

(1969) 12 PAT CK 0004

In the Patna High Court

Case No : A.F.O.D. No's. 262 of 1963 and 297 of 1965

Keshab Kishore Narain Saraswati

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 18-12-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Constitution of India, 1950 — Article 299(1)
Contract Act, 1872 — Section 70
Limitation Act, 1908 — Article 110, 120

Citation : AIR 1971 Patna 99

Hon'ble Judges : R.J. Bahadur, J;Kanhaiyaji, J

Bench : Division Bench

Advocate : J.C. Sinha and Saptami Jha, for the Appellant; Tarakant Jha and R.P. Katriar, for the Respondent

Final Decision : Allowed

Judgement

Kanhaiyaji, J.—These two appeals of the plaintiff arise out of one judgment passed by the Subordinate Judge, Darbhanga, and were heard together as common questions of law and fact were involved in both the appeals, and, therefore, this judgment will govern both of them.

2. The plaintiff filed two suits for recovery of rent in respect of the same land for different periods. It is the common case of the parties that, in all, 1 bigha 2 kathas of land of the plaintiff as per details given at the foot of the plaints was taken by the Public Works Department of the State of Bihar for dumping coal and tar. 11 Kathas of land was taken with effect from the 1st April, 1957, whereas 10 kathas of land from the 1st July 1950 and 1 katha of land from the 1st May, 1947. As regards the last item of 1 katha, it is also the common ground that rent to the plaintiff was paid at the rate of Rs. 10 per katha per month from the 1st May, 1947 to the 31st July. 1951, In First Appeal No. 262 of 1963 arising out of Money suit No. 66 of 1960, rent in question was claimed from the 1st August 1951 to the 31st March, 1959, in respect of 1 katha of land and from the 1st

July, 1950, in respect of 10 kathas of land and likewise from the 1st April, 1957 in respect of 11 kathas of land. In First Appeal No. 297 of 1965 arising out of Money Suit No. 31 of 1962, rent was claimed in respect of the lands from the 1st April, 1959, to the 31st March, 1962, at the rate of Rs. 10 per katha per month.

3. The case of the plaintiff is that the land in question was taken by the Public Works Department at the rate of Rs. 10 per katha per month, and, in spite of demand, no payment was made for the period in question. So he was obliged to file the two suits for the recovery of the arrears of rent along with interest at the rate of one per cent per month thereon and other incidental expenses like cost of notice u/s 80 of the Code of Civil Procedure.

4. The State of Bihar through the Secretary, Public Works Department, Government of Bihar, and the Collector of Darbhanga are the defendants in each suit. The two defendants filed separate written statements, but their defence was almost identical. The occupation of the land for keeping the stock of coal and tar was not denied. However, the plaintiff's claim of rent at the rate of Rs. 10 per katha per month was denied. As regards the aforesaid one katha of land, it was stated on their behalf that Rs. 10 per month was the rent not only for the land but also for a house standing thereon. As regards the other items of 10 kathas and 11 kathas, it was contended that the Department had not taken those lands at the rate of Rs. 10 per month, but the rent of the land was to be paid in accordance with the fair rent to be fixed by the District Magistrate, Darbhanga. Another defence put forward on their behalf was that the claim of the plaintiff was bad inasmuch as there was no written contract as required by Article 299(1) of the Constitution of India. In Money Suit No- 66 of 1960, bar of limitation was also pleaded.

5. In this connection. It is better to mention here that the averment in the plaint that the rent of the land was fairly assessed by the District Magistrate in 1958 at the rate of Rs. 10 per katha per month was not denied, but it was contended by the defendants that subsequently in pursuance of a letter dated the 10th June, 1959, from the Chief Engineer to the District Magistrate, the rent was revised and fixed at Rs. 3/-per katha per month at which rate the defendants expressed their readiness to pay the rent for the period in question. The defendants admitted that no payment had been made to the plaintiff for the period in question.

6. The material findings of the learned Subordinate Judge are that the fair rent of the lands in question for different periods involved in the two suits was Rupees 10/- per Katha, that the suits were hit by the provisions of Article 299(1) of the Constitution and that Article 110 of the Limitation Act was applicable which provides a period of three years for such suit for arrears of rent from the time when the arrears became due. The letter from the Under-Secretary to the Accountant General, Bihar, dated the 31st January, 1959 (Ext. 1/Gha) should be taken to be an effective acknowledgment, and, accordingly, the claim in question prior to the 1st February, 1956, was barred. Although, on merit, the learned

Subordinate Judge found the plaintiff's case well established, but he dismissed the suit for non-compliance with the provisions of Article 299 of the Constitution.

7. There is no written agreement or contract executed between the plaintiff and any officer of the Public Works Department. Article 299(1) of the Constitution provides that "all contracts made in the exercise of the executive power. . . of a State shall be expressed to be made. . . by the Governor of the State. . . and all such contracts. . shall be executed on behalf of the Governor by such persons and in such manner as he may direct or authorise". It was argued in the court below that in this case the Department had utilised the land of the plaintiff during the period in question for the purpose of dumping coal and tar in pursuance of an agreement which, however, did not comply with the provisions of Article 299, and, therefore, the defendants having derived benefit should be held liable for the claim in question. However, the learned Subordinate Judge, relying on a Bench decision of this Court in *Dominion of India Vs. Raj Bahadur Seth Bhikhranj Jaipuria*, held that the contract was unenforceable against the State.

8. Mr. J. C. Sinha, appearing for the plaintiff-appellant, did not contest the finding of the trial Court that the alleged contract was hit by the provisions of Article 299 of the Constitution and was void, but he submitted that the claim of the plaintiff could be allowed by applying the principle of Section 70 of the Indian Contract Act. In the first Instance the principles of law enunciated by the Supreme Court in *State of West Bengal Vs. B.K. Mondal and Sons*, and in *Mulamchand Vs. State of Madhya Pradesh*, have got to be appreciated. Gajendragadkar, J. (as he then was) pointed out in the case of *State of West Bengal Vs. B.K. Mondal and Sons*, that three conditions must be satisfied before the section aforesaid could be invoked. The conditions are :

"The first condition is that a person should lawfully do something for another person or deliver something to him. The second condition is that in doing the said thing or delivering the said thing he must not intend to act gratuitously and the third is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof."

As pointed out in that case as also by Ramaswami, J. in *Mulamchand Vs. State of Madhya Pradesh*, , "the juristic basis of the obligation in such a case is not founded upon any contract or tort but upon a third category of law, namely, quasi-contract or restitution." What Section 70 prevents is "unjust enrichment" says Gajendragadkar, J. in the former case, "and it applies as much to individuals as to corporations and Government. But in all such cases not only the two conditions but also the third condition must be fulfilled that the other party has accepted the thing delivered and has enjoyed the benefit thereof".

If the contract is void, it is void for both. Neither party can claim a specific performance of it or damages for breach of it or its enforcement in any other manner. Any party, however, by satisfying the requirements of Section 70 of the

Indian Contract Act can base its claim on that footing. In that case also the principles enunciated by the Supreme Court will be applicable equally to the citizens, corporation and the Government. This view, I find, is expressed by Untwalia, J., in *Ram Swarup Maru Vs. State of Bihar and Another*, with which I respectfully agree.

9. In *Dominion of India Vs. Raj Bahadur Seth Bhikhraj Jaipuria*, approved by the Supreme Court in *Seth Bikhraj Jaipuria Vs. Union of India (UOI)*, plaintiff Bhikhraj Jaipuria conducted grocery business in the name and style of "Rajaram Vijaikumar" in the town of Arrah. The Divisional Superintendent, East Indian Railway, under three "purchase orders" agreed to buy and the plaintiff agreed to sell certain quantities of foodgrains for the employees of the East Indian Railway. The plaintiff made some supplies of the foodgrains under the different contracts in time but failed to supply the entire quantity by the stipulated dates; and, hence the Railway Administration later declined to accept delivery of foodgrains offered to be supplied by the plaintiff. The plaintiff sued the Railway Administration claiming compensation for breach of the contract. The suit for compensation was dismissed, because the contract between the Dominion of India and the plaintiff was not in the form required by Section 175(3) of the Government of India Act and as such the contract was not enforceable and, therefore, the Dominion of India could not be sued for compensation for breach of the contract. Therefore, the facts of the case relied on by the trial court as also the ratio decidendi of that case are entirely different and have no application to the present case. The applicability of Section 70 of the Indian Contract Act does not depend upon the existence of a contract binding on the parties, and it does not provide for contractual liability. The basis for compensation under this section is not the same as of contractual rights but would be in a proportion to the benefit enjoyed by the party for whom a thing was done or to whom a thing was delivered.

10. Mr. Sinha argued that applying the principle of Section 70 of the Contract Act, the suit should be decreed and the plaintiff should be given compensation at the rate of Rs. 10/- per katha per month, as claimed. Learned counsel, appearing for the respondents, submitted that the suits may be dismissed as no such plea had been taken in the trial court. It was pointed out that the necessary materials for holding the amount of compensation are not on the record. According to them, the only material on which compensation could be allowed is the revised fair rent fixed by the Collector at Rs. 3/-. If a very technical and strict view was to be taken of the complaints, it can be said that on the facts alleged in them, no claim u/s 70 of the Indian Contract Act could be maintained; but for the application of the principles of Section 70 of the Indian Contract Act, such a strict and technical view of the complaint could not be taken. If there is sufficient evidence to show to what extent the respondents have been benefited, there can be no difficulty in allowing the appeal and decreeing the suits of the plaintiff.

In the complaints, it is specifically mentioned that the land was taken by the

defendants at a rental of Rs. 10/- per katha per month which was approved and sanctioned by the proper and concerned authority, and all the materials requisite for determining the quantum of compensation are on the record. Therefore, I do not feel inclined to agree with the learned Counsel for the respondents that the suits should be remanded to the trial court for decision after allowing the parties to adduce further evidence. (In Paragraphs 11 and 12, the judgment discusses the evidence on record to find as to what is the reasonable rent payable for the lands occupied by the Department. The judgment continues:)

13. The bar of limitation has been pleaded in Money Suit No. 66 of 1960 and that also with regard to the claim regarding the land in respect of 10 kathas and 1 katha. As for one katha of land, the claim is from the 1st August 1951, and as for 10 kathas of land the claim is from the 1st July, 1950, to the 31st March, 1959. It was argued in the court below for the defendants that Article 110 of the Limitation Act applied to the case, which provides a period for three years for suits for arrears of rent from the time the arrears became due. The trial Judge accepted the contention of the defendants but held that the letter of the Under Secretary to the Government written to the Accountant General, Bihar, On the 31st January, 1959 (Ext. 1/gha) communicating sanction of the Government for payment of rent at the monthly rate of Rs. 10/- per katha should be taken as effective acknowledgment, and, accordingly, the claim in question with effect from the 1st February, 1956 may be held to be alive and the claim prior to this date was barred.

Mr. Sinha, appearing for the appellant, contended that in this case Article 110 was not applicable. When a contract becomes void, relationship of landlord and tenant ceases. In this case, it has been held that the contract on which the plaintiff claimed relief was void. The obligation to pay compensation has been treated only as an obligation of a person enjoying the benefit of a non-gratuitous act u/s 70 of the Contract Act. Being a statutory liability, the only Article available for its breach is Article 120 of the Limitation Act, 1908. The claim u/s 70 of the Contract Act cannot be considered as one based on contract but on quasi-contract. Therefore, Article 110 has no application. This view is supported by a Full Bench decision of the Kerala High Court in Kora Lukose Vs. Chacko Uthuppan, . My conclusion, therefore, is that it is Article 120 and not Article 110 that applies to the case, and, as such, the claim in Money Suit No. 66 of 1960 has to be held as not barred by limitation from the 1st February, 1953. The claim prior to the 1st of February, 1953, is held barred.

14. The plaintiff has also claimed interest in both the suits. There is no express or implied contract for payment of interest. Interest for a period prior to the commencement of the suit is claimable either under an agreement or usage or trade or under a statutory provision or under the Interest Act for a sum certain where notice is given. In this case, none of these conditions exist. Interest antecedent to a suit is not a matter of procedure. It can be only allowed if the plaintiff succeeds in establishing one of the above requirements of law. The claim

of the plaintiff in these suits is being allowed on damages, and, therefore, I do not feel inclined to allow interest from the dates of the suits to the date of the decree. Therefore, the plaintiff's claim for interest prior to the date of the decree including the period prior to the dates of the suits is disallowed. The plaintiff, however, on equitable grounds will get interest at the rate of six per cent per annum from the date of the decree to the date of payment of the decretal amount.

15. For the reasons given above, both the appeals are allowed with costs. The suits are, accordingly, decreed, as indicated above,

Bahadur, J.

16. I agree.