

Sameer Suresh Gupta Tr. Pa Holder

v.

Rahul Kumar Agarwal

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE RANJANA PRAKASH
DESAI

Civil Appeal No. 2218 Of 2013 | 06-03-2013

Leave granted.

1. This appeal is directed against the order of the learned Single Judge of the Bombay High Court, whereby he allowed the petition filed by the respondent under Article 227 of the Constitution, set aside order dated 7.5.2008 passed by the Competent Authority, Pune and dismissed Application No. 21 of 2007 filed by the appellant under Section 24 of the Maharashtra Rent Control Act, 1999 (for short, 'the Act'). The respondent filed a suit for grant of a declaration that he is a tenant of the suit premises, i.e., Row House No. C-04, Kubera Garden, Salunkhe Vihar, Pune and that Leave and Licence Agreement dated 30.7.2003 is null and void.

2. During the pendency of the suit, the appellant filed an application under Section 24 of the Act and prayed that the respondent may be directed to handover vacant and peaceful possession of the suit premises. The respondent filed written statement to contest the application. He also applied under Section 10, CPC for stay of the proceedings of the application filed by the appellant. His prayer was declined by the Competent Authority vide order dated 2.11.2007. Writ Petition No. 9160/2007 filed by the respondent for quashing the order of the Competent Authority was dismissed by the learned Single Judge of the High Court vide order dated 12.2.2008.

3. In the meanwhile, the respondent filed an application for framing a preliminary issue whether the Competent Authority has the jurisdiction to decide the application filed under Section 24 of the Act. The same was dismissed by the Competent Authority vide order dated 7.5.2008 by recording the following observations:

“11. In the case on hand, the applicant has come with the case that the relationship between the parties is of licensor and licensee, on the basis of leave and licence agreement between the parties dated 30.7.2003. While arguing the matter, the learned advocate for the opponent pointed out that by way of skillful drafting the applicant has tried to bring the application (Exh.l), within the scope of MRC Act, 1999. The purpose for giving the premises to the

opponent is not specified in the pleading and hence, we are required to go by the contents of the agreement. It is pertinent to note that the opponent has not admitted the contents of the agreement anywhere in the application (Exh.29). As against this, the opponent has disputed the relationship between the parties.

12. It means that for recording the finding about the purpose of the transaction involving the suit premises, the evidence is to be recorded. It means that the purpose for which the suit premises was given, constitutes the factual aspect of the matter. The finding against this factual aspect cannot be recorded without recording the evidence in the matter.

17. The point regarding framing of preliminary issue of jurisdiction was under the consideration of Hon'ble Bombay High Court in the Writ Petition bearing No. 5479 between the parties - Satpal Singh Yadav v. Pramod Shinde (unreported) while deciding this point, the observations of Hon'ble Bombay High Court which serve as guidelines to the Competent Authority while dealing with the proceedings covered by the special procedure. With due respect to Hon'ble Bombay High Court, I hereby reproduce the observations of Hon'ble Bombay High Court on para 7 of that judgment :

‘(7) The Competent Authority is also expected to bear in mind that each order of Competent Authority is open for challenge their Article 227 of the Constitution of India more than one order can give rise to more than one petition. The litigants who are likely to be benefited are out to test each and every order in the writ jurisdiction of this Court so as to protract the litigation. Thus consideration the litigating attitude of the litigants, the competent authority is expected to pass minimum orders adjudicating rights of the rival parties. This can only be avoided, if all the issues are tried together and judgment is pronounced on all the issues.’

After considering the provisions of Order 14 Rule 2 of CPC and the above cited judgments of Hon'ble Bombay High Court, I have no hesitation to say that in this summary proceedings, it is not at all necessary to frame and decide any issue as preliminary issue. Hence I record my finding against point No. 1 in the negative.”

4. The respondent challenged the order of the Competent Authority in Writ Petition No. 4737/2008 filed under Articles 226 and 227 of the Constitution. The learned Single Judge treated the petition as one filed under Article 227 of the Constitution and held that the Competent Authority did not have the jurisdiction to entertain the application filed by the appellant. Paragraphs 7 to 11 of the order passed by the learned Single Judge which contain the reasons for his conclusion are extracted below:

“7. Going by the contents of the agreement, it is amply clear that the premises were let out to the Petitioner in terms of the said agreement not exclusively for residential purposes. If it is

so, the provisions of Section 24 of the Act will have no application to such a case. For, Section 24 governs premises given on licence for “residence” and no other premises. Ordinarily, the issue of jurisdiction has to be addressed on the basis of the averments in the plaint. As aforesaid, there is no clear averment in the plaint that the premises were let out for residential use only. It is for that reason in the fact situation of the present case, the Court was required to not only look at the original application but also the agreement of Leave and Licence which is integral part of the Petition as the Respondent has himself referred to the said document in Paragraph 3 of the original application and annexed the same.

8. Besides what has been observed above, I find substance in the stand taken on behalf of the Petitioner that the matter can be answered also by applying Clause (b) of Explanation below Section 24 which postulates that for the purposes of Section 24 of the Act an agreement of licence in writing shall be conclusive evidence of the fact stated therein. In other words, the fact stated in the Leave and Licence Agreement which is pressed into service by the Respondent, itself will bind the Respondent being conclusive. Viewed thus, it is not a case which gives rise to mixed question of fact and law, but the Competent Authority was obliged to examine the application preferred by the Petitioner on the basis of admitted facts stated in the pleadings and the contents of the Agreement which was conclusive and binding on the parties. In other words, there was ample material before the Competent Authority to authoritatively pronounce upon the issue raised by the Petitioner in the context of the issue of its jurisdiction to try and decide the original application filed by the Respondent.

9. To get over this position, Counsel for the Respondent has relied on the observation made in paragraph 16 of the impugned Judgment which in turn, proceeds to rely on the dictum of this Court in an unreported decision in Writ Petition No. 5479 in the case of Satpalsingh Yadav v. Pramod Shinde, wherein, it is observed that the Competent Authority should try all the issues together and pronounce the Judgment on all the issues. That exposition will have no application to the case on hand, having regard to the reasons already recorded hitherto.

10. A priori, it necessarily follows that the application preferred by the Petitioner ought to have been allowed on the finding that the original application preferred by the Respondent before the Competent Authority could not be proceeded for want of jurisdiction to try and decide the same as it pertained to premises which were not exclusively let out for residential use.

11. For the aforesaid reasons, this Writ Petition succeeds. The impugned Judgment and Order passed by the Competent Authority is set-aside. Instead, the application preferred by the Petitioner is made absolute and as a consequence of the opinion recorded hitherto, the original application filed by the Respondent before the Competent Authority being application No. 21 of 2007 will have to be dismissed for want of jurisdiction of the Competent Authority. Ordered accordingly.”

5. We have heard learned Counsel for the parties and carefully perused the record.

6. In our view, the impugned order is liable to be set aside because while deciding the writ petition filed by the respondent the learned Single Judge ignored the limitations of the High Court's jurisdiction under Article 227 of the Constitution. The parameters for exercise of power by the High Court under that Article were considered by the two-Judge Bench of this Court in *Surya Dev Rai v. Ram Chander Rai and Others*, IV (2003) SLT 810=III (2003) CLT 133 (SC)=(2003) 6 SCC 675. After considering various facets of the issue, the two-Judge Bench culled out the following principles:

“(1) Amendment by Act No. 46 of 1999 with effect from 1.7.2002 in Section 115 of 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 the CPC Amendment Act No. 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 the 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 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 covert itself into a Court of Appeal and indulge in re-appreciation 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.”

7. The same question was considered by another Bench in *Shalini Shyam Shetty and Another v. Rajendra Shankar Patil*, V (2010) SLT 404=III (2010) CLT 118 (SC)=(2010) 8 SCC 329, and it was held:

“(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of Tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of the Court or Tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* and the principles in *Waryam Singh* have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in *Waryam Singh*, followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, “within the bounds of their authority”.

(f) In order to ensure that law is followed by such Tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the Tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the Tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in *L. Chandra Kumar v. Union of India* and therefore abridgment by a constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised *suo motu*.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the Tribunals and Courts subordinate to the High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality."

8. By applying principles number (4), (6) and (7) enunciated in *Surya Dev Rai v. Ram Chander Rai* (supra) to the facts of this case, we hold that the learned Single Judge was not at all justified in interfering with the order passed by the Competent Authority declining to

frame preliminary issue. The course adopted by the Competent Authority was consistent with the object underlying the amendment made by Parliament in the Code of Civil Procedure, i.e., expeditious disposal of the civil cases without interference by the higher/superior Courts at interlocutory stages of the cases.

9. We are further of the view that while examining correctness of the order passed by the Competent Authority, the learned Single Judge could not have gone into the issue of maintainability of the application filed by the appellant under Section 24 of the Act and dismissed the same. In the result, the appeal is allowed, the impugned order is set aside with the direction that the Competent Authority shall make an endeavour to finally dispose of the matter within a period of one year. It is needless to say that we have not expressed any opinion on the merits of the application filed by the appellant under Section 24 of the Act and the question relating to jurisdiction of the Competent Authority to deal with the same.