

Sarsa and anr. Vs. J and K Special Tribunal and ors.

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Court : Jammu and Kashmir

Decided On : Mar-19-2004

Reported in : 2004(3)JKJ424

Judge : S.K. Gupta, J.

Acts : Limitation Act - Section 3; ;Agrarian Reforms Rules - Rule 52

Appeal No. : OWP No. 238 of 2004

Appellant : Sarsa and anr.

Respondent : J and K Special Tribunal and ors.

Advocate for Def. : A.H. Qazi, AAG

Advocate for Pet/Ap. : S.S. Lehar, Sr. Adv. and; Nitin Bhasin, Adv.

Disposition : Writ petition dismissed

Judgement :

S.K. Gupta, J.

1. The short submission made by the learned counsel appearing for the petitioners is that respondent No. 2, Agrarian Reforms Commissioner, Jammu instead of deciding the case on merits, as directed by this court vide order dated 11.9.2001 passed in OWP No. 948 of 1999, entitled Sarsa and Anr. v. State of Jammu &

Kashmir and Ors., dismissed the appeal of the petitioner on the ground of limitation only and respondent No. 1, J&K; Special Tribunal, Jammu up-held the order of the respondent No. 2, without going into the merits of the case.

2. The dispute pertains to the payment of rent to one Vaishno Dass, respondent No. 4 landlord, by the petitioner who is tenant under him. The landlord, respondent No. 4, approached the Tehsildar, Jammu regarding recovery of rent against the petitioner and other tenants of the land which was owned by respondent No. 4 and in possession of tenants. The Tehsildar, vide its orders dated 1.10.1991 and 10.7.1993 accepted the claim of respondent No. 4. Aggrieved by the order of the Tehsildar, the petitioner tenant impugned its correctness before the Financial Commissioner (Revenue) with powers of Commissioner Agrarian Reforms, Jammu and the order of the Tehsildar was modified on the basis of some agreement reached between the parties. The order passed by the Financial Commissioner dated 26.09.1996, however, came to be challenged before the J&K; Special Tribunal, Jammu where the order of the Financial Commissioner was set-aside and that of Tehsildar, Jammu was up-held. The matter did not end up here and was agitated in writ petition before this court by petitioner, tenant. The case, however, was remanded back to the Financial Commissioner with a direction to decide the appeal on merits and, if any, objection to the maintain-ability of the appeal is raised, that shall also be considered. The matter was heard by the Financial Commissioner (Revenue), Jammu and he dismissed the appeal on the ground of being time barred, vide order dated 26.5.2003. This order of the Financial Commissioner again was challenged in revision Under Section 21(2) of the J&K; Agrarian Reforms Act, 1976 before the J & K Special Tribunal, Jammu. The revision was, however, found possessing no merit and was dismissed, vide order dated 11.2.2004 which is subject-matter of challenge in this writ petition.

3. The sole ground taken by the Mr. S.S. Lehar, learned counsel for the petitioners, in this writ petition and strenuously vouched in his debate is that the matter was remanded to the Financial Commissioner (Revenue) to be heard and decide on merits, but the appellate authority without going into the merits of the case dismissed the appeal on the ground of being barred by limitation. It was further submitted by Mr. S.S. Lehar that the appeal could not be dismissed on the

point of limitation alone in view of a specific direction issued by this court to go into merits of the case. Further contention of Mr. S.S. Lehar is that the plea of limitation cannot be raised for the first time in appeal. All facts which are necessary to support the plea must be taken in appeal on record. It is further stated that any objection that the appeal being time barred, if not raised, at any time earlier than at the time of the arguments in appeal, must be rejected. It is relevant to refer section-3 of the Limitation Act(1995) which reads as under;

'3. Dismissal of suits, etc., instituted, etc. after period of limitation.- Subject to the provisions contained in section 4 to 25(inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefore by the first Schedule shall be dismissed, although limitation has not been set up as a defence.'

4. It is indisputably gatherable from the aforesaid provision that a question of limitation, arising as a pure question of law can, be raised in appeal though the same was not raised before the trial court. The aforesaid section casts a duty on the court to consider the question of limitation even if not raised by the parties, such a contention can be permitted to be raised for the first time in appeal. To elucidate further, though the limitation is not pleaded or raised earlier the appellate court before which the plea is first raised must take notice of it if it appears that it is barred by time. An appellate Court is entitled to decide a point of limitation even if the respondents have not raised it. Further it may be pointed out that there is no fatter that the plea of limitation cannot be raised even at the time of arguments in appeal. Where, the appeal preferred against the order of Tehsildar, is found by the appellate Authority to be time barred it must be dismissed on this ground alone. However, it is not disputed that the delay cannot be condoned, but only requirement is the satisfaction of the court that it has been sufficiently, adequately and satisfactorily explained. Preferring of an application seeking delay to be condoned would itself not be sufficient. The plea of limitation can be raised at any stage including the appellate stage. The Act must be applied at whatever stage it is found applicable provided it is before a final order or decree is passed. In the above view of the matter, the contention raised by Mr. Lehar, learned counsel appearing for the petitioners is devoid of legal force and bereft of any substance

and, thus, cannot be accepted.

5. Another limb of argument advanced by Mr. Lehar was non-compliance of the rule-52 of the Agrarian Reforms Rules. In this context, it may be pointed out that the record of the case is required to be submitted to the revisional authority only when the appellate authority is of the opinion that the order of the appellate authority deserves to be revised. In this case, the appeal having been dismissed by the appellate authority on the question of limitation only, record was not required to be submitted to the revisional court. This submission of the learned counsel for the petitioners though manifestly appears to be attractive but cannot be accepted in view of the aforesaid reasons.

6. In the facts and circumstances of the case, I do not find any infirmity or palpable illegality in the order impugned. No justifiable cause is made out by the petitioner to maintain the writ petition.

7. There is no merit, in my view, in the writ petition which is, accordingly, dismissed at the preliminary stage of hearing.