

Amita Mitra & Others

v.

Arun Kumar Chatterjee

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE
SUDHANSU JYOTI MUKHOP ADHAYA

Civil Appeal No. 6464, 6465-6466 Of 2012 (Special Leave Petition (Civil) No. 3994 Of 2009) (Special Leave Petition (Civil) No. 23050-23051 Of 2010) | 13-09-2012

1. Leave granted.

2. These appeals filed against order dated 13.1.2009 passed by the Calcutta High Court in F.M.A. No. 441/1996 - Kamal Kumar Mitra v. Arun Kumar Chatterjee and Ors. and orders dated 8.8.2007 and 6.4.2010 passed in W.P.L.R.T. No.656/2007 - Amita Mitra & Ors. v. the State of West Bengal and Ors. and R.T. No.182/2009, respectively, are being disposed of by one order because issues raised therein are interrelated.

3. Kamal Kumar Mitra (husband of appellant No.1) filed title suit being T.S. No.58/1972 for partition of the properties of his maternal grandfather Jogesh Chandra impleading his maternal uncles Prabhat Kumar Sinha and Arun Kumar Sinha and his cousin brothers and sisters as the defendants. The suit was decreed by 8th Subordinate Judge, Alipore.

4. After passing of the final decree, Kamal Kumar Mitra filed Execution Petition, which was allowed by the Executing Court sometime in 1994 and possession of the suit properties were delivered to him on 29.12.1994 with the help of police by evicting respondent No.1 - Arun Kumar Chatterjee, who was inducted as a tenant in the suit premises by his maternal uncles by executing registered lease deed dated 25.4.1969.

5. Soon after his eviction, respondent No.1 filed an application under Order 21 Rules 99 and 100 read with Section 151 Civil Procedure Code for restoration of possession by asserting that with the coming into force of the Calcutta Thika Tenancy (Acquisition and Requisition) Act, 1981 (for short, 'the 1981 Act') right, title and interest in the suit properties automatically vested in the State Government and he became thika tenant of the State Government; that the opposite parties did not have the right to secure partition of the suit properties and that he could not have been evicted in execution of the decree passed by the trial Court, which was nullity. He also pleaded that after vesting of the suit properties in the State Government he had been regularly paying rent to the Calcutta Corporation.

6. In his reply, Kamal Kumar Mitra pleaded that the suit properties did not vest in the State and the status of respondent No.1 was not that of a thika tenant. He pleaded that the judgment of the trial Court, which had become final, was binding on respondent No.1 and his eviction did not suffer from any legal infirmity.

7. After considering the rival pleadings and documents, the Executing Court ruled that with the promulgation of the 1981 Act, the suit properties vested in the State and respondent No.1, who was thika tenant, continued to occupy the same as a tenant of the State Government. The Executing Court further noted that after vesting of the properties in the State, respondent No.1 was paying rent to the Calcutta Corporation which was regularly making assessment in the former's name. The conclusion and the operative portion of order dated 22.2.1996 passed by the Executing Court are extracted below:

"Thus from my entire discussion I have come to this conclusion that this petitioner has exclusive right, title and interest in the Premises No. 39L, Suren Sarkar Road where neither the decree holder nor the judgement-debtors have any right and title to get it partitioned as per final decree of partition. The said final decree of partition in respect of premises No. 39L, Suren Sarkar Road, is not binding upon this petitioner.

Accordingly it is ordered.

that the Misc. Case is allowed on contest against the Opposite Party No.1 and exparte against the rest without any order of cost. It is declared that this petitioner has perfect legal title and interest in the premises No. 39L, Suren Sarkar Road, where the Opposite parties have no right to get it partitioned."

8. Kamal Kumar Mitra challenged the aforesaid order in F.M.A.T.No.1105/1996. During the pendency of the appeal, Kamal Kumar Mitra and six others filed Writ Petition No. 8701/2004 for issue of a direction to the respondents to withdraw the order passed by the Thika Controller whereby he declared that the suit properties had vested in the State. The same was dismissed by the learned Single Judge of the High Court on 21.6.2004 as withdrawn with liberty to the petitioners to avail the alternative remedy. Thereafter, Kamal Kumar Mitra filed an application for grant of a declaration that the order passed for vesting of thika tenancy in the State was illegal and was liable to be recalled. The same was registered as Miscellaneous Case No.34/2004. Respondent No.1 contested the application by asserting that the order of vesting was legally correct because he was a thika tenant in the suit properties.

9. After considering the rival cases Additional Controller, Kolkata, Thika Tenancy (for short, 'the Additional Controller') passed order dated 14.12.2004 and dismissed the application of Kamal Kumar Mitra by observing that the suit properties had vested in the State by operation of law and respondent No.1 became a tenant of the State Government.

10. The appellants questioned the order of the Additional Controller in OA No.527/2005, which was dismissed by the West Bengal Land Reforms and Tenancy Tribunal (for short, 'the Tribunal') vide order dated 16.5.2007.

11. The appellants challenged orders of the Additional Controller and the Tribunal in W.P.L.R.T. No.656/2007. After summoning the relevant records, the Division Bench of the High Court disposed of the writ petition on 8.8.2007 by recording the following order:

"Records are brought today in terms of the earlier order of this Court. We think that in this matter no other order need be passed except the Thika Controller shall supply the Xerox certified copy of all the documents filed by the Respondent No. 5 and all the orders as recorded in the note-sheet upon payment of requisite fees, if chargeable, to Mr. Banerjee's client and to Mr. De's client separately. This shall be delivered within fortnight from the date of paying the requisite fees. Therefore, the Thika Controller shall notify the amount of the fees to be paid in terms of this order for supply of the certified copy of the documents as recorded above within seven days from the date of receipt of the certified copy of this order. Parties would be entitled to take action in accordance with the law as may be advised. We record that we have not decided anything of this matter canvassed in the present application. Therefore, the order of the Learned Tribunal is modified to the above extent. The original records are returned to the Learned lawyer for the state.

Thus, the matter is disposed of."

12. The application filed by the appellants for review of the aforesaid order was dismissed by the High Court vide order dated 13.12.2007 on the ground that the same had not been drawn up as per the form provided under Order 47 Rule 3 CPC. However, liberty was given to the appellants to file fresh application. Thereafter, the appellants filed R.V.W. No.2389/2007 for recalling order dated 13.12.2007. That application was disposed of by the High Court vide order dated 16.9.2009, the relevant portions of which are extracted below:

"We are of the view when an application has been made in the form of Review; it has to be proceeded with in accordance with that form. Since we have not decided anything on the merit of the Review application and we have gone by the report of the department, we think, our earlier order is not required to be recalled, as prayed for by Mr. Banerjee.

In our earlier order dated 13th December, 2007, we made it clear that action may be taken afresh. We clarify that the aforesaid fresh action may be taken as per procedure, as permissible under the law; whether it be review or otherwise, is not decided by this Court. We also clarify earlier order that the certified copy need not be returned.

This application (CAN 311 of 2008) is, thus disposed of. There will be no order as to costs."

13. After about two months, the appellants filed fresh review application which was registered as Review Tender No.182/2009. They also prayed for condonation of delay by asserting that they were pursuing other remedies like filing of recall application. The Division Bench of the High Court did not feel satisfied with the cause shown by the appellants and refused to condone the delay. Consequently, the review application was dismissed as barred by time.

14. When F.M.A.No.441/1996 and F.M.A.T.No.1105/1996 were taken up for hearing, the Division Bench of the High Court took cognizance of the orders passed by the Additional Controller, the Tribunal as also the order passed by the coordinate Bench in W.P.L.R.T. No.656/2007 and dismissed the appeal as infructuous. The operative portion of order dated 13.1.2009 passed by the High Court is reproduced below:

"In this backdrop, we are of the view that the present appeal, in any event, has become infructuous. In case, the appellant ultimately succeeds in establishing his point of view, the order or the learned Judge allowing the application of the respondent no.1 on such plea would automatically be rendered nugatory. If the appellant is again unsuccessful, the judgment and order impugned herein would get its final affirmation on that score. Hence, no useful purpose would be served by examining the judgement and order impugned in this appeal on merits.

The appeal thus fails and is hereby dismissed."

15. While dismissing the appeal as infructuous, the Division Bench of the High Court took cognizance of the fact that the possession of two rooms had already been handed over to the appellant in terms of Court's order dated 16.4.2008 and observed that the appellant had undertaken to return the same within one month.

16. We have heard Shri Nagendra Rai, learned senior counsel appearing for the appellants, Shri Jaideep Gupta, learned senior counsel appearing for respondent No.1 and Shri Anip Sachthey, learned counsel appearing for the State of West Bengal and carefully scanned the record.

17. Although, learned senior counsel appearing for respondent No.1 made efforts to persuade us not to entertain the appellants' challenge to the impugned orders by arguing that the suit premises in which respondent No.1 was inducted as tenant automatically vested in the State in 1981 and the decree passed by the trial Court in the partition suit filed by Kamal Kumar Mitra was nullity, we are not inclined to non-suit the appellants by pronouncing upon the legality or otherwise of the order of vesting as also the order passed by the Additional Controller and the Tribunal because the High Court did not decide W.P.L.R.T. No.656/2007 and F.M.A. No.441/1996 on merits.

18. What has surprised us is that the orders impugned in these appeals do not contain any discussion on the issues raised by the appellants in the backdrop of factual matrix of the case. While the writ petition was disposed of with a specific stipulation that the Division Bench was not deciding any of the questions canvassed by the parties, the appeal was disposed of as infructuous by relying upon the order passed in the writ petition and the applications for review/recall.

19. We are further of the view that the approach adopted by the High Court in dealing with the review application filed in the light of order dated 16.9.2009 was hyper technical and was totally contrary to the basic notion of justice. It deserves to be noted that while deciding R.V.W.No.2389/2007, the High Court had given liberty to the appellants to file fresh application and within two months of that order, the appellants filed Review Tender No.182/2009. Therefore, in reality and substance there was no delay in filing the third application and the Division Bench committed serious error by refusing to entertain the same on the ground of delay.

20. In the result, the appeals are allowed, the impugned orders are set aside and the matters are remitted to the High Court for fresh disposal of the writ petition and the first appeal filed by the appellants by clubbing both the matters. It is needless to say that the parties shall be entitled to raise all legally permissible contentions before the High Court.

21. We also direct that the appellants shall, if they have already not done so, restore possession of two rooms to respondent No.1 within a period of four weeks from today failing which the writ petition and the first appeal pending before the High Court shall stand automatically dismissed.

22. Appeal allowed.