

SUPREME COURT OF INDIA

Municipal Council, Hansi - Petitioner

Vs.

Mani Raj

C.A.No.2561 of 2001

(D.P. Mohapatra and Shivaraj V. Patil JJ.)

04.04.2001

JUDGMENT

D.P. Mohapatra, J.

1. Leave granted.

2. In this appeal, the Municipal Council, Hansi, District Hissar, Haryana, has assailed the order dated 30th March, 1999 made by the High Court of Calcutta, rejecting the application filed by it *inter alia* seeking to intervene in G.A. No. 33/99, Award Case No. 2 of 1997 (Mani Raj and another v. Mamani Devi and Others). In nutshell, the facts which are necessary for disposal of this appeal are:

“In the aforementioned arbitration case between the parties (to which the appellant was not a party), an order was passed on 11.1971 with the consent of the parties appointing them as joint receivers giving several directions including a direction to take possession of immovable property being Khasra Nos. 1191 and 1992 situated at Hansi in the State of Haryana. In the same award case, another award was passed on 26.8.1993 based on the suggested order signed by the Advocate for the parties and joint receivers in which it is stated that inspite of the communication of the earlier orders of the High Court, the appellant did not take any action to deliver possession of the property in Khasra No. 1191. In the said order, it is further stated thus:-

"It is ordered that in case Octroi is abolished and/or the Municipal limits are extended the Municipal Committee is to shift the Octroi Barrier to the extended Municipal limits, then the Municipal Committee is hereby directed to deliver vacant possession of 2 (two) Marlas of land in Khasra No. 1191 to the said Joint Receivers and it is further ordered that the Municipal Committee is hereby restrained from dealing with the said 2 (two) Marlas of land in any other manner."

3. When the possession of the appellant on the property in question was threatened, they filed the application before the High Court seeking to intervene in the award case besides seeking

other reliefs. The appellant claimed that they were the owners in possession of an area of 37.33 sq. yds., in Khasra No. 1191 on which an octroi post had been built. The High Court rejected the said application by the impugned order on the grounds of delay and laches and that the land had been sold by an order of the Court and valuable right had accrued in favour of the *bona fide* purchasers. In the order under challenge, it is observed that:

"In those circumstances I am not inclined to accept the contentions of the petitioner. The fact of the inordinate delay only proved that the petitioner was occupying the land for the purpose of the octroi barrier and was directed by this Court in the order dated August 26, 1993 to remove such barrier and make over possession to the joint receivers."

4. The learned counsel for the appellant urged that the High Court was not at all justified in rejecting the application based on two earlier orders referred to above to which the appellant was not a party; admittedly the appellant is in possession of the property in dispute having built octroi post on the said piece of land, the very direction to the appellant to deliver possession supports the case of the appellant as to its possession over the property; when the appellant has claimed ownership and possession of the property referring to the records mentioned in the application filed by it, the application for intervention ought to have been allowed; in a case like this, the rights of the purchaser over the immovable property will be of no consequence if it was found that their vendor had no title in the property; similarly having regard to the facts and circumstances of the case, the application ought not to have been rejected on the ground of mere delay and laches; the immovable property in question is situated in the State of Haryana so the High Court of Calcutta had no jurisdiction to pass an order in respect of the said property. The learned counsel for the respondents made submissions supporting impugned order.

5. We have considered the submissions made by the learned counsel for the parties. We do not wish to examine and express opinion as to the respective contentions on merits touching the question of title over the property in dispute in the view we are taking. It cannot be disputed that the appellant is in possession of the disputed property. It was not party in the award case and the earlier two orders passed on 11.11.1971 and 26.8.1993 on the basis of which direction was given to the appellant to deliver possession of the disputed property. In the circumstances, the application made by the appellant ought to have been allowed when the direction adversely and seriously affected the valuable rights of the appellant over the immovable property in dispute. We are of the view that the High Court committed a manifest error in rejecting the application filed by the appellant, seeking intervention in the award case. The application of the appellant ought not have been dismissed on the ground of delay and laches having regard to the facts and circumstances of the case and particularly when the appellant was not a party to the earlier orders. The appellant was denied opportunity of putting forth its case before the High Court.

6. In the result, for the reasons stated above, the impugned order is set aside. The application filed by the appellant for intervention before the High Court is allowed. The case is remitted to the High Court for disposal on its merit in accordance with law after affording an

opportunity of hearing to the parties including the appellant. The appeal is disposed of accordingly. No costs.

Appeal allowed.