

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

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Court : Allahabad

Decided On : Mar-02-1998

Reported in : 1998(2)AWC1410

Judge : D.K. Seth, J.

Acts : Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 - Sections 4, 11(2), 12, 13, 20, 21 and 38; Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1986; Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Ordinance, 1986; [Constitution of India](#) - Article 213; Uttar Pradesh General Clauses Act - Sections 5(2)

Appeal No. : C.M.W.P. No. 3987 of 1986

Appellant : Tota Ram

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Mahesh Gautam, Adv.

Judgement :

D.K. Seth, J.

1. Against an order passed under Section 11 (2) read with Section 12 of the U. P. Imposition of Ceiling on Land Holdings Act, 1960. the petitioner had preferred an appeal under Section 13 thereof. The said appeal being numbered 45 of 1985 arising out of the order dated 23rd February, 1985 passed in Case No. 12 of 1982 was heard on 16th January, 1986 and was disposed of by an order dated 24th January, 1986.

2. Mr. Mahesh Gautam, learned counsel for the petitioner has assailed the said order on the ground that by reason of promulgation of the U. P. imposition of Ceiling on Land Holdings (Amendment) Ordinance, 1986, since been replaced by U. P. Act No. 3 of 1986, there was an amendment of Section 13. By virtue of such an amendment, the jurisdiction to hear an appeal by District Judge was replaced by that of Commissioner. The text of the said Ordinance is quoted below :

'The Uttar Pradesh imposition of Ceiling on Land Holdings (Amendment)

Ordinance, 1986

(U. P. Ordinance No. 3 of 1986)

Promulgated by the Governor in the thirty-sixth year of the Republic of India

AN

ORDINANCE

further to amend the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960.

Whereas the State Legislature is not in session and the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action.

Now, therefore, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution, the Governor is pleased to promulgate the following Ordinance, 1986.

It shall come into force at once.

2. In Sections 13, 20 and 21 of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960, hereinafter referred to as the Principal Act, for the word 'District Judge', wherever occurring, the word 'Commissioner' shall be substituted.

3. In Section 38 of the Principal Act, in sub-section (2),--

(a) for the word 'District Judge', the word 'Commissioner' shall be substituted. 4. All proceedings and appeals under Sections 13, 20 and 21 of the Principal Act, pending immediately before the commencement of this Ordinance before any District Judge, Additional District Judge, Civil Judge or Additional Civil Judge shall stand transferred to the Commissioner and shall be disposed of by the Commissioner in accordance with the provisions of the Principal Act, as amended by this Ordinance.'

3. It appears that the said Ordinance has come into force with immediate effect. In the absence of any specific date prescribing the effect of the said amendment in terms of Section 5 (2) of the U. P. General Clauses Act, the same should be taken to have come into force on the expiry of the day preceding the date of commencement, i.e., the publication of the notification. Thus the same was effective from 13th January, 1986. Then again when the said Ordinance was replaced by U. P. Act No. 3 of 1986, the date of the effect or commencement was mentioned as on 13th January, 1986.

4. By reason of the said amendment, the word 'District Judge', occurring in Section 13 and Additional District Judge, Civil Judge and Additional Civil Judge occurring therein were replaced by Commissioner and Additional Commissioner respectively. Section 4 of the said Ordinance provides that all such appeal pending before the commencement of the Ordinance before any District Judge, Additional District Judge, Civil Judge or Additional Civil Judge shall stand transferred to the Commissioner which shall be disposed of by the Commissioner.

5. In view of such provision being incorporated in Section 13, the present appeal pending before the learned District Judge stood transferred w.e.f. 13th January, 1986 to the Commissioner and was liable to be disposed of by the Commissioner. The effect of said Ordinance had taken away the competence and jurisdiction of

the learned District Judge to decide and dispose of the same, on its commencement.

6. In the present case, the appeal was heard on 16th January, 1986 by the District Judge when there was no Jurisdiction in him and it was so on 24th January, 1986 when the appeal was decided.

7. In that view of the matter, in the absence of any jurisdiction, the learned District Judge could not have proceeded to hear the said matter and decide the same. If an authority does not possess jurisdiction, in that event, any order good, bad or different renders void and a nullity. Therefore, the order impugned in the present writ petition, namely, the appellate order is wholly without jurisdiction and as such is void and a nullity.

8. Mr. Mahesh Gautam, learned counsel for the petitioner has relied on a decision in the case of Pandurang and others v. State of Maharashtra, 1987 (ECC) Excise and Food Adulteration Reports, 89, which supports the above view.

The Apex Court in the said case has held :

'When a matter required to be decided by Division Bench of the High Court is decided by a learned single Judge, the judgment would be a nullity, the matter having been heard by a Court which had no competence to hear the matter. It being a matter of total lack of jurisdiction. The accused was entitled to be heard by atleast two learned Judges constituting a Division Bench and had a right to claim a verdict as regards his guilt or innocence at the hands of the two learned Judges. This right cannot be taken away except by amending the rules. So long as the rules are in operation it would be arbitrary and discriminatory to deny him this right regardless of whether it is done by reason of negligence or otherwise. Deliberately, it cannot be done. Negligence can neither be invoked as an alibi, nor can cure the infirmity or illegality, so as to rob the accused of his right under the rules. What can be done only by atleast two learned Judges cannot be done by one learned Judge. Even if the decision is right on merits, it is by a forum which is lacking in competent with regard to the subject-matter. Even a 'right' decision by a 'wrong' forum is no decision. It is non-existent in the eyes of law. And hence a

nullity. The Judgment under appeal is therefore no Judgment in the eyes of law. 'This Court in *State of Madhya Pradesh v. Dewadas and others*, 1982 (3) SCR 81, has taken a view which reinforces our view. We, therefore, allow the appeal, set aside the order passed by the learned single Judge, and send the matter back to the High Court for being placed before a Division Bench of the High Court, which will afford reasonable opportunity of hearing to both the sides and disposes it of in accordance with law, expeditiously. We wish to add that the Registry of the High Court was expected to have realized the true position and ought not to have created a situation which resulted in waste of Court time, once for hearing the appeal, and next time, to consider the effect of the rules. No Court can afford this luxury with the mountain of arrears which every Court is carrying these days.'

9. In view of the aforesaid amended provision, the appeal shall be deemed to have been transferred to the Commissioner or the Additional Commissioner, as the case may be. It would be open to the Commissioner or Additional Commissioner, as the case may be, to hear and dispose of the said appeal in accordance with law. The learned District Judge shall remit the records of the case to the Commissioner forthwith.

10. Writ petition thus stands allowed.