
(2013) 05 AHC CK 0247
In the Allahabad High Court
Case No : Second Appeal No. 510 of 2013

Kishore

APPELLANT

Vs

Gram Panchayat, Patkhauli, Salempur, Deoria

RESPONDENT

Date of Decision : 02-05-2013

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 127B
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 114

Citation : (2013) 05 AHC CK 0247

Hon'ble Judges : Sudhir Agarwal, J

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri S.K.Purwar, learned counsel for the appellant.

2. This is defendant's appeal. Gram Panchayat through its Pradhan instituted Original Suit No.756 of 1987 against defendantappellant seeking injunction that he shall not interfere on disputed land, which is a public land belong to Gaon Sabha and is entitled to be used by public at large for various purposes.

3. The only argument advanced before this Court is that aforesaid suit was instituted by Gaon Sabha by engaging a private counsel though a private counsel has no right to represent Gaon Sabha or institute legal proceedings on behalf of Gaon Sabha. The Trial Court found that land belong to Gaon Sabha and defendant has no right or interest therein except that being a part of general public, he may also use the same like others but has no right to encroach thereupon or raise any construction for his individual benefit and interest.

4. Issue no.6 was considered as to whether suit was instituted without there being any resolution passed by Gaon Sabha and also whether a private counsel can be represented or not. The Trial Court held that paper no.54C was a resolution of Gaon Sabha and item no.5 was in respect to filing of suit by Gaon Sabha. It also authorised Gram Pradhan to do necessary Pairvi through Government or private counsel, as the case may be. The issue was decided against appellant and suit was ultimately decreed vide judgment and decree

dated 13.9.1991 whereagainst defendantappellant's civil appeal no.100 of 1991 had also been dismissed by Lower Appellate Court i.e. Additional District Judge, Room No.6, Deoria (hereinafter referred to as "LAC") vide judgment dated 16.5.2001.

5. The only argument advanced before this Court is that suit was instituted by Gaon Sabha and was conducted by a private counsel, which was not permissible and entire proceedings are thus wholly illegal. Reliance is placed on Section 127B of U.P.Zamindari Abolition & Land Reforms Act, 1950 (hereinafter referred to as "Act, 1950") and Rule 114 of U.P.Zamindari Abolition & Land Reforms Rules, 1952 (hereinafter referred to as "Rules, 1950").

6. Having gone through aforesaid provisions, this Court is really at a loss to find out any provision therein which may disentitle Gaon Sabha to be represented through a private counsel or counsel other than a panel lawyer. Section 127B of Act, 1950 provides for preparation of a panel of lawyers of one or more legal practitioners in respect of Gaon Sabhas of such local areas as may be specified. Subsections (2), (3) and (4) read together enable a panel lawyer to represent concerned Gaon Sabha for which he is appointed without any written authority in a matter entrusted to him or of which he is party. For the purposes of service of notice upon Gaon Sabha concerned, panel lawyer is to be treated as its agent. Meaning thereby, service of notice upon panel lawyer can be held service of notice upon concerned Gaon Sabha. Subsection (4) disentitle a panel lawyer to enter into any agreement or compromise with reference to or withdraw from any suit or proceedings on behalf of Gaon Sabha without prior sanction of Land Management Committee. There is nothing in the aforesaid provisions which disentitle or disable a Gaon Sabha from contesting a case either as plaintiff or defendant, by engaging a counsel other than panel lawyers.

7. Now I come to Rule 114 of Rules, 1952. Subrule (1) of Rules, 1952 talks of persons who can be appointed as panel lawyers and subrule (2) provides manner of their appointment. Subrules (3), (4) and (5) talks of terms and conditions with respect of panel lawyers appointed. Here also, I do not find any provision, which disempowers Gaon Sabha concerned from contesting a matter through an advocate or a legal practitioner other than a panel lawyer.

8. It is true, when statute has made provisions with respect of appointment of panel lawyers for representing Gaon Sabha in a legal proceeding, it should normally be represented through such panel lawyer, but this cannot be stretched to the extent of holding that Gaon Sabha cannot contest a matter by engaging a legal practitioner other than a panel lawyer. In absence of any such mandate or provision or prohibition in the statute, authority and power of Gaon Sabha in the matter of contest of legal proceedings cannot be narrowed down or restricted simply by referring to provisions which talks of engagement and appointment of panel lawyers for Gaon Sabha. These are enabling provisions and not for restriction.

9. Learned counsel for the appellant, however, sought to support the submission from a decision of this Court in Gaon Sabha Tappal, Tehsil Khair, District Aligarh & Anr. Vs. Satya Deo Sharma & ors., 2004(2) AWC 1735, wherein this Court took a view that para 128 of Gaon Sabha Manual is mandatory and for the said purpose the Court further referred to an earlier decision in Gram Samaj Vs. Deputy Director Consolidation, 1969 RD 356.

10. I have carefully gone through the aforesaid decisions.

11. Para 128 and 131 of Gaon Samaj Manual came to be considered before Hon"ble D.S.Mathur, J in Gram Samaj Vs. Deputy Director Consolidation (supra). Para 128, as was up for consideration has been quoted in para 10 of the judgment and reads as under:

"The conduct of Gaon Samaj litigation shall not depend upon the individual discretion of the Chairman of the Land Management Committee, but shall be a matter of a resolution of the Land Management Committee as a whole. In urgent cases, however, the Chairman can take action on his own and seek ratification of the Land Management Committee afterwards, by including it in the agenda of the next ensuing meeting."

12. This provision was held mandatory having force of law. There is no reason for this Court to take a view otherwise in this matter. Therein the Court found that Chairman of Land Management Committee himself proceeded for contesting the matter without there being any resolution passed by Land Management Committee to contest it and that is how this Court held that action of Chairman was not authorized. The fact that there was no resolution passed by Land Management Committee was admitted by learned counsel appearing for Gaon Sabha and that is how this Court in para 15 of the judgment in Gram Samaj Vs. Deputy Director Consolidation (supra)said:

"It was conceded by the learned Advocate for the petitioner that the Land Management Committee had not passed any resolution to defend the objection under Section 9, or to prefer and appeal or revision, till after the decision of the first revision. Many meetings of the Land Management Committee would have been held after the filing of the written statement, the appeal and the revision. As there was noncompliance of the provisions of paragraph 128 of the Gaon Samaj Manual, the revision was rightly held not to be maintainable. I would go a stage further and say that even the written statement filed by and also the appeal preferred by the Chairman on behalf of the Gaon Samaj were not maintainable."

13. U.P. Gram Sabha, Gram Panchayat and Bhumi Prabandhak Samiti Manual placed before this Court shows a provision similar to para 128, referred to in the judgment in Gram Samaj Vs. Deputy Director Consolidation (supra) as para 101 having been inserted vide G.O.No. 2240AZ/ZA11651954 dated 20th August, 1958.

14. Another question, which though raised before the Court was, whether Gaon Sabha can engage a private lawyer or not with reference to para 131. However, in para 17, this Court held that in view of the fact that Land Management Committee had not passed any resolution to contest the matter, there was a complete non compliance of mandatory provision under para 128 of the Manual hence it was not necessary to decide the question raised with reference to para 131 of the manual. In para 17 of the judgment the Court said :

"In view of the above finding it is not necessary to make detailed comments on the effect of paragraph 131 of the Gaon Samaj Manual with regard to lawyers to be engaged for prosecution or defence of a suit or proceeding.

15. However, having said so, in para 18 of the judgment, the Court referred to an earlier decision in Nainu Patti Vs. The Board of Revenue, U.P. Allahabad, 1965 RD 349 and thereafter held that para 131 of manual is directory. The observations made in para 18 of the judgment reads as under:

"Paragraph 131 of the Gaon Samaj Manual, as it stands at present, must, therefore, be regarded as directory."

16. The aforesaid provisions subsequently came to be considered by a Division Bench of this Court in Babu Ram Verma Vs. SubDivisional Officer, Akbarpur, District Faizabad and others, (1996) 3 UPLBEC 2028, wherein it has been stated that a lawyer other than penal lawyer can be engaged by Gaon Sabha by adopting a resolution and thereafter with approval of the Collector.

17. The Division Bench in Babu Ram Verma (supra) referred to Section 28B of U.P.Panchayat Raj Act, 1947 (hereinafter referred to as "Act, 1947") to point out that procedure for conduct and prosecution of suits and proceedings by or against Gaon Sabha relating to or arising out of the functions of Samiti is provided therein. Besides, it also says that Bhumi Prabandhak Samities shall function subject to the provisions of Act, 1950. Thereafter the Court refers to Section 126 of Act, 1950 and observed that it authorises the State Government to issue orders and directions to Land Management Committee which are necessary for the purpose of Act, 1950. Section 126(2) of Act, 1950 also puts an obligation on Land Management Committee to carry out and comply such directions. Rule 115A of Rules, 1952 also authorises the State Government to issue directions to Land Management Committee established under Section 28A of Act, 1947.

18. The Court then proceeded to hold further that when State Government issued directions in respect of conduct of litigation by Gaon Sabha, then the same are binding on Gaon Sabha. The provisions of the Act also makes it clear that Gaon Sabha as well as Land Management Committee shall be responsible for all litigations on behalf of Gaon Sabha. Then the Court referred to Section 127B of Act, 1950 as also provisions contained in Gaon Sabha Manual, which provides that a special lawyer can be engaged by Gaon Sabha by adopting resolution and thereafter, with the prior approval of Collector and get the case conducted

through a counsel other than a panel lawyer. The Court observed that Gaon Sabha management being a public body, it is in the public interest and also it is the duty of the State to see that Gaon Sabha's fund are not wasted. The Court thereafter proceeded to hold that Gaon Sabha can engage a private counsel but in accordance with the procedure prescribed under the rules. With respect to procedure, in para 8 & 9 of the judgment in Babu Ram Verma (supra), the Court said:

"8. It is well settled that where a procedure for the performance of a particular act has been prescribed, the same has got to be done in that manner or not at all.

9. Apart from this, now it is a settled law that if the State has a right to issue direction under some Statute then, the directions issued by the State is the statutory force of law and the same can introduce in a form of official memorandum or executive instructions."

19 The above decision has been followed in Gaon Sabha Tappal, Tehsil Khair, District Aligarh & Anr. (supra). However, therein this Court has further observed that if there is any procedural lapses, the same can be rectified/ratified or corrected subsequently also.

20. The above authorities as also provisions, discussed above, make it clear that in public interest, with an objective that fund of Gaon Sabha are not misused, misutilized or wasted or spent in an arbitrary manner at the whims of an individual person like Gram Pradhan, guiding principles have been laid down for appointment of panel lawyers, who will represent Gaon Sabha in litigation and conduct its cases. However, there is no embargo upon engagement of private counsel but, therefor, procedure has been laid down which will have a check over arbitrary engagement of private counsels and this is also a procedure with the wider objective of public interest.

21. The above procedure, however, cannot be made a tool in hand to server the interest of mischievous and scrupulous persons so as to defy and defeat otherwise genuine litigation pursued by Gaon Sabha to prevent unlawful and illegal encroachment of public land or to prevent any other illegal or unauthorized act on the part of an individual or group of individual. If visualizing urgency of the matter, such a litigation, in the larger interest of Gaon Sabha, is taken up by Gram Pradhan immediately, and subsequently his action is validated by passing a resolution by Land Management Committee, or Gaon Sabha, as the case may be, in my view, it cannot be said that action taken in the interest and for benefit of Gaon Sabha, would lose its validity merely for the reason that legal representative was a private one. There is distinction between issue relating to maintainability of suit and those, which are procedural for maintaining a suit. In the matter of procedural aspects, if larger public interest is guarded and protected, a slight deviation or variation cannot be considered as amounting to patent lack of jurisdiction for maintaining litigation itself.

22. Moreover, in the present case, this issue has to be examined from the angle and manner in which it was raised by defendant appellant before Courts below as also before this Court. Issue raised by appellant was that the suit on behalf of Gaon Sabha could not have been filed by a private counsel and that, before filing suit, resolution was not passed by Gaon Sabha or Land Management Committee, as the case may be. It was not the case of appellant that entire procedure, required for a litigation, in which a Gaon Sabha may be represented through a private counsel, was not followed or observed.

23. In the instant case, with respect to the issue raised by appellant, necessary facts were pleaded and evidence led by Gaon Sabha to show that appellant was going for an unauthorized encroachment and illegal construction over the land of Gaon Sabha and any delay in proceedings would have allowed him undue advantage. Hence, in the emergent circumstances, Gram Pradhan proceeded to institute suit for injunction by engaging a private counsel and filing it in the Trial Court. Subsequently, action of Gram Pradhan was ratified and approved by Gaon Sabha by passing a resolution. Factual dispute raised by appellant that there was no consent or resolution of Gaon Sabha, therefore, was found incorrect by Trial Court, inasmuch as, it found that there was a post facto resolution passed by Gaon Sabha validating action taken by Gram Pradhan having regard to the circumstances and urgency of the matter. In absence of any further challenge raising any factual issue, the Court below did not look into any further aspect of the matter.

24. In view of the above it cannot be disputed that bald submission that Gaon Sabha cannot be represented by a private counsel is not correct and the issue is already covered by the Division Bench decision of this Court. A private lawyer can be engaged for which procedure has been prescribed and that procedure has to be followed. It has not been argued before this Court that in the present case private lawyer has been engaged without following the procedure prescribed in law. What has been argued is that in no case private lawyer can be engaged, which is not correct in view of the decision in Babu Ram Verma (supra).

25. Since the argument advanced is already covered by a Division Bench decision of this Court, I do not find that it raises a substantial question of law in the case in hand.

26. In any case, the aforesaid issue by itself cannot make the suit in question not maintainable, inasmuch as, capacity of advocate cannot be constituted as to the lack of jurisdiction on the part of Court in entertaining and deciding a suit filed before it. In the circumstances, impugned judgments cannot be interfered as I do not find any illegality or otherwise error therein and in my view, no substantial question of law has arisen in this matter.

27. In order to constitute a substantial question of law, it must be an issue which, if decided one or the other way, may have a material bearing on the ultimate result of the suit.

28. Under Section 100 of Code, a second appeal can be entertained by this Court only if it involves substantial question of law. In other words it does not confer any jurisdiction on this Court to interfere with pure questions of fact, which have been considered and adjudicated by courts below after appreciation of evidence recording well considered findings. If there is a finding of fact, based on proper appreciation of evidence, and, material on record, and no perversity, illegality or irregularity in those findings are found, the second appeal is not at all entertainable by this Court under Section 100 of the Code. Even mere illegality or irregularity in findings would not permit interference. They require something more.

29. There are two situations in which, ordinarily, interference with findings of fact is permissible, namely, (a) when material or relevant evidence is not considered, which if considered, would have led to opposite conclusion, and (b) where a finding has been arrived at by court below by placing reliance on inadmissible evidence, which if would have been omitted, an opposite conclusion would have been possible. I derive these principles from some of the authorities of Apex Court and, briefly, it would be appropriate to refer the same.

30. In *Dilbagrai Punjabi Vs. Sharad Chandra*, AIR 1988 SC 1858, the Court affirmed the observations of High Court that First Appellate Court is under a duty to examine entire relevant evidence on record and if it refuses to consider important evidence having direct bearing on the disputed issue, and the error which arises is of magnitude that it gives birth to a substantial question of law, the High Court would be entitled to set aside the finding.

31. In *Jagdish Singh Vs. Nathu Singh*, AIR 1992 SC 1604, it was said, where finding by court of facts is vitiated by non consideration of relevant evidence or by an essentially erroneous approach to the matter, the High Court is not precluded from recording proper finding.

32. In *Sri Chand Gupta Vs. Gulzar Singh*, AIR 1992 SC 123 the Court upheld interference by High Court in second appeal where the Lower Appellate Court relied an admission of third party treating it as binding on the defendant though it was inadmissible against the said defendant.

33. In *Sundra Naicka Vadiyar Vs. Ramaswami Ayyar*, AIR 1994 SC 532 the Court said where certain vital documents for deciding the question of possession were ignored, such as compromise, an order of revenue Court relying on oral evidence was unjustified.

34. In *Ishwar Dass Jain (Dead) through Lrs. Vs. Sohan Lal (Dead) through Lrs.*, 2000(1) SCC 434 the Court in paras 11 and 13 of the judgment clearly mentioned two situations in which inference with findings of fact is permissible. It is said:

"11. There are two situations in which interference with findings of fact is permissible. The first one is when material or relevant evidence is not considered

which, if considered would have led to an opposite conclusion. . . ."

"13. The second situation in which interference with findings of fact is permissible is where a finding has been arrived at by the appellate Court by placing reliance on inadmissible evidence which if it was omitted, an opposite conclusion was possible. . . ."

35. In *Govindaraju Vs. Mariamman*, 2005(2) SCC 500 the Court said that existence of substantial question of law is the sine qua non for exercise of jurisdiction under Section 100 of the Code. If a second appeal is entertained under Section 100 without framing substantial questions of law then it would be illegal and would amount to failure or abdication of duty cast on the Court. The Court relied on its earlier decisions in *Kshitish Chandra Purkait Vs. Santosh Kumar Purkait & Ors.*, 1997(5) SCC 438; *Panchugopal Barua Vs. Umesh Chandra Goswami* 1997(4) SCC 413; and, *Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar* 1999(3) SCC 722.

36. Section 100 of the Code, first of all, places an obligation upon appellant to precisely state in the memorandum of appeal a substantial question of law involved therein which he proposes to urge before the Court. After hearing him this Court has to satisfy itself that a substantial question of law is involved in the case and it shall formulate that question. This is the next stage. This Court after hearing appellant may come to the conclusion that the question stated in memorandum of appeal itself constitutes a substantial question of law but then it has to be formulated by Court on its own. It will become a substantial question of law only when the Court has satisfied itself and put its seal by formulating it. The mere substantial question of law is not sufficient but it must be one such question which is involved in the case. An abstract question of law may be substantial but unless it is one which is involved in the case concerned, it will not satisfy the requirement of Section 100(4) of the Code.

37. In *Santosh Hazari Vs. Purushottam Tiwari*, 2001(3) SCC 179 the Court considered what the phrase "substantial question of law" means. It says that the phrase is not defined in the Code. The word "substantial", as qualifying question of law, means of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with technical, of no substance or consequence, or academic merely.

38. A Full Bench of Madras High Court in *Rimmalapudi Subba Rao Vs. Noony Veeraju*, AIR 1951 Madras 969 considered this term and said, "when a question of law is fairly arguable, where there is room for difference of opinion or where the Court thought it necessary to deal with that question at some length and discuss an alternative view, then the question would be a substantial question of law. On the other hand, if the question was practically covered by decision of highest Court or if general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular fact of case, it could not be a substantial question of law."

39. The above observations were affirmed and concurred by a Constitution Bench in *Sir Chunilal Mehta and Sons Ltd. Vs. The Century Spinning and Manufacturing Company Ltd.* AIR 1962 SC 1314. Referring to above authorities, the Court in *Santosh Hazari (supra)* said:

"A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be substantial, a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned. To be a question of law involving in the case there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

40. The decision in *Santosh Hazari (supra)* has been followed in *Govindaraju (supra)* and *Thiagarajan and others Vs. Sri Venugopalswamay B. Koll and others*, AIR 2004 SC 1913.

41. In order to satisfy the above requirement, arise in the matter, firstly, it must be shown that there are pleadings on the issue, evidence was led by parties and thereafter the courts below considered and affirmed opinion, one or the other way. Though in my view the issues raised by learned counsel for the appellant, *prima facie*, do not satisfy the requirement of Section 100 C.P.C., i.e, the substantial question of law, having arisen in this case.

42. The appeal, therefore, lacks merit. Dismissed.