

SUPREME COURT OF INDIA

State of Andhra Pradesh

Vs.

Anjuman Ara Begum

C.A.NO.1754 of 2006

(Dalveer Bhandari and Harjit Singh Bedi JJ.)

07.11.2008

JUDGMENT

DALVEER BHANDARI, J.

1. This appeal is directed against the judgment dated 15th September, 2005 of the High Court of Andhra Pradesh at Hyderabad in writ petition No.3646 of 2003. In the said writ petition, the order passed by the Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 at Hyderabad in Land Grabbing Code No.141 of 1989 dated 10.6.2002 was challenged.

2. The main grievance of the State of Andhra Pradesh in this appeal is that the case of the appellant was not decided on merit either by the Special Court or by the High Court. The Special Court decided the case entirely relying on a short order of this court in State of Andhra Pradesh & Others v. Merit Enterprises & Others (1998) 8 SCC 749. According to the appellant, the Special Court committed a serious error in invoking the concept of res judicata in the facts of this case.

3. In the impugned judgment, the High Court recorded the submissions of the appellant. The learned counsel for the appellant relied on the findings of the High Court on this aspect. Relevant findings are reproduced as under:

"The learned Special Court, according to the learned Government Pleader for Revenue, committed a mistake by holding that it was a case of res judicata, as respondents 22 to 59 were not parties to that judgment. It may be true that the judgment in M/s Merit Enterprises v. State of AP may not operate as res judicata, but at the same time, we agree with the learned counsel for the respondents that it was a piece of evidence in terms of Section 13 of the Evidence Act (I of 1872). Once the Court had decided, and the decision had been upheld even by the Supreme court that applicant-State Government was not the owner of the property in question, that judgment could be used as evidence."

4. It may be pertinent to mention that in the impugned judgment, the High Court has not gone into the question of ownership and possession. The relevant findings of the High Court are reproduced as under:-

"There is no finding by the Special Court as to who was in possession of the land. Therefore, we will not be in a position to decide the issue with regard to the possession and ownership over the said land, as this Court in its writ jurisdiction would not be able to appreciate the evidence although parties have led evidence with regard to the factual position. Therefore, while dismissing this writ petition, we make it clear that this Court has not gone into the question of ownership or possession."

5. According to the appellant, the courts have erroneously dismissed the appellant's case by relying on orders passed in certain other proceedings.

6. The appellant submitted that in 1989, the State of Andhra Pradesh filed a petition under sections 7 and 8 of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 against respondent no.1. According to the appellant, the land in question measured 18493 sq. mtrs. (approximately 4.23 acres) and fell within T.S. No.3/1/1/, Block S, Ward No.11 and T.S. No.3/1 (part) and 3/2 (part), Block U, Ward No.11, Shaikpet Village. The State's further case is that this land was earlier Plot No.129/75/D5, which fell within erstwhile Survey No.403, which was earlier numbered as Survey No.129/1, comprising Acre 2967-27 Guntas and belonged to the State Government, having vested in it in 1949 along with the rest of the properties of the Nizam of Hyderabad.

7. The case was initially filed against respondent no.1 alone. Through various interim orders, respondent nos.2-59 got themselves impleaded. The respondents can be classified into two categories according to their interests: Respondent nos.1-21 had set up one case and respondent

nos.22-59 had set up entirely a different case.

8. The case of respondent nos.1-21 was that the land corresponded to Plot No.129/75/D5, which land was assigned to one Mohammed Mahboob Ali Pasha (the father of respondent no.1) by the erstwhile Jubilee Hills Municipality in 1342 Fasli (corresponding to 1932 CE) and was, therefore, patta (private owned) land. Respondent nos.2-21 also claimed to be legal heirs of Pasha. None of the courts below have expressed any view on the merits of this defence.

9. The case of respondent nos.22-59, on the other hand, was that the land formed part of Survey No.129/6. Their case was that this area, covering schedule property and other land, in all 6 Acres and 20 Guntas, was assigned to one Jaffar Ali Sharif by Sarfekhas authorities in 1341 fasli (corresponding to September 1930). On 20.03.1965 Jaffar Ali Sharif sold that land to two persons, Karamath Ali and Vijay Haridas. These two persons sold different portions of the land to different people, and eventually to these respondents. The merits of this defence have also not been dealt with any of the courts below.

10. Respondent nos.22-59 further contended that the same Karamath Ali and Vijay Haridas also sold portions of the land to other persons and eventually some portion was sold to a company called Merit Enterprises. The State Government had initiated proceedings against Merit Enterprises under the Andhra Pradesh Land Encroachment Act, 1905 (for short "Land Encroachment Act"). Merit Enterprises moved the High Court in W.P.No.1963/1983, which quashed the said proceedings by its judgment dated 28.09.1983 and the judgment of the High Court was affirmed by the Supreme Court.

11. According to these respondents, the application schedule land as originally given by the State included the land on which Merit Enterprises had its construction. The Special Court vide order dated 19.12.2001 directed the State to delete the said extent of land from the case. Accordingly, the State amended its petition and restricted its claim to 14,835 sq. mtrs. It has been stated during the hearing before this court that the State should not have agreed to delete the land from its claim and that it will now take recourse to whatever remedy it has even against Merit Enterprises.

12. Respondent nos.22-59 relied on the judgment of the High Court in Merit Enterprises to contend that this judgment conclusively established the assignment in favour of Jafar Ali Sharif and consequently the title of Karamat Ali and Vijay Haridas. The further contention of respondent no.22-59 was that since they also claimed their title through the same Karamat Ali and Vijay Haridas, their title also stood established which meant that the land did not belong to the State Government.

13. The Special Court accepted the above contention of respondent nos.22-59. On this basis alone, it held that the land did not belong to the State Government and dismissed the petition. The High Court confirmed this order.

14. In this case, on the direction of the court, the Commissioner has submitted a Report. Survey No.129 (1) is government land and Survey No.129/6 is private land. It was the State's case that Plot No.129/75/D5 fell within Survey No.129/1 and since it was an unrecognized plot, the land belonged to the State.

15. In order to clarify the issue of the location of the land in dispute, the Special Court appointed a Commissioner. The Commissioner examined the documents and physically visited the site and gave his report. The gist of the report is as follows:

"(a) The land claimed by respondent no.1 is located in T.S. No.3/1, Block S, Ward No.11 and T.S. No.3/1 (part) and T.S. No.3/2 (part) of Block U, Ward No.11.

(b) As per the entries in the Town Survey Land Register, T.S. No.3/1 and 3/2 of Block U, Ward No.11 are recorded as graveyards. T.S. No.3/1 of Block S, Ward No.11 is shown as government land. All this is correlated to Old Survey No.403.

(c) The land claimed by respondent no.1 is Plot No.129/75/D5 which is government land. It is not patta land.

(d) Regarding the case of the other respondents claiming that the land falls under Survey No.129/6, there is no such survey number in Shaikpet village.

(e) The claim of the Government over the land is correct."

16. The report submitted by the Commissioner was taken on record on 11.07.1996. However, astonishingly, according to the State of Andhra Pradesh, the Special Court has not even referred this report in its final order. The case of the State of Andhra Pradesh can be summarized from the pleadings before the Special Court as follows:-

(a) In 1916, the initial survey of Shaikpet village was conducted. Survey No.129 comprising Acre 3288-02 Guntas was classified as government land.

(b) In 1921, Survey No.129 was subdivided into :

(i) Survey No.129/1 comprising Acre 3097- 39 Guntas and belonging to the Government; and

(ii) Survey Nos.129/2 to 129/10 comprising Acre 190-03 Guntas which were patta lands.

(c) In 1936, a renumbering of survey numbers took place. Survey No.129/1 became Survey No.403. Survey Nos.129/2 to 129/10 became Survey Nos.353 to 402.

(d) Around the same time, Survey Nos.129/11 to 129/87 were carved out of Survey No.129/1, as a result of which its area became Acre 2967-27 Guntas.

(e) In 1977, a town survey was conducted under the Andhra Pradesh Survey & Boundaries Act, 1923 ('Survey & Boundaries Act'). Survey No.403 is now

referred to as different Blocks all falling within Ward Nos.9-12 of shaikpet.

(f) The land in question measures 14835 sq. mtrs. and falls within T.S. No.3/1/1, Block S, Ward No.11 and T.S. No.3/1 (part) and 3/2 (part), Block U, Ward No.11. 7 Amended Petition, Concise Statement and Additional Concise Statement @ Additional Documents Vo.IV pp.582-601. 7 Deposition of PW2, Mr. Seetha Ram Reddy, Mandal Revenue Officer, Golconda @ Additional Documents Vol.IV pp.490-494. 7 Certified Extract of Khasra Pahani Patrika of the year 1981-82 @ Additional Documents Vol.III pp.459. 7 Correlation Chart showing Old Survey Numbers, New Survey Numbers and Town Survey Numbers @ Additional Documents Vol.V pp.848-852. 7 Detailed Map of the area @ Additional Documents Vol.V p.970."

17. On the basis of the aforementioned evidence, it is the case of the appellant State that the land in question belonged to the State. Reference has been made to sections 13 and 14 of the Survey & Boundaries Act by the State. Section 13 provides for the notification of the town survey in the official gazette and further provides that after such notification the record of the survey shall be conclusive proof that the boundaries determined and recorded therein have been correctly determined and recorded. Section 14 provides that any person aggrieved by such notification may

institute a suit within three years to challenge the same. In the instant case, no suit has been filed within three years or even thereafter, and the records of the Town Survey have thus attained finality.

18. According to the appellant State, the courts below were in serious error in placing reliance on the order of this Court in Merit Enterprises (supra) and disposing of the appellant's case. The land on which Merit Enterprises has its construction is adjacent to the land claimed in the proceedings. This has never been denied and indeed is a matter of record. The dispute in this case is regarding the survey number.

19. The High Court in the Merit Enterprises case was not concerned with the title of any party. Merit Enterprises was constructing a multi-storeyed building on certain premises situated at Road No.13, Banjara Hills, Hyderabad having a total area of 4090 sq. yds. In March 1983, the State Government issued a "notice to quit" under the provisions of the Land Encroachment Act. Merit Enterprises claimed to trace its title to Jafar Ali Sharif. The State Government's contention was that Sharif had no title and the purported assignment in his favour was a forgery. It also contended that the writ petition against the notice was not maintainable because it involved a disputed question of fact, viz., whether the land was government land or private land. The conclusion of the High Court was that there was a bona fide dispute with regard to title between the parties. The State Government could decide this unilaterally and evict Merit Enterprises. It relied on the judgment of this court in Government of Andhra Pradesh v. Thummala Krishna Rao & Another etc. (1982) 2 SCC 134 to hold that that Government could take action under the Land Encroachment Act only when it is absolutely sure of its title. Where there was a bona fide dispute, no proceedings under this Act could be taken.

20. According to the appellant, proceedings under the Land Encroachment Act and the Land Grabbing Act are fundamentally different. The former is a summary unilateral action of the State Government whereas the latter involves a decision by a Special Court after examining the evidence. This qualitative difference has also been completely ignored by the courts below. This court laid down that the Special Court has the jurisdiction to decide title disputes.

21. According to the appellant, the court below mis-appreciated the order in the case of Merit Enterprises (supra). The Special Court understood the judgment as having upheld the title of Karamath Ali and Vijay Haridas and this is a fundamental error. According to the appellant, the High Court in the instant case also failed to correct the error of the Special Court. According to the appellant, the only finding returned by the High Court in the Merit Enterprises case was that for the purposes of the Land Encroachment Act, there was a bona fide dispute between the parties. There was no finding on title; nor was there any occasion to give such a finding. The courts below failed to address or even raise this question and are, therefore, in error.

22. Mr. Gopal Subramaniam, the learned Additional Solicitor General appearing for the State of

Andhra Pradesh submitted that respondent nos. 26, 28, 29, 30, 31, 32, 35, 36, 37, 38, 39, 41, 43, 44 and 45 had in fact filed applications to the State Government for regularization of their title. All these applications were rejected by order dated 14.06.1999. In case the respondents had the clear title, where was the question of their filing applications before the State Government for

regularization of their title?

23. Mr. Gopal Subramaniam placed reliance on the judgment of this court in Mahalaxmi Motors Ltd. V. Mandal Revenue Officer & Others (2007) 11 SCC 714. In this case it has been held that the fact that regularization applications had been filed was held to be admission of lack of title. The appellant also submitted that none of the courts below have considered the merits of any of the claims of the parties. No finding has been given regarding the survey number of the

land. The Commissioner's report has been ignored.

24. According to the appellant, the appropriate course is to set aside the judgments of the courts below and remit the matter back to the Special Court for being decided afresh on merit uninfluenced by any findings or observations.

25. It was submitted on behalf of respondent nos. 1 to 21 that the suit land falls in Survey No. 129/75/D5 and it was purchased by their father Late Mohd. Maqbool Ali Pasha from Surfekhas Authority in 1342 fasli. Thereafter, the family of respondent no. 1 has been in peaceful and continuous possession of suit land for more than 50 years.

26. It was further asserted by respondent nos. 1 to 21 that the possession of the suit land was handed over to the father of respondent no. 1 vide Collector's letter dated 3rd Ardhivast 1346. The learned counsel for these respondents further submitted that the land in dispute was also subject matter in the case of Merit Enterprises being writ petition no. 1963 of 1983. In the said judgment the High Court has relied upon the Map prepared by the State Government for identification and demarcation of government and private lands in Banjara Hills. On the basis of the said Map and also on the basis of the submissions made by the appellant State, the High Court categorically held that Survey No. 129/75/D5 is a patta land. It was also submitted that Merit Enterprises case was upheld by this court and the same attained finality. In this view of the matter, this appeal deserves to be dismissed.

27. Learned counsel for the respondent nos. 22 and 23 admitted the arguments of respondent nos. 24-59. According to them, the only difference between the case of respondent nos. 22-23 and respondent nos. 24 to 59 is that the respondent nos. 22 and 23 never applied for regularization under any government scheme or notification.

28. Mr. Ranjit Kumar, learned Senior Advocate appearing on behalf of respondent nos.24 to 56 and 59 submitted that one Jaffar Ali Shareef was granted patta to an extent of 6 acres 20 guntas in Survey No.129/6 of Shaikpet village, Hyderabad district by the Surfekhas Authorities vide orders dated 10th Aban 1341 Fasli i.e. September 1930. According to him, the schedule land to the extent of 14835 sq. mts. is part of the above mentioned 6 acres 20 guntas. He further submitted that Shri Jaffar Ali Shareef sold the said 6 acres and 20 guntas of land to Karamath Ali and Vijay Haridas under registered sale deed dated 20.3.1965.

29. On 22.3.1975, respondent nos.22 to 33 jointly entered into an agreement of sale with Karamath Ali to purchase different extents of house plots totally admeasuring 5870 sq. yards in a plotted area, after deducting the common area for roads in the abovesaid 6 Acres 20 guntas of land. They have paid the entire sale consideration to Karamath Ali. Similarly, on 19.4.1974, respondent nos.34 to 44 have jointly entered into an agreement of sale with Karamath Ali to purchase different extents of house plots totally admeasuring 8480 sq. yards area after deducting the common area for roads in the abovesaid Ac 6.20 guntas of land. No sale deed was executed and Karamath Ali expired on 20.1.1994. Respondent no.24 to 44 filed suits in OS No.278 of 1997 and OS No.252 of 1997 respectively before the learned IVth Additional Judge, City Civil Court, Hyderabad against the legal heirs of late Karamath Ali i.e. wife and daughter of specific performance of

the agreement of sale and the suits were decreed by the learned Court below vide judgment and decree dated 30.4.1997.

30. Mr. Ranjit Kumar also submitted that the decision has been rendered on the basis of the sale deed by Karamat Ali qua lands in favour of Merit Enterprises in which a judgment had been rendered by the Division Bench on 28.9.1983 upholding the title of Karamat Ali and Merit Enterprises. The State of Andhra Pradesh had preferred an appeal in the Supreme Court in the year 1984 being Civil Appeal No.267 of 1984. After filing of the said appeal in the Supreme Court against Merit Enterprises, the State Government had also filed a land grabbing case being LGC No.141 of 1989. In that land grabbing case, the land of Merit Enterprises being 4090 sq. yds. was also included.

31. Mr. Ranjit Kumar also submitted that the case of Merit Enterprises has been finally decided by this Court and acquired finality. According to him, the case of the respondent represented by him is not different than the case of the Merit Enterprises.

32. Mr. Ranjit Kumar further submitted that the Division Bench considering the entire record and cogent evidence came to the correct conclusion and no interference is called for by this Court and the appeal filed by the State deserves to be dismissed.

33. We have heard the learned counsel for the parties at length and perused the relevant documents

and record.

34. In the impugned judgment, it is specifically observed that the High Court has not gone into the question of ownership and possession. The parties have taken entirely conflicting stands regarding ownership of the lands in question. There is no determination of the conflicting stand of the parties by the Special Court. The High Court without any cogent reasons upheld the judgment of the Special Court. It may be pertinent to mention that several respondents have filed applications for regularization. This fact would clearly lead to the conclusion that even the respondents were not sure of their title, otherwise there was no occasion for them to file applications for regularization.

35. In this view of the matter, it has become imperative that the impugned judgments of the High Court and the Special Court be set aside. Consequently, the judgments are set aside the case is remitted to the Special Court for deciding the same afresh on merits after hearing the counsel for the parties. The Special Court is directed to decide the case without being influenced by any findings or observations made by any court. Since this case has been pending for quite sometime, we request the Special Court to decide this case as expeditiously as possible. To avoid any delay, the parties are directed to appear before the Special Court on 1st December, 2008.

36. This appeal is accordingly disposed of. In the facts and circumstances of this case, we direct the parties to bear their own costs.