
(1986) 04 PAT CK 0051

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4945 of 1985

Satrudhan Sahani and others

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 07-04-1986

Acts Referred:

Constitution of India, 1950 — Article 13(2), 19(1)(f), 19(5), 299, 299(1)
General Clauses Act, 1897 — Section 3(26)
Registration Act, 1908 — Section 17(1)(d)
Transfer of Property Act, 1882 — Section 107, 54

Citation : (1986) PLJR 796

Hon'ble Judges : S.S. Sandhawalia, C.J.;R.N. Pd., J

Bench : Division Bench

Advocate : Sadanand Jha and Mr. Anil Kumar Tiwary, for the Appellant; Tara Kant Jha, Farooque Ahmad Khan, Durgesh Nandan and Mr. Kamla Pati Singh, G.P.V. with Mr. Balmukund Prasad, J.C. to G.P.V., for the Respondent

Final Decision : Dismissed

Judgement

S.S Sandhawalia, C.J.—A frontal challenge to the correctness of the view in The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, and the consequential ratio of the Full Bench judgment in Chetlal Sao and another v. The State of Bihar and others (1986 PLJR 149), has come to be the solitary though significant, threshold question in this case. Since this writ petition must fonder on the bedrock of the preliminary objection to its very maintainability, it becomes wholly unnecessary to recount the facts. It suffices to mention that the four petitioners herein, in the context of a sairat settlement have, inter alia, sought a mandamus commanding the official respondents that the fishery tank be settled with them. It is tile admitted postition that no formal registered lessee deed for the fishery rights has even remotely been executed in favour of the petitioners. On the other hand, it is not disputed that a lease agreement for settlement of pisciculture and fishery rights in the disputed tank has been duly executed and registered in favour of the private respondents for

the period- 1st April, 1985 to 31st March, 1995 (vide annexure J to the supplementary counter affidavit on behalf of respondents 8 to 11). In view of these admitted facts, the very maintainability of the writ petition has been strenuously challenged on behalf of the respondent. It is common ground that on this point the matter stands concluded against the writ petitioners by the recent Full Bench judgment in Chetlal Sao and another v. The State of Bihar and others (supra) which in terms rests substantially on 1 wholly on the reasoning in Sipahi Singh's case (supra). Learned counsel for the petitioners, Dr. Sadanand Jha, however, took upon him a somewhat onerous and uphill task of contending that Sipahi Singh's case was no longer good law in view of subsequent Supreme Court judgments and consequentially the very foundation of the Full Bench judgment in Chetlal Sao's case stood eroded.

2. In Chetlal Sao and another v. The State of Bihar and others the full Bench has, in express terms, ruled as under :

1. "that the administrative instructions or Circulars issued from time to time for the lease of fishery rights in tanks (sairats) vested in the State are not statutory in nature and consequently not binding."

2. "that a Writ of mandamus would not be maintainable in the absence of a concluded registered contract for the lease of the sairat."

3. "that the State is not bound by the doctrine of promissory estoppel for the acts of its subordinates done in violation of its directions or administrative instructions".

3. Now, Dr. Sadanand Jha has first placed reliance on State of Haryana and others v. Lal Chand and others (AIR 1904 SC 1326) for assailing the finding in Sipahi Singh's case that a settlement of a jalkar, if not made and executed in the manner prescribed in Article 299 of the Constitution, would not be valid and binding on the State and the respondent could not base his claim thereon. It was sought to be contended that in the State of Haryana and others v. Lal Chand and others it has now been held that statutory contracts under the Punjab Excise Act were outside the purview of Article 299(1) and the said provision was not attracted to the present situation. Learned counsel attempted to labour the point that a lease deed for fishery was on an identical footing to a statutory contract under the Punjab Excise Act and, therefore, the earlier view in Sipahi Singh's case could not hold the field.

4. The contention aforesaid has only to be noticed and rejected. It is significant to note that, in the Sipahi Singh's case their lordships came to the clearest finding that in the specific context of a lease of fishery rights the same was made in exercise of the executive power of the Union or the State and, therefore must satisfy the three pre-requisites for its validity under Article 299 (1). There is no warrant for the proposition that a lease of this nature is a statutory contract like the one under the Excise Act. The State of Haryana and others v. Lal Chand and others is thus plainly distinguishable and has no relevance to the present case

which remains squarely governed by the dictum of their Lordship in Sipahi Singh's case.

5. Yet again it must be noticed that in Sipahi Singh's case their Lordships found an additional reason for holding that the settlement of a jalkar was not valid and enforceable because it was not evidenced by a registered deed in view of the provisions of sections 54 and 107 of the Transfer of Property Act read in the light of section 3 (26) of the General Clauses Act and section 17 (1) (d) of the Indian Registration Act, 1908. It is common ground before us that the petitioners do not even remotely have any registered instrument executed in their favour and, therefore, are again hit frontally by the ratio in Sipahi Singh's case.

6. Dr. Jha had then attempted to rely on *The Gujarat State Financial Corporation v. M/s. Lotus Hotels Pvt. Ltd.* (AIR 1953 SC 848) for contending that the doctrine of promissory estoppel would be attracted to the case and the finding to the contrary in Sipahi Singh's case was incorrect. We are again also wholly unable to agree. There appears to be nothing in common far from the same being identical to what was said in *The Gujarat State Financial Corporation v. M/s. Lotus Hotels Ltd.* in the context for the statutory duty of a Corporation. The case is thus plainly distinguishable. In Sipahi Singh's case their Lordships, in no uncertain terms, said that the doctrine of promissory estoppel would also not be pressed into service in that case which was directly with regard to a sairat settlement. Assuming entirely for argument's sake that there is any conflict of view in this context, even then the larger Bench of three Judges in Sipahi Singh's case has plainly to be followed and given preminence because it directly governs the issue.

7. Perhaps as the last throw of a gambler, the learned counsel for the petitioners frontally assailed Sipahi Singh's case on ground that it was no longer good law in view of the subsequent decisions in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, and *Ram and Shyam Company Vs. State of Haryana and Others*, It was also contended that in Sipahi Singh's case the argument of the distribution of largesse by the State was not raised and considered, and on this ground also it could no longer hold the field. A faint submission was also made that in case of conflict the later judgments should be followed and not the earlier one.

8. I am afraid the somewhat tall submission of the learned counsel cannot possibly be accepted. What would perhaps first meet the eye is the fact that *Ram and Shyam Company v. State of Haryana and others* (supra) is a judgement by a smaller bench and, therefore, cannot possibly override the view in Sipahi Singh case. Even otherwise I find the same entirely distinguishable and also only presenting no inherent conflict therewith. Then equally the co-equal bench in *Ramana Dayaram Shetty v. The International Airport Authority of India and others* and *M/s. Kasturi Lal Lakshmi Reddy etc. v. the State of Jammu and Kashmir and another* (supra) again are not judgment at all with regard to spirit settlements and the peculiarities attached thereto which have been

authoritatively constructed in Sipahi Singh's case. plainly enough this High court is bound by the judgment directly governing the issue on all four and not by observation in subsequent judgements only by way of an involved and remote analogy. Nor am I inclined to the view that the subsequent judgements should be given preference even in the absence of any direct conflict the full bench in Indo Swiss Time Limited Vs. Umrao and Others, had observed as follows:-

Now, the contention that the latest judgment of a co-ordinate Bench is to be mechanically followed and must have preminence irrespective of any other consideration does not commend itself to me When judgements of the superior Court are of co-equal Benches and therefore of matching be considered by the rationale and the logic there of and not by the mere fortuitous circumstances of the time and date on which they were rendered. It is manifest that when two directly conflicting judgements of the superior court and of equal authority are extent then both of them cannot be binding on the courts below. Inevitably a choice, though difficult one, has to be made in such a situation. On principle it appears to me that the High Court must follow the judgement which appears to it to lay down the law more elaborately and accurately. The mere incidence of time whether the judgement which appears to it to lay down the law more elaborately and accurately. The mere incidence of time whether the judgements of co-equal benches of the superior Court are earlier or later is a coasideration which appears to me as hardly relevant.

In accord with the above, I am clearly of the view that Sipahi Singh's case herein directly governs the issue and lays down the law more elaborately and accurately and must, therefore, be unhesitatingly followed.

8A. The somewhat ingenious argument that Sipahi Singh's case is not good law because some novel fresh contention is now sought to be raised which was not projected and considered therein, must also be equally set at rest.

An identical contention was submitted before the Constitution Bench in Smt. Somavanti and Others Vs. The State of Punjab and Others, and their Lordships were invited to ignore the earlier precedents upholding the constitu-tionality of the Land Acquisition Act on the ground that the attack resting on Article 19 (1) (f) was not raised before the earlier Benches. It was counsel's forceful stand that the earlier judgments for that reason would not be binding. Categorically rejecting such an argument, their Lordships observed as under:-

...All the decisions are binding upon us. It is contended that none of the decisions has considered the argument Advanced before us that a law may be prote-cted from an attack under Art. 31(7).) but it will still be invalid under Art. 13(2) if the restriction placed by it on the right of a person to hold property is unreasonable. In other words, for the law before us to be regarded as valid, it must also satisfy the requirements of Art. 19(5) and that only thereafter can the property of a person be taken away. It is sufficient to say that though this Court may not have pronounced on this aspect of the matter, we are bound by the

actual decisions which categorically negative an attack based on the right guaranteed by Art. 19(1) (f). The binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with referer to which an argument was subsequently advancccd was actually decided, That point has been specificaliy decided in the three decisions referred to above.

The same view was then reiterated afresh in T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others, Following the same, the Full Bench in Pritam Kaur Vs. Surjit Singh, has also held as under :

The argument aforesaid is plainly unt?nable on principle. If the ratios of larger Benches and the judgments of superior Courts were to be merely rested upon the quicksands of the ingenuity of the counsel to raise some fresh or novel argument (which had -not been earlier raised or considered) in order to dislodge them. then the hallowed rule of the finality of binding precedent would become merely a testing mirage.

9. Lastly one has to remind oneself that the Full Bench in Chetlal Sao''s case, after an indepth consideration, found Sipahi Singh''s case squarely applicable and arrived at the considered findings noticed above in line there-with Sitting in a Division Bench, it is not even possible for us to take a contrary view from a binding precedent. In Pritam Kaur v. Surjit Singh {supra} it has rightly been observed as under :

It is equally necessary to highlight that the binding nature of precedents generally and of Full Benches in perticulaers is the kingpin of our judicial system. It is the bond that binds together what otherwise might well become a thicket of individual opinions resulting in a virtual judicial anarchy. This is a self-imposed discipline which rightly is the envy of other Schools of Law. Because of the legal position here being axiomatic and well-settled it is unnecessary toe laborate the issue on principle.

The plea for a reconsideration of Sipahi Singh''s case and the Full Bench judgment in Chetlal Sao''s case, therefore, must inevitably fail. Following the same, the preliminary objection is upheld and the writ petition is dismissed. There will, however, be no order as to cost.

R.N. Prasad, J.

I agree.