
(1989) 09 BOM CK 0079
In the Bombay High Court
Case No : F.A. No. 450 of 1976

Indira Bhalchandra Gokhale since deceased by her Executors APPELLANT
Ganesh Mahadeo Divekar and others

Vs

Union of India and another RESPONDENT

Date of Decision : 06-09-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80, 82

Citation : AIR 1990 Bom 98 : (1990) 1 BomCR 23 : (1989) 91 BOMLR 283

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : C.R. Dalvi and S.S. Pandit, for the Appellant; S.M. Mutalik, Asstt. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

S.M. Daud, J.—This appeal assails the dismissal of a suit wherein the deceased plaintiff had claimed a declaration, possession and incidental relief's in respect of plot bearing No. I9-A described with sufficient precision in para 1 of the plaint.

2. The land in suit was purchased by the plaintiff from the Central Mutual Life Insurance Co. under a registered sale deed dated 16th April 1954. At the time the land was acquired it was lying vacant. The Defence of India Act, 1962 was enacted to provide for special measures to ensure the public safety and interest, the defence of India and civil defence etc. etc. It received the assent of the President on 12-12-1962. Purporting to act u/s 29(1) of the said Act, the Collector of Pune requisitioned lands located at Yerawada, Pune including the suit land. In the order of requisition which is at Ex.56 the interested person vis-a-vis the suit land was given out to the Life Insurance Corporation of India. After the issue of the order of requisition, the Collector of Pune passed an order for acquisition purported to be made u/s 36 of the aforementioned Act. This order was of 31-3-1964 and is at Ex.57. In this order, the plaintiff was shown as an interested person vis-a-vis the suit land. A copy of the order was addressed to

the plaintiff's husband though the envelope in which the order was enclosed bore the name of the plaintiff and showed her to be residing at the same address as her husband. Plaintiff took exception to the order and this gave rise to an exchange of letters between her on the one hand and the Collector of Pune on the other. On 9-7-1968 an award was made and the compensation determined for the suit land was Rs. 6,048. When intimated of this determination, the plaintiff protested and filed, a suit after service of the prescribed Section 80, CPC notice.

3. The plaint averred that the suit land was and continued to be a vacant plot. As soon as it had been acquired by her she had intimated respondent No. 2 the Collector of Pune as also the Pune Municipal Corporation of her having become the owner and had requested that her name be brought on their records so as to enable her to pay the revenue and taxes payable on the land. The order of requisition was per se bad in law as she had not been given notice of the same despite the fact that she had become the owner of the property aforementioned prior to the date of requisition. Compensation payable for the requisitioning of the property had not been determined and intimated to her. The order of acquisition was contrary to Section 36 of the Act. Any action taken thereunder was and ineffective to divest her of the title over the land. She consequently sought a declaration that the orders of requisition and acquisition were invalid and not binding upon her. Next, she sought the relief of possession and payment of Rs. 2,325/- representing compensation for the past wrongful use and occupation and determination of pendente lite and future compensation.

4. The written statement filed on behalf of the Collector defendant No. 2 is at Ex.18. The claim advanced by the plaintiff was denied. "in regard to the non-service of notice of requisition upon the plaintiff, defendant No. 2 contended that the records showed the land to be standing in the name of L.I.C. and for that reason the notice was sent to that Corporation. It was not correct to say that the plaintiff had applied to the 2nd respondent to instate the property in her name. The order of acquisition was in accordance with law. It was not correct to say that the acquisition was ultra vires. The land was acquired for the expansion of the existing Training Centre, Bombay Engineering Group and Centre, Kirkee and was being used for the said purpose all along. The suit was not within time and was not maintainable in law. Defendant No. 1's written statement at Ex.19 was more or less on the same lines, an additional plea being that the statutory notice preceding the suit was not legal and proper. The learned Civil Judge, Senior Division framed appropriate issues. On behalf of the plaintiff three witnesses were examined whereas defendants examined only one witness. The findings were that the requisition and acquisition were valid in law for which reason plaintiff was not entitled to recovery of possession, compensation or the declaration claimed. However, the Section 80, CPC notice was found to be valid, the claim within limitation and the suit within the jurisdiction of a civil Court. Consistent with these findings the learned Judge dismissed the suit with costs.

5. Having regard to the submissions made before me the points arising for determination are:-

(1) Whether the orders of requisition and acquisition were illegal and ineffective to divest plaintiff of the title vested in her?

(2) Whether the claim put forth by the plaintiff was barred by estoppel?

(3) Whether the suit was within limitation?

(4) What compensation - if any - was plaintiff entitled to? ,

(5) What order?

My findings, for reasons given below, are:-

(1) Yes.

(2) No.

(3) Yes; except to the extent of past mesne profits preceding the; three years as computed from the date of the institution of the suit.

(4) Claim for past compensation prior to period above, time barred. Rest as per order.

(5) See order.

6. Before dealing with the issues, I have to advert to a request made on behalf of the respondents for the grant of an adjournment to enable them to adduce additional evidence. The purpose of this request is to show that the suit land has in its vicinity buildings and structures which make the suit land, something in the nature of an adjunct to the said building and structures and thus bring it within the scope of Section 36 of the Defence of India Act, 1962. The Advocate representing the respondents has it that this being first appeal the Court should be liberal in allowing the request made by her. I cannot agree. Under Order XLI, Rule 27, CPC production of additional evidence whether oral or documentary is permitted only in certain contingencies. The first contingency is that the evidence sought to be produced in the appeal Court is that which the trial Court has refused to admit though it ought to have been admitted. Next, is the contingency where the evidence sought to be produced was not available to the party seeking to produce it notwithstanding the exercise of due diligence by him. The third contingency is the requirement of the Court of appeal for additional evidence so as to enable it to pronounce judgment. Neither of these contingencies is applicable to the present case. Defendants had ample opportunity when the case was before the trial Court to adduce the required evidence. Order XLI, Rule 27, CPC is not to be taken recourse to merely because a party at the stage of appeal finds that some material which could have tilted the decision in its favour has not been produced but should have been.

7. On merits, the first question is in relation to the legality of the order of

requisition. The Defence of India Act of 1962 deals with requisitioning of immovable property u/s 29. sub-section (2) of that section is worded as follows:-- ,

The requisition shall be effected by an order in writing addressed to the person deemed by the Central Government or the State Government, as the case may be, to be the owner or person in possession of the property, and such order shall be served in the prescribed manner on the person to whom it is addressed.

At the date of requisition the Central Mutual Life Insurance Co. Ltd. as also its successor-in-interest the Life Insurance Corporation of India, had ceased to be the owners. This is because plaintiff acquired the property under a registered sale deed as far back as 16-4-1954. It was argued that the revenue records did not show plaintiff to be the owner of the suit land, that on the contrary the said record showed the LIC to be the owner and that in this state of affairs the second respondent did not err in deeming the LIC to be the owner or person in possession of the suit land. This contention ignores a series of steps taken by the plaintiff immediately after her purchase of the property. On 16-11-1956 she had addressed a letter to the second respondent pointing out that she had purchased the property on 16-4-1954, that she had applied for mutating her name in the revenue records and that despite . all efforts made by her it appeared that no action had been taken to update the revenue records. She sent the original sale deed passed in her favour along with the letter which is at Ex. 96 to the second respondent. Nothing more could have been done by the purchaser of any property to get the revenue records updated. In the face of efforts made by the plaintiff, the deeming provision could not be taken recourse to by the second respondent. There was no reason for the second respondent to deem the LIC to be the owner. In fact, before passing the order of requisition, the requisitioning authority should have taken a search of not only the revenue papers, but also the records in the Pune Municipal Corporation and the office of the District Registrar of Documents. Section 29(2) requires the Government concerned to first serve the requisition order upon the owner. If the owner is traceable, it will not be open to the Government to proceed to serve the order on someone who may be in possession on the basis of outdated entries in revenue papers which are primary sources only for finding out the persons liable to pay fiscal burdens owed upon the immovable property concerned. Where a mandatory provision of the law had been breached the requisition was invalid. The possession of the property was taken on 20-5-1963 itself. That possession not being attributable to a proper order of requisition, defendants would be deemed to be trespassers upon the property.

8. The other and major infirmity in the action of the respondents lies in the order of acquisition. This order is at Ex. 57 and is dated 31-3-1964. The purpose of the acquisition is given out to be the "expansion of the existing Training Centre, Bombay Engineering Group and Centre, Kirkee". Counsel for the appellants submits that the acquisition was not in accordance with the provisions of Section

36 of the aforementioned Act. This section to the extent relevant reads thus:-

(1) Any immovable property which has been requisitioned u/s 29 may, in the manner hereinafter provided, be acquired in the circumstances and by the Government specified below, namely:-

(a) where any works have, during the period of requisition, been constructed on, in or over the property wholly or partly at the expense of any Government, the property may be acquired by that Government if it decides that the value of or the right to use, such works shall, by means of the acquisition of the property, be preserved or secured for the purposes of any Government, or

(b) where the cost to any Government of restoring the property to its condition at the time of its requisition as aforesaid would, in the determination of that Government, be excessive, having regard to the value of the property at that time, the property may be acquired by that Government.

(2)

(3)

(4)

(5) For the purposes of this section; "works" includes every description of buildings, structures and improvements of the property.

Mr. Dalvi submits that the suit land was a vacant plot and continued to be one except for the putting up of a wire fencing by the respondents. No works had come up on the land and it was not therefore open to the respondents to proceed to acquire it under the Act. It is not as if the acquisition u/s 36 of the Act is of no consequence so far as the owner of the property is concerned, If the property is acquired u/s 36, the quantum of compensation which the owner gets is far less than what would be available to a person whose property is acquired under the provisions of the Land Acquisition Act. Section 37 of the Defence of India Act, 1962 prescribes a maximum to the quantum of compensation admissible to the person whose property has been acquired u/s 36. The outer limit is the lesser of the sums which the property would have fetched had it been sold on the date of acquisition or twice that which the property would have fetched in the open market on the date it was requisitioned. No such limitation is placed upon the compensation available to a person whose property is acquired under the Land Acquisition Act. The question how is whether the acquisition made by the defendants could be justified whether under clause (a) or clause (b) of Section 36(1) of the Defence of India Act. In so far as the latter clause is concerned, it is not the Government's case that the land had been put to such use that restoring it to its original condition would have entailed the Government to an expense deemed excessive having regard to the value of the property at the time the property was to be returned. Clause (a) is conditioned upon there being any works put upon on the property during the period of requisition. The expression "works" has been defined in sub-section (5) of Section 36 of the Act. It is argued

on behalf of the defendants that sub-section (5) is only an inclusive definition for which reason even a fencing would be within the meaning of the expression "works". This submission is disputed by Mr. Dalvi who argues that the word "works" must imply a building or structure" of some sort. It is common for a statute to contain a provision that certain words and phrases shall, when used in the statute, bear particular meanings. Many a time the word "include" is used in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include (see *Dilworth vs. Commissioner of Stamps*, (1899) A..C. 99). However there is another rule of interpretation where abstract general words take colour from the words which follow them. This is the rule of *ejusdem generis*. The rule is that general terms followed by particular ones apply only to such persons or things as are *ejusdem generis* with those comprehended in the language of the Legislature. In other words, the general expression is to be read as comprehending only things of the same kind as that designated by the preceding particular expressions, unless there is something to show that a wider sense was intended. This rule has been recently explained in a judgment of the Supreme Court reported in *Siddeshwari Cotton Mills (P) Ltd. Vs. Union of India (UOI) and Another*, by His Lordship Venkatachaliah, J. The teamed Judge says-

The expression *ejusdem generis* - "of the same kind or nature" - signifies a principle of construction whereby words in a statute which are otherwise wide but are associated in the text with more limited words are, by implication, given a restricted operation and are limited to matters of the same class or genus as preceding them. If a list or string or family of genus-describing terms are followed by wider or residuary or sweeping-up words, then the verbal context and the linguistic implications of the preceding words limit the scope of the words.

There is one qualification and that has been stated by His Lordship thus:-

The preceding words in the statutory provision which, under this particular rule of construction, control and limit the meaning of the subsequent words must represent a genus or a family which admits of a number of species or members. If there is only one species it cannot supply the idea of a genus.

9. The Advocate for the defendants argues that plaintiff has sought a declaration which is the principal relief- that ancillary; being possession and compensation. The declaration is aimed against the orders passed by the Collector under the Defence of India Act, 1962. A suit of this nature had to be brought within one year of the date of the order vide Article 100 or at least within three years under Article 58 of the Limitation Act, 1963. Article 100 speaks of suit to alter or set aside ...any act or order of an officer of Government in his official capacity. In the instant case the plaintiff was seeking a declaration. Truly speaking, a declaration was not necessary for once it is found that the requisition was without notice to the owner and the acquisition was without the same being sanctioned by clauses

(a) and (b) of Section 36(1) of the Act, plaintiff can ignore both the orders. The orders being void can be treated as such and no consequence ensues to that suitor proceeding with the main relief ignoring acts which have no existence in the eyes of law. The fact that plaintiff claims a declaration does not mean that no other relief can be granted to her. The main relief which she is claiming is not the declaration even though she may describe it as the principal relief. In construing these matters what is necessary is to take an overall view of the matter. Thus, it was not necessary for the plaintiff to seek any declaration in respect of the void orders. The suit is primarily one for possession and mesne profits. Her failure to obtain a declaration is of no consequence for the order which is put forth by the defendants to justify their action is nonest in the eyes of law. The dispossession of the plaintiff took place on 20th May 1963 and the suit was filed on 25-6-1971. Being a suit for recovery of possession and brought within 12 years the same was within limitation. This of course does not mean that the suit as a whole is within time, Plaintiff has sought compensation for the past as also pendente lite and future. In so far as the past compensation is claimed it covers the period 20-5-1963 upto 25-6-1971. Mr. Dalvi argues that under Order XX, Rule 12, CPC a Court can give a direction for mesne profits which have accrued prior to the institution; of the suit and that there is no limitation in relation to ascertainment of mesne profits in pursuance of such a direction. Amended Rule 12 of Order XX of CPC in so far as it covers Mr. Dalvi's argument reads thus :-

(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree-

(a)

(b) for the rent or mesne profits which have accrued on the property during the period prior to the institution of the suit or directing an enquiry as to such rent or mesne profits.

(c)

(2) Where an inquiry is directed under clause (b)... of sub-rule (1) above, a final decree in respect of the rent or mesne profits shall, be passed in accordance with the result of such enquiry.

But does this mean that the direction Can be given irrespective of the period, and in disregard of the law of limitation, If plaintiff had brought a suit for, compensation she would not have been entitled to mesne profits for more than three years preceding the date of wrongful occupation vide Article 87 of the Limitation Act, 1963. What cannot be done directly cannot be attained indirectly by taking recourse to the plea that the Court is at liberty to give a direction as permitted by Order XX, Rule 12(1)(b) of Civil Procedure Code. This provision has to be read consistently with the provisions of the Limitation Act and I hold that for the past mesne profits plaintiff cannot get more than the mesne profits cohering the period of three years preceding the institution of the suit. Plaintiff has claimed past mesne profits at the rate of Rs. 25/-p.m. It is argued that there

is no evidence to show that the land would have fetched a profit of Rs. 25/-. This argument is without substance. The land measures near about 5000 sq.ft. It is in Yerawada which is known to be a busy suburb of Pune. Judicial notice can be taken of the fact that land so spacious cannot but fetch an income of at the least Rs. 25/-. For the three years preceding the institution of the suit, the amount admissible to plaintiff Rs. 25/- p.m. for past mesne profits would come to Rs. 900/-.

10. Defendants have not pleaded estoppel as a defence to the suit brought by the plaintiff. Nonetheless it is argued that letters dated 22-10-1964 addressed by the plaintiff to the Pune Municipal Corporation and another dated 9-10-1964 addressed by her to the second respondent operate as bars to the claim set forth by the plaintiff. The letter addressed to the Pune Municipal Corporation can by no stretch of imagination be construed as a representation or even an admission of the plaintiff. In the first place it is addressed to the Pune Municipal Corporation making a query in regard to the liability to pay taxes consequent to the acquisition of the property by respondents. In so far as the letter dated 9-10-1964 is concerned, there is nothing in the said letter which can be said to be an acceptance by the plaintiff of the state of affairs and her readiness to receive the compensation payable unto her.

11. There last remains the plea that respondents be granted sufficient time to enable them to acquire the property under the Land Acquisition Act. There is hardly any need to accede to this request seeing that u/s 82 of CPC respondents will be having three months as from the date of, decree to take steps to avoid execution. Section 82 disables a party from executing a decree obtained against the Government before the expiry of three months as computed from the date of the decree. This should be adequate for the respondents to take steps to avoid execution. In any case, a request for extending the period can be made to the executing Court if and when the decree is put in execution. To conclude, the appeal has to be allowed and I do so by setting aside the dismissal of the suit and substituting the same by a decree in the following terms:

Defendants do deliver vacant possession of the suit land unto the plaintiff's legal representatives, to pay Rs. 900/- representing mesne profits of the three years preceding the institution of the suit and the costs of this suit as also the appeal. Plaintiff's remaining claim is dismissed. Mesne profits, pendente lite and Future until delivery of possession to the plaintiff's legal representatives shall be ascertained in a separate proceeding under Order XX, Rule 12(1). Civil Procedure Code. Defendants-respondents shall bear their own costs throughout. Appeal allowed in the foregoing terms.