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Court : Delhi

Decided On : Apr-20-1973

Reported in : ILR1973Delhi595

Judge : P.N. Khanna and; Prithvi Raj, JJ.

Acts : [Constitution of India](#) - Article 133(1)

Appeal No. : Civil Appeal No. 10 of 1973

Appellant : Hakim Mohd

Respondent : Union of India

Advocate for Pet/Ap. : A.L. Patney,; Rekha Sharma,; Urmila Kapoor,;

Judgement :

P.N. Khanna, J.

(1) This petition has been filed under Article 133 of the [Constitution of India](#) for the grant of a certificate of fitness for appeal to the Supreme Court, against our order dated November 2, 1972, dismissing the petitioner's writ petition.

(2) Mr. A. L. Patney, the learned counsel for the petitioner, submits that he had made two-fold prayers in his writ petition, viz. that the respondents be restrained from taking forcible possession of the dargah and that they be further restrained

from demolishing the grave and the dargah and other structures. According to him, no decision was given on the question of demolishing of the graves and other structures and that our decision was reached because we were not satisfied that the petitioner was in possession. The contention of the learned counsel, however, is without substance. It is clear from a perusal of our judgment that it was based on an affidavit sworn by the Chief Executive Director, Third Asian International Trade Fair, Ministry of Foreign Trade, annexure R-8, annexed to the reply filed on behalf of the respondents Nos. 1 and 2, where it was specifically stated that the Third Asian Trade Fair authorities had acquired 'vacant land comprising of dis-used and abandoned grave-yard' on September 3, 1972. It was also stated that possession had been taken after getting the said dis-used and abandoned grave-yard cleared of unauthorised squatters and further that the land was in possession of the said authorities. It was then categorically asserted that no part of the said land was in occupation of any other person and was in fact under the control of the Land and Development Officer. In view of these assertions, there was no question of restraining any one from demolishing anything as nothing was stated to be existing at the site; and whatever was there, was already under the direct control of the respondents. The petitioner was found not to be in possession. These were all questions of fact, which were found against the petitioner on the evidence available on record. It was in these circumstances that the petition was dismissed. No question of law was involved.

(3) The only ground on which the prayer for the grant of the certificate is made, is that the value of the property involved in the court of first instance and still in dispute was and is not less than Rs. 20,000/. Mr. Patney, the learned counsel for the petitioner contends that the right of appeal to the Supreme Court, being a vested right is not affected by the amendment of clause (1) of Article 133 of the Constitution effected by the Constitution (Thirtieth Amendment) Act. 1972, herein called the Amendment Act, which came into force on February 27, 1973. He had filed his petition on December 13, 1972. He, therefore, urges that the petitioner is entitled to the certificate under the provisions of law as it existed before the amendment.

(4) Section 3 of the Amendment Act is the relevant section, which reads as follows :-

'3.(1) Nothing in this Act shall affect- (a) any appeal under sub-clause (a) or sub-clause (b) or sub-clause (c) of clause (1) of Article 133 of the Constitution which immediately before the commencement of this Act was pending before the Supreme Court; or (b) any appeal preferred on or after the commencement this Act against any judgment, decree or final order in a civil proceeding of a High Court by virtue of a certificate given by the High Court before the commencement of this Act under sub-clause (a) or subclause (b) or sub-clause (e) of clause (1) of Article 133; and every such appeal may be heard and disposed of or, as the case may be, entertained, heard and disposed of by the Supreme Court as if this Act had not been passed. (2) Subject to the provisions of sub-section (1), no appeal shall lie to the Supreme Court under clause (1) of Article 133 of the Constitution from any judgment, decree or final order arising out of a suit or other civil proceeding which was instituted or commenced in any court before the commencement of this Act unless such appeal satisfies the provisions of that clause as amended by this Act.'

Sub-section (2), it will be observed, has created an absolute bar to an appeal under the said Article to the Supreme Court, unless such appeal satisfies the provisions of Article 133(1), as amended by the Amendment Act. The vested right of appeal, whatever it was, has thus been specifically taken away, unless it survives by satisfying the requirements of the Article 133(1), as amended. Sub-section (1) of section 3. above, provides two exceptions to the aforesaid bar of subsection (2) Under clause (a), an appeal, which immediately before the commencement of the Amendment Act was pending before the Supreme Court, would not be affected by the amendment. Under clause (b) an appeal preferred even after the commencement of the Amendment Act against any judgment, decree' or final order in a civil proceeding of the High Court will not be affected, if the certificate of fitness was given by the High Court before the commencement of the Amendment Act. This clearly shows that the bar created by subsection (2) is absolute and in full operation unless the petitioner can show that his case is covered by one of the aforesaid two exceptions given in clauses (a) and (b) of sub-

section (1). In other words, the judgment, decree or final orders in a civil proceeding in the High Court would be governed, for purposes of granting a certificate of fitness for appeal to the Supreme Court by Article 133(1) as now amended, if such a certificate has not already been granted before the commencement of the Amendment Act. The mere filing of an application for the grant of such a certificate, even if filed before the commencement of the Amendment Act, is of no avail.

(5) In the present case, the petition under Article 133 of the Constitution was filed on December 30, 1972, but a certificate of fitness has not so far been granted. The certificate can now be granted only if the requirements of the amended Article 133(1) are satisfied.

(6) The Amendment Act substituted a new clause for the old clause (1) of Article 133 of the Constitution and has provided that an appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court, if the High Court certifies that the case involves a substantial question of law, which is not only of general importance, but also in the opinion of the High Court needs to be decided by the Supreme Court. The valuation of the property involved is no longer of any importance.

(7) The present being a case, which does not involve any question of law, we do not find any merit in this Petition; and the same is, therefore, dismissed without any order as to costs.