

Surendra Singh Vs. District Judge, (Prabhari Adhikari), Kanpur Nagar and Others

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Court : Allahabad

Decided On : Sep-20-1999

Reported in : 1999(4)AWC3396

Judge : D.K. Seth, J.

Acts : Utrtar Pradesh Urban Planning and Development Act, 1973 - Sections 27, 27(1), 27(2) and 27(4); [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 39275 of 1999

Appellant : Surendra Singh

Respondent : District Judge, (Prabhari Adhikari), Kanpur Nagar and Others

Advocate for Def. : S.C. and ;M.M.D. Agarwal, Adv.

Advocate for Pet/Ap. : I.N. Singh and ;Ajay Yadav, Adv.

Judgement :

D.K. Seth, J.

1. An order of demolition of the house situated in the suit property belonging to the plaintiff petitioner was passed by the Kanpur Development Authority under

Section 27, sub-section (1) of the U. P. Urban Planning and Development Act, 1973. The petitioner as plaintiff filed Original Suit No. 897 of 1985 before the learned Additional Civil Judge (Senior Division), Kanpur Nagar for an injunction restraining the Kanpur Development Authority defendant from demolishing the house and obtained an ad interim injunction. The suit was dismissed in default on 29th November, 1994. Upon an application for restoration, the said order was reversed and the suit was restored on 25th August, 1995. The suit was again dismissed in default on 18th November, 1996. An application for restoration of the suit was filed on 31st May, 1997. The said application of restoration was dismissed on 3rd July, 1998 on the ground that by mistake the date was noted in the diary of the counsel as 7th July, 1998. This application was dismissed by an order dated 4th March, 1999 by the learned Additional Civil Judge (Senior Division), IIIrd Court. Kanpur Nagar passed in Case No. 48/74/98. The said order was affirmed in Civil Revision No. 107 of 1999 by an order dated 23rd April, 1999 passed by the District Judge, Kanpur Nagar. These orders have since been challenged by Mr. Ajay Yadav, learned counsel for the petitioner. According to him, the petitioner had made out sufficient ground for recalling the said order. Inasmuch as no objection was filed to the affidavit filed by the petitioner and that there were sufficient grounds for his non-appearance.

2. On the other hand. Mr. M. M. D. Agarwal, learned counsel for the opposite parties contends that the petitioner on the apprehension that there is no merit in the suit, had been lingering on with the suit in order to take advantage of the interim order granted in the suit. According to him. an order under Section 27 (1) of the 1973 Act is appealable under subsection (2) thereof. Therefore the petitioner having known the fate of the suit, he was after dragging on the same. According to him, both the Courts below had found that therewas no sufficient cause made out and at the same time, the only purpose was to delay the suit, which according to him, is concurrent finding of fact arrived at by the Courts below, which should not be disturbed by this Court in revision on an application under Article 226 of the [Constitution of India](#).

3. I have heard both the learned counsel at length.

4. It is apparent from the impugned orders that both the Courts below have arrived at a concurrent finding that the petitioner has not been able to make out sufficient ground for recalling the order and that the petitioner in order to drag on the process had adopted the tactics. The said finding is supported by reason of the provision under Section 27 of the 1973 Act as referred to by Mr. M. M. D. Agarwal.

5. Section 27 of the 1973 Act provides that the Development Authority may pass an order of demolition of a building if it contravenes the master plan or is made without approval or sanction as referred to in Section 14 of the said Act. Sub-section (2) makes an order passed under sub-section (1) of Section 27 of the Act appealable to the Chairman who may pass an order of stay in such an appeal under subsection (3). Sub-section (2) empowers the Chairman to pass appropriate order on such appeal. Sub-section (4) makes it clear that the decision of the Chairman on the appeal and subject only to such decision, the order under sub-section (1), shall be final and shall not be questioned in any Court. The said Act is special statute which creates an embargo In respect of the jurisdiction of the civil court relating to an order of demolition passed under Section 27 of the said Act. Thus it is apparent that the petitioner might have a reasonable apprehension that the suit may not succeed if it is heard on merit and, therefore. It can be reasonably presumed that he was after delaying the process. Such a finding has been arrived at by both the Courts below, which is a concurrent finding of fact.

6. It appears that there is rationale behind such finding, which is supported by sub-section (4) of Section 27 of the 1973 Act. Sitting in writ jurisdiction, this Court is not supposed to disturb the concurrent finding of fact unless there are perversity. In the present case, I have not been able to find out any perversity in the orders Impugned. Therefore, I am not inclined to interfere with the same.

7. The writ petition, therefore, fails and is accordingly dismissed. No cost.

8. It is made clear that this order is tentative for the purpose of deciding this case and shall not influence the learned trial court while deciding the suit on merit.