

RAJASTHAN HIGH COURT

Narpat Singh

Vs.

State of Rajasthan

Misc. Appln. No. 68 of 1991
(N.N. Mathur and D.N. Joshi, JJ.)

24.05.2000

JUDGEMENT

Mathur J.

1. This miscellaneous application, under Article 226 of the Constitution of India has been filed for re-hearing of D.B. Civil Appeal No. 134/1985 decided on 26-10-1989 afresh on merit. The say of the applicant is that as per the direction of the Hon'ble Supreme Court of India dated 20-9- 1990, passed in Special Leave to Appeal (Civil) No. 4769/1990 the case is to be re-heard and finally disposed of on the points urged before this Court and in Special Leave to Appeal before Supreme Court.

2. On 26th April, 2000, when the miscellaneous application came up for final hearing, Mr. B. S. Bhati appearing for the respondents invited our attention towards the order of the Supreme Court dated 20th September, 1990 and submitted that no direction has been given for rehearing. It was also urged that unless the earlier order dated 26-10-89 of the Division Bench finally deciding the appeal is recalled, the applicant cannot be heard on the points formulated in the application. Mr. Bhati also submitted that there is no prayer for reviewing or recalling of the judgment of the Division Bench dated 26-10-1989. To meet with the said contention, the application has been filed under Article 226 read with Order 6, Rule 17 and Section 151, Civil Procedure Code for amendment of the Civil Miscellaneous Application No. 68/91 incorporating the prayer : "that decision of the D.B. Civil Appeal No. 134/85 decided on 26-10-90 may be recalled/reviewed. The application was rejected by our order dated 4-5-2000 for the reasons to be stated while disposing of the instant miscellaneous application.

3. For the proper appreciation of the controversy, few relevant background facts are

stated as follows :-

Applicant Narpat Singh filed a writ petition before this Court claiming himself to be the owner of the agricultural land comprised in Khasra No. 1349 in village Jalore measuring 170 Bigha and 4 Biswa on the basis of gift made in his favor by the Former Ruler of Jodhpur State in the year 1969. However, the Collector, Jalore by order dated 11th July, 1972 issued a direction to the *Tehsildar* to take possession of the aforesaid land. The said direction was challenged by the applicant. It revealed that the land in question was originally used for the purpose of aerodrome and contained air strip. The learned single Judge rejected the writ petition having found that the rights, title and interest of the land owner namely the Former Ruler of Jodhpur in the agricultural land in question vested in the State Government as on April 1, 1965 by virtue of Section 7-A of the Rajasthan Land Reforms and Acquisition of Land Owners Estate Act, 1963 (hereinafter referred to as "the Act") and all transfers of an estate liable to acquisition, made by the land owner on or after the date of vesting are null and void. Thus, the learned single Judge held that the alleged transaction of gift by the Former Ruler of Jodhpur State in December, 1969 is null and void in view of the provisions of Section 7- A(ii) of the Act. The learned single Judge held that the Collector was justified in directing the *Tehsildar* to take possession of the land in dispute which has vested in the State Government in accordance with the provisions of the Act.

4. A special appeal under Ordinance 18 of the Rajasthan High Court Ordinance, 1949 was preferred against the aforesaid judgment of the learned single Judge dated 13-10-83. The appeal was presented by Sri J. P. Joshi and Shri M. R. Singhvi. In April, 1989, three applicants namely Kundanmal, Mangilal and Jeetmal all sons of Rikhab Chand Jain filed an application through Shri K. N. Joshi and Sri Rajesh Joshi Advocate with a prayer to implead them as party in the appeal or in alternate they may be permitted to participate as interveners. It was averred that the appellant Narpat Singh has entered into an agreement with them on certain terms and conditions for transfer of the subject land. It was further averred that the appellant Narpat Singh in addition to agreement has also executed a power of attorney in their favor to participate and look after his interest in the proceedings before the High Court. However, it appears that no order was passed on the said application permitting three applicants i.e. Kundan Mal Jain, Mangi Lal and Jeet Mal to be added as party in the appeal or permitting them to

intervene in the appeal. Thus, Kundanmal Jain and two brothers were nobody in the appeal and so as there was no question of appearance of learned Counsel Sri K. N. Joshi and Sri Rajesh Joshi in the said special appeal. It appears that at the final stage of hearing of the appeal, Sri K. N. Joshi appeared for the appellant. The Division Bench after hearing Sri K. N. Joshi for the appellant and Dr. S. S. Bhandawat, Additional Advocate General, dismissed the appeal by judgment dated 26-10-1989.

5. Applicant Narpat Singh carried the matter in appeal before the Apex Court by way of *Narpat Singh v. State of Rajasthan*.¹ Shri K. N. Joshi, Advocate filed an affidavit before the Supreme Court, stating that he appeared on behalf of the petitioner and argued the appeal. He urged all the points, grounds and stay in the appeal, specially Rule 2 of the Rajasthan Land Reforms and Acquisition of Estate Rules, 1964. He also pointed out that land is already entered in the inventory.

6. It appears that a grievance was made before the Apex Court that the Judges of the Division Bench have not noticed certain contentions put forward on behalf of the petitioner. The reliance was placed on the additional affidavit of the learned Counsel referred above. The Apex Court gave liberty to the applicant Narpat Singh to approach the High Court and bring to its notice the said facts and seek the relief as may be advised. With these observations, the Special Leave Petition was disposed of. The order of the Apex Court dated 20-9-90 is reproduced as follows :

"The main grievance of the petitioner is that certain contentions put forward on behalf of the petitioner before the High Court have not been noticed by the learned Judges. In support of this contention, an additional affidavit as well as an affidavit of the counsel who appeared in the High Court have been filed. It is open to the petitioner to move the High Court bringing to its notice these facts and seeking such relief as may be advised.

With these observations the Special Leave Petition is disposed of."

The reading of the order of Apex Court clearly shows that the Division Bench judgment of this Court (coram- Hon'ble Shri M. C. Jain, Acting Chief Justice and Sri J. R. Chopra) rendered in *Narpat Singh v. State of Rajasthan*,² was not disturbed and it remained intact. The only liberty was given to bring to the notice of the High Court that certain contentions put forward by them have not been noticed while deciding the appeal. It is a well established practice that when the litigant feels that his contentions

have not been noticed or certain facts have been missed in the judgment, he may apply for rehearing of the case and satisfy the Court that certain contentions were raised and the same have not been considered. Such fact must be brought to the notice to the same Judge or Judges without delay. Such a fact is required to be stated on oath, by none else, than, the learned Counsel or the party (in person) who urged the contention which has not been dealt with. The statement must be made in clear and in unambiguous language. Such a fact as far as possible can be appreciated by none else but the Judge or Judges, before whom the missing contentions were raised. Keeping in view this settled position of law, the Apex Court gave liberty to the applicant to approach the High Court. Even if such liberty was not given by the Apex Court, the applicant could have invited the attention of the learned Judges with promptitude by way of filing appropriate application, in the manner indicated above. No chance should be given by not filing such application promptly or after filing not pursuing the hearing of the application, to infer that the party making the complaint is avoiding hearing by the same Judges for the obvious reason i.e. the statement of fact made by the learned Counsel that the learned Judges did not deal with the points urged is false and the party has no courage to face those Judges. In the case in hand the applicant Narpat Singh, after the liberty given by the Apex Court did not file application for recalling of the judgment dated 26-10-1989 in accordance with the established practice, indicated above. On the contrary misrepresented this Court by asking to re-hear the appeal and decide finally on the points formulated by him, as per the directions of the Hon'ble Supreme Court dated 20-9-90. It is evident from the order of the Supreme Court as extracted above, that no such directions were given. It is significant to notice that initially the copy of the order of the Supreme Court was not filed along with the instant application, in spite of office objection. For the ready reference, the application is reproduced as follows :-

"The humble petitioner respectfully submits as under :-

(1) That as per the directions of Hon'ble Supreme Court of India vide order dated 20-9-1990 passed in Special Leave to Appeal (Civil) No. 469/90, the case may be re-heard and finally disposed of on the following points :- (Urged before this Hon'ble Court and in Special Leave to Appeals).

(i) That whether the property in question falls within the definition of Land as defined under Section 2(f) of the Rajasthan Land Reforms and Acquisition of Land Owners Estate Act, 1963 (hereinafter called as Act of 1963). Thus is not liable for acquisition.

In this regard it is further submitted that land in dispute was not agricultural land at the commencement of this Act of 1963, therefore, it is not and could not be subject-matter of acquisition under that Act, this land was not assessed to Land Revenue (Gigodi).

In this regard, it is further submitted that this property in dispute was part of inventory as defined under Section 2(a) of the Act of 1963 and in inventory at Serial No. 7 property was placed in category 'C' which consists of property which is absolute property of His Highness with full rights of disposal. Thus, since property in dispute was part of inventory specified as absolute property thus is exempted from acquisition.

(ii) That Section 10 of the Act of 1963 had specifically mentioned that property shall continue to belong to or be held by, such land owner or other person, and if any such dispute arises it shall be decided by the compensation commissioner, who may after holding inquiry make such orders as he deems fit. Thus, in the instant case Collector has no jurisdiction to take possession of the land in dispute. The whole action suffers from the vice of lack of inherent jurisdiction.

(iii) That Ex-Ruler (Land Owner), Jodhpur resides at Jodhpur as per the definition given in Rule 2(2) 'Collector' means the collector of the District in which a land owner permanently resides whether or not the whole of his estate is situated within that district. Thus, the Collector, Jalore has no territorial jurisdiction to take possession of the disputed land in question under Section 1 read with Rule 8. Thus, the impugned order of Collector, Jalore by which the possession of the disputed land was taken is wholly illegal, without jurisdiction, null and void in the eye of law.

(iv) That the competent Collector under Rule 2 (2) of the Rules under Act of 1963, is in possession of the copy of Covenant (Inventory) and other return filed by Ex-Ruler Jodhpur and as such he could have applied its mind in proper perspective after passing the Inventory since disputed property is part of Inventory and mentioned as absolute property of Ex-Ruler - Thus, he ought not taken possession of disputed property. This had highly prejudices the case of the petitioner.

(v) That the other than disputed properties mentioned in Category 'C' at Column 7 of the inventory has not been acquired by the State Government under the Act of 1963. The only petitioner's property's possession has been taken which is altogether discriminatory and thus is violative of Article 14 of the Constitution of India. The landing strip Sadari is still in possession of Transferee of Ex-Ruler

of Jodhpur.

(2) This fact was brought to the notice of Hon'ble Supreme Court of India in the form of additional affidavit which has been referred in the order dated 20-9-1990.

(3) That the other points shall be urged at the time of arguments.

Hence it is prayed that D. B. Civil Appeal No. 134/85 decided on 26-10-90 may be taken up for hearing and may be decided afresh on merits.

7. This application is supported by an affidavit of Shri Narpat Singh. There is not a word in the entire miscellaneous application as to why the D.B. Special Appeal No. 134/85 which has been decided by the Bench consisting of Hon'ble Mr. Justice M. C. Jain Acting Chief Justice and Hon'ble Mr. Justice J. R. Chopra should be reheard. As far as the Apex Court is concerned, it has not set aside the order dated 26-10-1989 of the Division Bench. The Supreme Court only gave a liberty to the petitioner to move to the High Court and bring to its notice the fact alleged that certain contentions were noticed. The bringing to the notice of these facts (sic) bring the notice of the Court that the contentions stated in the application were raised by the named counsel and they have not been considered while deciding the appeal. The application was required to be supported by affidavit of the counsel for appellant who argued the appeal and raised contentions which have not been considered. In absence of such an application and order thereon recalling the existing judgment, it is unfair to give an impression to this Court that arguments are to be heard on the merit.

8. The Supreme Court in *State of Maharashtra v. Ramdas Shrinivas Nayak reported*³ *in* has quoted with approval Atkinson in *Somasundaran v. Subramanian*,⁴ that "Judgments cannot be treated as mere counters in the game of litigation". The Court restated the well settled position of law with respect to the correctness of the Court proceedings as follows:-

"Statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the Party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had

been made in error.

In Para 7, the Apex Court after referring some of the leading decisions concluded as follows :-

"7. So the Judges' record is conclusive. Neither lawyer nor litigant may claim to contradict it, except before the Judge himself, but nowhere else."

9. Mr. D. S. Shisodia, learned Senior Advocate has invited our attention to the order-sheet dated 16-9-1999 and submitted that the question that this special appeal has to be decided on merit stand concluded by the said order. The order of this Court dated 16-9-1999 reads as follows :-

"The parties agree that in view of the Supreme Court's order passed in S. L. to Appeal No. 4769/90 dated 20-9-90, hearing has to be given on the points which were left out from being decided in the earlier order.

List the matter for hearing on the points raised in the application, after two weeks.

If any material illustrating the points raised before the Supreme Court is to be furnished, that will be furnished by the parties within a week."

10. We are unable to agree with the submissions of Mr. D. S. Shishodia. The order dated 16-9-1999 has been passed only on the basis of the statement made by the learned counsel for the parties. The order has been passed at the interim stage, before commencement of final hearing on the application. It is settled law that interim orders are not conclusive orders at the final stage of hearing either party can raise all contentions including the maintainability of the main matter, unless the issue has been raised and adjudicated upon by the Court. We may usefully quote observations of the Apex Court recently made in *Amresh Tiwari v. Lalita Prasad, reported in* ⁵ as follows :-

"It is settled law that interim orders, even though they may have been confirmed by the higher Courts, never bind and do not prevent passing of contrary order at the stage of final hearing."

11. A concluded judgment cannot annulled, just by agreement of the two counsel, however, learned they may be. It is not in dispute that the special appeal which is

sought to be re-heard on the points formulated by the applicant has been decided by the judgment dated 26th October, 1989 and the said judgment is still in existence and as long as the said judgment is in existence, the special appeal cannot be re-heard. In Ram Das's case (AIR 1982 Supreme Court 1249), Supreme Court has held that if the record of the case is not corrected by taking steps as indicated therein, the matter must end there. In the instant case, in spite of the fact that applicant did not move before the Bench which decided the appeal on 26-10-1989 when it was still fresh in the mind of the Hon'ble Judge constituting the Bench, the Apex Court gave life to the missed opportunity, by giving liberty to move this Court. The applicant was required to move application before this Court in accordance with the established practice and procedure. But this opportunity was not availed, rather it was used for misdirecting the High Court by misrepresentation. There is neither any statement of not considering the contentions, nor there is any affidavit of the lawyer. There is no prayer even. Thus, as laid down by the Apex Court, matter ends, question of hearing the special appeal on merit does not arise.

12. As regard the application for amendment which has been rejected by our order dated 4-5-2000, we proceed with recording the reasons as follows :-

(i) It is belated as it is delayed by 10 years. The original application was filed on 22-10-1990.

(ii) No efforts have been made to move the application for recalling of the judgment dated 26-10-1989 on the ground that some of the contentions raised by the counsel for the applicant were not noticed in spite of the fact that both the Hon'ble Judges My Lord the Acting Chief Justice Mr. M. C. Jain and Hon'ble Justice Mr. J. R. Chopra were available with this Court till November, 1990.

(iii) Even after the liberty given by the Supreme Court to move such an application, the application has been filed straightway for re-hearing of the appeal by misinterpreting the order of the Apex Court and misrepresenting that the direction has been given for re-hearing of the case.

(iv) One of the Hon'ble Judge who constituted the Division Bench namely Hon'ble J. R. Chopra, J. was available with this Court till 20-8-95. Still, no serious efforts were made to get the instant miscellaneous application heard by a Bench to which Hon'ble Justice J. R. Chopra was one of the Members. The Court proceedings show that there was no seriousness on the part of the applicant in getting the matter heard quickly. The case has been adjourned on

number of dates on the request of the learned counsel for the applicant.

(v) No useful purpose is going to be served by granting the amendment, as even today there exists no ground for reviewing or recalling the order dated 26-10-1989 as there is no averment in the application to the effect that the contentions raised by the counsel for the applicant were not considered by the Division Bench while deciding the appeal by judgment dated 26th October, 1989 without going into the controversy as to whether Mr. K. N. Joshi learned Advocate who was nobody in the said appeal could have argued for the applicant Narpat Singh, the fact remains that there is no affidavit even of Shri K. N. Joshi Advocate before us that he raised certain contentions and the same were not considered by the Bench consisting of Hon'ble Mr. M. C. Jain Acting Chief Justice and Hon'ble Mr. J. R. Chopra, J. Further simply stating that certain contentions were raised is not sufficient. The lawyer is required to state on oath in a clear and unambiguous language the contentions raised which were not considered by the Judges who decided the appeal.

13. Consequently, we find no merit in the instant application, and the same is rejected. Application rejected.

Cases Referred.

1. Special Leave Petition No. 4769/90
2. Special Appeal No. 134/85
3. AIR 1982 SC 1249
4. AIR 1926 PC 136
5. 2000 AIR SCW 1467