

(2002) 08 AHC CK 0155
In the Allahabad High Court
Case No : Contempt Petition No. 1756 of 1996

State of U.P.

APPELLANT

Vs

Behari Lal and Others

RESPONDENT

Date of Decision : 29-08-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A
Contempt of Courts Act, 1971 — Section 12, 2, 20
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 202, 209, 229A, 229B, 229D

Citation : (2002) 3 UPLBEC 2541

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : Satish Chandra Rai, Addl. Chief Standing, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Srivastava, J.—This reference u/s 12 of the Contempt of Courts Act was registered by the order of Chief Justice dated 1.8.96 on the request of the then District Magistrate. Hamirpur made through letter dated 27th April, 1996.

2. In a suit instituted under Sections 229B/209/202 of the U.P. Z.A. and L.R. Act, an order was passed on 14.12.91 in exercise of power u/s 229-B which was made absolute on 12.2.1992 in Case No. 334/123/35 of 1986-87, Nagar Palika, Rath v. Ayodhya Prasad and Ors.. It is alleged in the reference that Bihari Lal, Amar Kumar and Arvind have wilfully disobeyed the orders dated 14.12.90 and 12.2.92 passed by the S.D.M. in which they were restrained from using the water of pond in dispute for irrigation or altering the shape of the pond. It transpires from the record, that notices have not yet been issued to the Opp. Parties.

3. Heard Sri Satish Chand Rai, Addl. Chief Standing Counsel. In the light of the materials on record and the submissions made at the bar, the following questions crop up for determination :

1. Whether S.D.O./Asstt. Collector, 1st Class exercising jurisdiction u/s 229-B of the Z.A. and L.R. Act is a Court within the definition of Section 2-B of the Act?
2. Whether any proceeding could be launched under the Contempt of Courts Act for alleged wilful disobedience of order passed u/s 229-B of the U.P. Z.A. and L.R. Act?
3. Whether the present proceedings are barred u/s 20 of the Contempt of Courts Act and/or no proceedings could be initiated under the Contempt of Courts Act.
4. The second question being significant one having bearing on the other two questions, I propose to deal with it for proper appreciation of the other two questions. By virtue of Section 341 of the U.P.Z.A. and L.R. Act, the provisions of the C.P.C., it is well established by catena of judicial precedents, are attracted for application. Section 341 of the U.P. Z.A. and L.R. Act are excerpted below for ready reference :

"341. Application of certain Acts to the proceeding of this Act.--Unless otherwise expressly provided by or under this Act, the provisions of the Indian Court Fees Act, 1870 (VII of 1870), the Code of Civil Procedure, 1908 (V of 1908), and the [Limitation Act, 1963 (XXXVI . of 1963)], (including Section 5 thereof) shall apply to the proceedings under this Act."

It books no dispute that the proceedings u/s 229-D have the complexion of temporary injunction and by virtue of Section 341 of the U.P. Z.A. and L.R. Act, provisions of the CPC are intended for application inasmuch as the U.P. Z.A. & L.R. Act does not have any independent provision to deal with the situation such as the situation emerging from disobedience of the order. In the absence of any provision under the Act, the provisions of Order XXXIX, Rule 2-A C.P.C. can be invoked in aid to deal with the situation such as emerging from disobedience of the orders. My view receives reinforcement from a decision of this Court in Nepal Singh v. Board of Revenue, reported in 1994 Prayag Nirnai Patrika 205, in which it has been held that the procedure prescribed for temporary injunction in the C.P.C. will be applicable to the proceeding under the U.P.Z.A. & L.R. Act. In the light of the above discussion, it thus crystallises that the situation emerging from disobedience of the order can be dealt with by application of the provisions contained under Order XXXIX, Rule 2-A C.P.C. and by this reckoning, the matter can, by way of alternative remedy, be relegated to the Court initiating reference to deal with the matter resulting from disobedience of its orders, the contempt proceeding instituted in this Court under the Contempt of Courts Act by Reference, is not maintainable.

QUESTION NO. 3 :

5. It is alleged that interim order was passed on 14.12.90. It is further clear from the record that the cause of action arose on 12th December, 1995 but no notices have yet been issued by the Court. Section 20 of the Contempt of Courts Act being relevant on the point is quoted below :

"20. Limitation for actions for contempt.--No Court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed."

From the reading of the above section, it cannot be gainsaid that there is a complete bar for initiating any proceeding for contempt after expiry of one year from the date the contempt is alleged to have been committed. As stated supra, that no notices have yet been issued and, therefore, the conclusion is irresistible that contempt proceedings are barred by virtue of the provisions of Section 20 of the Act.

QUESTION NO. 1 :

6. In view of binding arrived at qua the two questions aforestated, I think it unnecessary to enter a finding on the aspect.

7. In the backdrop of the above discussion, the contempt petition fails and is accordingly dismissed.