STATE OF U.P. & ORS. A

v.

ROSHAN SINGH (DEAD) BY LRS. & ORS.

(C.A. Nos. 453-455 of 2008)

JANUARY 16, 2008 B

(DR. ARIJIT PASAYAT AND AFTAB ALAM, JJ.)

Code of Civil Procedure, 1908:

s.151 – Powers of court under – Scope of – Tenure-holder not filing statutory appeal against order declaring his land in C
excess of ceiling limit – After a lapse of about 2 years filing application u/s 151 CPC before Prescribed Authority – Application rejected – Appeal dismissed – High Court allowing the application – Held: Provisions of s.151 CPC would not be available when there is an alternative remedy – Tenure-holder D
having not availed the remedy of filing appeal u/s 12 of the Ceiling Act, judgment of High Court cannot be sustained – U.P. Imposition of Ceiling on Land Holdings Act, 1954 – S.12.

Certain land of the respondent tenure-holder was declared as surplus under the provisions of the U.P. Imposition of Ceiling on Land Holdings Act, 1954. He did not file any appeal. After a lapse of about two years, the tenure-holder filed an application under Section 151 CPC before the Prescribed Authority contending that during ceiling proceedings, consolidation proceedings were also in operation wherein different area was indicated, as a result of which his holding was reduced. The claim was rejected. The appeal filed by the tenure-holder was also dismissed. He then filed a writ petition before the High Court. Meanwhile the surplus land was distributed whereagainst two more writ petitions were filed. The High Court allowed the first writ petition and on that basis also allowed the subsequent writ petitions. E F G

In the instant appeals filed by the State Government,

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A it was contended for the appellants, inter alia, that when statutorily an opportunity and/or forum was provided which was not availed, the application u/s 151 CPC was not maintainable.

B Allowing the appeals, the Court

HELD: 1.1 It is well settled that provisions of Section 151 CPC will not be available when there is an alternative remedy. The object of the section is to supplement and neither to replace the remedies provided for in the CPC C nor to override or evade other express provisions. It cannot be invoked when there is express provision even under which the relief can be claimed by the aggrieved party. The operative field of power being thus restricted, the same cannot be risen to inherent power. The inherent D powers of the Court are in addition to the powers specifically conferred on it. If there are express provisions covering a particular topic, power u/s 151 CPC cannot be exercised in that regard. Section 151 CPC confers on the Court power of making such orders as may be necessary for the ends of justice. [Para 7] [792-A, B & C]

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Arjun Singh vs. Mohindra Kumar & Ors. AIR 1964 SC 993 and *State of W.B. & Ors. vs. Karan Singh Binayak & Ors.* 2002(4) SCC 188 – relied on.

1.2 In matters with which the CPC does not deal with, F the Court will exercise its inherent power to do justice between the parties which is warranted under the circumstances and which the necessities of the case require. If there are specific provisions of the CPC dealing with the particular topic and they expressly or by G necessary implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter, the inherent powers of the Court cannot be invoked in order to cut across the powers conferred by the CPC. The inherent powers of the Court H are not to be used for the benefit of a litigant who has

remedy under the CPC. Similar is the position vis-à-vis other statutes. [Para 7] [791-E, F, G & H] A

1.3 Undisputedly, an aggrieved person is not remediless under the U.P. Imposition of Ceiling on Land Holdings Act, 1954. The conclusions of the High Court are not only cryptic but also without indication of any basis. Besides, the application under Section 151 CPC was filed long after the period provided for preferring an appeal under Section 12 of the Act. The judgment of the High Court impugned in the instant appeals cannot be sustained and are set aside. [Para 7, 8 & 11] [792-D & E; 794-F] B C

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 453-455 of 2008.

From the final Judgment and Order dated 13.11.2002 of the High Court of Judicature at Allahabad in Civil Misc.Writ Petition No. 17464 of 1984 in Civil Misc. Writ Petition No. 8825 of 1995 in Civil Misc. Writ Petition No. 19050 of 1995. D

S.K. Dwivedi, AAG., Ratnakar Das, Abhishek Chowdhary, Manoj Kr. Dwivedi, Vandana Mishra and Gunnam Venjateswara Rao for the Appellants. E

A.S. Pundir and B.K. Pal for the Respondents.

The Judgment of the Court was delivered by F

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in these appeals is to the judgment of the learned Single Judge of the Allahabad High Court allowing the Civil Misc. Writ Petitions 17464 of 1984, 8825 of 1995 and 19050 of 1995. Challenge in the first writ petition was to the G order passed by the Prescribed Authority under the U.P. Imposition of Ceiling on Land Holdings Act, 1954 (in short the 'Act') and the appellate order passed by the Appellate Authority.

3. Background facts in a nutshell are as follows: H

A After issuance of notice under Section 10(2) of the Act an area of 17 Bighas 10 Biswas and 2 Biswansis of land of the respondent-Roshan Singh was declared as surplus. Thereafter consolidation operation commenced. Proceedings under Section 107 of the Act were initiated on 28.3.1974 and the B respondent-Roshan Singh was granted opportunity to file his response to the notice. The objection was filed on 25.5.1974 and by order dated 14.1.1980 the Prescribed Authority after determining the surplus gave opportunity to the respondent to indicate the choice of land to be retained. The respondent did C not indicate any choice. Therefore by order dated 8.4.1982, 17 Bighas 10 Biswas and 2 Biswansis of land was declared as surplus. Thereafter, possession of the surplus land was taken. There is a provision for appeal under Section 12 of the Act. But the respondent-Roshan Singh did not prefer any appeal. On the other hand on 17.2.1984 an application titled under Section D 151 of the Civil Procedure Code, 1908 (in short 'CPC') was filed. Stand taken was that in the consolidation proceedings different area was indicated and, therefore, holding was reduced. Objections were filed by the functionaries of the State on 23.3.1984 and 30.3.1984. Considering the objections the E Prescribed Authority by order dated 3.4.1984 rejected the claim of the respondent-Roshan Singh. An appeal was preferred by him i.e. Revenue Appeal no.24 of 1984 in the Court of III Additional District Judge, Banda, U.P. The appeal was dismissed on 21.8.1984. Civil Writ Petition no.17464 of 1984 F was filed before the Allahabad High Court. Subsequently, the surplus land was distributed. These were challenged in Civil Writ Petition no.8825 of 1995 and 19050 of 1995. The first writ petition was allowed by a learned Single Judge with the following observations:

G "Havind heard Sri V.K.S. Chaudhary, learned Senior counsel appearing on behalf of the petitioner and Smt. Archana Srivastava, learned Standing Counsel for the respondents, this Court is of the view that as the reduction of area made during the consolidation operation is made H for public purposes, the petitioner is entitled to the benefit

of said reduction. The submission made by the learned counsel for the petitioner has got force and therefore, the writ petition deserves to be allowed." A

4. It is to be noted that the above quoted portion was the only basis on which the writ petition was allowed. Two orders were also allowed following the decision rendered in the first case. B

5. Learned counsel for the appellants submitted that the approach of the High Court is clearly erroneous. Firstly, petition under Section 151 was not maintainable when statutorily an opportunity and/or forum is provided which was not availed. Further the proceedings under the Act and the Consolidation Act operate in different fields and, therefore, even if the area was different same was on the basis of the parameters under the Consolidation Act and a belated attempt to re-open concluded issues by resorting to Section 151 was clearly impermissible. C D

6. Learned counsel for the respondent submitted that there cannot be two different areas; one under the Act and the other the Consolidation Act. Therefore, the High Court was justified in its view. E

7. The principles which regulate the exercise of inherent powers by a court have been highlighted in many cases. In matters with which the CPC does not deal with, the Court will exercise its inherent power to do justice between the parties which is warranted under the circumstances and which the necessities of the case require. If there are specific provisions of the CPC dealing with the particular topic and they expressly or necessary implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter, the inherent powers of the Court cannot be invoked in order to cut across the powers conferred by the CPC. The inherent powers of the Court are not to be used for the benefit of a litigant who has remedy under the CPC. Similar is the position vis-à-vis other statutes. The object of Section 151 CPC F G H

A is to supplement and not to replace the remedies provided for in the CPC. Section 151 CPC will not be available when there is alternative remedy and same is accepted to be a well-settled ratio of law. The operative field of power being thus restricted, the same cannot be risen to inherent power. The inherent powers
B of the Court are in addition to the powers specifically conferred to it. If there are express provisions covering a particular topic, such power cannot be exercised in that regard. The section confers on the Court power of making such orders as may be necessary for the ends of justice of the Court. Section 151 CPC
C cannot be invoked when there is express provision even under which the relief can be claimed by the aggrieved party. The power can only be invoked to supplement the provisions of the Code and not to override or evade other express provisions. The position is not different so far as the other statutes are concerned.
D Undisputedly, an aggrieved person is not remediless less under the Act.

8. The conclusions of the High Court are not only cryptic but also without indication of any basis. As rightly contended by learned counsel for the appellant long after the period provided
E for preferring an appeal under Section 12 of the Act, the application under Section 151 CPC was filed.

9. This Court in *State of W.B. and Ors. v. Karan Singh Binayak and Ors.* (2002 (4) SCC 188), inter alia observed as follows:

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> "The period of 25 years under the lease expired in the year 1976. The notification under the Act was issued on 11th November, 1954. In 1957 record of rights was prepared under Section 44 of the Act according to which
G the land was held retainable under Section 6(1)(b) of the Act. The possession was handed over to the original owners in 1981 on liquidation of the lessee on an order being passed by the High Court directing official liquidator to disclaim the property which was later transferred to the writ petitioners in terms of the agreements of sale entered

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in the year 1988 and sale deeds in 1992-93. Meanwhile, in the year 1991 on proceedings being taken under the ULC Act, 6145.90 square meter of the land was held to be excess under the said Act. In June 1993, the plans were sanctioned and construction commenced. It can, thus, be seen that after the preparation of record-of-rights, not only the appellants did not take any steps and slept over the matter but various steps as above were taken by the respondents in respect of the land in question. The argument that the proceedings under the ULC Act or the preparation of record-of-rights were ultra vires and the acts without jurisdiction and, therefore, those proceedings would not operate as a bar in appellants invoking inherent jurisdiction under Section 151 CPC by virtue of conferment of such power under Section 57A of the Act is wholly misconceived and misplaced. The inherent powers cannot be used to reopen the settled matters. These powers cannot be resorted to when there are specific provisions of the Act to deal with the situation. It would be an abuse to allow the reopening of the settled matter after nearly four decades in the purported exercise of inherent powers. It has not even been suggested that there was any collusion or fraud on behalf of the writ petitioners or the erstwhile owners. There is no explanation much less satisfactory explanation for total inaction on the part of the appellants for all these years."

10. In *Arjun Singh* v. *Mohindra Kumar and Ors.* (AIR 1964 SC 993) it was, inter alia, observed as follows:

"There is one other aspect from which the same question could be viewed. Order IX Rule 7 prescribes the conditions subject to which alone an application competent under the opening words of that rule ought to be dealt with. Now, the submission of Mr. Pathak if accepted, would mean to ignore the opening words and say that though specific power is conferred when a suit is adjourned for hearing, the Court has an inherent power even when (a) it is not

A adjourned for that purpose, and (b) and this is of some importance when the suit is not adjourned at all, having regard to the term of Order XX Rule 1. The main part of Order IX Rule 7 speaks "of good cause being shown for non-appearance" on a previous day. Now what are the B criteria to be applied by the Court when the supposed inherent jurisdiction of the Court is invoked? Non-constat it need not be identical with what is statutorily provided in Rule 7. All this only shows that there is really no scope for invoking the inherent powers of the Court. Lastly, that power C is to be exercised to secure the ends of justice. If at the stage of Rule 7 power is vested in the Court and after the decree is passed Order IX Rule 13 becomes applicable and the party can avail himself of that remedy, it is very difficult to appreciate the ends of justice which are D supposed to be served by the Courts being held to have the power which the learned counsel says must inhere in it. In this view it is unnecessary to consider whether to sustain the present submission the respondent must establish that the court was conscious that it lacked specific statutory power and intended to exercise an inherent power E that it believed it possessed to make such orders as may be necessary for the ends of justice."

11. Looked at from any angle the orders of the High Court impugned in these appeals cannot be sustained and are set F aside. It is to be noted that subsequent two writ petitions were allowed primarily on the ground that first writ petition was allowed.

The appeals are allowed but in the circumstances without any order as to costs.

G R.P. Appeals allowed.