(1967) 07 PAT CK 0022

In the Patna High Court

Case No : S.A. No. 616 of 1962

Nawabzadi Kaniz Fatma APPELLANT

Vs

Mohammad Yasin and Others RESPONDENT

Date of Decision : 27-07-1967

Acts Referred:

Constitution of India, 1950 — Article 31
Electricity (Supply) Act, 1948 — Section 76
Specific Relief Act, 1963 — Section 42

Citation : (1968) 16 BLJR 476

Hon'ble Judges : Shambhu Prasad Singh, J;Ramratna Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shambhu Prasad Singh, J.—This second appeal by defendant No. 1 against, concurrent judgments and decree, arises out of a suit for a declaration that auction sale under the Bihar & Orissa Public Demands Recovery Act (Act IV of 1914), dated 13-4-1954 in respect of mahal Detrol, appertaining to tauzi No. 9954, was void and the appellant, who was the auction purchaser, did not. acquire any title by virtue of the said sale in the property sold. A certificate under the Public Demands Recovery Act was issued for realisation of arrears of cess which ultimately resulted in the sale. The plaintiffs-respondents filed an application u/s 29 of the Public Demands Recovery Act and a conditional order was passed on it on 8-8 1955, according to which, the sale was to be set aside if the plaintiffs deposited the purchase money within the time fixed by the court. They defaulted and the application was dismissed.

2. Learned Counsel for the appellant in his arguments did not challenge the findings of the courts below. He raised only two questions of law which were not argued before either of the two courts below. It is, therefore, not necessary to set out the cases of the parties in detail. Briefly stated, the plaintiffs'' case was that they had a separate account which was not in arrears and they were also

not party to the certificate case. They further claimed that notices u/s 7 of the Public Demands Recovery Act were not served upon them and there were material irregularities in publishing and conducting the sale and that they came to know o? the sale for the first time on 8-2-1955. According to them, the real purchaser was defendant No. 2, who was himself in arrears and defendant No. 1 was his mere benamidar.

3. Though defendant Nos. 1 and 2 tiled separate written statements, the defence put forward by them was identical. According to them, defendant No. 2 had nothing to do with the purchase and defendant No. 1, i.e., the appellant, was the real purchaser. They admitted that the plaintiffs had a separate account which was not in arrears but maintained that the sale was legal and valid, that there was no fraud or suppression of. processes and that everything was done legally according to the procedure prescribed under the Public Demands Recovery Act.

4. The suit was instituted on 13-12-1955 and admittedly tauzi No. 9954 had vested in the State of Bihar on 26-1-1955.

5. The trial court held that the sale dated 13-4-1954 was void and defendants 1 and 2 did not acquire any title to mahal Detrol, tauzi No. 9954, by virtue of that sale. The court of appeal below has confirmed that decision.

6. As a preliminary to his main contention, Mr. Lal Narain Sinha, learned Counsel for the appellant, urged that in substance the suit was for a declaration that the plaintiffs were entitled to the compensation for the property from the State of Bihar and the appellant was not entitled to it, and that if it was to be treated as a suit for declaration of title to the estate itself, in that case, it was barred by Section 42 of the Special Relief Act (Act 1 of 1377) inasmuch as the estate having vested in the State of Bihar no suit could be filed in respect of the property to which the plaintiffs had no subsisting title. Mr. J.C. Sinha, appearing for the plaintiffs-respondents conceded that in substance if was a suit for declaration of plaintiffs'' title to the compensation and in the circumstances the question whether the suit is barred u/s 42 of the Specific Relief Act, does not arise.

7. The main contention of Mr. Lal Narain Sinha was that the Bihar Land Reforms (Abolition of Zamindari) Act (Act XXX of 1950) prescribes complete procedure for determination of questions relating to the payment of compensation including the question as to who is an intermediary and entitled to the compensation payable under the Act and as such a separate suit for the purpose could not be entertained by Civil Courts. Mr. Sinha further contended that an intermediary''s right to receive compensation for his interest vested in the State of Bihar is itself a creation of the Bihar Land Reform (Abolition of Zamindari) Act. On the other hand, it was contended by Mr. J.C. Sinha that every citizen has got a fundamental right under Article 31 of the Constitution of India to get compensation for his property which is acquired by the State, and that the question who is the intermediary is a jurisdictional fact which can be determined

by a Civil Court. He further urged that a citizen had a right to receive compensation for his property acquired by the State under the general law even before the framing of the Constitution, and that it was never intended by the Bihar Land Reforms Act, that complicated questions of title as to who is entitled to receive compensation, should not be decided by Civil Courts but by the Special Tribunal under the Act appointed mainly for the purpose of determining the amount of compensation.

8. The contention of Mr. Lal Narain Sinha that an intermediary''s right to receive compensation for his interest vested in the State of Bihar is itself a creation of the Bihar Land Reforms Act, does not appear to be correct. In support of his contention he relied on the following observation made in the case of Secy. of State Vs. Kameshwar Singh Bahadur and Another, .

There is no right to receive compensation for acts done under the authority of the law unless the law itself gives such a right.

That appeal before this Court arose from a suit claiming more compensation than what was awarded by the Magistrate under the Bengal Ferries Act, from the Government for taking possession of the plaintiffs'' private ferry for declaring it to be a public ferry. Their Lordships in support of the aforesaid observation relied on the decision of a Full Bench of the Calcutta High Court in the case of The Collector of Pubna v. Romanath Tagore 7 W.R. 191 that a suit for compensation for the loss sustained in consequences of having resumed a ferry which had till then under the private management of the plaintiff, was not maintainable. There is no discussion in the judgment of this Court as to whether taking possession of a private ferry for declaring it a public ferry amounts to mere interference with the right of the person managing the private ferry, or acquisition of a right in a property; rather, their Lordships also discussed the merits of the case on the assumption that the plaintiff''s right to receive compensation existed independently of the Bengal Ferries Act. It is not necessary to discuss this question in detail in the present case inasmuch as the Bihar Land Reforms Act is a post-Constitution Act and Article 31 of the Constitution declares that every citizen has got a fundamental right to get compensation for his property which is acquired by the State.

9. The contention, however, of Mr. Lal Narain Sinha further was that, irrespective of the fact whether intermediary''s right to receive compensation is a creation of the Bihar Land Reforms Act or not, when the Act prescribes a complete procedure for determination of questions relating to the payment of compensation including the question as to who is an intermediary and entitled to the compensation payable under the Act, a separate suit for the purpose could not be entertained by Civil Courts. In support of this contention he placed reliance on Sections 26 to 28 of the Bihar Land Reforms Act. According to Section 26(1)(a)(1), after determination of the amount of compensation as provided in foregoing Section s of chapter V of the Act, when a Compensation Assessment-roll has been prepared, the Compensation Officer shall "cause to be published in

the prescribed manner and for the prescribed period which shall not be less than thirty days, a drfat of such roll together with a public notice stating that the amount of compensation specified in the draft is the entire amoust of compensation payable in respect of the interest of the intermediary in the estate or tenure or part thereof as the case may be, and that the person named therein is presumed to be the only person entitled thereto and that objections, if any, in respect of any entry in the draft. Assessment-roll may be filed by any person before the Compensation officer within sixty days of the expiry of the said prescribed period". Sub-section (2) of Section 26 lays down that the Compensation officer shall consider any objection which may be made under Sub-section (1) to any entry in such draft Compensation Assessment-roll or to any omission therefrom and pass such orders thereon as he may consider fit. Section 27 provides that an appeal shall lie from an order of the Compensation Officer passed under Sub-section (1) of Section 26, to a Judge of the High Court nominated by the State Government for the purpose in consultation with the Chief Justices; and Section 28 says:

When all such objections and appeals have been disposed of, the Compensation Officer shall make such alterations in the draft Compensation Assessment-roll as may be necessary to give effect to any orders passed on objections made under Sub-section (1) of Section 26 or on appeals preferred u/s 27 and shall cause the said roll as so altered to be finally published in the prescribed manner and every entry in the roll so finally published shall, except as hereinafter provided, be final and conclusive evidence of the matter referred to in such entry and also of the nature of the interests of an intermediary and the apportionment of the compensation among the persons claiming interest therein.

According to Mr. Lal Narain Sinha, these three Section s provide a complete procedure for enquiry into all questions relating to the payment of compensation under the Bihar Land Reforms Act including the question who is the intermediary and that the orders passed by the Compensation Officer and the appellate Tribunal shall be final. In support of this contention he relied on three authorities, (1) Secy. of State Vs. Kameshwar Singh Bahadur and Another, (2) Subodh Gopal Bose v. Mines Tribunal, Gaya 1966 B.L.J.R. 968 and (3) Raja Sailendra Narayan Bhanj Deo Vs. Kumar Jagat Kishore Prasad Narayan Singh, .

10. Mr. J.C. Sinha, for the respondents, submitted that in none of the cases relied on by Mr. Lal Narain Sinha, a question of jurisdictional fact was involved; and he appears to be right in his contention. As already stated earlier, in the case of Secy. of State Vs. Kameshwar Singh Bahadur and Another, the question was only as to the quantum of compensation. A question which arose for decision in the case of Subodh Gopal Bose v. Mines Tribunal, Gaya 1966 B.L.J.R. 968 was, when there is no dispute between the parties, i.e., the intermediary and the State, as regards the terms and conditions of the statutory lease created u/s 9 of the Bihar Land Reforms Act, whether the Tribunal constituted u/s 12 of the Act or a Civil Court had jurisdiction to decide the dispute between the parties about the area of

the lease, and it was held that the Tribunal alone had the jurisdiction and not the Civil Court. Sub-section (2) of Section 12 expressly lays down that in settling the terms and conditions of a lease by the State Government u/s 9, the Mines Tribunal shall have power to determine the extent of the property deemed to have been issued by the State and in so doing, shall have regard to the reasonable requirements for the future development of lessee''s mining concern. There is nothing either in Section 9 or Section 12 of the Act to show that the question of the area of the lease was a jurisdictional fact. Therefore, the decision in the case that the Civil Courts have no jurisdiction will be of assistance to the appellant only if it is held that the question who is the intermidiary is not a jurisdictional fact for the Compensation Officer appointed under Chapter V of the Bihar Land Reforms Act. The decision in Subodh Gopal Bose''s case 1966 B.L.J.R. 968 is also distinguishable on the ground that the right conferred by Sub-section (1) of Section 9 on the intermediary is an inchoate and incomplete right and until the terms and conditions and area of the leasehold property are settled by the Tribunal u/s 12(2) of the Act, the intermediary has no right as a lessee which can be enforced in a Civil Court. The right to receive compensation which is conferred upon every citizen by Article 31 of the Constitution is not an inchoate right. The right u/s 9 is an inchoate right was one of the contentions of Mr. Lal Narain Sinha himself who appeared in that case for the State and was accepted by the Court.

11. The appeal before the Supreme Court in Raja Sailendra Narayan Bhanj Deo Vs. Kumar Jagat Kishore Prasad Narayan Singh, arose out of a suit brought by the respondents before the Supreme Court, for redemption of certain mortgages. The suit was brought in the year 1949 and a decree for redemption was passed in the year 1951. In the same year an appeal was feed in this Court. During the pendency of the appeal, in the year 1952, the right, title and interest of the mortgagor vested in the State of Bihar under the Bihar Land Reforms Act. The High Court dismissed the appeal holding that what was barred by the Act was a suit by the mortgagee and not a suit by the mortgagor. The Supreme Court allowed the appeal and observed:

...It is clear that a redemption decree can no more be given effect to after the notification issued under the Land Reforms Act, since thereafter the mortgaged tenures became vested in the State of Bihar free from all encumbrances. The tenures having vested in the State of Bihar, the mortgagee had no longer any interest in the tenures nor was he in possession of them. He could not carry out the decree by reconvening the tenures to the mortgagor or put him into possession. The mortgage as a security had ceased to exist, for the mortgaged properties vested in the State of Bihar under the Act free from all encumbrances. The mortgagor in his turn also ceased to be entitled to the mortgaged properties. He had hence no right to redeem them....

Their Lordships further held that it was open to a mortgagor to establish before the Claims Officer appointed under the Bihar Land Reforms Act, that the mortgagee had realised out of the income of the mortgaged property, of which he was in possession, more than what was due to him and nothing was payable to him out of the compensation. They expressly left the question whether a suit by the mortgagor to recover from a mortgagee, the amount paid in excess, before the Civil Court was barred or not open. They also observed that the Bihar Land Reforms Act has provided that the investigation would be by experienced Judicial Officers of high status and that the proceedings should be taken as if they were taken in a Civil Court. This decision thus supports Mr. Lal Narain Sinha''s contention that a person who has got no subsisting right cannot institute a suit, but as that point was conceded by Mr. J. C. Sinha and it has already been held earlier that in substance this was a suit for compensation and as the plaintiff had an existing right to receive the compensation, he could maintain the suit, it has not been referred to earlier in that connection. According to Mr. Lal Narain Sinha, this decision also supports his second contention that the Compensation Officer has got exclusive jurisdiction in the matter, for, the investigation u/s 26 of the Act was also to be done by experienced officers and the appeal was to be heard by a High Court Judge. While Section 14 expressly provides that the Claims Officer shall either be a Subordinate Judge or a Munsif and where the claim notified exceeds Rs. 20,000/-he must be a Subordinate Judge, according to Section 19 of the Act, any officer can be designated as Compensation Officer. No doubt, Section 27 provides that the appeal should be heard by a Judge of the High Court but as an appellate court ordinarily he shall have to decide on the materials brought on the record by the Compensation Officer. In the case before the Supreme Court, the question involved could at best be one of accounting which was not a jurisdictional fact but a matter within the exclusive jurisdiction of the Claims Officer and their Lordships cannot be said to have laid down in that case that the jurisdiction of Civil Courts, which are courts of plenary jurisdiction, is barred even in respect of questions relating to jurisdictional facts.

12. Our attention was drawn to Rule 250(2) of the Bihar Land Reforms Rules by Mr. J. C. Sinha and it was contended that it is manifest from the rule that where there is a genuine dispute about the interests or rights to receive compensation of an intermediary, in other words, a bona fide dispute with regard to the title of the intermediary, it will be a matter beyond the jurisdiction of the Compensation Officer. Rule 25G prescribes special procedure for making ad interim payments in certain cases and Sub-rule (2) says:

Where there is a genuine dispute about the interests of an intermediary in an estate or tenure or part of an estate or tenure or in resject of his right to receive compensation or annuity, the Collector shall withhold such ad interim payment to the extent disputed until such time as the dispute is decided by a competent court.

In reply to this contention it was urged by learned Counsel for the appellant that, firstly, the expression "competent court" in the rule does not mean a civil court but the Compensation Officer and the Appellate Tribunal appointed under Chapter V of the Act and secondly, if it is held that "competent court" does not refer to the Compensation Officer and the Appellate Tribunal, then the rule is ultra vires, inasmuch as it is not open to the rule making authority to make rules inconsistent with the provisions of the Act. It was further urged that rules should not be referred to for the purposes of interpreting the Act itself. In the case of Atma Ram Budhia Vs. State of Bihar, S.B. it was held that rules may be taken into account for the purpose of construing the language of the Act itself and removing any ambiguity that may arise therefrom. Hence, it is permissible to refer to Rule 25G(2) for construing the language of the Act. However, the contention of Mr. Lal Narain Sinha that the expression "competent court" refers to the Compensation Officer and the Appellate Tribunal, cannot be said to be without substance. Rule 15(3) provides that the Compensation Officer shall give reasonable opportunity to the proprietors, tenure-holders and other persons concerned to be heard and to place before him evidence before finalising the roll and that he shall record a brief summary of the evidence and record his finding. Rule 21(2) dealing with the question how objections, if any, filed u/s 26(1) are to be disposed of, lays down that the Compensation Officer after giving reasonable notice to the persons interested in the objection, shall hear the parties on the objection and shall receive such evidence as he may consider necessary. According to Rule 22, in hearing and disposing of appeals filed u/s 27, the procedure laid down in Order XLI of the CPC for the disposal of civil appeals shall be allowed so far as may be. Thus, the Compensation Officer and the Appellate Tribunal have to function as courts and, there fore, on the basis of Rule 25G(2) it may not be possible to hold that the Compensation Officer and the Appellate ''Tribunal cannot at all go into questions of title. Rule 25G deals with procedure for payment of ad interim compensation and not preparation of the Compensation Assessment-rolls and thus it has got no direct hearing on the question; but as, in my opinion, the question who is the intermediary is one of jurisdictional fact, a Civil Court cannot be held to be debarred from going into that question. It is therefore, not necessary to come to a definite conclusion as to the meaning of the expression "competent Court" in Rule 25G(2) of the Bihar Land Reforms Rules.

13. Section 19 of the Bihar Land Reforms Act empowers the State Government to appoint Compensation Officers and the purpose for which they are appointed is to "prepare in the prescribed form and in the prescribed manner a Compensation Assessment-roll containing the gross asset and the net income for each proprietor and tenure-holder of estates and tenure and the compensation to be paid in accordance with the provisions of this Act to such proprietor or tenure-holder and to other persons whose interests are transferred to the State under this Act," The language of Section 19 admits of, no doubt, that the Compensation Officer has got no jurisdiction to prepare a Compensation Assessment-roll providing for compensation to be paid to a person who is not a proprietor or a tenure-holder or a person whose interest has been transferred to the State under the Act. The question, therefore, whether a person who has been shown entitled to receive compensation in the Compensation Assessment-roll, is or is not a

proprietor or tenure-holder or a person whose interest has been transferred to the State, in other words, an intermediary, is a question of jurisdictional fact. In a Bench decision of this Court in the case of Chandreshwari Prasad Narain Deo and Others Vs. State of Bihar and Another, it was held that the question whether a Khorposh grant made by the outgoing proprietor was with the object of defeating the provisions of the Bihar Land Reforms Act or for obtaining higher compensation, was a question of jurisdictional fact and that a finding on the question recorded by the Collector u/s 4(h) of the Act could be challenged before the High Court in a writ application, though Section 4(h) specially provides:

...If he is satisfied that such transfer was made...with the object of defeating any provisions of this Act or causing loss to the State or obtaining higher compensation there under, the Collector may...annul such transfer....

The aforesaid decision was referred to with approval in a Full Bench decision of this Court in the case of Patna Municipal Corporation Vs. Ram Bachan Lal, The question for decision in the Full Bench case was whether a revision of the assessment of taxes by an authority appointed for the purpose under the Bihar & Orissa Municipal Act, could be challenged in the Civil Court mainly on the ground that its finding as to the monthly rental of the holding was not correct and it. was held after examination of a large number of Indian and English authorities that the revised assessment-could be challenged in a Civil Court. It was observed:

Another principle which is firmly established is that a local authority, an administrative authority or any tribunal of limited jurisdiction cannot assume jurisdiction to do anything or to pass any order by arriving at a wrong decision on facts. Such facts have been referred to in various decisions as preliminary or collateral facts or as jurisdictional facts. The Civil Court or the High Court, in exercise of its power to issue an appropriate writ in suitable cases, can investigate the correctness of the decision of the inferior tribunal of limited jurisdiction relating to such facts.

To hold otherwise would create a curious and illogical situation, because a tribunal of limited jurisdiction would have unlimited power to assume jurisdiction in any case in which, on a correct decision on the jurisdictional facts, it cannot possibly have any jurisdiction.

According to this decision, errors as to jurisdictional fact cannot only be corrected by a High Court in exercise of its writ jurisdiction but also by Civil Courts. If a Civil Court can entertain a suit and hold that finding of a limited Tribunal on a jurisdictional fact is erroneous, it can also entertain a suit on the subject matter, even before the matter has gone to and decided by the Tribunal of limited jurisdiction, because the test in both the cases will be the same, whether it is a matter within the exclusive jurisdiction of the Tribunal or also within the plenary jurisdiction of the Civil Court.

14. Strong reliance was placed by learned Counsel for the appellant on the words "may be filed by any; person" in Section 26(1)(a)(i) and the language of Sub-

section (2) of the same Section that a Compensation Officer is empowered to consider any objection to any entry in the draft Compensation Assessment-roll or to any omission therefrom. No doubt, these words are of wide amplitude, but they cannot enlarge the purpose for which a Compensation Officer is appointed u/s 19 of the Act. In the case of The Mysore State Electricity Board Vs. Bangalore Woollen, Cotton and Silk Mills Ltd. and Others, it was held with reference to Section 76(1) of the Electricity (Supply) Act, 1948, according to which all questions arising between the State Government or the Board and a licensee or other person, are to be determined by arbitration, that though the words used in the Section were of wide amplitude, they could not cover a question which did not arise under the Act. It was observed by their Lordships that obviously it could not have been contemplated by the framers of the Act that any question arising between the State Government on one side and any person on the other, shall be determined by arbitration. Similarly it could not have been contemplated here, while enacting Section 26, that the Compensation Officer could decide any question which was even beyond the purpose for which he was appointed. In view of the provisions of Section 19 already discussed above, in my opinion, Section 26 of the Act cannot be construed to have conferred on the Compensation Officer jurisdiction to make payments of compensation to persons who are not proprietors nor tenure-holders nor whose interests are transferred to the State under the Act. The question as to who is the intermediary, therefore, remains a question of jurisdictional fact so far the Compensation Officer is concerned and the jurisdiction of Civil Courts in respect of such a question is not barred.

15. In the case of Shri Raja Durga Singh of Solan Vs. Tholu, the question for decision before their Lordships of the Supreme Court was whether the suit was barred from the cognizance of a Civil Court u/s 77(3) of the Punjab Tenancy Act (XVI of 1887). According to that Section, "suits by a landlord to eject a tenant" and "suit by a tenant to establish a claim to a right of occupancy or by a landlord to prove that a tenant has not such a right" could not be taken cognizance of by a Civil Court and could be tried by a Special Tribunal as provided for in the Act. The suit was for possession and mesne profits against the defendants who claimed to be occupancy tenants but whose status as tenants was denied by the plaintiffs and it was held that the Section barred only such suits from the cognizance of the Civil Court where there was no dispute between the parties that a person cultivating land or who was in possession of land, was a tenant and that if there was any such dispute, the suit could be entertained by the Civil Court. In the instant case too, according to the plaintiffs-respondents, the defendant appellant was not an intermediary at all, i.e., a person in whose favour no Compensation Assessment-roll can be prepared by the Compensation Officer. This decision of the Supreme Court, leaves no room for doubt that there can be no justification for a view that one should exhaust his remedy before the Tribunal of the limited jurisdiction and then only should come to a Civil Court. No doubt, the point raised by Mr. Lal Narain Sinha is one of law and can be raised for the

first time in a second appeal; but it was never raised before the two courts below and there is nothing on the record from which it can be gathered whether before 13-12-55 the Compensation Officer had, at all prepared or started preparing a Compensation Assessment-roll in relation to the estate which was purchased by the appellant at an auction sale which, ac cording to the plaintiffs-respondent was void and has vested in the State of Bihar, and it cannot, therefore be said that the plaintiffs-respondents when they instituted the suit had another remedy before the Compensation Officer which they did not pursue. No one can be asked to wait indenfinitely in the hope that he may have a remedy before a Tribunal of limited jurisdiction sometime in future and, therefore, should not avail of a remedy before a Civil Court.

16. For the foregoing reasons, in my considered opinion, the suit was maintainable in the Civil Court and there is no merit in the appeal. It is accordingly dismissed with costs.

Ramratna Singh, J.

17. I agree.

