

Court No. - 6

Case :- WRIT - C No. - 1004049 of 2004

Petitioner :- Hardwari Lal

Respondent :- State Of U.P. Thru Principal Secretary Forest
Deptt And Anr

Counsel for Petitioner :- Salil Kr Srivastava, Pankaj Gupta

Counsel for Respondent :- C.S.C

Hon'ble Alok Mathur, J.

(1). Heard learned counsel for the petitioner and the learned Additional Chief Standing Counsel.

(2). The present petition has been filed challenging the order dated 26.02.2004 whereby, on an application filed by the respondents, a review application has been allowed.

(3). The facts, in brief, are that the opposite party no.1 instituted proceedings against the petitioner by filing an application before the Sub-Divisional Magistrate under section 3/4 of the U.P. Public Premises (Eviction of Unauthorized Occupants) Act of 1971 (hereinafter referred to as 'Public Premises Act'). The said application was allowed and the petitioner was directed to be evicted from the land in dispute. The petitioner preferred an appeal under section 9 of the 'Public Premises Act', the said appeal was allowed by means of an order dated 16.11.1992. The said order remained unchallenged, however, the opposite party no.1 filed an application for review of the judgment dated 16.11.1992. The said review came to be allowed by means of the impugned order.

(4). The counsel for the petitioner argues that the impugned order is bad in law inasmuch as firstly there is no power of review conferred upon the appellate authority specifically or impliedly under the Public Premises Act. He draws my attention

to Section 9 and 10 of the Public Premises Act, which are quoted herein below:

9. Appeals. (1) An appeal shall lie from every order of the prescribed authority made in respect of any public premises under section 5 or section 7 to an appellate officer who shall be the district judge of the district in which the public premises are situate or such other judicial officer not below the rank of Civil Judge as the District Judge may designate in this behalf.

(2) An appeal under sub-section (1) shall be preferred,?

(a) in the case of an appeal from an order under section 2, within fifteen days from the date of publication of the order under sub-section (1) of that section ; and

(b) in the case of an appeal from an order under Section 7, within fifteen days from the date on which the order is communicated to the appellant :

Provided that the appellate officer may entertain the appeal after the expiry of the said period of fifteen days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time,

(3) Where an appeal is preferred from an order of the prescribed authority, the appellate officer may stay the enforcement of that order for such period and on such conditions as he deems fit.

(4) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible.

(5) The costs of any appeal under this section shall be in the direction of the appellate officer.

(6) The District Judge may withdraw any appeal pending with any judicial officer referred to in sub-section (1) and either dispose of the same or transfer it to any other judicial officer referred to in that sub-section.

10. Finality of orders - Save as otherwise expressly provided in this Act, every order made by a Prescribed Authority or Appellate Officer under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

(5). He further argues that even the original order, which was subject matter of appeal was without jurisdiction as in terms of the powers conferred by virtue of section 3 of the Public Premises Act, initially a notification was issued by the State Government on 14.06.1972 conferring the power of the prescribed authority on all the Sub-Divisional Magistrate, however the said notification dated 14.06.1972 was modified by means of a subsequent notification dated 31.08.1974 whereby all the Additional District Magistrate were appointed as prescribed authority, thus in any case the S.D.M. who had passed the first order did not have the jurisdiction.

(6). The counsel for the petitioner has placed reliance on the judgment of this Court in the case of ***Smt. Deepika Singh vs. Zila Panchayat and another; 2016 (30 AWC 2784***. He further places reliance on the judgment of this Court in the case of ***Kailash Prasad and others vs. ADJ and others passed in Civil Misc. Writ Petition No.55019 of 1999 decided on 09.05.2018*** as well as the full bench judgment of this Court in the case of ***Smt. Anar Kali and others vs. Deputy Director of Consolidation and others; 1997 (15) LCD 921***.

To buttress his submissions as referred above, the counsel for the petitioner has also placed reliance on Rule 9, 10 and 11 of the Public Premises Rules 1973, which are quoted herein below:

9. Procedure of appeals: Sections 9 and 18(2) (f) - (1) An appeal under Section 9 may be preferred by any person aggrieved by an order under Section 5 or Section 7.

(2). The appeal shall be preferred in the form of a memorandum signed by the appellant or his representative and be presented either in person or through such representative to the District Judge or to the munsarim of his court.

(3). Every such memorandum shall be accompanied by a copy of the order appealed against and shall set forth concisely and under district heads the grounds of objection and such grounds shall be numbered consecutively.

(4). On receipt of the appeal and after calling for and perusing the record of the proceedings before the prescribed authority, the appellate officer shall fix a date for the hearing of the appeal and shall give notice thereof to the prescribed authority against whose orders the appeal is preferred, as well as to the appellant.

10. Power under the Code of Civil Procedure 1908: Section 8 (c) - The prescribed authority or the appellate officer shall, for the purpose of holding an inquiry or hearing any appeal under the Act, shall have the same powers as are vested in the civil court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely -

(a) the power to dismiss an application or appeal for default and to restore it for sufficient cause;

(b) the power to proceed ex parte and set aside, for sufficient cause an order passed ex parte;

(c). the power to order attachment before judgment

(d). the power conferred to in Section 151 of the Code of Civil Procedure, 1908 to make any order for the ends of justice or to prevent the abuse of process of the authority concerned; and

(e). the power to accept affidavits in proceedings pending before him and to issue commissions in suitable cases.

11. Application for setting aside ex-parte orders and for restoration Section 18 - the prescribed authority of the appellate officer, as the case may be, may for sufficient cause-
(a) set said an ex-parte order made in proceedings under Section 5 or Section 7;

(b). restore an appeal arising out of the proceedings referred to in clause (a) where such appeal has been dismissed for default of appearance of the appellant or his counsel"

The learned Additional Chief Standing Counsel, on the other hand, argues that there is legal flaw in the appellate order and thus, a review was filed and the order impugned rightly allowed the review, as the earlier appellate order suffered from inherent legal defects.

(7). The first argument that the appellate authority did not have any power of review, merits acceptance inasmuch as in terms of the Act or the Rules framed there under, no power of review has been conferred on the appellate authority either specifically or impliedly. On the contrary Rules 10 and 11 are specific in respect of the applicability of the provisions of CPC before the appellate proceedings and the same do not include the power under section 114 of the CPC or the powers under Order 47 Rule 1 CPC. It is well settled that the power of substantial review is not inherent and has to be specifically conferred. This aspect has been dealt with in the judgment cited in the case of **Anar Kali (supra) and Kailash Prasad (supra)**. Thus, I have no hesitation in holding that the appellate authority has no jurisdiction of review and thus, the order impugned cannot be sustained on that ground alone.

(8). The other issue with regard to jurisdiction also stands

decided by this Court in the case of **Smt. Dipika Singh (supra)** wherein the said question were considered by this court and it was specifically held that after the issuance of the notification in the year 1974, the earlier notification of 1972 stood eclipsed. In view of the said judgment, with which I have no reasons to differ, the earlier order which was set aside in appeal, was passed by the authority which did not have the jurisdiction. Thus, on the both the counts, the order impugned cannot be sustained and is set aside.

(9). The writ petition stands allowed.

(Alok Mathur, J.)

Order Date :- 7.3.2024

Virendra