

# SUPREME COURT OF INDIA

State of Rajasthan & Ors.

Vs.

Jeev Raj & Ors.

C.A.No.1585-1586 of 2005

(P.Sathasivam and H.L.Gokhale,JJ.,)

11.08.2011

## JUDGMENT

**P.Sathasivam,J.,**

1. These appeals arise from the final judgment and order dated 14.10.2003 passed by the High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Special Appeal (W) No. 270 of 2002 and D.B. Cross Objection No. 1 of 2003 wherein the appeal filed by the appellants herein was dismissed and the cross objection filed by the respondents was allowed by the High Court.

2. Brief facts:

“(a) On 12.10.1941, respondent No.1 and his brother Pusa Ram (since expired)-his legal representatives are on record, were granted `Bapi Patta' No. 14 for agricultural land measuring about 603.16 bighas in Village Gevan, Tehsil Jodhpur by the then Jodhpur Government. As the land in question was part of the catchment area of the feeder canal of Kaliberi canal and stone slabs which were constructed by the respondents were obstructing the flow of water, on 19.07.1942, at the request of the Public Health and Engineering Department (in short "the PHED"), Jodhpur Government cancelled the patta and removed the stone slabs.

(b) On 05.09.1945, the respondents claimed compensation of Rs.37,826/- for the loss of their land and stone slabs. On 14.06.1949, the State Government made payment of Rs.9,377/- as compensation to the respondents.

(c) Thereafter, in the year 1968, after a gap of about 20 years, the respondents again claimed compensation of Rs.73,885/- as price of the aforesaid land and stone slabs from the PHED through a notice. The PHED passed an order dated 23.04.1969 to restore the land in question to the respondents in lieu of compensation amount sought

for by them. In compliance of the said order, the possession of 460.15 Bighas of land was restored to them on 27.05.1969 and the same was also mutated in their name.

(d) On some complaints being made, the restoration of the land was cancelled by the State Government on 01.05.1973.

Challenging the same, the respondents filed writ petition before the High Court. The learned single Judge of the High Court, by order dated 24.11.1976, quashed the order dated 01.05.1973 and directed that in case the State wants to reopen the order dated 23.04.1969, it can do so by giving proper opportunity of hearing to the petitioners therein. After the aforesaid judgment, on 25.03.1978, a notice was served on the respondents by the PHED stating that it wanted to get the land back from the respondents which had been restored to them for its own use and order dated 23.04.1969 was sought to be recalled. It was also stated that the respondents are liable to be evicted from the land in question. The respondents filed objections against the notice for recalling the order dated 23.04.1969.

(e) Since the notice for recalling the order dated 23.04.1969 has not been formally dropped, the respondents filed a suit in the Court of Munsif and Judicial Magistrate, Jodhpur City, Jodhpur. The Munsif Magistrate, by order dated 30.06.1982, decreed the suit restraining the State Government from making any alterations in the contract that has come into existence in pursuance of the order dated 23.04.1969. Notices were sent to the respondents to appear before the Revenue Minister as the Revision Petition for cancellation of the plot granted in the year 1969 was pending before him. The parties appeared before the Revenue Minister. By order dated 15.12.1992, the Revenue Minister cancelled the order dated 23.04.1969.

(f) Challenging the order of the Revenue Minister, the respondents filed a petition being W.P. No. 1526 of 1993 before the High Court. The learned single Judge of the High Court, by order dated 19.03.2002, allowed the same.

(g) Against the said judgment, the State filed D.B. Civil Special Appeal (W) No. 270 of 2002 and the respondents also filed cross objections before the High Court. The Division Bench of the High Court, by impugned judgment dated 14.10.2003, dismissed the appeal filed by the State and allowed the cross objection filed by the respondents herein.

(h) Aggrieved by the said order of the Division Bench, the State Government filed these appeals before this Court by way of special leave petitions.

3. Heard Dr. Manish Singhvi, learned counsel for the appellants, Mr. Dipankar Gupta, learned senior counsel for respondent Nos. 1-6 and Ms. Bhati, learned counsel for the intervenor.

4. The main issue in these appeals is about the grant of 460.15 bighas of land on 23.04.1969 by the PHED to the respondents herein. As far as the remaining land of 143 bighas is concerned, even the Division Bench of the High Court, in the impugned order, remitted the matter to the Revenue Minister. Inasmuch as the issue of remaining land of 143 bighas raised by the respondents is pending before the Revenue Minister, the same is not relevant for our present consideration.

5. It is the contention of the learned counsel for the State that the order dated 23.04.1969 about the grant of 603.16 bighas of land (including 460.15 bighas - the subject matter of present proceedings) was ex facie without jurisdiction as it was allotted by the PHED on flimsy and fallacious grounds about cancellation of patta way back in the year 1942 and the compensation sought in the year 1968. It is relevant to note that the same was cancelled way back in 1973. Inasmuch as opportunity of hearing was not given, the learned single Judge of the High Court, by order dated 24.11.1976, remanded back to the State Government for deciding the matter afresh after giving due opportunity of hearing to the respondents herein.

6. On behalf of the State, it was pointed out that it has legitimate grievance with the allotment dated 23.04.1969 by the PHED. The cancellation was made way back in the year 1942 for allotment made in the year 1941 on the ground of violation of lease conditions. The respondents have claimed huge compensation for construction said to have been made during subsistence of lease in the year 1949 itself and filed application for compensation with regard to the cancellation of patta in the year 1968. According to the State, the said application was barred by limitation and it was also filed before wrong forum, i.e., the PHED, when it should have been filed before the Land Revenue Department, which is the appropriate Department.

7. It is also the grievance of the State that the allotment dated 23.04.1969 was cancelled on 01.05.1973, however, the High Court set aside the same on 24.11.1976 on the limited ground that there was violation of natural justice and directed the State Government to decide it afresh after giving opportunity of hearing. In those circumstances, the State wants to exercise its power under the Land Revenue Act read with the orders passed by the learned single Judge of the High Court dated 24.11.1976 and the Revenue Minister dated 15.12.1992.

8. It was highlighted that the judgment of the trial Court dated 30.06.1982 is also nullity since there was no discussion on merits with regard to the validity of allotment dated 23.04.1969. Though it was pointed out by the counsel for the respondents that it was hit by the principle of res judicata as clarified by the counsel for the appellants, the principle of res judicata shall only apply if there is discussion or finding on the same subject matter. A perusal of the decree of injunction that had been passed on 23.04.1969 shows that it did not advert to the merits of the case at all. It is also not in dispute that the subject matter, namely, validity of allotment dated 23.04.1969 has not been gone into.

9. It is also relevant to point out that by virtue of Section 259 of the Land Revenue Act, the jurisdiction of the Civil Court is ousted and if any decree is passed by the Civil Court contrary to the said provision, the same is a nullity in the eyes of law. If the decree is passed

coram non iudice, as in the present case, then it is a nullity in the eyes of law and it shall not operate as res judicata. This proposition has been enunciated in *Sabitri Dei and Others. vs. Sarat Chandra Rout and Others*<sup>1</sup>, wherein this Court held that once a decree is held to be a nullity, the principle of constructive res judicata will have no application and its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right even at the stage of execution or in any collateral proceeding. This proposition has been reiterated in *Sushil Kumar Mehta vs. Gobind Ram Bohra*<sup>2</sup> It was held in the aforesaid case that, "Thus it is settled law that normally a decree passed by a court of competent jurisdiction, after adjudication on merits of the rights of the parties, operates as res judicata in a subsequent suit or proceedings and binds the parties or the persons claiming right, title or interest from the parties. Its validity should be assailed only in an appeal or revision as the case may be. In subsequent proceedings its validity cannot be questioned. A decree passed by a court without jurisdiction over the subject-matter or on other grounds which goes to the root of its exercise or jurisdiction, lacks inherent jurisdiction. It is a coram non iudice. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings."

It is also relevant to note that the order passed on 23.04.1969 was by the PHED whereas it was the Land Revenue Department which alone had the power under the Land Revenue Act to grant land to any person. Thus the allotment of land was also without jurisdiction as the PHED was not empowered to transfer such a huge chunk of 460.15 bighas of land which is now an integral part of the city of Jodhpur.

10. It is also not in dispute that the validity of the order dated 23.04.1969 has not been adjudicated by any appellate/revisional forum and according to the learned counsel for the State, it wants to decide the validity of order dated 23.04.1969 on merits and, in that event, the respondents shall have full opportunity to put-forth their case and objections, if any, available under the law. As rightly pointed out by the learned counsel for the State, the respondents cannot be conferred with such huge benefit of 460.15 bighas of land without any proper adjudication on merits about the grant of allotment of land. As pointed out earlier, the judgment and decree dated 30.06.1982 does not dwell upon the merits of the validity of the allotment dated 23.04.1969 but instead proceeds that such allotment on 23.04.1969 would entail the order of injunction. The learned single Judge, on 24.11.1976, set aside the order of cancellation passed on 01.05.1973 and referred the matter back to the State Government to consider it on merits. The learned single Judge, on 24.11.1976, has again remitted the matter to the State Government because no opportunity of hearing was given with regard to 460.15 bighas of land. However, the Division Bench of the High Court upheld the validity of order dated 23.04.1969 on the principle of res judicata. As discussed and observed above, the principle of res judicata shall not apply inasmuch as neither the subject matter of validity of allotment dated 23.04.1969 was considered on merits by the Munsif Court nor the decree passed by the Civil Court was within its jurisdiction because the Land Revenue Act prohibits the jurisdiction of the Civil Court. This has led to the validity of the order dated 23.04.1969 being left unexamined by the State Government despite orders of the learned single Judge of the High Court dated 24.11.1976.

11. In view of the same, it is desirable that since the State Government is going to decide the allotment of 143 bighas of land in pursuance of the impugned judgment, we are of the view that let the State Government may as well decide the grant of remaining 460.15 bighas of land allotted vide order dated 23.04.1969 in accordance with law. It is also to point out that even the Division Bench in its judgment dated 14.10.2003 has clearly recorded the fact that the land in question was part of the catchment area for canal and stone slabs which were obstructing the flow of water and, therefore, "Bapi Patta" No. 14 granting 603.16 bighas of land was cancelled. The Division Bench has also recorded the stand of the State Government that soon after "Bapi Patta" was granted, it was realized that the same had been granted wrongly because the land fell under the catchment area of Kailana Lake and it was for this reason that subsequently in 1942, the said patta was cancelled and compensation of Rs.9,377/- was paid to the appellants therein for stone slabs which had been removed. Further, the Revenue Minister, in his order dated 15.12.1992, has clearly recorded that it came to the knowledge that "Bapi Patta" cannot be granted to the appellants therein inasmuch as the aforesaid land falls within the catchment area of feeder canal of Kaliberi and, therefore, the patta was cancelled on 19.07.1942. Inasmuch as the land in question was being utilized as catchment area of potable water, grant of "Bapi Patta" was void ab initio and, therefore, it was cancelled. Even the learned single Judge, in his order dated 19.03.2002, has recorded while narrating the facts that on 09.03.1978, the Chief Engineer of the PHED had issued notices to the respondents along with others mentioning that the land was falling in the feeder canal catchment area and, therefore, the PHED wanted back the complete land of 603 bighas. Supreme Court of India

<sup>1</sup>(1996) 3 SCC 0301

<sup>2</sup>(1990) 1 SCC 0193