
(2003) 02 AHC CK 0120
In the Allahabad High Court
Case No : Writ Petition No. 229 (Cons) of 2003

Smt. Saubhagyawati

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-02-2003

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9A(2)

Citation : (2003) 2 AWC 1689

Hon'ble Judges : I.M. Quddusi, J

Bench : Single Bench

Advocate : C. Mukherjee, for the Appellant; C.S.C., for the Respondent

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—Heard learned counsel for the petitioner and the learned standing counsel for the State of U.P. as well as Shri R.N. Gupta, learned standing counsel for Gaon Sabha.

2. This writ petition has been filed against the refusal to grant interim order in a pending Case No. 13656 u/s 9 (A) (2) of the U.P. Consolidation of Holding Act by Consolidation Officer. The petitioner approached the Deputy Director of Consolidation, Sultanpur also, but the Deputy Director of Consolidation, Sultanpur, vide its order dated 30.1.2003 dismissed Revision No. 1659 holding that the revision is not maintainable against the interlocutory order. There is no doubt that against the rejection of the interim order, no revision lies u/s 48 of the U. P. Consolidation of Holdings Act. The Consolidation Officer has rejected the application for interim relief indicating the reason that he has no jurisdiction to grant interim relief, which is not sustainable in the eye of law.

3. In the case of Income Tax Officer v. M. K. Mohd. Kunahi, AIR 1969 SC 430, the Hon'ble Supreme Court has held that there is no manner of doubt that by the provisions of the Act or the Income Tax Appellate Tribunal Rules, 1993, powers have been expressly conferred upon the Appellate Tribunal to stay

proceedings relating to the recovery of penalty or tax due from an assessee. At the same time, it is significant that u/s 220 (6), the power of stay by treating the assessee as not being in default during the pendency of an appeal has been given to the Income tax Officer only when an appeal has been presented u/s 246 which will be to the Appellate Assistant Commissioner and not to the Appellate Tribunal. There is no provision in Section 220, under which the Income Tax Officer or any of his superior departmental officers can be moved for granting stay in the recovery of penalty or tax. The argument advanced on behalf of the appellant before us that in Sections 254 and 255 of the Act relating to stay of recovery during the pendency of an appeal, it must be held that no such power can be exercised by the Tribunal, suffers from a fundamental infirmity inasmuch as it assumes and proceeds on the premise that the statute confers such a power on the Income Tax Officer who can give the necessary relief to an assessee. The right of appeal is a substantive right and the questions of fact and law are at large and are open to review by the appellate Tribunal. Indeed the Tribunal has been given very wide powers under Sections 254 (1) for it may pass such orders as it thinks fit after giving full hearing to both the parties to the appeal. If the Income Tax Officer and the Appellate Assistant Commissioner have made assessments or imposed penalties raising very large demands and if the appellate Tribunal is entirely helpless in the matter of stay of recovery the entire purpose of the appeal can be defeated if ultimately the orders of the departmental authorities are set aside. It is difficult to conceive that the Legislature should have left the entire matter to the administrative authorities to make such orders as they choose to pass in exercise of unfettered discretion. The assessee, as has been pointed out before, has no right to even move an application when an appeal is pending before the appellate Tribunal u/s 220 (6) and it is only at the earlier stage of appeal before the Appellate Assistant Commissioner that the statute provides for such a matter being dealt with by the Income Tax Officer. It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective (Sutherland Statutory Construction, Third Edition, Article 5401 and 5402). The powers which have been conferred by Section 254 on the appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective. In Domat's Civil Law, Cushing's Edition, Vol. 1 at page 88, it has been stated."

"It is the duty of the Judges to apply the laws, not only to what appears to be regulated by their express dispositions but to all the cases where a just application of them may be made, and which appear to be comprehended either within the consequences that may be gathered from it."

4. Maxwell on Interpretation of Statutes, Eleventh Edition contains a statement at p. 350 that "where an act confers a jurisdiction, it impliedly also grants the power of doing all such Act, or employing such means, as are essentially necessary to its execution. Cui Jurisdictio data est, ea quoque concessa esse

vindentur, since quibus jurisdictio explicari no potuit". An instance is given based on Ex-Parte, Martin (1879) 4 QBD 212 at p 491 that "where an Inferior court is empowered to grant an injunction, the power of punishing disobedience to it by commitment is impliedly conveyed by the enactment, for the power would be useless if it could not be enforced". In the case of Issma and Others Vs. State of U.P. and Others, this Court has held that the question which remains to be considered is whether the subordinate courts, i.e., the Courts of Sessions and the Courts of Magistrates can release an accused on personal bond for a short period pending the disposal of a bail application, it is well-settled that when a Court has jurisdiction to grant a relief, such jurisdiction includes the power of granting incidental, ancillary or limited relief short of the ultimate and final relief.

5. In Sections 437 and 439, Cr. P.C. although there is no provision for granting temporary or interim bail, but the Court has power to allow the application for bail finally, it has also power to grant temporary or Interim bail for short period as an ancillary or incidental relief.

6. Unless specifically barred by the statute, an authority who has Jurisdiction to grant final relief, can also grant interim relief. Since the Consolidation Officer has jurisdiction to decide the matter finally. It cannot be said that he has no jurisdiction to grant interim relief.

7. In view of what has been discussed above, the impugned order dated 20.1.2003 passed by the Consolidation Officer holding that he has no jurisdiction to grant interim relief, is not sustainable in the eye of law.

8. In the result, the writ petition is allowed in part. The impugned order dated 20.1.2003 passed by the Consolidation Officer, Sadar, Sultanpur, is quashed and the matter is remanded to the Consolidation Officer, Sadar, Sultanpur to decide the interim relief application of the petitioner, after providing opportunity of hearing to the parties concerned, as expeditiously as possible. Till an order is passed by the Consolidation Officer, as directed above, status quo as on today shall be maintained by the parties over the land in dispute and the land in dispute shall also not be allotted to any one by the Gaon Sabha concerned.