(1988) 08 KL CK 0043

High Court Of Kerala

Case No: O. P. No. 1938 of 1988

M.K. Thenu		APPELLANT
	Vs	
V. Jose P. Sonny and Others		RESPONDENT

Date of Decision: Aug. 10, 1988

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: (1988) 2 KLJ 368

Hon'ble Judges: Chettur Sankaran Nair, J

Bench: Single Bench

Advocate: P.K.M. Hassan, for the Appellant; P.N.K. Achan, for the Respondent

Final Decision: Dismissed

Judgement

Chettur Sankaran Nair, J.

This is petition under Article 227 of the Constitution of India, do quash Ext. P6 order of the Rent Controller confirmed in appeal and revision, by Exts. P7 and P8 respectively. Petitioner is the tenant of a residential building, belonging to 1st ''respondent. By Ext. P1 notice, 1st respondent required petitioner to vacate the premises, on the ground that he wanted the building for occupation. It was also stated that he wanted to stay in the building and supervise construction of a hospital in the premises. Then followed a series of correspondence, and eventually, a petition for eviction was filed.

2. The three courts below concurrently found that the grounds put forward by the landlord were established and that they were bonafide grounds. These findings are assailed, as ''unsupported by pleadings''. Petitioner would contend that the case put forward is an afterthought and that the idea of putting up a hospital where the tenanted building stands, was revealed only in the pleadings. Petitioner submits that the case in Ext. P1 notice, was that 1st respondent wanted to stay in the building and then supervise construction of a hospital building. Petitioner would say

that, if the idea was to construct a hospital after demolishing the tenanted building, it should have been so stated, in the petition. It is also alleged that a plan, was produced only belatedly, and that even according to the plan, the land is not suitable for construction of a hospital building.

3. Counsel for 1st respondent submits that there are no inconsistencies in the case put forward, at different stages. Even in Ext. P1 notice, three requirements were stated-residence, construction of a hospital and supervision thereof. Nothing more or nothing less, has been said at a later stage, according to Ist respondent''s counsel. Counsel elaborated his submission by saying that after part of the hospital was constructed, 1st respondent intended to move to the residential quarters therein, then demolish the existing structure and proceed with further construction. The building Sought to be constructed is a multi storied hospital and counsel says, this cannot be constructed, except by stages for more reasons than one.

4. It is difficult to say that the case of 1st respondent has undergone refinements from stage to stage, or that it is such, that no person instructed in appreciating facts or law, would accept it.

5. Counsel for petitioner referred to Hasmat Rai and Another Vs. Raghunath Prasad, to contend that the findings made by the courts below are liable to be set aside, when they are, against incontrovertible facts. Landlord plaintiff in that case, wanted vacant possession of premises occupied by the tenant on the ground that he had no other suitable place in his possession. This plea was opposed to admitted facts (noticed in para 4 of High Court''s judgment) namely, that premises occupied by Goraldas Parmanand had been vacated and had come to the possession of plaintiff. This obvious fact was ignored, and for that reason, the Supreme Court considered it a fit case for exercising the jurisdiction under Article 227.

6. Counsel for 1st respondent relied on the decision in Mrs. Labhkuwar Bhagwant Shaha. Vs Janardhan Mahadeo Kalan and another (1982) 3 S.C.C. 915). The Supreme Court clearly stated that reappreciation of evidence is not permissible, in proceedings under Article 226. It was observed:

Whether jurisdictional or otherwise it was purely a question of fact requiring adjudication on appreciation of evidence. It could not convert itself into even a mixed question of fact and law entitling the High Court to interfere.

The statement of Law in D.N. Banerji Vs. P.R. Mukherjee and Others, , Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, , Harbans Lal Vs. Jagmohan Saran, and Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, is the same.

7. In India Pipe Fitting Co. Vs. Fakruddin M.A. Baker and Another, , the law was so stated:

Power under Article 227 is one of judicial superintendence and cannot be exercised to upset the conclusion of facts, however erroneous these may be.

(emphasis supplied)

In Chandravarkar''s Case, Sabyasachi Mukharji, J. speaking for the court stated the position lucidly. The observations serve fruitful reputation.

The history and the development of the writ of Certiorari, and scope and ambit of its application have been emphasised by Lord Denning in R Vs. Norhumberland Compensation Appeal Tribunal, Ex Parte Shaw, (1952) 1 All ER 122 at P. 128. It is not necessary to reiterate these. But the Courts must guard themselves against the error mentioned by Morris, L. J. in the said decision at page 133 to use the power under Art. 227 as the clock of an appeal in disguise. The writ of Certiorari does not lie in order to bring up an order or decision for rehearing of the issues raised in the proceedings. These inhibitions are more often than not transgressed by the Courts in exercise of jurisdiction under Art. 227,

The guiding principle indicated by His Lordship is that, if fact finding bodies have acted properly in law, and if findings could not be described as perverse in law in the sense that no reasonable person properly instructed in law could have come to such a finding, such findings should not be interfered with, in exercise of the jurisdiction under Article 227.

8. Needless to say, conferment of jurisdiction contemplates situates where jurisdiction could be exercised rightly, or wrongly. It is not every erroneous exercise, that merits interference under Article 227. It is not an appellate jurisdiction, nor can a supervisory jurisdiction, which is not compulsive, but discretionary, be used as a disguise for appellate jurisdiction. This court exercising powers under Article 227 will not arrogate to itself, the role of a fourth court on facts. Exercise of jurisdiction varies with character of jurisdiction. The jurisdiction under Article 227 will be invoked not because this court might come to a different view on the facts, not even because it would consider the findings not satisfactory. It would only interfere if the findings are so perverse in law, that no reasonable person properly instructed in law could have come to such a finding. An error manifest on the face of the record, is much more than an error. Considered in this light, it is not possible to say that the three courts below arrived at a finding which was so unreasonable or perverse, or that the findings were reached on extraneous considerations, or by turning the Nelson''s eye to facts. For that matter, the very elaborate orders of the courts below have taken into account the relevant circumstances and come to a proper finding.

Petition fail and is dismissed. No Costs.