
(1982) 11 AHC CK 0051

Allahabad High Court

Case No: Writ Petition No. 6476 of 1982

Smt. Rukmini Devi

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision: Nov. 29, 1982

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Constitution of India, 1950 - Article 226
- Urban Land (Ceiling and Regulation) Act, 1976 - Section 12(5), 33

Hon'ble Judges: N.N. Sharma, J

Bench: Single Bench

Advocate: C.B. Misra and Sri Kant, for the Appellant; P.K. Misra, S.C., for the Respondent

Final Decision: Disposed Of

Judgement

N.N. Sharma, J.

This petition is directed against orders dated 2-3-1982 (Annexure-II) and 12-3-1982 (Annexure-IV) recorded by Sri. Prahlad Narain, learned appellate authority, Gorakhpur u/s 33 of Urban Land (Ceiling and Regulation) Act, 1976 (Act No. XXXIII of 1976). The prayer is to quash the said orders along with order dated 8-11-1977, recorded by the Prescribed Authority by a writ in the nature of certiorari.

2. It appears that a notice was issued to the Petitioner under the Urban Land (Ceiling and Regulation) Act, 1976 showing that an area measuring 504 square meters was proposed to be declared as surplus. The notice was dated 8-11-1977.

3. Petitioner preferred objection. Her objection was repelled by the competent authority on 8-11-1977 vide annexure-1.

4. Petitioner carried the matter in appeal which was dismissed in default on 2-3-1982, vide annexure-2.

5. Petitioner sought restoration of the appeal on the ground that she was a lady and could not contact her Counsel on the date fixed in the appeal; she herself fell seriously ill on that date and so the default occurred. All these allegations were not traversed on behalf of the State and constituted a sufficient ground for restoration.

6. This application was rejected on 2-3-1982 by learned tribunal on the ground that the said Act was self sufficient and the provisions of the CPC were inapplicable to it and so this application was rejected in limini.

7. It is correct that Section 33 of the said Act unlike Section 12(5) of the said Act itself makes provisions of the CPC applicable to such appeal but finality attaches to such orders vide Sub-clause (3) of Section 33 which reads:

Every order passed by the appellate authority under this section shall be final.

8. In declaration of finality will not, however, prevent the aggrieved person to take the matter to this Court under Article 226 of the Constitution of India. It is also correct that there is no express provision u/s 33 of the said Act to restore the appeal dismissed for default although it obligates on the appellate authority to give an opportunity to the Appellant for being heard before the disposal of the appeal.

9. It is correct that principle of exercise of inherent power in interest of justice applies to quasi-judicial authority like Rent Controller or the Appellate Tribunal also as was held in [V. Usman Koya Vs. R. Muthukrishnan and Others](#), . In that case on the death of landlord the tenant was in doubt about the person entitled to receive the rent and made a petition u/s 9(2) of Tamil Nadu Buildings (Lease and Rent Control) Act (Act No. 18 of 1960) and deposited the amount of rent due in the Rent Controller's Court. On the dismissal of the petition the Rent Controller mistakenly permitted the tenant to withdraw the amount. In such a case the Rent Controller as a quasi-judicial Tribunal was held to possess inherent power to rectify the mistake by directing the tenant to redeposit the amount though Section 151 of the CPC did not apply to proceedings under that Act. Thus the order of the tribunal was upheld in that case. Obviously, appellate authority was a quasi-judicial tribunal and in the absence of any prohibition could have recorded the requisite order while exercising his inherent power in the interest of justice or to prevent abuse of process of Court.

10. Usually, Courts or Tribunal of limited jurisdiction have no inherent powers as was held in [P.R.M. Abdul Huq Vs. Katpadi Industries Ltd. and Another](#), . It was a case under the Companies Act. In that case reliance was placed upon the observation made by Hon'ble Mr. Justice Mohmood in Narsingh Das v. Mangal Dubey ILR 5 All 163 which reads:

Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the perverse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law, as a matter of general principle prohibitions cannot be

presumed.

11. Thus in view of the aforesaid observations, the tribunal in the absence of express prohibition can be deemed to have possessed a power which was necessary to do the right and undo wrong in course of determination of justice. Bearing this principle in mind, I find that Petitioner had a good cause for her absence on 2-3-1982 and denial of her right to be heard by the appellate authority operated as a denial justice in this case to her.

12. Under these circumstances, the petition is partly allowed. As the proceedings are to be expedited the impugned orders dated 2-3-1982 and 12-3-1982 (annexure 2 and 4) are quashed and the case is remanded to the appellate authority concerned to dispose of the appeal in accordance with law afresh after affording an opportunity of being heard to the Appellant. The interim order dated 27-5-1982 is dissolved. Costs easy.