

SUPREME COURT OF INDIA

Purshottam Das Tandon

Vs.

Military Estate Officer

(R.C. Lahoti and Ashok Bhan JJ.)

19.12.2003

ORDER

ASHOK BHAN, J.

1. This order shall dispose of Civil Appeal No. 7284 of 2001 arising from the order of the Division Bench of the High Court of Judicature at Allahabad dated January 7, 2000 in Civil Misc. Writ Petition No. 13353 of 1992 and Civil Appeal No. 6637 of 2003 arising from the order of the another Division Bench of the High Court of Judicature at Allahabad dated 5th March, 2003 in Civil Misc. Writ Petition No. 28558 of 2002. Both the impugned orders pertain to the same set of property between the same parties. Seemingly, there is a contradiction and inconsistency in the two orders passed by the two different Benches. For the reasons stated hereinafter the matters need to be remanded back to the High Court for a fresh decision for disposal by taking them up together to avoid any contradiction or inconsistency.

Facts in Civil Appeal No. 7284 of 2001

2. The property in dispute situate in Survey No. 143, Old Cantonment, Allahabad was put to auction in execution of a decree against the judgment debtors-Scott and Spencer. The property in dispute was put to auction on 25th November, 1848 and was purchased by the decree holder Lala Manohar Lal, (Grand Father of the appellant) for a sum of Rs. 2,900/-. The auction sale was confirmed by the Court on 27.12.1848. Respondents on behalf of the Union of India on the strength of Governor General's Order No. 179 dated 12th September, 1836 issued a resumption notice dated 26th December, 1968 to the appellant and tried to take possession. Appellant filed Writ Petition No. 175 of 1969 in the High Court challenging the notice alleging, inter alia, that the property in dispute is in his ownership and possession. The same was purchased by his predecessors-in-interest in an auction sale and has fallen to his share in the family settlement. That Union of India was not the owner of the disputed property. That he had also perfected his title by adverse possession. This claim was resisted by the Union of India on various grounds. This petition was finally dismissed on 6th July, 1970 with the observations that it involved highly disputed questions of fact relating to title which could not be adjudicated upon in exercise of writ jurisdiction. The parties were relegated to their alternative remedy of filing a civil suit, if so advised.

3. The appellant thereafter filed Suit No. 147 of 1971 in the Court of Additional District Judge, Allahabad against the tenant/sub-tenant for recovery of arrears of rent and ejection from the property. Union of India claiming to be the owner after the resumption notice also issued a notice to the person occupying the property as a tenant for recovery of the arrears of rent.

4. The tenant/sub-tenant filed interpleader Suit numbered as Suit No. 161 of 1973 in the Court of the Civil Judge, Allahabad asserting himself to be the tenant of the appellant and impleaded him and the Union of India as defendant Nos. 1 and 2 respectively claiming following reliefs:

"(a) The defendant Nos. 1 and 2 be asked to inter plead among themselves to establish their respective rights with regard to the amount of rent due from the plaintiff in respect of premises No. 29, Chaithem Lines, Allahabad Cantonment, and declare that the plaintiff is fully discharged from the liability of the payment of rent due against it to defendant Nos. 1 and 2 upto 30.6.1973.

(b) Plaintiff be awarded the costs of suit

(c) Any other relief deemed fit and just be passed in favour of the plaintiff against the defendants or any of them."

It was pleaded by him that he was not certain about the respective rights of the defendants as both of them were claiming themselves to be the owner of the disputed property and in the circumstances it would be just and proper that they be asked to inter plead between themselves to prove their rights with regard to the disputed property. The trial court framed number of issues including as to who is the owner of the disputed property and entitled to receive the rent. Trial court decreed the suit in favour of the appellant. Aggrieved against which the Union of India filed appeal before the 2nd Additional District Judge, Allahabad which was accepted. The order of the trial court was set aside. Aggrieved against the order passed by the first appellate court the appellant filed Second Appeal No. 2866 of 1978, which was accepted. The order of the first appellate court was set aside and that of the trial court restored. Relevant findings recorded by the High Court were as follows:

"(i) The controversy in the suit mainly turns round the determination of the question whether the property in suit belonged to the Cantonment as alleged by the Union of India or it was private property of the predecessor of the appellant having been acquired at an auction sale.

(ii) The Sale Certificate shows that in execution of a decree held by Lala Manohar Lal against George Spencer the property was sold for Rs. 2900/- and the purchased by the Decree-holder Lala Manohar Lal. The auction sale undoubtedly conveyed the right, title and interest which the judgment-debtor had.

(iii)

(iv) It was consequently unbounded duty of the Union of India to establish that the judgment-debtors George Spencer and Mr. Scott held the Bungalow the appurtenant land subject to the condition mentioned in G.G.O. No. 179 dated 12th September, 1836, No old grant in favour of the Judgment-debtors was filed. The Court is, therefore, entitled to draw an adverse inference against the Union of India.

(v) Under misconception the appellate court presumed that since the Bungalow and the land lie

within the precincts of Cantonment, therefore, the Cantonment must be deemed to be owner, which should be repelled outright.....Even in connection with the G.G.O. No. of 1836 private ownership of land and houses within cantonment limits was fully recognised.

(vi) The Union of India instead of filing the necessary evidence regarding grant has merely chosen to rely on an admission of the appellant said to be contained in Ext. 8.....There is no admission of the appellant or his predecessor of the title Union or its predecessors and the appellant and his predecessors have been enjoying this property to let or hindrance by the Union of India and consequently by lapse of time for more than 100 years have acquired title even if it is assumed that title was with the Government, at any time. The admission in paper No. 67-C is vague and ambiguous. No explanation was sought from the appellant regarding this and this admission does not and cannot be taken to pass title which can only pass by a deed of transfer duly registered.

(vii)

(viii)

(ix) Giving the matter may vary anxious consideration I come to the conclusion that the property belongs to the appellant, that there is no proof or grant in favour of the respondent and as necessary result recourse cannot be had to a mere notice to evict the appellant."

Union of India filed Civil Appeal No. 5931 of 1983 in this court which was dismissed on 21st February, 1964.

5. After the dismissal of the Civil Appeal No. 5931 of 1983, the appellant moved an application before the Executive Officer, Cantonment to mutate his name as 'owner' in the Government Land Register and allow him to deposit property taxes of the premises. He also filed an application dated 8.4.1977 before the competent authority (Urban Land Ceiling, Lucknow Cantonment) seeking exemption of excess vacant land on the ground that he wants to utilise it for construction of dwelling house for the weaker sections of the society. As no action was taken by the respondents on the application moved by the appellant the appellant filed C.M.W.P. No. 363985 of 1992 seeking the following reliefs:

"(i) to issue a writ of mandamus directing the respondent No. 1 and 3 to mutate the name of the petitioner in pursuance of the Hon'ble Supreme Courts Judgment in their record and directions be issued to accept property taxes from the petitioner.

(ii) to issue directions to respondent No. 2 to dispose of all applications of the petitioners pending before the competent authority."

6. The High Court disposed of the writ petition on 7th January, 1992 directing the authorities to take a decision on the application filed by the appellant within a period of two months from the date of the presentation of the certified copy of the order of the High Court.

The authorities dismissed the applications filed by the appellant, aggrieved against which the appellant filed the writ petition in the High Court which resulted in the passing of the impugned order. The High Court formulated 9 questions (question No. iv is missing) which required adjudication. Question Nos. (I) to (v) are not relevant for the present. On question Nos. (vi) to (ix)

which read as follows:

"(vi) Whether the findings recorded in the interpleader suit in favour of the petitioner and against the union of India in the Second Appeal and by the Supreme Court operate as Res Judicata against the respondents?

(vii) Whether the mutation application of the petitioner were not maintainable and whether for that reason the Respondents were justified in not passing orders thereon? If the answer of the first question is the negative then whether this Court will be justified in issuing a writ of mandamus?

(viii) Whether the Respondents were justified in not accepting the property taxes of the Bungalow in question from the petitioner earlier?

(ix) Whether in the facts and circumstances this court should saddle one or the other party with heavy costs?

no decision was given by the High Court and were disposed of by observing as follows:

"Thus we refrain ourselves in expressing our views in regard to Question Nos. (vi) to (viii) and leave them to be adjudicated in the civil suit which may be filed either by the petitioner or by the respondents in terms of the order dated 6th July, 1970 passed by this Court in the petitioner's earliest writ petition No. 175 of 1969."

7. Appellant has filed the present appeal against this order of the High Court.

8. It would be seen that the High Court did not record any finding as to whether the earlier decision rendered by the Allahabad High Court which was affirmed by this court would operate as Res Judicata or not. The question was left open to be decided in a civil suit to be filed by either of the parties.

Facts in Civil Appeal No. 6637 of 2003

9. P.D. Tandon, respondent herein, who is the appellant in Civil Appeal No. 7284 of 2001 filed an application before the competent authority for sanction of map under Section 181 of the Cantonments Act, 1924. His application was rejected by the competent authority on 14.3.2002, aggrieved against which he filed Civil Misc. Writ Petition No. 28558 of 2002 in the High Court. In this writ petition without referring to the decision taken by the High Court of Allahabad in writ petition No. 13353 of 1992 which is under challenge in Civil Appeal No. 7284 of 3001 (which presumably was not referred to or produced before the Bench) and relying upon the earlier decision of the High Court in Second Appeal No. 2866 of 1978 observed: -

"...the question of title in this case has already become res-judicata and cannot be raked up again. It has been held in that case that the property in dispute belonged to the petitioner. This finding is conclusive and res-judicata and cannot be permitted to be raked up again."

10. Order passed by the competent authority refusing to sanction the plans submitted by the appellant was set aside and a direction was issued to the concerned authority to decide the claim of the respondent-P.D. Tandon in accordance with law within six weeks treating as if the property

belonged to the respondent-P.D. Tandon.

Decision

11. The property involved in both the Civil Appeals is the same. The dispute is between the same parties. In both the cases the High Court has interpreted the earlier judgment given by the High Court of Allahabad in Second Appeal No. 2866 of 1978. The finding recorded by the High Court in the two writ petitions regarding res-judicata is contrary to each other. To resolve the seeming contradiction it would be in the interest of justice to set aside both the impugned orders passed by the High Court and remit the cases back to the High Court to dispose them of together to avoid any inconsistency in the orders passed in both the cases.

12. Accordingly, both the appeals are accepted. Orders under appeal are set aside and the cases are remitted back to the High Court for a decision taking up the two writ petitions together for disposal to avoid any contradiction in the orders. We would request the Hon'ble the Chief Justice of the High Court to assign both the writ petitions to the same Bench with a request to dispose them of at the earliest, and if possible, preferably within six months as the litigation between the parties is going on for the last more than 35 years.

13. Anything stated in this order be not taken as an expression of opinion by this Court and the High Court would be at liberty to dispose of the matters in accordance with law. All questions are left open.

14. Parties through their counsel are directed to appear before the Registrar of the High Court of Allahabad on 21st January, 2004 for listing of the writ petitions after obtaining orders from Hon'ble the Chief Justice of the High Court. No costs.