

Madan Singh Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Feb-09-1999

Reported in : 1999(2)AWC996

Judge : B.K. Roy and;Yatindra Singh, JJ.

Acts : [Indian Stamp Act, 1899](#) - Sections 47A and 48; [Constitution of India](#) - Article 141

Appeal No. : C.M.W.P. No. 19223 of 1992

Appellant : Madan Singh

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : H.S. Nigam, Adv.

Judgement :

B.K. Roy and Yatindra Singh, JJ.

1. The prayer of the petitioner is to quash the order dated 10th February. 1992 as contained in Annexure-2. Annexure-2 contains a copy of letter dated 10.2.1992 issued by the Additional Collector (Finance and Revenue), Denradun to the petitioner stating, inter alia, that in furtherance of the notices dated 1.10.1991.

9.11.1991 and 7.1.1992, he is being informed that a sum of Rs. 43,500 as stamp fee is to be paid by him on account of lease in his favour thereby it is expected that he will deposit the said amount within one week and in the event of its non-payment, action under Section 48 of the Stamp Act will be taken.

2. Sri H. S. Nigam, learned counsel appearing in support of this writ petition contended as follows :

(i) The ratio laid down by the three Judges Full Bench decision of our Court in Board of Revenue v. Mulakh Raj and another 1984 ACJ 99, is squarely in favour of the petitioner which had merged in the order passed by the Hon'ble Supreme Court dismissing the Special Leave Petition preferred by State of U. P. against the three Judges Full Bench decision and accordingly this writ petition be allowed.

(ii) The Five Judges Full Bench of this Court in Civil Misc. Writ Petition No. 6325 of 1993. Smt. Guddi v. State of U. P.. 1997 ACJ 631, reversing the earlier Full Bench decision is not a good law inasmuch as it has overlooked the fact of dismissal of the State's S.L.P. and thus is not a binding precedent.

3. When we enquired from Sri Nigam as to whether the Hon'ble Supreme Court had dismissed the Special Leave Petition filed by State of U. P. after recording any reason, he frankly answered that no speaking order was passed but yet in view of its latest two Judges Division Bench decision in Sree Narayana Dharma Sangam Trust v. Swami Prakashananda and others 1998 (1) AWC 365 (SC), even orders passed by the Supreme Court dismissing the Special Leave Petition in limine will have the effect of merger of the judgment of the High Court in the Supreme Court and thus the order by which the Special Leave Petition of the State of U. P. was dismissed, was binding on the Five Judges Full Bench decision as well as on us and thus, we are required to set aside the impugned direction and allow this writ petition.

4. The Hon'ble Supreme Court in Uday Pratap Singh v. State of Bihar : 1994(4)SCALE344 , had clearly ruled that dismissal of Special Leave Petition by a non-speaking order does not imply approval of the impugned Judgment. It laid down in (i) Yogendra Narayan Chaudhary v. Union of India AIR 1996 SC 751 and

(ii) Kirloskar Brothers Ltd. v. E.S.I. Corporation : (1996)ILLJ 1156 SC , that in limine dismissal of S.L.P. or without laying down any law does not operate as res judicata. Same view was taken by it in Union of India v. Sube Ram, : (1997)9SCC69 ; Union of India v. Sher Singh : AIR 1997 SC1796 ; C. E. D. v. Pratap Singhji : [1987]167ITR210(SC) and Mir Osman Ali Khan v. C. W. T. : [1986]162ITR888(SC) . Thus, there is no law declared to constitute a binding precedent under Article 141 of the Constitution on us.

5. Judicial discipline requires us to follow the express judgment rendered by the Five Judges Full Bench Decision overruling the three Judges Full Bench decision on which Mr. Nigam has placed reliance.

6. Sree Narayana Dharma Sangam Trust (supra), strongly relied upon by Sri Nigam is apparently distinguishable on facts and does not take a contrary view after considering the earlier decisions of the Supreme Court referred to above by us.

7. For the reasonsaforementioned, we dismiss this writpetition, but without there being anyorder as to cost.

8. With this dismissal, the authority below may proceed in accordance with law.

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