

(2016) 05 AHC CK 0307
In the Allahabad High Court
Case No : Writ-C No. 28547 of 2003.

Vishwanath Rai And Others - Petitioners @HASH State of U.P. And Others

Date of Decision : 16-05-2016

Acts Referred:

Citation : (2016) 11 ADJ 1 : (2016) 119 ALR 410 : (2017) 1 ARC 302

Hon'ble Judges : Sudhir Agarwal and Shamsheer Bahadur Singh, JJ.

Bench : Division Bench

Advocate : J.P. Singh, A.N. Singh and Ajay Singh, Advocates, for the Petitioner;
C.S.C., Govind Krishna, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal and Shamsheer Bahadur Singh, JJ. - Heard Sri J.P. Singh and Sri Ajay Singh, Advocates, for petitioners, Sri Govind Krishna, Advocate, for respondents 5 and 6, and, perused the record.

2. The only arguments advanced on behalf of petitioners is that petitioners had applied for conversion of lease rights into freehold in accordance with Government Order dated 01.12.1998 and, therefore, respondents-authorities must allow petitioners to deposit freehold charges as per the circle rate of 1991-92 strictly in accordance with Government Order dated 01.12.1998 and subsequent Government Orders issued by State Government changing conditions of freehold cannot be made applicable to petitioners. Relying on a Division Bench judgment in Dr. O.P. Gupta v. State of U.P. and another 2009 (76) ALR 767 : 2009 (4) AWC 4038 it is contended that right to be considered for conversion to freehold would vest according to the provisions as were applicable while application was filed for freehold and would not change according to law as it would have been available on the date of passing of order by authorities concerned inasmuch subsequent policy would be prospective and would not apply to the cases where applications are already pending.

3. We find really sorry for petitioners for relying on a Division Bench judgment which has already been overruled by Full Bench in Anand Kumar Sharma v. State

of U.P. through Secretary and others 2014 (2) ADJ 742. Following two questions were referred for answer by Larger Bench:

"(1) Whether the application of the petitioner dated 25.7.2005 submitted for grant of freehold right on the basis of the Government Order dated 1.12.1998 (Paragraph 7) and the Government Order dated 10.12.2002 (paragraph 5) was entitled to be considered in accordance with the Government policy as was in existence on the date of application or the Government policy as amended by Government Order dated 4.8.2006, was to be taken into consideration while deciding the application on 18.12.2006?

(2) Whether the Division Bench judgment in Dr. O.P. Gupta v. State of U.P. 2009 (76) ALR 767 lays down the correct law?"

4. Full Bench answered the aforesaid questions in para 46 of judgment as under:

"(1) The application of the petitioner dated 25.7.2005 submitted for grant of free hold right on the basis of the Government Orders dated 1.12.1998 and 10.12.2002 was entitled to be considered in accordance with the Government's policy as was in existence at the time of passing of the order. The Government Order dated 4.8.2006 was rightly relied on by the Collector while rejecting the application on 18.12.2006.

(2) The Division Bench judgment in Dr. O.P. Gupta's case (supra) does not lay down the correct law insofar as it holds that the application for grant of freehold right is to be considered as per the Government policy as was in existence on the date of making application for grant of freehold right."

5. Thus, it is evident that decision in Dr. O.P. Gupta v. State of U.P. (supra) stood overruled by Full Bench in Anand Kumar Sharma v. State of U.P. (supra), and, hence ought not to have been cited by learned counsel for petitioners in 2016 before this Court since a counsel is not expected to rely on a judgment which has already been overruled and no more a valid law when it is being cited before Court. We also find that relying on Full Bench decision in Anand Kumar Sharma v. State of U.P. (supra) there is another Division Bench decision in Ashyana Sahkari Awas Samiti Ltd. v. State of U.P. through Principal Awas Vikas U.P. & Others (Writ C No. 48641 of 2007) decided on 30.05.2014 wherein this Court has said as under:

"In view of the foregoing discussion, we thus, conclude that doctrine of promissory estoppel is not applicable in the present case, the State was fully entitled to change its policy from time to time and the Government Order dated 22.10.2002 was well within the power of the State Government. The petitioners had not acquired any vested right under the Government Order dated 2.6.1998 nor the present case is a case of taking away any vested right of the petitioners. We do not find any infirmity in the Government Order dated 22.10.2002 and the decision of Housing Commissioner dated 16.9.2006 which may warrant any interference in exercise of writ jurisdiction. The petitioners are not entitled for

any relief in these writ petitions. All the writ petitions are dismissed."

6. In view of above exposition of law laid down in Anand Kumar Sharma v. State of U.P. (supra) followed in Ashyana Sahkari Awas Samiti Ltd. v. State of U.P. through Principal Awas Vikas U.P. (supra), we find no substance in the submission advanced by learned counsel for petitioners.

7. No other point has been argued.

8. The writ petition lacks merits. Dismissed.

9. Interim order, if any, stands vacated.