr. Antony Nirappal and Others Vs. State of Kerala and Others, and State of Kerala Vs. C.U. Scaria and Another, .

(2) Before the year 1976 there was a difference of opinion as to whether section 141 of the Code of Civil Procedure, 1908 was applicable to the proceedings under Article 226 of the Constitution. At that time section 141 of the Code read as under :

"THE procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction".

However, by the CPC (Amendment) Act, 1976, an Explanation has been inserted, which reads as under :

"IN this section, the expression "proceedings" includes proceedings under Order IX, but not include any proceeding under Article 226 of the Constitution".

(3) Undoubtedly, in view of the Explanation so added by the Amendment Act of 1976, it cannot be contended any longer that the provisions of the Code would apply to the proceedings under Article 226 of the Constitution. And, the judgments referred to by Mr. Lekhi say the same.

(4) With the provisions of the CPC having been made inapplicable, the thought goes to Article 225 of the Constitution which protects the powers of every High Court to make rules of procedure. By virtue of this power a High Court can make rules for the regulation of proceedings under Article 226. However, Mr. Lekhi contends, and this is not disputed, that this Court has not framed any rule with regard to impleading of parties in proceedings under Article 226 of the Constitution.

(5) What then?

(6) Let me go back to Prabodh Verma v. State of U.P. I opened this order with it. The relevant observations made therein need to be quoted now. They are: "A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, Therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties".

(7) If this be the legal position, and undoubtedly it is, how to make a "vitally affected" person a party when Order I Rule 10 of the Code does not apply and where the Rules of the High Court too make no provision for it?

(8) The answer is simple. There is nothing in Article 226 of the Constitution to preclude a High Court from exercising such power which avoids, if possible, a multiplicity of judicial proceedings and since a High Court ought not to decide a writ petition under Article 226 of the Constitution without the person who would be vitally affected by its judgment being before it as a respondent such person may appear at the hearing or make a prior application, and ask for leave to join the proceedings and when it so happens the Court shall, notwithstanding section 141 of the Code and despite there being no Rule of the High Court in that direction, in exercise of its inherent powers on the analogy of Order I rule 10 of

the Code, and following the general principles of justice proceed to make him a respondent.

(9) This, then, is the answer to the preliminary objection raised by Mr.Lekhi to the application under Order 1 rule 10 of the Code moved by one Jyotiraditya Scindia for being imp leaded as a party to the writ petition.