SUPREME COURT OF INDIA

Antonio S.C. Pereira

Vs

Ricardina Noronha (D) By Lrs

Appeal (Civil) 4128 of 2006 (Arising Out of S.L.P. (Civil) No.8304 of 2005)

(S. B. Sinha and Dalveer Bhandari, JJ)

14.09.2006

JUDGMENT

S. B. SINHA, J.

Leave granted.

Jose Joaquim de Noronha was the Count of Mayem. He was married to one Filomena Correia Noronha. They had six children (two sons and four daughters). Jose Joaquim had grandchildren through his son Dr. Francis Antonio, who was married to Racardina. Filomena died in 1903. On her death, in the inventory, half of the estate was allotted to Dom Jose Joaquim de Noronha and the other half to their children. On or about 17/18.04.1929, Dom Jose Joaquim de Noronha bequeathed his disposable quota of properties allotted to him in the inventory upon the death of Filomena. He died on 20.04.1929. Upon his death, his disposable quota of properties was purportedly described as southern lot. Allegedly, the terms of the Will were later altered on 20.06.1930. The legality of such a course of action, however, is in dispute.

On or about 24.12.1964, the Goa Administration Evacuee Property Act, 1964 (for short, 'the Act') and the Rules framed thereunder came into force. Sub-sections (1), (2) and (3) of Section 15 of the Act, which are relevant for our purpose read as under :

"15. Restoration of evacuee property.-(1) [Save as provided under section (3) and subject to such rules] as may be made in this behalf, any evacuee or any person claiming to be an heir of an evacuee may apply to Government or to any person authorized by it in this behalf (hereinafter in this section referred to as the authorized person) that any evacuee property which has vested in the Custodian and to which the applicant would have been entitled if this Act were not in force, may be restored to him.

(2) On receipt of an application under sub- section (1) Government or the authorized person, as the case may be, shall cause public notice thereof to be given in the prescribed manner, and after causing an inquiry into the claim to be held in such manner as may be prescribed, shall –

(a) if satisfied :

(i) That the conditions prescribed by rules made in this behalf have been satisfied,

(ii) That the evacuee property is the property of the applicant, and

(iii) That it is just or proper that the evacuee property should be restored to him,

Make an order restoring the property to the applicant, or

(b) if not so satisfied, reject the application :

Provided that where the application is rejected on the ground that the evacuee property is not the property of the applicant, the rejection of the application shall not prejudice the right of the application to establish his title to the property in a Civil Court, or

(c) if there is any doubt with respect to the title of the applicant to the property, refer him to a Civil Court for the determination of his title :

Provided that no order for the restoration of any evacuee property shall be made under this sub-section unless provision has been made in the prescribed manner for the recovery of any amount due to the Custodian in respect of the property or the management thereof.

(3) Upon the restoration of the property to the evacuee or to the heir, as the case may be, the Custodian shall stand absolved of all responsibilities in respect of the property, so restored, but such restoration shall not prejudice the rights, if any in respect of the property which any other person may be entitled to enforce against the person to whom the property has been so restored.

Provided that every lease granted in respect of the property by or on behalf of the Custodian shall have effect against the person to whom restoration is made until such lease is determined by lapse of time or by operation of law."

On 14.11.1967, the southern half of the estate of Mayem belonging to Eurico Silva was declared to be 'evacuee properties'.

A suit was instituted before a learned Civil Judge, Senior Division, Panaji, Goa, in the year 1993 for a declaration that the allotment in Inventory Proceedings No.957 of 1929 to Eurico ceased to be valid/effective.

It further appears that Ricardina, wife of Eurico, filed an application before the Custodian for declaring southern half of Mayem as 'non-evacuee property'. A prayer was also made for restoration of possession in her favour. A suit being Civil Suit No.1/96/A was also filed restraining the Custodian from releasing the suit properties in favour of Ricardina till disposal of Suit No.154/1993/A. However, the said suit was withdrawn. By an order dated 16.09.1997, the application filed by the Ricardina (since deceased) was dismissed.

Maria Elsa bequeathed her estate in favour of her nephew, Antonio S.C. Pereira, Appellant herein, by a will. She died on 21.11.1997.

The Civil Court passed an order of temporary injunction restraining Respondent No.1 from transferring or alienating any part of the suit properties, where-against an appeal has been filed, which is said to be still pending.

Respondent No.1, however, filed an application for review of the order before Respondent No.3. In the said proceeding an objection was filed by the Appellant herein. The said objection was rejected. A suit was filed by the Appellant that the application filed by Respondent No.1 for reconsideration of the said order dated 16.09.1997 by Respondent No.3 be declared as null and void. The said suit was dismissed. An appeal there- against is said to be pending.

Respondent No.3 by reason of an order dated 21.04.1999, however, reviewed his earlier order dated 16.09.1997, declaring that the entire alleged southern half of Mayem estate to be 'non-evacuee property'. An order was also passed on 17.05.1999 for delivery of possession of the said properties in favour of Respondent No.1.

The said order was, however, set aside by the Government of Goa by an order dated 14.02.2000. Respondent No.1 questioned the correctness of the said order passed before the High Court.

Original Respondent No.1 expired on 22.11.2001 and her heirs and legal representatives were

brought on records in the writ proceedings before the High Court. By reason of the impugned judgment dated 22.12.2004, the High Court while setting aside the order of the Government of Goa, Daman and Diu dated 14.02.2000 purported to have entered into the disputed questions of title arising by and between Appellant and Respondent No.1.

Contention of Mr. T.R. Andhyarujina, the learned Senior Counsel appearing on behalf of the Appellant was that the High Court committed a serious error in entering into the question of disputed question of title in the writ proceedings particularly when a civil suit is pending decision before a competent Civil Court since 1993.

Mr. Mukul Rohtagi, the learned Senior Counsel appearing on behalf of Respondent No.1, however, would submit that while the Civil Court may determine the disputed question of title, but the judgment of the High Court should be directed to be implemented by Respondent No.3.

According to the learned counsel, Respondent No.3 has the requisite jurisdiction to direct restoration of property in terms of Section 15 of the Act and as such this Court should not pass any order which would come in the way of the said authority from exercising his statutory power.

The High Court by reason of the impugned judgment, inter alia, opined that the order dated 21.04.1999 passed by Respondent No.3 was not vitiated in law as the application filed by the said Respondent which came to be rejected by an order dated 16.09.1997, had not been determined as was required under Section 15 of the Act, directing :

"if the legal representatives of Ricardina apply for hearing of the said application on merits within a period of four weeks by taking steps to comply with the requirements of Rule 14(2) and (3) of the rules, we direct the State Government to decide the said application afresh on its own merits. The restoration application may be decided as expeditiously as possible and preferably within a period of six months after compliance. We make it clear that the respondent no.3 has no title, as at present, to the share of Eurico in the southern half property, i.e. the subject property."

It is now trite that ordinarily a writ court would not go into a disputed question of title. We have noticed some of the issues pending before different courts only for the purpose of showing that the parties are at loggerheads as regards the title of the property and in particular the legality or validity of the alterations in the terms of the Will.

Before the High Court, the order of the Government of Goa was in question. The High Court was of the opinion that both the orders dated 16.09.1997 as well as 21.04.1999 were not passed by a competent authority in terms of Section 15 of the Act and as such they were void ab initio.

The High Court, however, proceeded to hold that the matter is required to be considered afresh by the Government or an authorized officer. While, however, issuing the said direction, the court entered into a side issue, namely, title of the successor of Respondent No.1 which, with respect, was

not warranted. The dispute in regard to the title of the properties is pending decision in Suit No.154 of 1993. The High Court, thus, should have allowed the Civil Court to go into the said question.

The statutory scheme under the said Act clearly shows that the question of title can be determined by the Civil Court and not by the administrator or the Government of Goa. The statute may not contain any explicit provision to hear a third party but it is not excluded either. The principle of natural justice as well as that of pro interesse suo would be applicable in such a situation.

It has not been disputed that the Civil Court would be the final authority in this behalf. If that is so, the Administrator would be bound by the judgment of the Civil Court.

We have furthermore noticed hereinbefore that the Appellant had not been heard before the Custodian. If he is claiming title over the property, indisputably he would suffer substantial injury, if possession is restored in favour of Respondent No.1 herein. The Act also contemplates determination of disputed question of title by the Civil Court. Keeping in view the peculiar facts and circumstances of this case, we are of the opinion that with a view to do complete justice between the parties, the following directions shall be issued :

(i) The Civil Court would dispose of Suit No.154 of 1993 as expeditiously as possible and preferably within a period of six months from the date of receipt of a copy of this order, without being in any way influenced by the observations made by the High Court;

(ii) The Civil Court shall not grant any adjournment to the parties, save and except for sufficient and cogent reasons;

(iii) The appropriate authority shall consider the application filed by the Respondents herein after the decision of the said suit in accordance with law.

(iv) In the said proceedings, the Appellant may also be heard.

(v) It would be open to the parties to raise all contentions before the said authority.

The appeal is allowed to the extent mentioned hereinabove. The parties, in the facts and circumstances of the case, shall pay and bear their own costs.