

(2004) 07 PAT CK 0053
In the Patna High Court
Case No : CWJC No. 629 of 2004

Pabittar Singh alias Ram Pabittar Singh and Another	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 23-07-2004

Acts Referred:

Citation : (2004) 07 PAT CK 0053

Judgement

S.K. Katriar, J.—Heard Mr. Kumar Uday Bhanu Roy for the petitioners, and Mr. Anil Kumar, learned junior counsel to Mr. Hemendra Prasad Singh, Standing Counsel (Ceiling), appearing for respondent Nos. 1 to 4. This writ petition is directed against the order dated 15.1.2003 (Annexure-5), passed by Mr. C. Ashok Vardhan, learned Additional Member, Board of Revenue, Bihar, Patna, in Revision Case No. 173 of 2001 (Smt. Mandiliya v. Pabittar Singh and Ors.), whereby he has remitted the matter back to the learned Collector of the district of Vaishali to pass a fresh order in accordance with law after obtaining report of the Anchal Adhikari.

2. The impugned order was passed on 15.1.2003, and the present writ petition was lodged in this Court on 14.1.2004. The writ petition suffers from unexplained delay as a result of which the petitioners have allowed the matter before the Court below to progress. I, therefore, do not wish to interfere with the impugned order. The writ petition is accordingly dismissed.

3. I must record my feeling of displeasure against the learned Additional Member who passed the impugned order is in the habit of disposing of matters pending before him by short and cryptic orders to avoid the work involved in writing a full-length judgment. Refusal by the High Court to admit a writ petition does not by itself mean that the impugned order is correct in law and has been upheld. Dismissal of the matter before the superior Court in Limine can be on various grounds other than the merits of the matter, for example, on the ground of delay as the situation is in the present case, non-payment of Court fee, non-substitution of heirs and abatement, dismissal for non-appearance, dismissal of

a second appeal on the ground that the issues are concluded by concurrent findings of facts.

4. The House of Lords in its judgment reported in (1985) 2 All E.R. (Wilson v. Colchester Justices) held that grant or refusal of leave to appeal by a superior Court does not by itself imply disapproval or approval of judgment below. The relevant portion of the speech of Lord Roskill is set out hereinbelow for the facility of quick reference :

"Seemingly the Divisional Court felt that this refusal indicated at least implied approval of the decision which it had been unsuccessfully sought to impugn. Counsel surprised your Lordships by saying that this impression was widespread in the profession. My Lords, if that were so, as my noble and learned friend Lord Diplock remarked during the argument, the sooner this erroneous impression is emphatically corrected by your Lordships the better. There are a multitude of reasons why, in a particular case, leave to appeal may be refused by an Appeal Committee. I shall not attempt to embark on an exhaustive list for it would be impossible to do so. One reason may be that the particular case raises no question of general principle but turns on its own facts. Another may be that the facts of the particular case are not suitable as a foundation for determining some question of general principle. Your Lordships House is only able, in any given year, to hear and determine a limited number of cases and it is important for the evolution of the law as a whole that those cases should be carefully chosen. Conversely the fact that leave to appeal is given is not of itself an indication that the judgments below are thought to be wrong. It may well be that leave is given in order that the relevant law may be authoritatively restated in clearer terms. It is not difficult to find in the books examples of cases where, after leave to appeal has been refused in one case, another case will later arise in which leave to appeal has been given as a result of which the decision against which leave to appeal was originally refused is shown to have been wrong. But that of itself does not mean that the initial refusal of leave was wrong."

5. The Supreme Court in its judgment reported in 1986 PLJR 48 (SC) Indian Oil Corporation Ltd. Vs. State of Bihar and others, quoted with approval the aforesaid statement of law by the House of Lords. The relevant portion of paragraph 6 and paragraph 8 of the judgment in Indian Oil Corporation Ltd. (supra) are set out hereinbelow for the facility of quick reference :

"6. As observed by this Court in Workmen of Cochin Port Trust v. Board of trustees of the Cochin Port of dismissal of a SLP without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that this Court had decided only that it was not a fit case where special leave should be granted. This conclusion may have been reached by this Court due to several reasons. When the order passed by this Court was not a speaking one, it is not correct to assume that this Court had necessarily decided implicitly all the questions in relation to the merits of the award, which was under challenge before this Court in the special leave petition."

8. It is not the policy of this Court to entertain special leave petitions and grant leave under Article 136 of the Constitution save in those cases where some substantial question of law of general or public importance is involved or there is manifest injustice resulting from the impugned order or judgment. The dismissal of a special petition in limine by a non-speaking order does not therefore justify any inference that by necessary implication the contentions raised in the SLP on the merits of the case have been rejected by this Court. It may also be observed that having regard to the very heavy backlog of work in this Court and the necessity to restrict the intake of fresh cases by strictly following the criteria aforementioned...."

6. In *Rup Diamonds and Others Vs. Union of India and Others*, the Supreme Court declared the law by stating that it cannot be said that the mere rejection of SLP could, by itself, be construed as the imprimatur of the Supreme Court on the correctness of the decision sought to be appealed against.

7. In the decision of the Supreme Court reported in *Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another, and Yogendra Naryana Chowdhury and other Vs. Union of India and other*, it has been held that a non-speaking order of dismissal of a SLP cannot lead to the assumption that it had necessarily decided by implication the correctness of the decision under challenge.

8. The Supreme Court in its latest judgment reported in *Kunhayammed and Others Vs. State of Kerala and Another*, has reviewed the law on the issue in question has reiterated that refusal to grant leave to appeal does not mean that the order impugned is necessarily correct on merits, and has agreed/upheld the line of reasoning assigned in the aforesaid judgments. For a complete statement of the law on the point, I must reproduce hereinbelow paragraph 22 of the judgment :

"22. We may refer to a recent decision, by a two-Judge Bench, of this Court in *V.M. Salgaocar and Bros. Pvt. Ltd. Vs. Commissioner of Income Tax*, holding that when a SLP is dismissed, this Court does not comment on the correctness or otherwise of the order from which leave to appeal is sought. What the Court means is that it does not consider it to be a fit case for exercising its jurisdiction under Article 136 of the Constitution. That certainly could not be so when appeal is dismissed though by a non-speaking order. Here the doctrine of merger applies. In that case the Supreme Court upholds the decision of the High Court or of the Tribunal. This doctrine of merger does not apply in the case of dismissal of a SLP under Article 136. When appeal is dismissed, order of the High Court is merged with that of the Supreme Court. We find ourselves in entire agreement with the law so stated. We are clear in our mind that an order dismissing a special leave petition, more so when it is by a non-speaking order, does not result in merger of the order impugned into the order of the Supreme Court.

9. The learned Additional Member should, therefore, be under no impression that

dismissal of the present writ petition In Limine has led to the conclusion that the impugned order is correct in law, Had the petitioners approached this Court in time and not allowed the matter to progress before the learned appellate authority, this Court may perhaps have disposed it of differently. In fact, the impugned order suffers from the following infirmities which are of serious nature:

(i) An order of remand is a serious matter, inter alia, for the reason that the same sets at naught the efforts made by the Courts and the parties till then and fresh efforts have to be made to dispose of the matter. There are very limited and recognised grounds to remit the matter to the Courts below and the superior Court should always be very circumspect in passing an order of remand. Reference may be made to the judgment of this Court reported in 2004 (2) PLJR 755 (Ram Vinod Roy and Anr. v. Most. Ram Sumeri Devi).

(ii) The impugned order is vague and it is difficult to decipher the ground(s) of remand assigned in the impugned order.

(iii) In view of the position that the matter has gone back on remand I do not wish to express myself on the merits of the matter. The learned appellate authority has recorded the finding that the purchasers are co-sharers who are full brothers, as is manifest from the following portion of the order of the learned appellate authority :

^^vfHkys[k ,oa vfHkys[k esa miyC/k dkxtrksa rFkk fuEu U;k;ky;ksa ds vfHkys[k dk voyksdu fd;kA ;g ik;k tkrk gS fd fookfnr tehu dk [kfr;ku Vhd flag] jkes"oj flag] jke ifo= flag pqMkeu flag] fir k f"ko pj.k jdok 0-25 Mh- gS ,oa fgLls cjkj gSA

On the other hand, it is recorded as follows in the impugned order which is to the effect that neither the pre-emptor nor the purchasers are co-sharers or adjoining raiyats :

^^iwoZ ?;kf/kdkj dk nkok djus okys izfroknh ;k vkosnd nksuksa esa ls dksbZ Hkh lg&fgLlsnkj ;k ik"oZorhZ jS;r ugha gSA**

This Court is unable to appreciate as to on what basis and without appreciation of the materials on record, the learned Additional Member has recorded the finding that neither the pre-emptor nor the purchaser is a co-sharer or an adjoining raiyat. The Board of Revenue u/s 32 of the Act, is an authority of unlimited jurisdiction, is a Court of facts and is, therefore, duty bound to examine all issues of facts and law.

(iv) After the learned Additional Member decided to remit the matter for collection of evidence, what is the justification to remit it to the appellate authority. The primary forum for collection of evidence is the first authority, namely, the Deputy Collector, Land Reforms.

(v) It is not clear from the impugned order whether or not he has set aside the order of the appellate authority after allowing the revision application, or has

retained the main matter (the revision application) with himself and has called for the report on a particular point from the appellate authority. The practice in this Court in an appeal arising out of eviction suit is that if this Court finds that evidence is lacking on the question of partial eviction, then this Court often times retains the main matter with itself while remitting it back to the trial Court for collection of evidence and the finding whether or not partial eviction is possible and will serve the purpose of the tenant. In the impugned order, there is no declaration whether the order of the learned appellate authority has been set aside in which case the revision application would come to an end. On the contrary, if the order of the learned appellate authority has not been set aside, then the revision application would be deemed to be pending before the Board of Revenue and will be disposed of on the receipt of the report.

10. In view of the aforesaid observations, I would have preferred to modify the impugned order and remit the matter back to the learned first authority which I find it difficult on account of the belated writ petition presented in this Court. The matter may have registered progress before the learned appellate authority or may have even been concluded. The learned Additional Member has by his negligent approach or lack of application of mind in refusing to remit the matter back to the first authority has not passed the appropriate order. The party aggrieved by the order of the appellate authority may in future complain of deprivation of the appellate forum, a situation attributable to the inveterate habit of the learned Additional Member to dispose of matters before him in a most perfunctory manner and on non-application of the mind.

11. In the result, this writ petition is disposed of. The order of the appellate authority is hereby set aside. The observations made in this judgment on the merits of the matter, if any, are meant to illustrate my line of reasoning, are confined to disposal of the writ petition, should be completely overlooked by the learned appellate authority who shall go into the matter afresh and apply his independent mind and dispose of the matter in accordance with law.

12. Let a copy of this order be handed over to Mr. Hamendra Prasad Singh learned Standing Counsel (Ceiling), to be forwarded to the learned Member, Board of Revenue, for circulation.