
(1971) 04 AHC CK 0032

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3572 of 1968

Thakur Dass

APPELLANT

Vs

Chagan Lal and Others

RESPONDENT

Date of Decision : 26-04-1971

Acts Referred:

Citation : AIR 1971 All 563 : (1971) 41 AWR 608

Hon'ble Judges : B.N. Lokur, J

Bench : Single Bench

Advocate : Sripat Narain Singh, for the Appellant; H.G. Mehrotra, Shambhoo Pd., Ajit Ranjit, Mansingh and Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

B.N. Lokur, J.—Sri Bankey Bihari Refugees Co-operative Housing Society allotted plot No. 62 admeasuring 2200 sq. feet to petitioner Thakur Dass for Rs. 300/- as a transfer certificate was issued on the 18th April, 1961. Adjoining this plot was an open space admeasuring 440 sq. feet. As this open space was regarded as useless, it was allotted to Thakur Dass at his request on payment of additional price of Rs. 60. On the 27th July 1962, a fresh transfer certificate was issued showing that the open space of 440 sq. feet was also included in plot No. 62 which was described therein as admeasuring 2640 sq. feet. On the 23rd September, 1963, the Society informed Thakur Dass that the Managing Committee of the Society had cancelled the allotment of the open space of 440 sq. feet and the additional price paid by Thakur Dass would be refunded to him.

That open space was on the same day allotted to Chhagan Lal, opposite party No. 1, who immediately started constructing a house thereon. Aggrieved, the petitioner made a representation to the Managing Committee which failed. Then on the 7th October, 1963, he requested for arbitration under Rule 115 of the Co-operative Societies Rules made under the Co-operative Societies Act, 1912 (hereinafter referred to as "the Act of 1912"). The Arbitrator made an award on the 3rd April, 1965, that the cancellation of the allotment of the open space to

the petitioner without notice and without his consent and the subsequent allotment thereof to Chhagan Lal were bad and directed that the open space be restored to Thakur Dass after removing the constructions and that Thakur Dass be also paid Rs. 250/- by way of compensation. The award of the Arbitrator was confirmed in appeal by the Assistant Registrar on the 1st April, 1968. (It appears that the Society also had filed an appeal which was later withdrawn on the ground that it was unauthorised and a fresh appeal was filed long after the period of limitation. The Assistant Registrar has not formally passed any order in that appeal. We are not, however concerned with this aspect of the case in this petition). Chhagan Lal preferred a second appeal to the Registrar and it was heard by the Deputy Registrar who allowed the appeal and set aside the award of the Arbitrator. This order of the Deputy Registrar is impugned by Thakur Dass in this petition.

2. Two grounds were urged on behalf of Thakur Dass by his learned counsel. The first ground was that no second appeal lay and the order of the Deputy Registrar was, therefore, without jurisdiction; the second ground was that the order of cancellation of the allotment of the open space in favour of Thakur Dass was illegal as no opportunity was given to Thakur Dass to show cause against the cancellation and the principles of natural justice were violated.

3. To appreciate the arguments on the first ground, it may be recalled the dispute had been referred to the Arbitrator under Rule 115 of the Co-operative Societies Rules made under the Act of 1912. The award rendered by the Arbitrator under Rule 123 was appealable to the Registrar under Rule 133; the powers of the Registrar under that rule were delegated to the Assistant Registrar, who, by reason of this delegation, heard and decided the first appeal in this case on 1st April, 1968. Rule 133-A conferred upon a party aggrieved by the orders passed in appeal by the Assistant Registrar the right to prefer a further appeal to the Registrar. Thus under the scheme of the Co-operative Societies Rules, a second appeal was competent in the present case. However the State Legislature passed the Uttar Pradesh Co-operative Societies Act, 1966, (hereinafter referred to as "the Act of 1965") which came into force on the 5th April 1965, and Section 134(1) thereof repealed the Act of 1912 in the following words:--

"134 (1) The Co-operative Societies Act, 1912 (Act 2 of 1912), as amended from time to time in its application to Uttar Pradesh is hereby repealed and the provisions of Sections 6 and 24 of the U. P. General Clauses Act, 1904 (U. P. Act No. I of 1904), shall apply to the repeal of the Co-operative Societies Act 1912 (Act II of 1912), as if it were an Uttar Pradesh Act."

The Act of 1965 does not provide an appeal to the Registrar against the appellate orders of the Assistant Registrar as did Rule 133-A of the Rules under the Act of 1912. Section 132 (1) of the Act of 1965 also enacted:--

"132 (1) Any suit, other proceeding, enquiry or inspection instituted or commenced under the Co-operative Societies Act, 1912 (Act II of 1912), shall, so

far as may be deemed to have been instituted or commenced under this Act and may be continued accordingly."

4. The learned counsel for the petitioner contended that as a result of the repeal of the Act of 1912 and consequently of the Rules made thereunder, and in view of the provisions of Section 132 (1) of the Act of 1965, the right of a further appeal to the Registrar against the order made by the Assistant Registrar in appeal conferred by Rule 133-A of the Co-operative Societies Rules under the Act of 1912 does not survive in the absence of a provision for a similar appeal in the Act of 1965.

5. The repealing section of the 1965 Act, namely, Section 134 (1) in addition to repealing the Act of 1912, has further provided, inter alia, that the provisions of Section 6 of the U. P. General Clauses Act shall apply to the repeal of the Act of 1912, as if it were an Uttar Pradesh Act. Section 6 of the U. P. General Clauses Act provides that legal proceedings commenced before the repeal of an Uttar Pradesh Act may be continued and concluded as if the repealing Act had not been passed. It was urged for petitioner Thakur Dass that there is apparent conflict between Section 132 (1) and Section 134 (1) regarding the continuation of the legal proceedings pending at the time of the enforcement of the Act of 1965, but the particular provisions of Section 132 (1) ought to be construed to override the general provisions in Section 134 (1) and pending proceedings have to be deemed to have been instituted or commenced under the Act of 1965 and to have continued accordingly.

He submitted that since the Act of 1965 does not provide for an appeal to the Registrar against the appellate orders of the Assistant Registrar, the effect of Section 132 (1) is to take away that right of appeal provided by the Co-operative Societies Rules made under the repealed Act of 1912. The learned counsel for Chhagan Lal, however, contended that Section 132 (1) merely deals with the procedural aspects and in view of Section 134 (1) read with Section 6 of the U. P. General Clauses Act, the pending legal proceedings have to be continued under the Act of 1912 and the Rules thereunder as if that Act had not been repealed.

6. The proposition is no more in dispute that a right of appeal is a substantive right and not a procedural right and that this substantive right vests in a party when the original proceeding commences and can only be extinguished by a subsequent enactment providing for extinction of the right either expressly or by necessary intendment. Though there is abundant case law on the question, reference need be made only to the majority decision of the Supreme Court in Garikapatti Veeraya Vs. N. Subbiah Choudhury, which, after reviewing a number of earlier decisions extracted therefrom with approval, the following conclusions:

"(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceedings.

(ii) The right of appeal is not a mere matter of procedure but is a substantive

right.

(iii) The institution of the suit carries with it the implication that all the right of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter superior Court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right or appeal can be taken away only by a subsequent enactment if it so provides expressly or by necessary intendment and not otherwise."

7. Section 132 (1) of the Act of 1965 creates a legal fiction that a proceeding instituted under the Act of 1912, shall so far as may be, be deemed to have been instituted under the Act of 1965. In order to determine whether the legal fiction created by Section 132 (1) embraces within its scope the substantive right of appeal provided under the Act of 1912 and overrides the fiction envisaged by Section 134 (1) read with Section 6 of the U. P. General Clauses Act, that the Act of 1912 shall govern pending proceedings as well, it would be relevant to examine the provisions of the Act of 1965 in regard to appeals with particular reference to appeals against awards.

8. Section 71 of the Act of 1965 provides for reference of disputes to arbitration. Such reference can be heard either by the Registrar himself or by a single Arbitrator or a Board of Arbitrators. Section 97 states that a person aggrieved by the Award of the Registrar may appeal to the Co-operative Tribunal constituted u/s 96. There is no provision for a further appeal against the order of the Tribunal and the Tribunal's decision is final. Section 98 sets out other appealable orders, appeals against some of which have to be heard by the Tribunal and those against some others either by the State Government or by the Registrar.

Section 98 (1) (h) read with Section 98 (2) envisages that an appeal against "an award made by an arbitrator or Board of Arbitrators under Sub-section (1) or Sub-section (2) of Section 71" may be preferred to the State Government if the award is made by the Registrar and to the Registrar if the award is made by any other person. The appellate orders of the State Government or the Registrar are not subjected to a further appeal. This scheme, so far as the awards are concerned, speaks of awards u/s 71 of the Act of 1965. Section 98 of the Act of 1965 expressly refers to the awards made under that Act and it is difficult to construe it as including also the awards made under the Act of 1912.

9. Section 132 (1) and Section 134 (1) of the Act of 1965 shall have to be construed harmoniously; Section 132 (1) does not state that its provisions shall

have effect notwithstanding the provisions of Section 134 (1). Section 134 (1) clearly continues the right of appeal to the Registrar against the appellate orders of the Assistant Registrar and Section 132 (1) would require a more clear-cut provision to take away the effect of Section 134, particularly as it cannot be lightly held that a substantive right of appeal has been denied. On the harmonious construction of Section 132 (1) and Section 134 (1) and on the general principle that a party can be deprived of a vested right of appeal conferred by an enactment only by the express language or necessary intendment of a subsequent enactment, I am of the view that the further appeal to the Registrar against the appellate orders of the Assistant Registrar provided by the Rules made under the Act of 1912 is in fact and has not been taken away. That being so, in my opinion the Registrar had jurisdiction to decide the appeal filed by Chhagan Lal in this case.

10. The second ground is that the allotment of open space of 440 sq. feet could not be cancelled by the Society without giving the allotted an opportunity to show cause against the cancellation. The resolution cancelling the order of allotment has not been brought on record by any party, but it appears from the counter-affidavit of Chhagan Lal that the Managing Committee cancelled the allotment as Thakur Dass did not raise a construction thereon within the period prescribed by the bye-laws of the Society. The learned counsel for Thakur Dass urged that the revised transfer certificate included this open space within plot No. 62, and if a notice was given to him prior to the cancellation he had several objections to urge against the cancellation on the ground that no construction was raised within the prescribed period on a part of the plot namely, the space of 440 sq. feet. It is true that the bye-laws of the Society do provide for cancellation of the allotment but after the allotments have been made and a transfer certificate has been issued, principles of natural justice would require that the allotment be not cancelled on any ground unless the allotted is given an opportunity to meet that ground.

As, in the present case, no such opportunity was given to Thakur Dass the cancellation of the allotment of a part of the plot is vitiated. The Registrar had failed to appreciate this aspect and to determine whether the allotment of the open space in favour of Chhagan Lal was not irregular to the extent that the Society did not inform Thakur Dass in advance of the proposed cancellation of allotment in his favour and has wrongly come to the conclusion that the order of allotment of Chhagan Lal is within the powers of the Society as balance of convenience lay in favour of Chhagan Lal. The Registrar has committed an error apparent on the face of the record in ignoring the gross violation of natural justice on the part of the Managing Committee in cancelling the allotment although it had never given a notice to Thakur Dass. In the view I take, his order deserves to be quashed.

11. Accordingly, the petition is allowed and the order of the Registrar, a copy of which is attached to the petition as Annexure "D", is quashed and he is directed

to dispose of the appeal in accordance with law and in the light of the observations made above. No order as to costs.