Peddapudi Seshagiri Rao Vs Andhra University and Others

Court: Andhra Pradesh High Court

Date of Decision: Nov. 8, 1995

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 115
Constitution of India, 1950 â€" Article 226, 227

Citation: (1996) 1 ALT 820

Hon'ble Judges: P.S. Mishra, C.J; B. Sudershan Reddy, J

Bench: Division Bench

Advocate: V.V.L.N. Sarma and P. Ravi, for the Appellant; T.S. Harinath for Respondents 1 and 2, for the Respondent

Final Decision: Dismissed

Judgement

P.S. Mishra, C.J.
Heard learned Counsel for the appellant.

2. We propose take notice of the facts of the case for the purpose of considering whether the writ petitioner- appellant had any justification to

invoke the extraordinary writ Jurisdiction of this Court under Article 226 of the Constitution of India. Writ petitioner - appellant has claimed that he

is the cultivating tenant of the lands in question. He has raised accordingly a proceeding before the Special Officer-cum-District Munsif for

declaration of his tenancy rights and for permanent injunction Petitioner-appellant has, in the said proceeding, filed an interlocutory application for

temporary injunction, pending disposal of the proceeding. The special Officer-cum-District Munsif initially granted interim injunction, but vacated

the same after hearing the respondents and finally disposed of the proceeding. The Petitioner-appellant preferred appeal before the District Judge,

i.e., appellate authority. The appellate authority has, however, dismissed the appeal. The petitioner-appellant has thereafter filed a petition invoking

this Court"s extraordinary jurisdiction seeking a direction to quash the order passed by the Special Officer-cum-Distrist Munsif as confirmed by

the appellate authority. Learned single Judge has declined to give any such order. The writ Petitioner-appellant has come before us complaining

that on the facts and on merits he should be granted injunction and declared to be entitled to possession.

3. Before we advert to the issue of jurisdiction and when an application under Article 226 of the Constitution of India can be entertained and the

limitations upon such exercise of jurisdiction which the Courts have themselves created as rules of prudence, we may state that the case of the

petitioner-appellant depends upon his establishing title and proving in the proceeding before the Special Officer-cum-District Munsif that he is the

tenant and that he has the occupancy in accordance with law from which he cannot be evicted. His whole case depends upon his claim that it is

wrong to allege that he surrendered the tenancy and in any case, according to him, there is no surrender of tenancy by him as contemplated u/s 14

of the Tenancy Act. Confining only for the purposes of interim injunction, learned single Judge has in his order noted the specific allegations brought

on the record by the respondents in his behalf in these words:

Both the courts below have concurrently found that after the alleged surrender,every year public auction is being conducted by the respondents

for the right to enjoy the usufruct it appears that in some years the petitioner himself was the highest bidder, that in one year the son of the petitioner

was the highest bidder and in the last year i.e., for the year 1994-95 one Padmanabha Murthy was the highest bidder for Rs. 50,000/- Ex. B-4,

which is a delivery receipt dt. 6-6-1994 signed by the petitioner shows that the petitioner was the highest bidder for the year 1993-94 and he re-

delivered possession of the land at the end of that year. Similarly Ex. B-6 letter dt. 17-3-1994 addressed by the petitioner also reveals that he was

the highest bidder for the year 1993-94. Even the documents filed by the petitioner himself i.e., Exs. A.1 to A.5 show the payment of the bid

amounts by the petitioner during the years when he was the highest bidder. It is, therefore, amply established by the evidence on record that

auction was being conducted every year. The respondents have stated in their counter-affidavit that in the latest year i.e., 1994-95 one

Padmanabha Murthy was the highest bidder for Rs. 50,000/- and he enjoyed the usufruct for the land. It is therefore futile to contend that the

petitioner is entitled for grant of temporary injunction pending disposal of the A.T.C.

4. Rule when injunction is granted has been stated variously but there is no deviation from the principle that inunction is granted only when there is a

strong prima facie case and is refused if the balance of convenience is not in favour of maintaining the status quo. Mandatory injunction is granted

only in such cases where, if the property is not restored to the possession of the plaintiff or his alleged right is not protected and preserved for him,

there is a likelihood of irreparable injury. In the case of the petitioner-appellant injunction pending writ petition, in our view, will run counter to the

cardinal principle of the balance of convenience as well as the injury which, in our view, can always, in the event of his success in the writ petition,

be repairable by grant of compensation in terms of money. Learned single Judge has noticed the balance of convenience of the parties inasmuch as

he has found that pending the proceedings before the Special Officer-cum-District Munsif and the appellate authority as well as in the proceedings

before him, the land was being auctioned year to year and the petitioner - appellant himself participated and once or twice got the yearly settlement

of the land.

5. We have chosen, however, to speak briefly whether the power under Article 226 of the Constitution of India can be exercised by this Court so

as to provide the benefit of the original proceeding in lieu of a proceeding in a regular suit, to a person for whom a special procedure is provided

and forums of Special Officers and appellate authorities are made available with a view to exclude the jurisdiction of the ordinary Civil Court. In

Muramalla Ammannaraju Vs. Babba Seetaratnam and Another, a Division Bench of this Court has held that the law as it stands and which after

amendment has replaced the Tahsildars and Revenue Divisional Officers by the Special Officers, who are Distrist Munsifs and the District Judges

as original and appellate authority respectively, has not merely named the courts or officers to preside, but has retained their character as

authorities or tribunals which are not Courts amenable to the revisional juridiction of the High Court u/s 115 of the Code of Civil Procedure. It is

held in the said judgment that the District Munsifs or the District judges discharging functions under the Andhra Pradesh (Andhra Area) Tenancy

Act are not civil courts but only tribunals and as such a revision does not lie to the High Court u/s 115 of the CPC against the orders passed by

such tribunals, as the tribunals are not subordinate courts for the purpose of the revisional jurisdiction under the CPC of the High Court. The court,

however, has said, ""We further hold that the remedy available to the litigant is only to file a revision petition under Article 227 of the constitution or

a writ petition under Article 226.

6. The plenary or constitutional power of this Court under Article 226 of the Constitution of India, notwithstanding anything in Article 32, which

confers on the Supreme Court powers to issue Writs, is designed for the enforcement of any of the rights conferred by Part -III of the Constitution

and for any other purpose. There are only two limitations placed upon the exercise of these powers by a High Court - (1) that the power is to be

exercised throughout the territory in relation to which it exercises jurisdiction; and (2) that the person or authority to whom the High Court is

empowered to issue the Writs should be found within the territory in relation to which it exercises jurisdiction - and the power can be exercised if

the cause of action has arisen wholly or in part within its territory, notwithstanding that the seat of such government or authority, or the residence of

such person is not within its territory. The Court invariably exercises its power without any hesitation, if a clear case of violation of a fundamental

right is made out and in cases in which its jurisdiction is invoked for any other purpose when the impugned action is a nullity, without jurisdiction or

inflicted by mala fide. The Court ordinarily interferes with the orders of the quasi judicial tribunals and authorities by issuing writs in the nature of

certiorari or any other order or direction when the impugned action, order or judgment of the tribunal or authority is without jurisdiction or taken or

made in violation of the principles of natural justice. The rules created and developed by judicial pronoucements in all such cases, are to ask the

questions-

(1) Whether the tribunal or authority is a tribunal or authority created by or under a law?;

(2) Whether the tribunal or authority is empowerd to determine questions affecting the rights of the petitioner? ; and

(3) Whether the tribunal or the authority has the duty to act judically?

If such tribunal or authority acts without jurisdiction or commits such error of jurisdiction which goes to the root of its determination, the court

reviews its order and makes suitable amends by issuing appropriate writs or directions. Where there is a determination of question affecting the

rights of a party, it is obvious there is a duty to act judicially and such procedures, which are fundamental to any adjudication, have to be followed.

If the rules which have to be adhered to are violated and the violation has resulted in denial of a fair opportunity of being heard and even if there

are no such rules, but there is no rule putting a bar upon the right and being heard, the petitioner is not given the opportunity of being heard, a

fundamental rule of natural justice is violated. Even for violation of other rules of natural justice such as-no person should be a judge in his own

cause, or all judicial and quasi judicial orders should contain at least a precise statement of facts and the reasons why the contentions of a particular

party have not been accepted or why the contentions of the other party have been accepted, the Court exercises its extraordinary writ jurisdiction.

In other cases, however, the court is slow in entering into the controversies which are adjudicated by a competent tribunal or authority and

invariably declines to exercise its jurisdiction. Norms of judicial review in exercise of the power under Article 226 of the Constitution of India have

thus been settled by the courts and excepting exceptional cases, in almost all cases where there is no error of jurisdiction or there is no violation of

the principles of natural justice or there is no proof of any malice in law or malice in fact, the Court declines to exercise its jurisdiction under Article

226 of the Constitution.

7. Article 227 of the Constitution of India gives to the court the power of superintendence over all courts and tribunals throughout the territories in

relation to which it exercises jurisdiction and the court exercises this power in cases of grave injustice or grave dereliction of duty or flagrant

violation of law by any tribunal or authority within its territorial jurisdiction. The power under Article 227 of the Constitution is wider than that u/s

115 of the Code of Civil Procedure, but is exercised with care and not merely to correct a mere erroneous decision. When there is an error

apparent on the face of the record, however, this power is exercised by the Court.

8. It is difficult to divide the specific area of Article 226 of the Constitution of India and that of Article 227 thereof, but it is not difficult to see that

in matters where writ petitions are filed almost at a stage of a second Appeal or a Civil Revision of ordinary proceedings in the Civil Courts, the

attempt is not merely to bring to the notice of the Court any error of jurisdiction, violation of principles of natural justice, or any ground of mala fide

or arbitrariness in the actions or orders of the tribunal or authority. The attempt is to seek a review of the order by inviting interference in the

findings of fact and the law by the tribunal or the authority. All such cases in which a remedy is sought not on grounds of want of jurisdiction or

grounds of failure of justice, as the principles of natural justice have not been complied with, or the tribunal or the authority has acted with malice -

whether in law or in fact, or on such grounds which are limited to the judicial review or a quasi judicial order, use of Article 226 and the plenary

power of the court is not warranted. Such cases must fall for correction, if necessary in exercise of the Court''s power of superintendence and for

all such purposes only Article 227 of the Constitution should be invoked.

9. We have made an attempt to identify the matters which should be entertained by the Court for interference under Article 226 of the Constitution

of India only to make sure that the plenary power of the Court is not used as a fresh and original proceeding with a view to avail not only the

examination by the Court of all materials which are already examined by the original and appellate authority created for the said purpose, but also

to avail the right of appeal under Clause 15 of the Letters Patent of the Court. Any attempt to use the Court''s plenary power in such matters is

nothing but making the legislative sanctions for special tribunals meaningless as proceedings in regular Courts would have given to such persons the

right of one appeal and a second appeal only when substantial questions of law are involved and in many cases not even a second Appeal but a

Revision u/s 115 of the Code of Civil Procedure. Legislature could never intend to take away the right of a litigant to go to the ordinary court with

a view to providing it not only the two forums i.e., the original or trial forum and the forum of appeal but two more forums - one under Article 226

of the Constitution of India and the another under Clause 15 of the Letters Patent of the Court. It appears to us reasonable thus to hold that a party

seeking to invoke the Court''s extraordinary and plenary jurisdiction under Article 226 of the Constitution, can do so only by clearly showing that it

has a ground for judicial review of the order of the Special Officer or the appellate authority under the Act and not merely it has decided to

challenge the order by filing a writ petition. If at all there is any error apparent on the face of the record and there is a chance of gross injustice, if

the order of the Special Officer or the appellate authority is not interfered with, the court can always exercise its jurisdiction under Article 227 of

the Constitution of India. Parties making such a grievance can invoke this power of superintendence under Article 227 of the Constitution, but not

under Article 226 thereof. It is obvious that in such a case the appeal under Clause 15 of the Letters Patent shall not be maintainable.

10. It appears to us an abuse of the process of the Court, if appeals are filed against interlocutory orders in the writ petitions. We do not for a

moment intend to say that in no case appeal shall lie against an interlocutory order, but it is well settled that right of appeal under Clause 15 of the

Letters Patent is available only against a final order and against such interlocutory orders which are in the nature of a final order and in some

matters and in exceptional cases against interlocutory orders which are orders of moment and if there is no interference by the court in exercise of

its appellate power, there is likely to be an irreparable injury. The instant appeal suffers from this infirmity as well since it is not against an order of a

moment which this court should quash in exercise of its power under Clause 15 of the Letters Patent.

11. For the reasons aforementioned, we find no merit in the appeal. The Appeal is dismissed.