

Raja Ram Vs. State of U.P. and Others

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SooperKanoon Citation : sooperkanoon.com/455949

Court : Allahabad

Decided On : Nov-12-1997

Reported in : 1998(1)AWC393

Judge : D.C. Srivastava, J.

Acts : Urban Land (Ceiling and Regulation) Act, 1976 - Sections 31, 33, 33(2) and (3); [Code of Civil Procedure \(CPC\), 1908](#) - Order XLI, Rule 19

Appeal No. : C.M.W.P.No. 3879 of 1983

Appellant : Raja Ram

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Ashok Khare, Adv.

Judgement :

D.C. Srivastava, J.

1. Rejoinder-affidavit filed be kept on record. Heard learned counsel for the petitioner and the learned standing counsel.
2. In this writ petition the prayer is for quashing the orders dated 26.3.1982 and 18.12.1982 (Annexures 2 and 3 to the writ petition) passed by the District Judge,

Gorakhpur.

3. The brief facts are that the competent authority under the Urban Land Ceiling and Regulation Act determined the surplus land from the holding of the petitioner rejecting his objection that his sons had also share in the land in question, An appeal under Section 33 of the Act was filed which was dismissed in default by the appellate authority on 26.3.1982 vide Annexure 2. An application for restoration of the aforesaid appeal was filed which too was dismissed on 18.12.1982 through order contained in Annexure 3. These two orders are in challenge. The main challenge is to the order dated 18.12.1982. The contention is that once an appeal was admitted and was dismissed in default, the view of the appellate authority that the appeal so dismissed in default cannot be restored and provisions of Order XLI, Rule 19. C.P.C. are not attracted, is not correct and in accordance with law. Learned standing counsel has supported the view taken by the appellate authority.

4. Section 31 of the Act deals with the powers of Competent Authority. It provides that not all the provisions but certain provisions in the Code of Civil Procedure shall apply to the proceedings before the competent authority. The provision for appeal is contained In Section 33 of the Act. The proviso to Section 33 provides for entertaining appeal which is filed beyond thirty days of the communication of the order passed by the competent authority. Sub-section (2) of Section 33 of the Act provides that on receipt of an appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard, pass such order thereon as it deems fit as expeditiously as possible.

5. The words 'after giving the appellant an opportunity of being heard' are meaningful as the Legislature intended that the appellant should be afforded an opportunity of hearing and then only the appeal should be decided.

6. Sub-section (3) of Section 33 further provides that every order passed by the appellate authority under this section shall be final. The Legislature intended to attach finality to the order passed by the appellate Authority. It was conscious of the fact that the appellant should be given reasonable opportunity of being heard before final order is passed by the appellate authority. It is true that unlike Section 31, there is no provision under Section 33 as to how the appellate authority shall

proceed to hear and decide the appeal and what provisions of the Code of Civil Procedure for hearing of appeal have been made applicable, yet from the words 'after giving the appellant an opportunity of being heard' mentioned in sub-section (2) of Section 33 make it clear that an order dismissing the appeal in default is not final order within the ambit of sub-section (3) of Section 33 of the Act. If the Legislature Intended to afford an opportunity to the appellant of being heard by the appellate authority, it implies that if the appeal has been dismissed in default, the appellant may come forward and apply the Court for affording opportunity of hearing which further implies prayer for setting aside the order dismissing the appeal in default. Of course, in doing so, the appellant has to make out sufficient cause why he could not appear on the date of hearing of appeal. For this affidavit was filed by the appellant before the appellate authority supported by medical certificate of a doctor that the appellant was ill. It appears from the impugned order Annexure 3 that no counter-affidavit was filed by the State of U. P. challenging the correctness of the affidavit and the medical certificate. If no counter-affidavit was filed, the affidavit and the medical certificate, which remained uncontroverted, was liable to be accepted and in refusing to accept the same, the appellate authority committed manifest error of law.

7. For the reasons stated above, the impugned order, Annexure 3, cannot be sustained. The writ petition, therefore, succeeds and is allowed. The impugned order, Annexure 3, dated 18.12.1982 is accordingly quashed. As a consequence of quashing of this order, the order dismissing the appeal in default, Annexure 2 is likewise quashed. The appellate authority is directed to hear and dispose of the appeal of the petitioner expeditiously in accordance with law after affording him reasonable opportunity of being heard. In the circumstances of the case there shall be no order as to cost.