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Court : Delhi

Decided On : Oct-14-1968

Reported in : 5(1969)DLT424

Judge : V.S. Deshpande, J.

Acts : Constitution of India - Article 227

Appeal No. : Miscellaneous Second Appeal No. 25 of 1968

Appellant : Detoa

Respondent : Phagu

Advocate for Pet/Ap. : K.C. Pandit,; Prithvi Raj and; P.N. Nag, Advs

Judgement :

V.S. Deshpande, J.

(1) The question in this appeal is whether this court can suo mtou exerciset powers of superintendence and control without having been moved by a specific petition under article 227 of the Constitution.

(2) Khasra No 451 measuring 5 bighas and 12 bids was of village Kumar said was admittedly cultivated by respondent Phagnu holding under the appellant deity. It is said that Phagnu relinquished his rights as a tenant about 12 or 14 years ago and

since then is tilling this land as an employee of the deity. If the land was under the personal cultivation of the deity, then it did nto vest in the State in view of subsection (2) of section 27 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 (hereafter called the Act). Nevertheless, the Compensation Officer purposed to proceed under Section 27 of the Act and actually ordered on 28th December, 1967 that the ownership rights be granted in favor of the deity against payment of Rs. 168.24. The grantee was told to deposit the amount of Compensation within a period of two months.

(3) Section 85 of the Act invalidates any contract or agreement made between the land owner and any toher person including the tenant on or after the 1st of April, 1952, which has the effect of directly or indirectly preventing the vesting of any lard of the land owner in the State Government or to defeat any toher provisions of Chapter Viii of the Act. Even according to the case of the deity, the so-called relinquishment had taken place only 12 to 14 years prior to December, 1967. It is clear, thereforee, that it had taken place after the 1st of April, 1952. Its direct effect was to take the land out of the provisions of subsection (1) of Section 27 of the Act and to center the prtoection of Subsection (2) of Section 27 on the deity. It was, thereforee, directly hit by the provisions of section 85. The relinquishmentt was, thereforee, void, even if it had actually taken place.

(4) The legal position, thereforee, was that Phagnu continued to be the tenant of this land when the Act came into force. As the land was cultivated by a tenant and as it paid more than Rs. 125 as land revenue it vested in the State under section 27(1) of the Act. The transfer of the right, title and interest of the land owner deity so acquired under section 27(1) had to be made by the State Government to Phagnu under sub-section (4) of the Act. The learned Compensation Officer purported to transfer the rights 16 the deity instead of Phagnu. The order of the learned' Compensation Officer being contrary to the fundamental provision of the Act, may be said to be illegal and without jurisdiction. The grave errors of law are apparent on the face of if. The learned District Judge was, thereforee, right in setting aside the order of the Compensation Officer and in remanding the case to him. I agree to the order old the remand, but would add that the further observations made by me above may be lorne in mind by the learned

Compensation Officer who will enquire into this matter in the light of the said observations de-nova after giving permission to tie parties to file fresh pleadings and adduce fresh evidence.

(5) The learned counsel for the appellant realised that on the merits of the case his position was weak. He was on a better fotoing, however, in pointing out that the appeal to the learned District Judge was filed beyond the period of limitation. The only ground urged by Phagnu as sufficient cause under section 5 of the Limitation Act was that the order of the learned Compensation Officer, though dated 28th December, lfc67, was actually conveyed to him on 29th February 1968. It is deaf to me that as a rule, the order sheet-written by a Court or Tribunal must be presumed to be correct-unless a heavy burden resting on the party challenging its correctness is discharged by proper averments, affidavit and, if necessary, by evidence. I am unable, thereforee, to regard the affidavit of Phagnu as sufficient to show that the order of the learned Compensation Officer dated 28th December, 1967 was nto communicated to him on the same date. Consequently, the appeal to the District Judge was time-barred and could nto be entertained by him.

(6) The question, thereforee, is whether inspire of the errors of jurisdiction and law committed by the Compensation Officer, there is no remedy available to this court to do Justice between the parties. It is clear to me that this court can act suo mtou under Article 227 of the Constitution in keeping the Compensation Officer within the bounds of his jurisdiction. Section 95 of the Act would show that the Compensation Officer is a tribunal very much analogous to a civil court. This Court, thereforee, has the power and duty of superintendence and control over him under article 227 of the Constitution. This superintendence and control can be exercised even though the appeal to the learned District Judge was barred by time. There is no rule of limitation fixed for preferring of an application under Article 227. Much less can there be a period of limitation for the court to act suo mtou under Article 227. The generally accepted rule is that a party has to go to the Court as expeditiously as possible. The mere fact that technically Phagnu was late by a few days in filing the appeal to the District Judge may be a bar to that appeal under the Limitation Act, but it is nto a bar in the way of this Court to give him relief under Article 227 of the Constitution Jai Ram Sonu v. New India Rayon Mill Co.

Ltd. and Narayan Deju Puthrani v. The Labour Appellate Tribunal of India and antoher.

(7) The appeal against the judgment of the learned District judge is, thereforee, allowed to the extent that the learned District Judge could nto have entertained the appeal which was barred by limitation. But acting under Article 227 of the Constitution, the order of the learned Compensation Officer is set aside and he is directed to proceed in the light of the observations made above under section 27 of the Act. He will first find out, in view of section 85 of the Act, whether Phagnu continued to be the tenant of the suit land. He will then find out whether the land vested in the State. If the findings on btoh these issues are in the affirmative, then the learned Compensation Officer will have to decide to whom the rights in the land should be transferred from the state under sub-sect on (4) of Section 27 and the consequential matters of compensation etc. In the special circumstances of the case, I make no order as to .costs. Parties to appear before the Compensation Officer on 18th November, 1968.

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