
(1999) 01 RAJ CK 0061

In the Rajasthan High Court

Case No : Civil Writ Petition No"s. 3020, 3250 and 3257/93

Subhash Chandra

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-01-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 1 RLW 605 : (1999) 1 WLN 200

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—All these three petitions are disposed of by this common order as identical point is involved in these matters.

2. Writ Petition No. 3230/93 filed by the petitioner M/s. Subhash Chandra Surendra Kumar, was placed before this Court for admission yesterday i.e. on 5.1.1999. At the time of hearing of the matter, learned Counsel for the parties pointed out that writ petition No. 3250/93 filed by M/s. Girdhari lal Bhagwan Das was admitted by the Division Bench of this Court on 14.4.1995. Similarly, writ petition No. 3257/93 was also admitted on 10.11.1994 by the learned Single Judge. However, it was pointed out that another writ petition No. 2961/93 was dismissed by the learned Single Judge of this Court on 6.1.1995.

Under the circumstances, writ petition no: 3020/93 was ordered to be placed today for hearing and orders along with writ petitions No. 3250/93 and 3257/93. Accordingly, all these three matters are placed for orders today.

3. Writ petition No. 2961/93 was dismissed only on the short ground that the petitioner had an alternative remedy available to him by way of suit. It is a brief order, which I would like to reproduce, which is as under-

6.1.1995

Hon"ble M.P. Singh. J.

B.L. Purohit, for the Petitioner.

The prayer made by the petitioner in this case is for quashing the agreement dated 18.3.1993 which the petitioner entered with the Secretary, Agriculture Produce Market Committee. The proper remedy for him is to file a suit for the same.

Accordingly, the writ petition is dismissed on the ground of alternative remedy.

In view of the above order of learned Single Judge dismissing the writ petition in limine by a speaking order, all these three petitions are required to be dismissed, but it was pointed out by learned Counsel Shri Acharya for the petitioners that the Apex Court has remanded the matter to the High Court in almost identical situation. In support of his submission Mr. Acharya has relied upon the Apex Court Judgment in case of *Bir Bajrang Kumar v. State of Bihar and Ors.* reported in AIR 1987 S.C.1345. There cannot be any quarrel with the principle laid down by the Apex Court in the aforesaid case.

4. Prior to filing of these writ petitions, first writ petition No. 2961/93 was filed by M/s. Bharat Trading Co., wherein, learned Counsel Shri B.L. Purohit himself appeared and Hon"ble M.P. Singh, J. by his order dated 6.1.1995 dismissed the writ petition in limine only on the ground that the petitioner had an alternative remedy available to him by way of suit. I have already reproduced that order. It must be stated that writ petition No. 3250/93 when came up for hearing and admission before Hon"ble Arun Madan, J. on 15.2.1995, it was brought to his lordship's notice that identical S.B. Civil Writ Petition No. 2961/93 was dismissed by this court (Hon"ble M.P. Singh, J., as he then was) on 6.1.1995, whereas, writ petition No. 3257/93 was admitted on 10.11.1994 by Hon"ble N.C. Kochar, J. (as he then was). In that writ petition, learned Counsel Shri J.L. Purohit appeared for the petitioner. Under the circumstances, the matter was kept on the next date i.e. 16.2.1995 by Hon"ble Arun Madan, J. In view of the aforesaid facts, Hon"ble Arun Madan, J referred the matter to the Division Bench. On 14.4.1995, learned Counsel Shri A.K. Rajwanshi appeared and on that the matter was straight away admitted and notices were ordered to be issued. Going through the papers of writ petition No. 3257/93, it appears that the matter was straight away admitted by Hon"ble N.C. Kochar, J. (as he then was) on 10.11.1994 and notices were ordered to be issued.

5. However, in writ petition No. 3020/93 filed by petitioner M/s. Subhash Chandra Suresh Kumar so far notices were ordered to be issued on 13.7.1993 and in response to that learned Counsel Shri Khumbhat appeared for the respondent No. 1 and Mr. M.L. Garg appeared for respondent Nos. 2 and 3. Somehow or the other, this matter was not admitted. Yesterday, when this petition was placed before me I kept it today when it was pointed out that one identical petition was dismissed by learned Single Judge of this Court. Therefore, this petition along with two other matters are kept today. It may be stated that

remaining two petitions No. 3250/93 and 3257/93 were straight away admitted without issuing notice to other side. Whereas, in this writ petition No. 3020/93 notices were ordered to be issued, wherein, a specific contention has been raised by the other side that petitioners had an alternative remedy by way of suit which they have not availed of, therefore, this Court should not exercise its jurisdiction in these petitions which is filed under Article 226 of the Constitution of India.

6. It may be stated that the orders passed by Hon''ble M.P. Singh, J. (as he then was) on 6.1.1995 dismissing the writ petition No. 2961/93 has become final because it has not been challenged by way of special appeal. It was a speaking order by which the writ petition was dismissed only on the ground of alternative remedy. This fact is not in dispute. Under the circumstances, all these writ petitions were required to be dismissed only on this ground that alternative remedy was available to the petitioners by way of suit and the speaking order passed by the learned Single Judge would be binding to this Court.

7. The only argument which can be advanced is that the matters were straight away admitted and it would not be proper to dismiss the same on the ground of alternative remedy available to them after so many years. It is true that similar view has been taken by the Supreme Court in some of the cases that ordinarily when the matters are admitted then it should not be dismissed on the ground of alternative remedy.

8. However, glaring feature in two other writ petitions, which are admitted, is that the same were admitted straight away without issuing notice to other side. If notices were issued to them as in writ petition No. 3020/93 then perhaps the other side would have raised that objection which has been raised in this petition regarding alternative remedy available to the petitioners by way of civil suit. That apart, the Full Bench of five Judges of this Court in case of Gopi Lal Teli v. State reported in 1995 RLR 1 has already decided that when the alternative remedy is available then this Court would not interfere with such cases in its extra ordinary jurisdiction under Article 226 of the Constitution of India.

9. In view of the above discussion, all these three petitions fail and are dismissed with no order as to costs.