

MEERA MISHRA

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v.

SATISH KUMAR & ORS.

(Civil Appeal No. 11763 of 2018)

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DECEMBER 03, 2018

[ABHAY MANOHAR SAPRE AND INDU MALHOTRA, JJ.]

Public Distribution System: Fair Price shop – Cancellation of licence – Dispute relating to a fair price shop between the two private individuals namely, appellant and respondent no.1 – Magistrate cancelled the licence of respondent no.1 in relation to the shop in question – Commissioner dismissed the appeal – High Court allowed the writ petition filed by respondent no.1 mainly on the ground that it was not a reasoned order and that the Commissioner did not discuss all the issues arising in the case – In the instant appeal, appellant challenged the order of High Court on the ground that same adversely affected his right to run the shop – Held: High Court having held that the order of the Commissioner was not legally sustainable because it was an unreasoned order, had an option to either decide the controversy on merits in the writ petition itself or remand the case to the Commissioner for deciding the appeals afresh on merits – Since High Court did not exercise any option, neither the Commissioner could record any finding on merits nor the High Court – Matter remanded back to the Commissioner to enable him to examine the merits of the case in accordance with law.

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Partly allowing the appeal and remitting the matter to Commissioner, the Court

HELD : The parties were entitled for a decision of their case on merits by the Appellate Court (Commissioner) and then by the High Court in its writ jurisdiction. In this case, neither the Commissioner could record any finding on the merits and nor the High Court. [Para 13][1207-E-F]

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A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11763 of 2018

From the Judgment and Order dated 12.07.2018 of the High Court of Judicature at Allahabad, Lucknow Bench in MS No. 3476 of 2007.

B Deepak Bora, Gaurav Agrawal, George Thomas, Anurag Charote, Ms. Chritarth Palli and Ms. Monica Haseja, Advs. for the Appellant.

Ghanshyam Singh, Gauri Shankar Maurya, Rajnish Kumar Jha and Vijay Advs. for the Respondents.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J.

C 1. Leave granted.

D 2. This appeal is directed against the final judgment and order dated 12.07.2018 passed by the High Court of Judicature at Allahabad, Bench at Lucknow in Writ Petition No.3476 of 2007 whereby the Single Judge of the High Court allowed the writ petition filed by respondent No.1 herein and set aside the order dated 14.02.2007 passed by the Sub-Divisional Magistrate, Mishrit cancelling the license of respondent No.1 for fair price shop and order dated 07.06.2007 passed by the Commissioner, Lucknow Division, Lucknow rejecting his appeals.

E 3. The issue involved in this appeal is short as would be clear from the facts stated *infra*.

F 4. The dispute relates to a fair price shop at Gram Panchayat Ambaghat, Block Godalamau, Tehsil Mishrit District Sitapur (UP). It is between the two private individuals, namely, the appellant and respondent No. 1 herein. Both are asserting their respective rights to run the shop.

F 5. By order dated 14.02.2007, the Sub-Divisional Magistrate, Mishrit cancelled the license of respondent No. 1 in relation to the shop in question and, therefore, he filed appeals before the Commissioner, Lucknow Division, Lucknow.

G 6. By order dated 07.06.2007, the Commissioner dismissed the appeals, therefore, respondent No. 1 filed a writ petition before the High Court of Judicature at Allahabad, Bench at Lucknow.

H 7. By impugned order, the High Court allowed the writ petition and set aside the order dated 14.02.2007 of SDM, Mishrit and also the order dated 07.06.2007 of the Commissioner, Lucknow in Appeal No.38/2006-07 and Appeal No.651/2006-07.

8. The High Court set aside the order of the Commissioner mainly on the ground that it was not a reasoned order. In other words, the High Court was of the view that the Commissioner did not discuss all the issues arising in the case. A

9. Aggrieved by the said order, the appellant has filed this appeal by way of special leave in this Court because according to the appellant, the impugned order has adversely affected his right to run the shop. B

10. The short question, which arises for consideration in this appeal, is whether the High Court was right in allowing the respondent No.1's writ petition.

11. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and remand the case to the Commissioner for deciding the appeals afresh on merits after hearing the appellant, respondent No. 1 and State (concerned department). C

12. In our considered opinion, the High Court having held that the order of the Commissioner was not legally sustainable because it was an unreasoned order, it had two options to follow. One, to decide the controversy on merits in the writ petition itself and the other to remand the case to the Commissioner for deciding the appeals afresh on merits in accordance with law by passing reasoned order after dealing with all the contentions raised by the parties in support of their case. D
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13. The High Court did not exercise any option. As a consequence, the merits of the case could not be examined either by the Commissioner in appeal properly or the High Court in writ petition. In our view, the parties were entitled for a decision of their case on merits by the Appellate Court (Commissioner) and then by the High Court in its writ jurisdiction. In this case, neither the Commissioner could record any finding on the merits and nor the High Court. It is for this reason, we are inclined to prefer the second option and while giving effect to the impugned order remand the case (appeal) to the Commissioner to enable him to examine the merits of the case in accordance with law. F
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14. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed in part. The case is remanded to the Commissioner, Lucknow Division, Lucknow (UP) for deciding the appeals afresh on merits.

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A 15. The appeals bearing Nos.38/2006-07 and 651/2006-2007 are accordingly restored to their respective numbers on the file of the Commissioner for their disposal in accordance with law on merits.

B 16. The appellant and respondent No.1 both will appear before the Commissioner, Lucknow on 14th December, 2018 and file a copy of this Order. The Commissioner will then fix any suitable date for hearing the appeals and on that day will hear the appellant, respondent No.1 and the concerned department of the State, and after hearing all the parties will pass a reasoned order on all the issues arising in this case relating to fair price shop in question uninfluenced by any observations made by the High Court and this Court.

C 17. Parties are permitted to file additional documents, if any, in support of their case before the Commissioner in appeals. Let the proceedings be over within three months from the date of appearance of the parties.

Devika Gujral

Appeal partly allowed.