

SUPREME COURT OF INDIA

Yeshwant Sakhalkar

Vs.

Hirabat Kamat Mhamai

C.A.Nos.2962-63 of 2004

(S. B. Sinha and S.H.Kapadia JJ.)

30.04.2004

JUDGMENT

1. Leave granted.

2. These appeals are directed against the judgment and order dated 27-3-2003 passed by the High Court of Bombay at Goa in Writ Petitions Nos. 326-27 of 2002 whereby an order passed by the Additional District Judge, Panaji in Miscellaneous Appeal No. 61 of 1998 allowing an appeal from an order of the trial court in Suit No. 63/97/B refusing to pass an order of interim injunction was set aside.

3. Having regard to the order proposed to be passed by us, it is not necessary to delve deep into the factual matrix. Suffice it to state that the respondents herein filed a suit for injunction against the appellant claiming, inter alia, the following reliefs:

"(a) That this Hon'ble Court may be pleased, by way of permanent injunction, to restrain the defendants including their family members, agents, servants and labourers from raising any structure or construction in place of the demolished suit premises and from constructing anything above the ground floor of the structure.

(b) For a mandatory injunction, directing the defendants to place zinc sheets above the ground floor with the existing ground floor walls as the support in order to prevent the monsoon waters from affecting the ground floor premises of the plaintiff."

4. Admittedly, the appellants are tenants in respect of the premises in suit. A lease in respect of the said suit premises was created in favour of the predecessor of Appellant 1 in terms of a deed dated 25-1-1964 which was subsequently transferred to Appellant 1 herein in the year 1975. It is also not in dispute that the plaintiff-respondents have 1/12 share in the suit premises. One Soiru Camotim Mhamai, said to be the karta of the joint family, on a representation made by Appellant 1 granted a no-objection certificate for carrying out the acts by him and as specified in the letter dated 1-4-1996, which are as under:

1. To start any other type of businesses suitable and profitable to you in addition to the present business of hotel/restaurant, including bar for retail sale of liquor for consumption within the premises, either in partnership or as a private limited company with any persons of your choice.
2. To carry out different types of businesses in the said premises we have no objection in allowing you to apply for various licences required for the same from various government departments, municipality, Commissioner for Excise, PWD, etc., as the case may be.
3. To carry out in the said premises various types of repairs, construction and renovation/furnishing works of roof, ceilings, walls, flooring, toilets, pavements, canopies, rolling shutters, etc. required for profitable business and without disturbing the other tenants and without changing the present name of the firm.
4. To apply and take various connections in the said premises viz. electricity, water, sewage, telephone, fax, etc."
5. Pursuant to or in furtherance of the said no-objection granted by the alleged karta of the family (which fact is denied and disputed by the respondent) I herein obtained licence from the municipal authorities for carrying out repairs.
6. Acting pursuant to and in furtherance of the said licence the appellant herein is said to have demolished a part of the suit premises.
7. The aforementioned suit for injunction was filed by the respondents at that stage. The learned trial court passed an interim order of injunction in favour of the respondent, where-against an appeal was preferred by the appellant. The said appeal, as noticed hereinbefore, was allowed. The respondent moved the High Court questioning the correctness of the said order purported to be under Article 227 of the Constitution of India which has been allowed by the impugned judgment.
8. Mr. Mehta, the learned counsel appearing on behalf of the appellants contends that having regard to the fact that in terms of the amendment made to Section 115 of the Code of Civil Procedure the High Court could not have entertained the revisional application against the appellate order, by exercising its jurisdiction under Article 227 of the Constitution of India. It was further submitted that in any view of the matter the High Court could not have disturbed the finding of fact arrived at by the learned Additional District Judge in exercise of its writ jurisdiction.
9. Mr. Lalit, the learned counsel appearing for the respondents, on the other hand, submits that the trial court passed the order of injunction on the premise that the said purported no-objection certificate dated 1-4-1996 was not a genuine document and in any event the aforementioned Soiru Camotim Mhamai was not the karta of joint family as the joint family disrupted long back. The appellant, in the garb of no-objection certificate granted by Soiru

Camotim Mhamai for carrying out the repairs of the premises, could not have demolished substantive portion thereof, Mr. Lalit would contend.

10. It is neither in doubt nor in dispute that the writ jurisdiction of the High Court is very limited. Although the High Court has the requisite jurisdiction, the same must be exercised having regard to the scope and ambit of Article 227 of the Constitution of India.

11. The question as to whether the application of Article 227 of the Constitution of India could be maintainable or not has been answered by this Court in *Surya Dev Rai v. Ram Chander Rai* wherein it was held:

"38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there-against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in depreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case."

12. In view of the aforementioned dicta, there cannot be any doubt that writ petition was maintainable, but its jurisdiction was limited. It further appears that the High Court had not considered the question as to whether by reason of the alleged demolition of the suit premises the tenancy itself became non-existent or not. However, it appears from the records that a Commissioner was appointed to inspect the premises. Even from his report, it would be evident that a portion of the suit premises has been demolished as would appear from the judgment of the appellate court itself:

"To substantiate the contention that due to the demolition of the walls the tenanted premises no longer exist - the respondent's photographs. The appellant also produced photographs and contended that they are repairing and renovating the suit premises and in no manner they have demolished it. The trial court appointed the Commissioner who submitted his report. On perusing the photographs produced by the appellants and Commissioner's report it does appear that the premises were demolished. The mere fact that the entire roof of the suit premises was removed and a portion of the middle wall was demolished, it cannot be said that the entire suit premises was demolished. The report of the Commissioner states that outer wall of the suit premises from Mandovi side, external wall facing Secretariat, the walls near the respective staircases are intact. Once there is a permission from the landlord to carry out the repairs and based on the no-objection certificate the appellants obtained licence from the municipality to carry out the repairs. Any acts on the part of the appellants done in respect of the suit premises for the purpose of repairing and renovating the same, it cannot be said that the appellants are demolishing the suit premises. If any repairs or renovation in the suit premises are required to be done they will be always incidental to the expansion of the business for which the appellants get the permission from the head of the family of Casa Social Commission Mhamai."

13. Whether the appellants herein could carry out such acts in the garb of repairs of the suit premises, in terms of a licence granted by the municipal authorities is a question which would fall for consideration of the trial court. We may for the purpose of these appeals proceed on the basis that the alleged no-objection given by one of the co-owners of the suit premises is a genuine document.

14. However, it is borne out from the records that an order of status quo is in existence since 9-5-1997 and thus balance of convenience, in our view, lies in favour of maintaining the said order.

15. We, however, would direct the trial court to dispose of the suit as early as possible as and not later than three months from the date of the communication of this order.

16. We have been assured by the learned counsel for the parties that the parties shall render all cooperation to the learned trial court for early disposal of the suit. We have made certain observations only for the purpose of the disposal of the appeals and the learned trial court shall dispose of the matter on merit without being influenced in any manner by any observation made by this Court or the High Court.

17. The appeals are disposed of with the above directions. No costs.