

SUPREME COURT OF INDIA

Surja

Vs.

Hardeva

C.A.No.778 of 1966

(S. M. Sikri and R. S. Bachawat, JJ.)

17.10.1968

JUDGEMENT

SIKRI, J.:-

1. This appeal by special leave is directed against the judgment and order of the High Court of Punjab in Letters Patent Appeal No. 146 of 1965 whereby the High Court dismissed in limine the Letters Patent Appeal filed by the appellant Surja against the judgment of the learned Single Judge allowing the writ petition filed by the respondent, Hardeva.

2. The relevant facts for determining the points raised before us as follows: Hardeva, respondent before us, is a big landlord of village Punniwala Mota in Sirsa Tahsil of Hissar District. Surja, the appellant, was an old tenant of Hardeva and had been cultivating the land in dispute since about 1949. Section 18 of the Punjab Security of Land Tenures Act 1953, (Punj. Act X of 1953)-hereinafter referred to as the Act-entitles a tenant of a land-owner other than a small land-owner to purchase from the land-owner the land held by him, but not included in the reserved area of the land-owner if he satisfies the conditions laid down in that Section. Section 18 (1) and (2) may be set out.

"18 (1) Notwithstanding anything to the contrary contained in any law, usage or contract, a tenant of a land-owner other than a small land-owner-

(i) who has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years, or

(ii) who has been restored to his tenancy under the provisions of this Act and whose periods of continuous occupation of the land comprised in his tenancy immediately before ejection and immediately after restoration of his tenancy together amounts to six years or more, or

(iii) who was ejected from his tenancy after the 14th day of August, 1947, and before the commencement of this Act, and who was in continuous occupation of the land comprised in his tenancy for a period of six years or more immediately before his ejection,

shall be entitled to purchase from the land-owner the land so held by him but not included in the reserved area of the land-owner, in the case of a tenant falling within Clause (i) or Clause (ii) at any time, and in the case of a tenant falling within Clause (iii) within a period of one year from the date of commencement of this Act;

Provided that no tenant referred to in this sub-section shall be entitled to exercise any such right in respect of the land or any portion thereof if he had sublet the land or the portion, as the case may be, to any other person during any period of his continuous occupation, unless during that period the tenant was suffering from a legal disability or physical infirmity, or, if a woman, was a widow or was unmarried:

Provided further that if the land intended to be purchased is held by another tenant who is entitled to pre-empt the sale under the next preceding section, and who is not accepted by the purchasing tenant, the tenant in actual occupation shall have the right to pre-empt the sale.

(2) A tenant desirous of purchasing land under sub-section (1), shall make an application in writing to an Assistant Collector of the First Grade having jurisdiction over the land concerned, and the Assistant Collector, after giving notice to the land-owner and to all other persons interested in the land and after making such inquiry as he thinks fit, shall determine the value of the land which shall be the average of the prices obtaining for similar land in the locality during 10 years immediately preceding the date on which the application is made."

Surja accordingly applied on August 5, 1957, to the Collector, Hissar District, stating that he intended to purchase the land in dispute and that the land is outside the reserved area of the land owner. He further alleged that he had been in possession of the land for the last eight years. Hardeva in his written statement, inter alia, stated that Surja was in possession of the land only for three or four years. He alleged that Surja had already 150 bighas of cultivable land. He further stated that the land is reserved and for that reason Surja was not entitled to purchase it. In his evidence before the Assistant Collector given on March 25, 1958, Hardeva deposed:

"The land is reserved. I do not know whether the land in dispute is reserved or not."

By his order dated March 31, 1959, the Assistant Collector, Sirsa, held that Surja was entitled to purchase the land in dispute and, accordingly, fixed the price. Regarding reservation he observed:

"It is admitted by the respondent that they are big land-owners and got this land reserved, but later on during his very cross examination, he denied any knowledge about the reservation. The respondent produced no evidence with regard to having this land got reserved though they are big land owners."

Hardeva thereupon filed an appeal before the Collector, and one of the grounds taken was that the Assistant Collector erred in holding that the land in dispute was not reserved land. The Collector, by his order dated July 20, 1960, dismissed the appeal. It was common ground before him that Hardeva was a big land-owner and that Surja had been in continuous possession of the land in dispute for a more than six years, and the only point he determined was whether with the addition of the 28 bighas and 12 biswas of land which Surja had been permitted to purchase his total area would exceed the permissible area or not. On this point he held in favour of Surja and accordingly dismissed the appeal.

3. Hardeva then filed a revision before the Commissioner. In the grounds of revision dated October 27, 1960, various grounds were taken but there was no ground regarding reservation of land or selection of land under Section 5-B of the Act. On February 1, 1961, Hardeva filed an application in the Court of the Commissioner. In this application he stated that the entire land in dispute was included in the permissible area selected by him under Section 5-B of the Act by submitting form "E". He further stated that the Financial Commissioner had in *Karam Singh v. Angrez Singh*, (1960) 39 Lah LT 57 held that selection under Section 5-B (1) had the same force as reservation under Section 5 of the Act, and this disentitled Surja from purchasing the land in dispute. He prayed that he may be allowed to raise the plea of selection under Section 5-B (1). He stated that this plea involved a question of jurisdiction and in the interest of justice he may be permitted to raise this plea as an additional ground of revision.

4. The Commissioner allowed the ground to be taken but as Surja's counsel suspected the bona fides of the selection, the Commissioner sent for the original file and he satisfied himself, after examining the original form "g" and the affidavit in relation to form "g", that Hardeva had duly submitted the selection document to the Collector within time on June 19, 1958. It appears that the Financial Commissioner had held in *Dhanapat Rai v. State of Punjab*, 1961 Lah LT 8 that the period of six months allowed by Section 5-B for making selection would start from March 22, 1958, the date when the Punjab Government Notification prescribing the form was issued. The Commissioner felt that the selected land could not be purchased under Section 18 by the tenant. He accordingly submitted the case to the Financial Commissioner with the recommendation that the revision petition be accepted and that the orders of the Assistant Collector and the Collector be set aside.

5. The Financial Commissioner dismissed the revision. He held that as Hardeva had not put forward the plea of selection before the Assistant Collector or the Collector he could not be allowed to do so at that stage. He observed:

"In other words the consideration that reservation of area under Section 5 and selection of area under Section 5-B are identical in their effect has no relevance in the present cases for the reasons that it was never claimed (except in revision) that the area had been selected under section 5-B. If such a claim had been made and substantiated, the position would have been different, but since this was not done, the decision against the petitioner cannot be challenged. It is also clear that there is no question in these cases of the authorities concerned having acted without jurisdiction or having exercised it with illegality or material irregularity which alone could justify interference in revision."

6. Hardeva then filed a petition under Articles 226 and 227 of the Constitution. The High Court held that the Financial Commissioner should have accepted the recommendation made by the Commissioner and accordingly allowed the petition and declared that Surja was not entitled to purchase the land in dispute selected by the land-owner under the provisions of Section 5-B of the Act. The learned Single Judge was of the view that the disputed question relates to jurisdiction and went to the root of the whole matter.

6A. It appears that there was some dispute the learned Single Judge about the date of the selection, because the learned Judge observed:

"There is a slight dispute on the question whether the intimation of selection was given on 19th or 20th of June, 1958." He, however, preferred to accept, the finding of the learned Commissioner on the point and gave the land-owner the benefit of it. He further observed that the question could not have been raised before the Assistant Collector and the Collector because "the prevailing view up

till 1960 appears to have been that the selected area had not been equated with the reserved area" and and it was because of this that Hardeva had not placed it before the Assistant Collector and the Collector although he had placed the point that the area was part of the reserved area.

7. It seems to us that the High Court was right in holding that the question whether the land sought to be purchased by Surja was part of the reserved or selected area was a jurisdictional fact. Under Section 18 of the Act a tenant is only entitled to purchase land which is not included in the reserved or selected area of the land-owner. Under S. 18 (2) the Assistant Collector is only authorised to determine the value of the land after making such enquiries as he thinks fit. He is not authorized expressly to go into the question whether the land sought to be purchased is included in the reserved or selected area of the land-owner or not. But, obviously it must be the intention that he should go into these questions before embarking on determining the price. But by wrongly deciding that question he cannot finally confer on himself jurisdiction to deal with the matter. In exercise of the powers under Sec. 24 of the Act, read with Section 84 of the Tenancy Act, the Financial Commissioner had jurisdiction to go into the question whether the Assistant Collector or the Collector had rightly assumed jurisdiction .

8. It was urged before us that the orders of the Assistant Collector and the Collector were final and could not be assailed on the ground that they had wrongly jurisdiction. Reliance was placed on authorities like Brij Raj Krishna v. S. K. Shaw, 1951 SCR 145 = (AIR 1951 SC 115) where this Court referred to Queen v. Commrs. for Spl. Purposes of Income-tax, (1888) 21 QBD 313 and Colonial Bank of Australia v. Willan, (1874) 5 PC 417. That was a case of a suit whereby the order of the Commissioner under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 (S. 11) was sought to be declared illegal, ultra vires and without jurisdiction, but we are concerned with the revisional power of the Financial Commissioner which is the same as that of the High Court. As observed by Kapur, J., speaking for the Court in Chaube Jagdish Prasad v. Chaturvedi, 1959 Supp 1 SCR 733 at p. 746 = (AIR 1959) SC 492 at p. 498) these cases have no application to the exercise or revisional power. He observed:

"The appellant also relied on 1951 SCR 145 = (AIR 1951 SC 115) where this Court quoted with approval the observations of Lord Esher in (1888) 21 QBD 313 and (1875) 5 PC 417, where Sir James Colville said:

"Accordingly the authorities....establish that an adjudication by a Judge having jurisdiction over the subject matter is, if no defect appears on the face of it, to be taken as conclusive of the facts stated therein and that the Court of Queen's Bench will not on certiorari quash such an adjudication on the ground that any such fact, however, essential, has been erroneously found."

But these observations can have no application to the judgment of the Additional Civil Judge whose jurisdiction in the present case is to be determined by the provisions of Section 5 (4) of the Act. And

the power of the High Court to correct questions of jurisdiction is to be found within the four corners of S. 115. If there is an error which falls within this section the High Court will have the power to interfere, not otherwise.

The only question to be decided in the instant case is as to whether the High Court had correctly interfered under Section 115 of the Code of Civil Procedure with the order of the Civil judge. As we have held above, at the instance of the landlord the suit was only maintainable if it was based on the inadequacy of the reasonable annual rent and for that purpose the necessary jurisdictional fact to be found was the date of the construction of the accommodation and if the court wrongly decided that the fact and thereby conferred jurisdiction upon itself which it did not possess, it exercised jurisdiction not vested in it and the matter fell with the rule laid down by the Privy Council in *Joy Chand Lal Babu v. Kamalaksha Chaudhary*, 76 Ind App 131 = (AIR 1949 PC 239). The High Court had the power to interfere and once it had the power it could determine whether the question of the date of construction was rightly or wrongly decided. The High Court held that the Civil Judge had wrongly decided that the construction was of a date after June 30, 1946, and therefore fell within Section 3-A." Similarly, in *Jagannath Ramchandra Datar v. Dattaraya Balwant Hingmire*, Civil Appeal No. 585 of 1964, D/- 9-9-1966 (SC) this Court observed:

"Therefore if it can be shown that the subordinate court without any evidence whatsoever held that the transaction in question was not a sale but a mortgage and that the relationship between the parties was that of a debtor and a creditor and on that footing proceeded to exercise its power under Sections 3 and 10A of the Dekhan Agriculturists Relief Act the High Court would be entitled to interfere with such a decision under both the parts of Section 115. It would then be possible to say that the subordinate court had clutched at jurisdiction which it had not under the said section and it would also be possible to say that that court had exercised its jurisdiction illegally or with material irregularity."

9. It seems to us that the Financial Commissioner did not appreciate the content of his powers of revision under Section 24, read with Section 84 of the Tenancy Act. It was obvious from the report of the Commissioner that if the finding arrived at by the Commissioner was accepted the Assistant Collector and the Collector had no jurisdiction in the matter.

10. In our opinion the Financial Commissioner should have gone into the question whether the Commissioner's report was acceptable or not on merits.

11. It is urged by the learned counsel for the Surja that the High Court did not decide the question whether the selection had been properly made within time, but it merely accepted the report of the Commissioner. He, therefore, still disputes the fact that the selection was made within time. He also says that it is not a genuine and valid selection. These points should be gone into by the Financial Commissioner. Under these circumstances we allow the appeal, set aside the orders passed by the

High Court and the Financial Commissioner and remit the case to the Financial Commissioner to dispose of the revision filed before him in accordance with law.

12. There will be no order as to costs in this appeal.

Appeal allowed.