Rupesh Kakkad vs Union Of India And Ors on 8 February, 2022

Author: Yashwant Varma

Bench: Yashwant Varma

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 2162/2022, CM APPL. 6989/2022
RUPESH KAKKAD ...
Through: Mr.Asutosh Lohia, Adv.

versus

UNION OF INDIA AND ORS. ..... Respond
Through: Ms.Nidhi Raman, CGSC with
Mr.Zubin Singh, Adv. for respon
nos. 1 to 3.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
ORDER

% 08.02.2022
[VIA VIDEO-CONFERENCING]
1. Heard learned counsels for parties.

2. This writ petition has been preferred seeking the issuance of appropriate directions commanding the respondents to mutate the name of the petitioner over land admeasuring 17008 sq. ft. falling in the GLR survey no. 73/2 situate in Varanasi cantonment in the State of Uttar Pradesh.

3. On the first day when the matter was taken up for consideration, the Court had raised the issue of the territorial jurisdiction of this High Court being invoked in respect of land situate in Varanasi in the State of Uttar Pradesh. Undisputedly, the mutation is to be made by the competent authority heading the Cantonment estate in Varanasi. That respondent has been arrayed as respondent No.4 in the present writ petition.

4. It has also come on the record that in respect of this very piece of land and seeking similar reliefs, the petitioner had earlier instituted a writ petition before this Court which came to be numbered as W.P. (C) 8178/2010. That writ petition came to be dismissed in default on 06 September, 2011. The order of the Court passed on the said writ petition further establishes that the respondents had raised an objection with respect to the territorial jurisdiction of the Court being invoked in respect of land situate in Varanasi. However, since none had appeared to prosecute that writ petition, the learned Judge proceeded to dismiss it in in default.

5. The petitioner also claims rights in an adjacent part of the plot in question and had raised his claim for mutation in respect thereof separately. The petitioner, aggrieved by an order of 29

December 2011 passed by the respondents in the course of consideration of that claim, had at that stage preferred a separate writ petition being W.P. (Civil) 766/2012. That writ petition was ultimately allowed in part by a learned Judge in terms of the judgment dated 28 October 2015. The aforesaid judgment was assailed by the petitioner by way of LPA No. 123/2016 which came to be disposed of in terms of the observations entered by the Division Bench in its order of 02 April 2019.

6. While the adjacent piece of land is also undisputedly situate in Varanasi, the respondents in those proceedings do not appear to have raised any issue of territorial jurisdiction therein. However and notwithstanding the above, as this Court reads the orders passed on the earlier writ petition as well as the LPA, it is manifest that the question of territorial jurisdiction had neither been raised nor urged or decided.

7. The attention of the Court has not been drawn to any material which may establish that the issue of mutation cannot be proceeded with or decided by the respondent No.4 without some direction being issued by this Court against respondent Nos. 1 to 3. The Court lays emphasis on this fact bearing in mind the issue that unless a part of the cause of action could be said to arise within the territorial jurisdiction of this Court and required the framing of an appropriate direction against respondent Nos. 1 to 3, the writ petition would clearly not be maintainable.

8. The reliance placed by learned counsel on the decision rendered by a bench of five learned Judges of this Court in New India Assurance Co. Ltd. Vs. Union of India1 is also clearly misplaced for the following reasons. Regard must be had to the fact that the Full Bench of the Court in New India Assurance was considering the correctness of the view taken by a learned Judge that a writ petition would not be maintainable before this Court even though the appellate authority whose decision was assailed was situate within the territorial limits of this Court. The Court ultimately proceeded to hold thus:-

> "20. The judgment in Nasiruddin case clearly holds that the place where an order is passed by an appellate authority or revisional authority, as the case may be, the same would confer jurisdiction on the High Court under Article 226 of the Constitution of India. Secondly, it has been held that even where a part of the cause of action arose, it would be open to the litigant, who is the dominus litis to have his forum conveniens. This principle was affirmed by the Supreme Court in Kusum Ingots and Alloys Ltd. (supra). But before we examine the decision in Kusum Ingot, we may refer to the Constitution Bench judgment in Collector of Customs v. East India Commercial Co. Ltd. (supra) and the decisions of the Bombay High Court in Kishore Rungta v. Punjab National Bank and (supra) and of the Delhi High Court in Indian Institute of Technology v. P.C. Jain (supra) and that of the Madras High Court in ORJ Electronics Oxides Ltd. v. Customs, Excise and Service Tax (supra).
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> 32. As held in Nasiruddin's case, even where part of the cause of action arose, it would be open to the litigant, who is the dominus litis to have his forum conveniens. In the present case, since the Appellate Authority is situated at New Delhi, the Delhi High Court has the jurisdiction under Article 226 of the (2009) 161 DLT 55 (Del) (FB)

> Constitution of India and, therefore, there was no occasion for the learned Single Judge to apply the principle of forum conveniens to refuse to exercise the jurisdiction. The principle of forum non-conveniens originated as a principle of international law, concerned with comity of nations. A domestic Court in which jurisdiction is vested by law otherwise ought not to refuse exercise of jurisdiction for the reason that under the same law some other Courts also have jurisdiction. However, the remedy under Article 226 being discretionary, the Court may refuse to exercise jurisdiction when jurisdiction has been invoked mala fide. There is no such suggestion in the present case.

Nothing has been urged that it is inconvenient to the contesting respondent to contest the writ before this Court. The Counsel for the contesting respondent has not disputed the jurisdiction of this Court; his main contention is of possibility of conflict. We do not find any merit in this contention of the Counsel for the contesting respondent. First, that is not the case in hand. The contesting respondent is not aggrieved by the order of the appellate authority and has not assailed the same before any High Court. Thus, there is no possibility of conflicting judgments or confusion in the present case. Secondly, even if in a given case such a situation were to arise, the same is bound to be brought to the notice of the Court and the likelihood of both Courts proceeding with the writ petition and conflicting judgments is remote. In such a situation, following the principle in Section 10 of the Code of Civil Procedure, the subsequently filed petition may be stayed in view of the earlier petition entailing similar questions or the Court may ask the petitioner to approach the High Court where the earlier petition has been filed. In our opinion, it will be inappropriate to refuse to exercise jurisdiction merely on the basis of possibility of conflict of judgments, particularly in view of the clear language of Article 226(2)."

9. New India Assurance thus authoritatively reiterates the settled legal position that for the purposes of considering the issue of territorial jurisdiction, even if a part of the cause of action falls within the territorial limits of a court, the petitioner would be entitled to invoke its jurisdiction and recognise the right of "forum conveniens" as inhering in the litigant. Even a miniscule but relevant facet of the cause compelling the litigant to approach that particular court would be sufficient. However, in the facts of the present case, learned counsel, despite repeated queries was unable to establish that the respondents Nos. 1 to 3 had to discharge some obligation with respect to mutation or that any direction was required to be framed commanding them to proceed in the matter for the purposes of facilitating mutation by respondent No. 4. In fact and as a reading of the reliefs as sought in the writ petition would reveal, no specific direction against respondent nos. 1 to 3 is either framed or sought.

10. The principles which must govern were succinctly enunciated by the Supreme Court in Alchemist Ltd. Vs. State Bank of Sikkim2 in the following terms:-

> "37. From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small

> fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a "part of cause of action", nothing less than that."

11. In the absence of any vestige or a relevant part of the cause of action having been shown to have arisen within the territorial jurisdiction of this Court, the writ petition fails and shall consequently stand dismissed. This order, however, shall not preclude the petitioner from approaching the appropriate High Court, if so chosen and advised.

12. The pending application stands dismissed.

YASHWANT VARMA, J.

FEBRUARY 8, 2022/bh (2007) 11 SCC 335