SUPREME COURT OF INDIA

Ritesh Tewari

Vs.

State of U.P.

C.A.No.8178 of 2010

(P.Sathasivam and Dr.B.S.Chauhan JJ.)

21.09.2010

JUDGEMENT

Dr.B.S.Chauhan, J.

1. Leave granted.

2. This appeal has been preferred against the judgment and order dated 20th January, 2009, passed by the High Court of judicature at Allahabad in Civil Misc. Writ Petition No. 45169 of 2008 by which the prayer of the appellants to quash certain inter-departmental communications has been rejected.
Facts:

3. One Mawasi, resident of Saraivega Hemlet of village Kakratha, Tehsil and District Agra, had two sons, namely, Sukha and Shyama.

> "Shyama has only one son namely, Rammo. Descendents of Sukha have been Ballo, Radhe Ram, Babu and Sohan Singh. They were having certain land in Gata Nos. 870, 258, 192, 258/2 and 258/5 measuring 9 Bighas 14 Biswas situate in the revenue estate of Village Kakratha Pragana, Tehsil and District Agra. The *Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter called `the Act 1976')* came into force in the State of Uttar Pradesh with effect from 17th of February, 1976. The aforesaid tenure holders were subjected to the provisions of the aforesaid Act 1976. They had filed their respective declaration as required under the Act 1976, however, the record reveals that ex-parte assessment orders had been passed against all of them under Section 8(4) of the Act 1976 on 30th January, 1981, 31st January, 1981, 30th March, 1981, 8th May, 1981 and 25th May, 1981, declaring an area of land as surplus."

4. The original tenure holders did not challenge the said assessment orders in appeal or writ jurisdiction, thus they attained finality. It is stated that the said tenure holders transferred the major part of land so declared as surplus with them on 20th April, 1982 in favour of Mayur

Sahkari Awas Samiti. The authorities under the Act 1976 proceeded against those tenure holders under Section 10 (3) publishing a Notification dated 6.7.1993 which effectuated the deemed vesting of such land in the State. Notices under Section 10(5) were issued on 31st March, 1993; 13th September, 1993; and 18th February, 1994, directing the said tenure holders to hand over the possession to the statutory authority, however, there is nothing on record to show that actual physical possession was taken by the statutory authorities in exercise of their power under Section 10(6) of the Act of 1976.

5. The pleadings in this appeal reveal that certain members of Mayur Sahkari Awas Samiti had sold their land to M/s Savy Homes (P) Ltd. who in turn further sold the land to the present appellants vide sale deed dated 15th June, 2006. Appellants further claim to have applied for sanction of plan for construction of buildings and the same was accorded by the statutory authorities under the Municipal Law. Appellants also claim to have developed the land.

6. The Act 1976 was repealed with effect from 18th March, 1999 vide *Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter called the Act 1999)*. The appellants apprehended that they could be dispossessed by the authorities in view of certain inter-departmental communications contained in letters dated 30th June, 2008 and 18th July, 2008, and thus, preferred Civil Miscellaneous Writ Petition No. 45169 of 2008 before the High Court of Judicature at Allahabad for quashing of the same and for a direction restraining the respondents to interfere with the actual and physical possession of the land of the appellants. The said writ petition has been dismissed by the impugned judgment and order dated 20th January, 2009. Hence, this appeal.

Rival claims of the Parties:

7. Shri Jayant Bhushan, learned senior counsel appearing for the appellants, has submitted that the authorities under the Act 1976 have never exercised the power under Section 10(6) of the Act 1976 and, thus, possession of the land in dispute had never been taken by the State and after commencement of the Act 1999, the proceedings stood abated. Therefore, the question of interference with the land in dispute does not arise. The High Court erred in taking into consideration the locus-standi of the appellants and holding that the transfer in favour of the appellants was consequential to the void transaction in favour of Mayur Sahkari Awas Samiti. Hence, the appeal deserves to be allowed.

8. On the contrary, Shri S.R. Singh, learned senior counsel appearing for the respondents, has vehemently opposed the appeal contending that once the assessment had been made under Section 8(4) of the Act 1976, against the original tenure holders, the sale in favour of Mayur Sahkari Awas Samiti was void. Further, the transfer in favour of M/s Savy Homes (P) Ltd. and the subsequent transfer in favour of the appellants being consequential remained inexecutable and unenforceable, thus, a nullity. Once an order in inception is bad, it cannot have sanctity at a subsequent stage by other subsequent orders/developments. The original tenure holders are nowhere involved and none of them has been impleaded in these

proceedings. No evidence has been placed on record to show that the sale deed in favour of Mayur Sahkari Awas Samiti was genuine. More so, the writ petition was filed for quashing the inter-departmental communications, thus, the writ petition itself was not maintainable. The appellants had never received any show cause notice from the statutory authorities. No proceedings have ever been initiated against them or their predecessors-in- interest. The appeal lacks merit and is liable to be dismissed.

9. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

Case on merits:

10. The appellants had not approached the High Court for quashing an order passed by the authority under the Act 1976. The relevant reliefs claimed by the appellants-writ petitioners have been as under :

> "(i) to issue a suitable writ, order or direction in the nature of mandamus directing the respondents not to interfere in the actual physical peaceful possession and construction of the petitioners' multi storied building known as `Ganpat Green Apartment' situated at Khasra Plot No. 258, Village Kakraitha, Tehsil Sadar, District Agra.
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> (ii) To issue a suitable writ, order or direction in the nature of certiorari and to quash the directions contained in the letters dated 30th June, 2008 and 18th July, 2008 (Annexures 19 & 20 to the writ petition).
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> (iii) To issue suitable writ, order or direction constituting an enquiry committee to enquire into the role of and to fix responsibility on the erring respondents for the illegal and undue harassment of the petitioners in respect of the construction in question as also for the publication of the press reports dated 26.08.2008 (Annexure 21 to the writ petition) damaging irredeemably the business, reputation as well as goodwill of the petitioners and to direct such authority found responsible for the said illegal acts to compensate the petitioners for the aforesaid damage caused to their business, reputation and goodwill."

11. The letters referred to hereinabove are part of the record. The said letters are communications from the Deputy Collector (Sadar), Agra to Additional District Collector, (A), Prescribed Authority, Urban Land, Agra dated 30th June, 2008; and from Additional District Collector, (A), Prescribed Authority, Urban Land, Agra to Secretary, Agra Development Authority dated 18th July, 2008.

> "We fail to understand as to how the contents of such a communication between two officers of the departments of the government can be the subject matter of the writ

petition. The appellants could not have approached the High Court for the aforesaid relief sought by them. The writ petition was certainly not maintainable."

12. Be that as it may, in view of the fact that the High Court has decided the case on merit and we have also heard the case on merit, the issue of the maintainability of writ petition remains merely academic.

"Shri Jayant Bhushan, learned senior counsel appearing for the appellants has submitted that as the State Government had not taken possession of the land in exercise of its powers under Section 10(6) of the Act 1976, on commencement of the Act 1999 into force, the proceedings stood abated and the respondents have no business to interfere with the peaceful possession and enjoyment of the property."

13. We find full force in the submissions so made by Shri Jayant Bhushan to a certain extent, and hold that all proceedings pending before any court/authority under the Act 1976, stood abated automatically on com- mencement of the Act 1999 in force, provided the possession of the land in- volved in a particular case had not been taken by the State. Such a view is in consonance with the law laid down by this court in *Pt. Madan Swaroop Transport & Ors.*[1].

14. The aforesaid conclusion leads us further to the question as to whether the appellants have any justifiable cause to approach the court. Firstly, no proceedings had ever been initiated against the appellants by the authorities under the Act 1976. Secondly, the State authorities, the respondent herein, failed miserably to perform their statutory duties and it appears that they could not muster the courage to take the actual physical possession of the land in dispute in spite of issuance of notice under Section 10(5) of the Act 1976 in the year 1993. More so, the so-called authorities could issue notices under Section 10 of the Act 1976 after a lapse of twelve years as the assessment of surplus land became final in 1981 itself. Such an indifferent attitude on the part of the authorities is not worth commendable rather it is condemnable, but that does not mean that court should decide only the effect of repealing Act 1999 in these proceedings at the behest of the appellants in absence of the original tenure holders and subsequent transferees inasmuch as in the fact-situation of this case where the appellants, for the reasons best known to them, did not consider it proper to place either of the sale deeds on record.

15. The ex-parte orders of assessment of surplus land against the original tenure holders have been placed on record. Admittedly, the said assessment orders had not been challenged by them and attained finality. In view of provisions of Sections 5 and 10 of the Act of 1976, transfer of such land by them in favour of anyone was not only prohibited but null and void. Section 5 (1) of the Act 1976 provided that transfer of vacant land in excess of the ceiling limit at any time during the period commencing on the appointed day and ending with the commencement of this Act, by way of sale, mortgage gift, lease or otherwise, the extent of the land so transferred shall also be taken into account in calculating the extent of vacant land held by such person.

"Section 5(3) provided that transfer of vacant land or part thereof effected by a recorded tenure holder having land in excess of the ceiling limit subsequent to the commencement of Act of 1976 by way of sale, mortgage or lease until he had furnished a statement under Section 6, and a Notification under Section 10(1) has been published would be deemed to be null and void."

16. Section 10 (4) of the Act 1976 reads as follows:

"10. Acquisition of vacant land in excess of ceiling limit.

(4) During the period commencing on the date of publication of the Notification under sub-section (1) and ending with the date specified in the declaration made under sub-section (3).

(i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof) specified in the Notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void; and (ii) no person shall after or cause to be altered the use of such excess vacant land."

(Emphasis added)

17. The High Court after considering the said statutory provisions and taking note of the fact that the appellants did not disclose the date of notification under Section 10(1) of the Act 1976, nor annexed the copy of the same and further presuming that the said notice must have preceded the notice under Section 10(3) of the Act 1976, reached the conclusion that the transfer which had been effected by the recorded tenure holders in favour of Mayur Sahkari Awas Samiti on 20th April, 1982 was deemed to be null and void by operation of law under Sections 5(3) and 10(4) of the Act 1976. We do not see any cogent reason to take a contrary view. More so, a further examination of the correctness of the aforesaid finding at the behest of the appellants is not desirable for the reasons that they did not disclose even the date of notification issued under Section 10(1) of the Act 1976. More so, the user of the land could not be changed in view of the provisions of Section 10(4) of the Act 1976. The alleged transfer by the recorded tenure holders in favour of Mayur Sahkari Awas Samiti for the purpose of construction of residential houses was totally illegal.

18. The sale deed in favour of Mayur Sahkari Awas Samiti dated 20th April, 1982 is not on record. There is nothing to establish whether the sale deed was a genuine, forged or fabricated document. Merely making a statement that it was a registered sale deed and, therefore, it was genuine, cannot be accepted. There is no such presumption in law. There is nothing to ascertain who had been the transferors and who were the transferees therein. None of the subsequent sale deeds is on record. Therefore, the genuineness of either of the alleged sale deeds can be tested. There are no pleadings as under what circumstances the sale deeds

have been executed and as to whether the original tenure holders have received any consideration.

19. It is a settled proposition of law that a party has to plead the case and produce/adduce sufficient evidence to substantiate his submissions made in the petition and in case the pleadings are not complete, the Court is *State of Haryana & Ors.*[2], this Court has observed as under:- "In our opinion, when a point, which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or the counter-affidavit, as the case may be, the Court will not entertain the point. There is a distinction between a hearing under the Code of Civil Procedure and a writ petition or a counter- affidavit. While in a pleading, i.e. a plaint or written statement, the facts and not the evidence are required to be pleaded. In a writ petition or in the counter affidavit, not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it." (Emphasis added) *Vimalabai Prabhulal & Ors*[3]., and Rajasthan Pradesh 2221).

> "The present appeal definitely does not contain pleadings required for proper adjudication of the case. A party is bound to plead and prove the facts properly. In absence of the same, the court should not entertain the point."

20. The power under Article 226 of the Constitution is discretionary and supervisory in nature. It is not issued merely because it is lawful to do so.

> "The extraordinary power in writ jurisdiction does not exist to set right mere errors of law which do not occasion any substantial injustice. A writ can be issued only in case of a grave miscarriage of justice or where there has been a flagrant violation of law. The writ court has not only to protect a person from being subjected to a violation of law but also to advance justice and not to thwart it. The Constitution does not place any fetter on the power of the extraordinary jurisdiction but leaves it to the discretion of the court.
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> However, being that the power is discretionary, the court has to balance competing interests, keeping in mind that the interests of justice and public interest are coalesce generally. A court of equity, when exercising its equitable jurisdiction must act so as to prevent perpetration of a legal fraud and promote good faith and equity. An order in equity is one which is equitable to all the parties concerned. Petition can be entertained only after being fully satisfied about the factual statements and not in a casual and *Income Tax, West Bengal & Ors.*[4], *Chimajirao Kanhojirao Shrike & Anr. v. Oriental Fire and General Insurance Co. Ltd.*[5],; *LIC of India v. Smt. Asha Goel & Anr.*[6], *The State Financial Corporation & Anr. v. M/s. Jagdamba Oil Mills & Anr.*[7], *Chandra Singh v. State of Rajasthan & Anr.*[8], *and Punjab Roadways, Moga through its General Manager v. Punja Sahib Bus and Transport Co. & Ors*[9]).

21. Where a party's claim is not founded on valid grounds, the party cannot claim equity. A party that claims equity must come before the court with clean hands as equities have to be properly worked out between parties to ensure that no one is allowed to have their pound of flesh vis-`-vis the others unjustly. (vide: *Sikkim Subba Associates v. State of Sikkim*[10].

22. In *Andhra Pradesh State Financial Corporation v. M/s. GAR Re- Rolling Mills & Anr.*[11], this Court observed:- "Equity is always known to defend the law from clefty evasions and new subtelities invented to evade law."

23. In *M.P. Mittal v. State of Haryana & Ors.*[12], this Court held:

> ".....it is open to the High Court to consider whether, in the exercise of its undoubted discretionary jurisdiction, it should decline relief to such petitioner if the grant of relief would defeat the interests of justice. The Court always has power to refuse relief where the petitioner seeks to invoke its writ jurisdiction in order to secure a dishonest advantage or perpetrate an unjust gain."

24. This Court in *State of Maharashtra & Ors. v. Prabhu*[13], considered the scope of equity jurisdiction of the High Court under Article 226 of the Constitution and pointed out as follows:

> "It is the responsibility of the High Court as custodian of the Constitution to maintain the social balance by interfering where necessary for sake of justice and refusing to interfere where it is against the social interest and public good."

25. The present appeal does not present any special feature warranting exercise of equitable discretionary jurisdiction in favour of the appellants.

> "The equity jurisdiction is exercised to promote honesty and not to frustrate the legitimate rights of the other parties."

26. It is settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order.

27. It would be beyond the competence of any authority to validate such an order. It would be ironical to permit a person to rely upon a law, in violation of which he has *Tewari*[14]. 228, this Court held that a right in law exists only and only when it has a lawful origin.

28. *Mishra (dead) by LRs. & Ors.*[15], this Court held that if an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non-est and have to be necessarily set aside.

29. In the instant case, as we have observed that the alleged sale deed dated 20th April, 1982 in favour of Mayur Sahkari Avas Samiti has been a void transaction, all subsequent transactions have merely to be ignored.

30. While hearing this appeal, we made a futile exercise to ascertain the true facts and find out the bona fides of the appellants. For that purpose, we put certain questions to the learned counsel for the appellants. Shri Jayant Bhushan, learned Senior counsel persistently answered that the facts, the court wanted to ascertain were not in issue.

> "Section 165 of the *Evidence Act, 1872* empowers the Court to ask questions relevant, irrelevant, related or unrelated to the case to the party to ascertain the true facts. The party may not answer the question but it is not permitted to tell the Court that the question put to him is irrelevant or the facts the court wants to ascertain are not in issue. Exercise of such a power is necessary for the reason that the judgment of the court is to be based on relevant facts which have been duly proved. A court in any case cannot admit illegal or inadmissible evidence for basing its decision. It is an extraordinary power conferred upon the court to elicit the truth and to act in the interest of justice. A wide discretion has been conferred on the court to act as the exigencies of justice require. Thus, in order to discover or obtain proper proof of the relevant facts, the court can ask the question to the parties concerned at any time and in any form. "Every trial is voyage of discovery in which truth is the quest". Therefore, power is to be exercised with an object to subserve the cause of justice and public interest, and for getting the evidence in aid of a just decision and to uphold the truth. The purpose being to secure justice by full discovery of truth and an accurate knowledge of facts, the court can put questions to the parties, except those which fall within exceptions contained in the said provision itself. (Vide[16] .)"

31. In the instant case, in spite of all our sincere efforts, we could not succeed in eliciting the true facts.

32. In view of above, we do not find any force in the appeal on merit and it is, accordingly, dismissed. No order as to costs.

[1] *JT (2010) C 298*	[2] *AIR 1988 SC 2181*	[3]*(2005) 8 SCC 252*	[4] *AIR 1970 SC 645*
[5]*AIR 2000 SC 2532*	[6]*AIR 2001 SC 549*	[7]*AIR 2002 SC 834*	[8]*AIR 2003 SC 2889*
[9]*(2010) 5 SCC 235*	[10]*(2001) 5 SCC 629*	[11] *AIR 1994 SC 2151*	[12] *AIR 1984 SC 1888*
[13]*(1994) 2 SCC 481*	[14]*(2006) 1 SCC 530*	[15]*(2005) 3 SCC 422*	[16]*(2004) 4 SCC 158*