Apar (P) Ltd. and Another

Vs

Union of India and Others

Special Leave Petition (Civil) No. 7670 of 1990

(L. M. Sharma, J. S. Verma JJ)

04.10.1991

ORDER

1. This petition is for grant of special leave to appeal against the judgment dated April 25, 1990 of the Bombay High Court dismissing the petitioners' Writ Petition No. 1941 of 1979. The petitioners' prayer in the writ petition was to quash the demand made from the petitioners by letter dated June 21, 1979 (Ex. 8) of damage charges specified therein for the encroachment made by the petitioners; and to regularise the excess land found in petitioners' occupation. The High Court found that no case was made out for grant of any relief to the petitioners and while rejecting the writ petition, it also made critical observations about the petitioners' conduct throughout.

2. The matter was heard on several occasions on different dates and every aspect pointed out on behalf of the petitioners has been considered. At one stage, both sides put forward a suggestion that opportunity be given to the parties to arrive at an amicable settlement. Accordingly, this case was adjourned on more than one occasion with certain interim directions as suggested by the parties. However, it was finally indicated that no settlement could be reached and on August 20, 1991, it was stated by learned counsel for the State of Maharashtra that the State Government had discovered some disturbing facts indicating collusion of some of its employees with the petitioners in an attempt to give some undue benefit to the petitioners which was under investigation. It was urged that certain measurements of the encroachment by the petitioners made during the pendency of this petition were suspect for this reason and the State Government was not willing to proceed on that basis and make any settlement in the matter. Obviously what transpired between the parties for the purposes of reaching a settlement during the pendency of this petition can have no bearing upon the decision on merits when no settlement has been reached and the State Government has clearly said so. It is needless to add that everything said or done by either party while exploring the possibility of settlement was without prejudice to their rights and has to be ignored when the decision is to be on merits. The interim orders passed earlier in the present case were also interim in nature without deciding anything and cannot be relied upon by the petitioners in support of this special leave petition. We, therefore, refrain from making any reference to any matter relating to the negotiations for a settlement between the parties during the pendency of this petition, in spite of the attempt made by learned counsel for the petitioners to refer to them for supporting the petitioners' contention. This is more so on account of the State Government's assertion of a surreptitious attempt of its employees to give undue benefit to the petitioners against whom action is contemplated.

3. There are only a few facts which are material for the decision on merits. The petitioners purchased some land near Vithalwadi Railway Station at Ulhasnagar in 1957, the area of which, according to the deed of conveyance read with the prior agreement of sale was 39,200 sq. yds. The petitioners undoubtedly occupied land in excess of 39,200 sq. yds. which alone was purchased by

them. The area of encroachment by the petitioners was determined at 25,915 sq. yds. by order dated May 26, 1967 passed by the Managing Officer and Administrator, Ulhasnagar Township. By the same order a direction was given for removal of the encroachment over the government land. Admittedly, no appeal or any other statutor__y remedy was restored to against this order by the petitioners. Accordingly, encroachment over 25,915 sq. yds. government land by the petitioners in excess of the area 39,200 sq. yds. purchased by them came to be finally determined in this manner. Learned counsel for the petitioners tried to coend that the area of encroachment is less than 25,915 sq. yds. and he attempted to rely on some measurements of the encroachment made during the aforesaid negotiations for settlement in which different areas have been shown as the encroachment. In our opinion, the binding effect of the order dated May 26, 1967 concludes this controversy and the extent of encroachment by the petitioners has to be taken as 25,915 sq. yds. on the date of that order as a concluded finding of fact.

4. Learned counsel for the petitioners then urged that even if the encroachment was 25,915 sq. yds. on May 26, 1967, it could be reduced subsequently and, therefore, a fresh determination of the existing encroachment must be made. He further argued that unless a fresh determination of the existing encroachment is made, the question of recovering damage charges for the encroachment does not arise. It is substantially on this basis that learned counsel challenges the validity of the demand of damage charges in this letter dated June 21, 1979 (Ex. S). It was also urged that this demand is wholly without jurisdiction and also a nullity because it was made in violation of principles of natural justice without giving any opportunity to the petitioners to dispute the quantum.

5. So far as the area of encroachment of government land by the petitioners is concerned, there is no scope for raising any dispute. The encroachment determined by the order dated May 26, 1967 (Ex. C) was 25,915 sq. yds. It has not been the petitioners' case till now that the petitioners restored the possession of any part of the encroachment area to the State Government at any time subsequent to the aforesaid order dated May 26, 1967. Without taking any such plea and proving restoration of possession of any part of the encroached area. The petitioners cannot contend that the area of encroachment is reduced subsequently to less than 25,915 sq. yds. There is a presumption of continuity of possession and in the absence of any such plea of restoration of possession of any part of the encroached area and proof of that fact, the area of continuing encroachment has to be taken as 25,915 sq. yds. Petitioners' letter dated June 13, 1967 (Ex. D) contains a clear admission of the petitioners that their possession was over an area of 65,115 sq. yds. instead of 39,200 sq. yds. sold to them and that the excess land in their possession was 25,915 sq. yds. This admission of the petitioners in their letter dated June 13, 1967 and a specific prayer in the writ petition filed in the High Court to regularise their encroachment without suggesting any reduction in the area of encroachment is sufficient to negative the contention that the area of existing encroachment requires a fresh determination. This conclusion is reached even without the concession made by the petitioners' counsel in the High Court which is recorded in the judgment of the Division Bench presided over by the learned Chief Justice. Learned counsel for the petitioners also offered at the hearing that the government can take back possession of the encroached area of any time. This offer made at the hearing is not material for deciding the points raised in the petition.

6. The only surviving question relates to the quantification of the damage charges demanded from the petitioners. Learned counsel referred to certain provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 to contend that the demand contained in the letter (Ex. S) dated June 21, 1979 is nullity. It is unnecessary for us to go into that question because we are clearly of the opinion that the petitioners are not entitled to the benefit of Article 136 of the

Constitution on account of their conduct which is manifest from the record.

7. Even though in the writ petition filed in the High Court there was a relief for regularisation of the encroachment over the government land, no attempt was made even in the High Court to argue for grant of that relief as stated clearly in the judgment. Even now no attempt was made to claim regularisation of the encroachment and instead the attempt was to dispute the extent of encroachment, and offer to surrender the encroached land without taking the necessary steps for restoration of its possession to the government. It is urged by learned counsel for the State of Maharashtra that the argument for regularisation of the encroachment was not made because the petitioners have already sold out or entered into agreement for transfer of the land to others and derived huge profit from those transactions. Several transactions in this regard made by the petitioners are admitted and the only contest by the petitioners is that the transactions were wholly of the petitioners' land within the purchased area of 39,200 sq. yds. The concessions made by counsel on behalf of the petitioners in the High Court as recorded in the impugned judgment indicate that the transactions by the petitioners were of land in excess of purchased area 39,200 sq. yds. Learned counsel for the petitioners strenuously urged that the concessions attributed to the petitioners' counsel in the High Court are wrongly recorded in the High Court's judgment. An affidavit of counsel filed in this Court disputing the making of such concessions which have been recorded in the High Court's judgment was relied on by learned counsel for the petitioners. In reply to our query, the learned counsel, however, clearly conceded that no such affidavit was filed in the High Court saying that the concessions recorded in the judgment had not been made by the petitioners' counsel. The permissible manner in which such challenge to the concession of counsel recorded in the High Court's judgment can be made is well settled (see State of Maharashtra v. Ramdas Shrinivas Nayak [(1982) 2 SCC 463 : 1982 SCC (Cri) 478]). This being the settled practice to assail a concession of counsel recorded in the High Court's judgment and the same not having been adopted by the petitioners in spite of the fact that the petitioners were represented by several senior counsel before us, this contention cannot be accepted and the petitioners must be held bound by the concessions made on their behalf by their counsel in the High Court as recorded in the High Court's judgment to which the learned Chief Justice was a party.

8. In our opinion, this conduct of the petitioners is alone sufficient to decline special leave under Article 136 of the Constitution, apart from rejection of the points on merits. Consequently, the special leave petition is dismissed.

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