Revenue Divisional Officer and Others

Vs

A. Aruna and Others

Civil Appeal No. 3641 of 1998

(S. B. Majmudar, M. Jagannadha Rao JJ)

05.08.1998

JUDGMENT

S. B. MAJMUDAR, J. –

1. Leave granted. We have heard learned counsel for the parties finally. This appeal arises out of the decision rendered by a Division Bench of the High Court of Andhra Pradesh upsetting the majority view arrived at by two members of the Special Court functioning under the provisions of the A.P. Land Grabbing (Prohibition) Act, 1982 (hereinafter referred to as "the Act"). The appellants are the authorities functioning under the said Act. They had moved the Special Court on the ground that the respondents were in illegal possession and were landgrabbers of a plot of land being Plot No. 9 situated at Jubilee Hills in Hyderabad city. That application was moved in 1991. The Full Bench of the Special Court consisting of the Chairman and the two Members decided the said application after hearing the parties and after considering the evidence led by them came to the conclusion that though the appellants had established their title to Plot No. 9, it was adversely possessed by the respondents and, therefore, no relief could be granted to the appellants in the said proceedings. That decision was rendered on 31-10-1995. An application for review under Section 17-A of the Act was moved by the appellants before the Special Court. In the said application, two grounds were sought to be relied upon - (i) that the Special Court had relied upon Ex. B-12 which was not legally admissible on the record of the case; and (ii) that the decision rendered by the Court suffered from an error of fact. The said review petition was heard by the Full Bench of the Special Court. The learned Chairman who presided over the Bench, took the view that there was no question of invoking the review jurisdiction and, therefore, he was inclined to dismiss the said proceedings. However the other two Members took a contrary view and held that the order sought to be reviewed required reconsideration and, therefore, they were inclined to rehear the matter by granting the review application. Accordingly, by majority, review petition was allowed. That resulted in a writ petition on behalf of the respondents before the High Court.

2. The Division Bench of the High Court by the impugned order dated 25-11-1996 held that the review jurisdiction was wrongly sought to be invoked by the appellants and review proceedings were not maintainable. It was held that the first ground, namely, that Ex. B-12 was inadmissible in evidence, could not be sustained for supporting the review petition as it was admitted in the evidence earlier without any objection. On the second ground, it was held by the High Court that the earlier judgment on 31-10-1995 was based on the relevant facts, both oral and documentary, namely Exs. B-12 and B-13 and B-15 which were earlier judgments of the Special Court wherein it was held that for Plot No. 9 situated at Jubilee Hills, the State authorities had no title and the plot was a fully paid-up plot belonging to the erstwhile occupants and consequently, the earlier proceedings filed under the very same Act by the same appellants seeking eviction of the alleged unauthorised

occupants of this very plot were dismissed. It is also pertinent to note that nothing was brought out on the record of these proceedings to show that the earlier decisions of the very same Court at Exs. B-13 and B-15 which were relied upon by it while passing the order dated 31-10-1995, were ever carried higher up or were sub-judice before any other higher authority. In fact, such was not even the ground on which a review was sought by the appellants. The High Court, therefore, took the view that when the earlier decision was rendered on consideration of all relevant facts and on appreciation of evidence, both oral and documentary, it could not be said that the said decision suffered from any patent error of fact which could have enabled the appellants to seek review of the said order under Section 17-A of the Act consequently the writ petition was allowed and the majority decision of the Special Court seeking to review its earlier order was set aside.

3. Learned Senior Counsel, Shri A. Raghuvir for the appellants, fairly stated that he was pressing the case for review of the earlier order of the Special Court not on the ground that Ex. B-12 was wrongly held admissible in evidence but he strongly relied upon the second ground for review, namely, that the earlier decision suffered from a clear error of fact which in his view was a glaring one and could be said to be an apparent or a patent error. He submitted that Ex. B-12 which was earlier relied upon by the Special Court in coming to the conclusion that it had reference to Plot No. 9, in fact did not refer to Plot No. 9 at all which was the disputed plot but it was concerned with Plot No. 10 which was an adjoining plot. That is one patent error of fact which had crept in the earlier decision of the Special Court dated 31-10-1995. It was next contended by the learned Senior Counsel for the appellants that even that apart, the decision sought to be got reviewed, relied upon two earlier judgments of the Special Court Exs. B-13 and B-15, which might have referred to Plot No. 9 but those decisions had held that Plot No. 9 did not belong to the Government but was a fully paid-up plot which had passed on to the then occupant of the plot and did not remain in the ownership of the erstwhile municipality and consequently could not have been available to the State to claim its title thereon through the said erstwhile defunct municipality. Therefore, the finding reached by the Special Court in the present case on 31-10-1995 when it decided that the said plot belonged to the Government could not have been based on the earlier judgments Exs. B-13 and B-15 which clearly held to the contrary. This was another patent error of fact. It was next submitted that the High Court wrongly assumed that the Special Court while passing the impugned judgment seeking to review the earlier decision had already set it aside on merits and that while granting the review petition, the entire matter was finally disposed of by the Court. On all these grounds, it was vehemently contended that the review proceedings which were at the stage of hearing before the Special Court could not have been intercepted by the High Court in exercising powers under Articles 226 and 227 of the Constitution of India.

4. On the other hand, learned Senior Counsel, Shri P. P. Rao for the respondents, submitted that review jurisdiction is by no means an appellate jurisdiction. That jurisprudentially speaking, a review lies to the same authority only on patent errors of law and if the power of review can also take in its fold errors of fact, the errors of fact must be such that they would go to the root of the matter, otherwise the reviewing authority would almost be able to exercise full appellate powers which would be completely contrary to the well-settled connotation of review jurisdiction. It was also submitted that the High Court was justified in taking the view that the earlier decision was rendered on appreciation of evidence on record then led by both the parties and even if there was any error in coming to any final conclusion, it could be corrected only by an appellate or higher authority in the hierarchy of proceedings and could not be corrected by the same authority by invoking the review jurisdiction. That mere error of appreciation of evidence cannot be equated with a patent error of fact even on the ground that under Section 17-A of the Act, on an error of fact, review powers could be invoked. It was, therefore, contended that the impugned order of the

High Court suffers from no error and calls for no interference under Article 136 of the Constitution of India.

5. Having given our anxious and careful consideration to these rival contentions, we have come to the conclusion that on the peculiar facts of this case, it could not be said that the High Court had committed any error in interfering with the order of the majority of the Members of the Special Court and in quashing the review proceedings.

6. In order to resolve the controversy between the parties, it will be necessary to have a look at the review jurisdiction conferred on the Special Court under Section 17-A of the Act. It reads as under :

> "17-A. Review. - The Special Court may in order to prevent the miscarriage of justice review its judgment or order passed under Section 8 but no such review shall be entertained except on the ground that it was passed under a mistake of fact, ignorance of any material fact or an error apparent on the face of the record :
>
> Provided that it shall be lawful for the Special Court to admit or reject review petitions in circulation without hearing the petitioner :
>
> Provided further that the Special Court shall not allow any review petition and set aside its previous order or judgment without hearing the parties affected."

7. A mere look at the said provision shows that review jurisdiction can be invoked by the Special Court mainly with a view to prevent miscarriage of justice. Consequently the order sought to be reviewed must appear to have resulted into miscarriage of justice and not merely that it might have occasioned dissatisfaction to the party that loses before the Special Court in the first instance. But even part from that, as Section 17-A clearly lays down, review shall be entertained only on the grounds mentioned therein, meaning thereby it is not a full-fledged power of reconsideration of the entire case as if it was a second innings on facts and law permitted by the legislature to the Special Court once it decided a lis between the parties earlier. The grounds of review are limited as mentioned in the said section. It is, of course, true that these grounds are wider than the grounds on which review is allowed under Order XLVII Rule 1 CPC, because even on the mistake of fact or even on ignorance of material fact, a review is permitted. It is also true that an error apparent on the face of the record is a separate ground for reviewing the order of the Special Court as laid down under Section 17-A of the Act. However, it cannot be gainsaid that there is a clear distinction between review power and appellate power. A review can never be said to be an appeal in disguise. Therefore, in order to effectively invoke the jurisdiction of the Special Court in review proceedings, it has to be shown that the mistake of fact which is alleged by the review petitioner should be such that it gets directly embedded in the final order, in the sense it goes to the root of the matter. The phrase, "judgment or order passed on a mistake of fact" shows that the mistake of fact must be so patent that it directly results in an erroneous order sought to be reviewed. In other words, the mistake of fact must have a direct nexus with the ultimate order which but for such a patent mistake, would not have been so rendered. It has to be shown that but for such a mistake of fact, a contrary result might have followed. It is, therefore, obvious that before a review petitioner can invoke Section 17-A of the Act, it should be shown that the mistake of fact is a patent mistake and not a latent one. Mere mistakes in appreciation of evidence or in any inferences drawn from facts could be corrected only in proceedings before a higher forum and not in review proceedings. It is, therefore, not possible to agree with the learned Senior Counsel for the appellants that once a mistake of fact is pointed out and once it is shown that the inference of fact is drawn which is

conjectural, that by itself would be a ground for review under Section 17-A of the Act. Shri Raghuvir, learned Senior Counsel for the appellants, submitted that in the earlier judgment, it was observed by the Chairman speaking for the Special Court that because Plot No. 9 was adjoining Plot No. 10, the owner of Plot No. 10 might have encroached upon the adjoining Plot No. 9 and even his vendee also would have accordingly trespassed on this land. This was purely a conjecture. It must be kept in view that as a court of first instance, even if inference is drawn from available data of facts and if that inference is found fault with, unless that inference is of such a nature that but for that inference the ultimate result would have been different, it would not amount to any glaring mistake of fact on which such judgment can be sought to be reviewed under Section 17-A of the Act. In our view, the High Court was right when it held that on the facts of the present case, the earlier decision of 31-10-1995 was arrived at by the Court on appreciation of oral and documentary evidence and the conclusion was reached on facts that the respondents were in adverse possession of Plot No. 9 even though the title of the appellants was held proved. As this finding was reached on appreciation of a number of documents on record and also on consideration of oral evidence, it could not be said that there was any such mistake of fact which was so patent that but for such mistake, the final conclusion about adverse possession of the respondents would have been different. Under these circumstances, therefore, we cannot find fault with the High Court when it took the view that the majority of the Members were not justified in reopening the earlier decision of the Special Court.

8. We may, however, mention that learned Senior Counsel for the appellants, Shri Raghuvir was right when he contended that the High Court wrongly assumed that the Special Court had not only reopened the earlier matter but had already decided it in the review proceedings. Even if the learned Senior Counsel is right to that extent, the ultimate decision rendered by the High Court on the facts of the present case cannot be said to be in any way erroneous.

9. We make it clear that as learned Senior Counsel, Shri Raghuvir had not pressed the review proceeding on the ground that there was a patent error also in connection with the admissibility of Ex. B-12, we are not expressing any opinion on this question.

10. In the result, this appeal fails and is dismissed. In the facts and circumstances of the case, there will be no order as to costs.