
(2013) 11 MP CK 0103

In the Madhya Pradesh High Court

Case No : Civil Revision No. 251 of 2007

Madhya Pradesh Housing Board

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 01-11-2013

Acts Referred:

Citation : AIR 2014 MP 1 : (2013) ILR (MP) 2723 : (2014) 2 JLJ 79 : (2014) 3 MPHT 502 : (2014) 2 MPLJ 615

Hon'ble Judges : N.K. Gupta, J

Bench : Single Bench

Advocate : R.K. Samaiya, for the Appellant; Santosh Yadav, Panel Lawyer for the Respondent No. 1-State, Smt. Shobha Menon and Shri Rahul Choubey, Advocate for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Gupta, J.—By way of the present civil revision, the applicant has challenged the order dated 30.6.2007 passed by the learned Civil Judge Class-II, Bhopal in Civil Execution No. 44-A/82/90, whereby the application of the applicant was dismissed and the trial Court did not declare that the decree dated 8.2.1984 was nullity. The brief facts of case are that the applicant obtained some land after acquisition of such land in the year 1963. The land bearing Survey No. 40/34 area 18.86 acres situated at Mouja Govindpur Tahsil Huzur District Bhopal was also acquired. The respondent No. 2 had instituted a Civil Suit No. 44-A/82 to get a decree of injunction relating to the land of the respondent No. 2 so that he should not be dispossessed. The learned 4th Civil Judge Class-II, Bhopal vide judgment and decree dated 8/2/1984 decreed the suit and declared the title of the respondent No. 2 and further directed that the respondent No. 2 should not be dispossessed by the applicant or its employees. The appeal filed by the applicant was withdrawn and ultimately the execution proceeding was initiated. During the execution the applicant and its officers tried to obtain a settlement with the respondent No. 2, but no concrete proposal was made by the officers of

the applicant. Ultimately in compliance to the order dated 6.8.2004 passed in WP No. 1520/2004, an objection was raised by the applicant in the execution matter to get the decree dated 8.2.1984 to be declared nullity but vide order dated 30/6/2007 the learned Civil Judge Class-II dismissed the said application.

2. I have heard the learned counsel for the parties.

3. The learned counsel for the applicant has submitted that according to the provisions of the Land Acquisition Act, jurisdiction of civil Court is barred, and therefore the decree given by the learned Civil Judge was null and void ab-initio. The learned counsel for the applicant has placed his reliance upon the various judgments and orders of Hon''ble the Apex Court in the cases of Laxmi Chand and others Vs. Gram Panchayat, Kararia and others, , State of Bihar Vs. Dharendra Kumar and others, , Commissioner, Bangalore Development Authority Vs. K.S. Narayan, and The Commissioner, Bangalore Development Authority and Another Vs. Brijesh Reddy and Another, . It is further submitted that the doctrine of estoppel cannot be invoked against the applicant. In this context, the learned counsel for the applicant has placed his reliance upon the judgment of Hon''ble the Apex Court in the case of Shabi Construction Company Vs. City and Industrial Development Corporation and Another, . It is submitted that the decree passed by the learned 4th Civil Judge Class-II was nullity ab-initio, and therefore it could be considered in the execution case also. In this regard the learned counsel for the applicant has placed his reliance upon the judgment of Hon''ble the Apex Court in the case of Harshad Chiman Lal Modi Vs. DLF Universal and Another, . Hence, it is submitted that the decree passed by the learned 4th Civil Judge Class-II, Bhopal was nullity from the very beginning and it could not be executed. Therefore, it is prayed that the decree may be declared nullity.

4. On the other hand, the learned counsel for the respondent No. 2 has submitted that the decree was passed against the applicant after due opportunity given to the applicant to raise all such defence before the trial Court following which the applicant went in appeal but the appeal was withdrawn. Under such circumstances, the decree attained finality, and therefore the Executing Court cannot go back into the merits of the decree. It is further submitted that no land of the respondent No. 2 was acquired. No valid notice was given to the respondent No. 2. The respondent No. 2 had purchased the land from the previous owner Ballo Bai wife of Ramchand in the year 1954, whereas the land acquisition proceedings took place in the year 1963, and therefore no notice has been given to the respondent No. 2. Hence the entire land acquisition proceedings were not binding to the respondent No. 2, and therefore his case for declaration and injunction was tenable in a Civil Court. In this connection the learned counsel for the respondent No. 2 has placed his reliance upon the judgment of Hon''ble the Apex Court in the cases of Firm Seth Radha Kishan (Deceased) Represented by Hari Kishan and Others Vs. The Administrator, Municipal Committee, Ludhiana, and Union of India (UOI) Vs. Tarachand Gupta

and Bros, . Similarly, the learned counsel for the respondent No. 2 has placed his reliance upon the judgment of the Division Bench of this Court in the case of Rao Bhupendra Singh Vs. Smt. Gopal Kunwar Umath and Another, and the judgment passed by the Single Bench of this Court in the case of V.K. Munshi Vs. Raipur Co-operative Housing Society Limited and another, . It is submitted that it is for the Civil Court itself to consider the question of jurisdiction and decide the same and when such a question is decided, then the aggrieved person has a right to challenge it before the higher courts. The applicant had an opportunity to challenge the judgment and the decree passed by the trial Court, but the appeal filed by the applicant was withdrawn, and therefore the applicant is estopped to raise the objection before the Executing Court again.

5. After considering the submissions made by the learned counsel for the parties and looking at the facts and circumstances of the case, only two questions are to be considered in the present case. Firstly, whether the applicant could raise such an objection before the Executing Court and secondly, whether the learned 4th Civil Judge Class-II, Bhopal had the jurisdiction to pass such a decree. For the first question, it would be apparent that the applicant was made party in the case and it had an opportunity to raise all such objections in the case and the trial Court had decided all the questions raised before it. If the judgment dated 8.2.1984 is perused, then it would be apparent that no such objection was raised by the applicant in the written statement and the trial Court could not consider such a point in the case. It was for the applicant to raise this objection before the trial Court along with the other objections raised by it. According to the judgment of the Single Bench of this Court in the case of V.K. Munshi (supra) it is for the trial Court to consider as to whether the Civil Court had the jurisdiction to entertain the suit or not, and therefore it was for the applicant to raise such objections before the trial Court. When the opportunity is given to the defendant to raise all objections before the trial Court and if any objection is not taken before the trial Court, then the concerned defendant is not competent to take such an objection before the Executing Court. Hon"ble the Apex Court in the case of Brijesh Reddy (supra) has laid that such objection ought to have been raised at the earliest before the trial Court. The higher Court may refuse to entertain such plea in absence of proof of prejudice. In para 8 of the order Hon"ble the Apex Court has held as under:

Section 9 of the Code of Civil Procedure, 1908 provides jurisdiction to try all suits of civil nature excepting those that are expressly or impliedly barred which reads as under:

9. Courts to try all civil suits unless barred.-The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

From the above provision, it is clear that Courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The jurisdiction of Civil Court with regard to a particular matter

can be said to be excluded if there is an express provision or by implication it can be inferred that the jurisdiction is taken away. An objection as to the exclusion of Civil Court's jurisdiction for availability of alternative forum should be taken before the trial Court and at the earliest failing which the higher court may refuse to entertain the plea in the absence of proof of prejudice.

No reason has been shown by the applicant as to why no such objection was raised before the trial Court at the time when the written statement was filed. Under such circumstances, where the applicant withdrew the appeal filed against the judgment and decree passed by the learned 4th Civil Judge Class-II, Bhopal, then certainly the applicant is estopped to raise such an objection before any other Court including the Executing Court, and therefore the contention of the learned counsel for the applicant cannot be accepted that such objection could be raised before the Executing Court.

6. The learned counsel for the applicant has placed his reliance upon the judgment of Hon"ble the Apex Court in the case of Urban Improvement Trust, Jodhpur Vs. Gokul Narain and another, in which it is laid that in some rare cases such objection may be raised in execution also. But in that judgment Hon"ble the Apex Court has observed that if a decree is of such a nature that it cannot be cured by consent or waiver of the party, then such a decree which was nullity ab-initio can be considered even in the execution. In the light of this decision, it is to be considered as to whether the decree was nullity ab initio.

7. The land acquisition proceedings were initiated in the year 1963 and if the award dated 30.11.1963 is perused, then it would be apparent that the Deputy Director In-Charge Land Acquisition, Bhopal had passed that award against one Mst Bao W/o Ramchand. In para 14, the non appearance of Mst Bao to file any statement of claim relating to Survey No. 34/40 area 18.86 acres was observed. The respondent No. 2 had established before the trial Court that he purchased the land from Ballo Bai in the year 1954 and mutation also took place soon after his purchase. The trial Court had decided the issue No. 1 in an affirmative result that the land in question was owned by the respondent No. 2. When the land in question was purchased by the respondent No. 2 and mutation took place in the year 1954, then during the land acquisition proceedings which took place much after that mutation, a notice was to be given to the applicant. It is true that in the land acquisition proceeding, jurisdiction of the Civil Court is barred, but if the award passed by the concerned officer is perused, then it would be apparent that the respondent No. 2 was not party in that award and no notice of the land acquisition proceedings was given to the respondent No. 2. The applicant could not establish before the trial Court that a notice of the land acquisition was published in official gazette against the respondent No. 2. Hence the land of the respondent No. 2 was not acquired in the eye of law, since no notice was given to the respondent No. 2. The land was initially registered in the name of Ballo, whereas a notice was given to Mst Bao wife of Ramchand, who had already expired in the year 1959, and therefore the notice issued to a dead person was

nullity. Hence the acquisition proceedings against the respondent No. 2 for the land in question was nullity from very beginning, and therefore the respondent No. 2 had no option except to institute a civil suit for declaration and injunction relating to the property on which the applicant and its officers tried to get possession by encroachment. This was the civil right of the respondent No. 2. There is no provision in the Land Acquisition Act that if no notice of the land acquisition is given to the concerned party and the authority had tried to get the possession of the property forcefully without any acquisition of the land, then the matter shall be decided by any authority created under the Land Acquisition Act. Under such circumstances, looking at the nature of the case, there was no bar on the jurisdiction of the civil Court to entertain the suit of the respondent No. 2 and to declare his title and to pass the injunction order against the applicant and its officers.

8. The learned counsel for the applicant has placed his reliance upon several judgments of Hon'ble the Apex Court in various cases, however due to factual difference, such judgments cannot be applied in the present case. It is true that the jurisdiction of the civil Court is barred for the land acquisition cases, but looking at the factual position of the present case, the respondent No. 2 had no option except to knock the door of the Civil Court, because no notice of the land acquisition was given either to the respondent No. 2 or Mst Ballo Bai. In this regard, the judgment of the Division Bench of this Court in the case of Rao Bhupendra Singh (*supra*) may be applied in which it is laid that the order made without jurisdiction is nullity, but it is for the civil Court itself to consider the question of jurisdiction and to decide the same. Similarly, in the case of V.K. Munshi (*supra*), it is held that the jurisdiction of the Civil Court is to be considered according to the facts of the case and if it appears that the Civil Court has jurisdiction in the case, then the Court may entertain the civil Suit accordingly.

9. The jurisdiction of the Civil Court is barred for the land acquisition proceeding, but in the present case no notice of the land acquisition was given either to the respondent No. 2 or to his predecessor Ballo Bai, and therefore *prima facie* in absence of any notice the land of the respondent No. 2 was not acquired in the eye of law, and therefore the respondent No. 2 was entitled to proceed with the civil suit and since it was the matter of declaration of the right of the respondent No. 2, then certainly the Civil Court has jurisdiction to decide the case and to pass a decree. Hence the decree directed by the learned 4th Civil Judge Class-II Bhopal is not nullity *ab initio* and is thus enforceable.

10. On the basis of the aforesaid discussion, it would be apparent that the Civil Court had jurisdiction to consider the suit and that the decree passed by the 4th Civil Judge Class-II, Bhopal was not nullity *ab-initio*. The decree is executable and the objection raised by the applicant cannot be accepted. Also the applicant had an opportunity to raise such an objection before the trial Court and the appellate Court, but the applicant or its officers did not raise such an objection

before the trial Court or the appellate Court and therefore, now the applicant is estopped to raise such objection before the Executing Court. Under such circumstances, the present revision filed by the applicant cannot be accepted. The learned Civil Judge Class-II, Bhopal has rightly dismissed the objection raised by the applicant vide order dated 30.6.2007. There is no illegality or perversity visible in the impugned order passed by the learned Civil Judge Class-II, Bhopal. Under such circumstances, the revision filed by the applicant is hereby dismissed with costs.

11. It is made clear that the applicant shall bear its own cost as well as those incurred by the respondent No. 2. Rs. 5000/- is quantified towards the Advocate fee, if certified. A copy of this order be sent to the Executing Court for information and to proceed with the execution case.