

(2004) 02 J&K CK 0010
In the Jammu And Kashmir High Court
Case No : Civil Revision No. 11 of 2004

Conservator of Forest and Others

APPELLANT

Vs

Gurbachan Singh

RESPONDENT

Date of Decision : 24-02-2004

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Section 47

Citation : AIR 2004 J&K 115 : (2010) 3 JKJ 382

Hon'ble Judges : Yash Paul Nargotra, J

Bench : Single Bench

Advocate : S.K. Anand, for the Appellant; U.K. Jalali and Ruchi Bakhri, for the Respondent

Final Decision : Dismissed

Judgement

Y.P. Nargotra, J.—This revision petition u/s 115, CPC is directed against the Order dated 9th December, 2003 passed by the learned

Principal District Judge, Jammu in File No. 9/Execution, whereby the objection raised to the executability of the decree by the Judgment-debtors

petitioners has been overruled.

2. The facts in brief are that in connection with Forest lease granted in favour of respondent-Forest Lessee in 1970, a dispute arose which was

referred for adjudication through arbitration to the sole Arbitrator Shri Sohan Singh, Ex-Chief Conservator of Forest Jammu and Kashmir. The

arbitrator, on the basis of material and evidence led by the parties to the dispute gave his award dated 12th October, 1990, which was filed in this

Court for making it the rule of the Court. After receipt of the award from the Arbitrator, notices were issued to the parties on 1-11-1990. Notice

on behalf of respondent was accepted by Mr. U.K. Jalali whereas notice was

accepted on behalf of petitioners by Mr. M.S. Bhat, Advocate.

Subsequently, objections were filed by Mr. M.S. Bhat but the same were held time barred and, therefore, the award was made rule of the Court

by order dated 31 January, 1991. Appeal was filed against the order dated 31st January 1991 before a Division Bench of this Court. The Hon'ble

Division Bench dismissed the appeal by its order dated 30th April 1991. An SLP was filed in the Supreme Court against the order of Division

Bench. The Hon'ble Supreme Court by its order dated 22-10-1991 remanded the matter back to the High Court on a short point to consider the

question whether Mr. M.S. Bhat, Advocate had appeared for the Government under the instructions of the Government and whether he apprised

the Government of the proceedings. The parties were given liberty to adduce additional oral and documentary evidence in support of their

contentions both on the first question and on other objections.

3. On remand, learned single Judge vide order dated 12-2-1999, held that objections filed were within time and consequently case was fixed for

framing of issues on the merits of the case. However, vide order dated 3rd June 1999, learned single Judge on perusal of the objections filed by

Mr. M. S. Bhat, found that objections did not spell out any ground so as to bring the said objections within the ambit of Sections 30 and 33 of the

Jammu and Kashmir Arbitration Act. Consequently, learned single Judge did not feel inclined to interfere with the award and accordingly rejected

the objections and made the award rule of the Court. Aggrieved by the order of learned single Judge, the petitioners filed an appeal before the

Division Bench. The Hon'ble Division Bench also by its order dated 4th September, 2002 dismissed the appeal. The petitioners again filed an SLP

before the Hon'ble Supreme Court. The Hon'ble Supreme Court by its order dated 7th July 2003 dismissed the SLP in terms of the following

order :

Delay condoned.

The SLP is dismissed.

The learned counsel for the petitioner submits that an objection in the execution shall be taken on the ground of inherent lack of jurisdiction in

making the award also in making the same rule of the Court. We record the statement of the learned counsel but do not express any opinion

thereof.

4. After that decree passed on the basis of the award, acquired finality as aforesaid, the respondent in whose favour the decree was drawn, filed

an execution petition, the proceedings on which are being conducted by the Court of Principal District Judge, Jammu. Before the learned Executing

Court, the petitioners raised the objection to the executability of the decree by submitting that the decree sought to be executed is a nullity for lack

of inherent jurisdiction in the Court passing it in view of the provisions contained in Section 3 of the Jammu and Kashmir Nationalization of Forest

Working Act, 1987. The plea raised by the Petitioners-Judgment Debtors was hotly contested by the respondent-decree holder. The learned

Executing Court overruled the objection and rejected the same by its order dated 9th December, 2003 impugned in this revision petition.

5. I have heard counsel for the parties and perused the record.

6. Mr. S.K. Anand, learned counsel for the petitioner-judgment-debtors has argued that after the coming into operation of the Jammu and Kashmir

Nationalization of Forest Working Act, 1987, all Leases, agreements and contracts executed between the parties became extinguished and in

respect of such lease, contract or agreement including the arbitration agreement, no award or decree could be passed by any court or authority in

view of the provisions contained in Section 3 of the Jammu and Kashmir Nationalization of Forest Working Act, 1987. According to him,

therefore, the decree passed in the present case is a nullity and is inexecutable by a Court of law. In support of his contention, he relied upon the

Division Bench Judgment of this Court rendered in the case Baldev Singh Sardool Singh v. State of Jammu and Kashmir. It would be pertinent to

mention here that the said Judgment relied upon by Mr. Anand, an SLP was filed before the Supreme Court by M/s. Baldev Singh and Sardool

Singh but the same was dismissed by the order dated 8th December, 2000.

7. On the other hand, contention of Mr. Jalali, learned counsel for the respondent-decree holder is that the plea which is now being raised before

the Executing Court and this Court by the petitioners was consistently raised by the petitioners-judgment-debtors before the learned single Judge

who had rejected the same and made the award rule of the Court. When the appeal was filed, the same plea was raised before the Division Bench.

The plea was again rejected by the Hon'ble Division Bench and appeal was dismissed. SLP was filed and in the SLP, again the same plea was

raised but the Hon'ble Supreme Court also dismissed the SLP. Therefore, according to him, after having failed consistently before all the Courts,

the petitioners cannot be permitted to raise such plea before the Executing Court and the plea raised was, therefore, rightly rejected by the learned

Executing Court as learned Executing Court was not competent to sit in appeal over the Judgments of the High Court and the Hon'ble Supreme

Court. Mr. Jalali has, therefore, argued that there is no bar executing the decree and the learned Executing Court has not committed any illegality

by rejecting the objection raised by the petitioners-judgment-debtors in its impugned order. Section 3 of the Jammu and Kashmir Nationalization

of Forest Working Act, 1987 reads as follows :--

3. Ban on forest working by private persons notwithstanding anything to the contrary contained in law, rule instrument, agreement or contract or in

any Judgment, decree or order of any court or authority--

(a) as from commencement of the Jammu and Kashmir Nationalization of Forest Working Ordinance, 1986. (V of 1986) no person shall fell or

convert any timber or carry on the felling of any tree or conversion or removal of any timber in any demarcated forest of the State;

(b) any lease, contract or authority in existence at the commencement of the Jammu and Kashmir Nationalization of Forest Working Ordinance,

1986 (V of 1986) for felling of trees or conversion or extraction of timber from such demarcated forest shall cease to have effect and right which

might have accrued to any person under any such contract, agreement or authority shall stand extinguished and shall vest the State;

Provided that nothing in Clause (b) shall effect the Government to recover any amount payable to it on account of royalty interest, compensation,

penalty or any other sum chargeable from any person by virtue of any lease, contract or authority referred to above, in the manner provided for in

any such lease, contract or authority.

8. The Division Bench of this Court in the case relied upon by Mr. S.K. Anand in its Judgment rendered in CIMA 25/98 after noticing the

provisions contained in Section 3 has observed as follows :--

A perusal of the above reproduced provision of law shows that the non obstante

clause of Section 3 makes the Act enforceable in supersession of any law, rule instrument, agreement or contract, decree or order of any court or authority. The award is an order of an authority. This order emanates out of an agreement between the parties. Obviously the agreement between the parties and the award of the arbitrator are coming within the purview of this non obstante clause of Section 3 of the Act, it was not possible for the learned single Bench to act upon the award and make it a rule of the Court. Learned single Bench has rightly dealt with interpretation of Section 3 of the Act as against the agreement and the award mentioned above.

The argument of Mr. Jalali that the Act only nationalized the operation of works in the forests and not the forests cannot be accepted by us. We in the light of a total ban on forest working laid down in terms of Section 3 (supra) have no difficulty in coming to the conclusion that the leases and the contracts existing at the time of promulgation of Forest Working Ordinance 1986 would be rendered non est and the rights flowing from such agreement, contract or authority in favour of a private person had extinguished and the same vested in the State.

Section 6 of the Act seems to have taken care of the claims of those persons affected by the Act by empowering the Government to appoint an authority to determine such claims. A Forest Authority under the Forest Act has been constituted by the Government to look into such claims in terms of Section 52(c) of the Forest Act, 1982.

In our opinion, after promulgation of the Act, the award passed by the Arbitrator was contravening the Act and was, therefore, invalid. The learned single Bench while setting aside the award has acted in accordance with the mandate of Section 30 of the Arbitration Act. In that view of the matter, we do not find any substance in this appeal and dismiss the same.....

9. On the strength of the above said observations of the Hon'ble Division Bench, learned counsel for the petitioners-judgment-debtors, Mr. S.K.

Anand, submits that an award passed by the Arbitrator could not be made rule of the Court in view of the provisions contained in Section 3 of the Act and, therefore, the decree drawn pursuant to the judgment passed by the learned single Judge by order dated 3rd June 1990 is a nullity.

Undisputedly the judgment-debtors petitioners consistently raised the objection,

which is now being raised before the single Judge in the first instance and before the Division Bench in appeal against the decree but could persuade them to allow the objection. In SLP again the same objection was taken up before the Hon'ble Supreme Court but the SLP was dismissed. Therefore, the objection of the petitioner has been decided by the Courts possessing inherent jurisdiction and the lis qua the parties has attained finality. Therefore, even it is assumed for the sake of arguments that it has been wrongly decided still the petitioners-judgment-debtors cannot be permitted to reopen the issue in execution proceedings as per the Executing Court, it is not permissible by law to go behind the decree and determine the question of its legality. After a decree has attained finality, its correctness and legality cannot be questioned by a party simply because in another case High Court or the Supreme Court has interpreted the law differently in some different case.

10. Mr. Anand, learned counsel for the petitioner, therefore, cannot be permitted to maintain challenge to the decree on the basis of the said

Division Bench judgment of this Court when the ground of challenge has already been considered and rejected and the decree has attained finality.

11. Therefore, there is no illegality, irregularity or impropriety in the order impugned.

12. Revision is dismissed.