

(2009) 07 UK CK 0063

In the Uttarakhand High Court

Case No : Writ Petition No"s. 514 and 1044 of 2003 (MS)

V.S. Agrawal and Others

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 98

Citation : (2009) 3 UC 1550

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Rajendra Dobhal, for the Appellant; K.P. Upadhyay, for State of Uttarakhand/Respondent No. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J.—Both these writ petitions are being disposed of by a common judgment as the issues raised in both the writ petitions are the same and Petitioners in both the writ petitions are members of Housing Cooperative Society known as Yamuna Valley Engineer Employee Society.

2. This society was deregistered by the Deputy Housing Commissioner / Deputy Registrar, Uttar Pradesh Awas Vikas Parishad (Cooperative Section) vide order dated 1st August, 1995 (contained as Annexure No. 15 to the writ petition No. 1044 of 2003 (ms)). An appeal against the said order of deregistration was filed by the Petitioners and other members of the society quite belatedly after a period of seven years u/s 98 of the U.P. Cooperative Societies Act. However, this appeal was summarily dismissed by the Additional Registrar, Cooperative Society vide its order dated 19.2.2003 on two grounds, firstly on the ground of limitation and secondly on the ground of maintainability of the appeal before the Additional Registrar, Uttarakhand as according to the Additional Registrar such an appeal should have been filed before the Registrar, Cooperative Societies in U.P. What is important, however, is that the Additional Registrar did not exercise his jurisdiction as an appellate authority and has summarily dismissed the appeal

without applying his mind on the merit of the case, therefore, in short, he has neither confirmed nor affirmed the decision of the Deputy Registrar on merits. In Writ Petition No. 514 of 2003 Lalit Pant v. Registrar Cooperative Societies, Uttaranchal, Dehradun, the order dated 1.8.1995 passed by the Deputy Registrar, Uttar Pradesh Awas Evam Vikas Parishad and the order of 19.2.2003 passed by the Additional Registrar, Cooperative Societies have been challenged, whereas in Writ Petition No. 1044 of 2003 V.S. Agrwal and Ors. v. State of Uttaranchal, only the order dated 1.8.1995 passed by the Deputy Registrar, Uttar Pradesh Awas Vikas Parishad has been challenged. The prayer has also been made in the writ petitions regarding execution of the sale deed in favour of the Petitioners and delivery of possession of the plots to the Petitioners. However, such a prayer cannot be entertained in a writ petition and therefore, no relief can be granted to the Petitioner as per this prayer is concerned, and therefore, this prayer stands rejected. Further new facts have merged before this Court by means of the counter affidavit filed by the State of Uttarakhand, wherein it has been stated that the order dated 1st August, 1995 passed by the Deputy Registrar by which the registration of the Society was cancelled has been recalled vide order dated 3rd March, 2004 passed by the Additional Registrar, Uttarakhand and therefore, the order against which the writ petitions have primarily been filed does not survive and therefore, the writ petition may be dismissed as infructuous. On this Learned Counsel for the Petitioner Senior Advocate Mr. Rajendra Dobhal has stated firstly that though it is now a fact that order dated 1st August, 1995 has been recalled by order dated 3rd March, 2004, this order is bad to the extent that it could not have recalled the order dated 1st August, 1995 since the order dated 1st August, 1995 has now merged in the order of the appellate authority dated 19th February, 2003 and on application of the "doctrine of merger" what is liable to be recalled is the order of the appellate authority and not the order of the Deputy Registrar dated 1st August, 1995.

3. Firstly, this Court is of the considered view that since the impugned order dated 1st August, 1995 has been recalled vide order dated 3rd March, 2004, no cause of action survives and the writ petitions are liable to be dismissed as having become infructuous. Secondly, the "doctrine of merger" would not be applicable in the facts and circumstances of the present case.

4. What is important here is that the appellate authority has neither confirmed, nor affirmed the order of the Deputy Registrar in his order dated 19th February, 2003 on merit. The appellate authority has simply refused to entertain the appeal on the ground of limitation as well as on the ground of jurisdiction. Therefore it cannot be said that the order of the Deputy Registrar dated 1st August, 1995 has merged in the order of the appellate authority dated 19th February, 2003. There is no application of the doctrine of merger in the present case. This argument of the Petitioner also fails.

5. It must be stated here that the doctrine of merger is a common law doctrine, which is based on the principle of propriety in our present hierarchy of the justice

delivery system. It is not a doctrine laying down a principle of any universal application and merely where there are two orders one of the inferior authority and another by the superior authority passed in an appeal or revision, it would not necessarily mean a merger of the two orders, irrespective of the subject matter or even irrespective of orders passed in the appeal or revision.

6. The doctrine of merger has been thoroughly discussed in *Kunhayammed and Others Vs. State of Kerala and Another*, by the Hon"ble Supreme Court, where the Hon"ble Apex Court has, inter alia, stated thus:

12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effecting and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way -whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view.

7. In the present case, this Court finds that the appellate authority has in fact not exercised its jurisdiction inasmuch as it has not examined the merits of the matter, in its appellate jurisdiction had summarily dismissed the case on technical grounds as stated above on the ground of limitation as well as on the ground of jurisdiction. This being the situation, the order of the Deputy Registrar dated 1.8.1995 will not merge in the order dated 19th February, 2003.

8. Therefore, since the doctrine of merger is not applicable in the present case and there being no infirmity in the order dated 3rd March, 2004 whereby the earlier order dated 1.8.1995 has been recalled, the situation, as it stands today remains where the order which has been impugned by the Petitioner has admittedly been recalled. The writ petition is liable to be dismissed as infructuous and is hereby dismissed as having become infructuous. No order as to costs.