

Sidheswar Sahu Vs. Second Additional District Judge and ors.

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Court : Orissa

Decided On : Feb-27-2003

Reported in : AIR2004Ori58

Judge : P.K. Balasubramanyan, C.J. and ;Pradip Mohanty, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rule 35; Urban Land (Ceiling and Regulation) Act, 1976 - Sections 5 and 42; Urban Land (Ceiling and Regulation) (Amendment) Act, 1999 - Sections 3; [General Clauses Act, 1897](#) - Sections 6

Appeal No. : O.J.C. No. 7231 of 1996

Appellant : Sidheswar Sahu

Respondent : Second Additional District Judge and ors.

Advocate for Def. : B.K. Panda, Adv. for Nos. 3 and 4

Advocate for Pet/Ap. : P.K. Routray, P.K. Mohanty, P.R. Sutar and M.R. Dash

Disposition : Petition dismissed

Judgement :

ORDER

1. In this writ petition filed by the judgment-debtor, the order of the District Court in revision rejecting the objection raised by the judgment-debtor to the executability

of the decree is challenged. Since what is challenged is the decision of the Executing Court as modified by the Revisional Court, this proceeding can be understood only as one initiated under Article 227 of the Constitution of India, since Article 226 of the Constitution of India cannot apply and a writ of certiorari cannot issue to a Civil Court as has been held by the Supreme Court in *Naresh Shridhar Mirajkar v. State of Maharashtra*, AIR 1967 SC 1.

2. One Moti Dei, mother of the petitioner entered into an agreement for sale of an extent of land in favour of opposite party Nos. 3 and 4 said to be the sons of her brother. The land agreed to be transferred was a piece of urban land for the consideration referred to in the agreement. Before entering into that agreement Moti Dei had filed a return under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter called the 'Act') declaring that she was in possession of 6015.09 sq. metres of vacant land and claiming certain exemptions. The claim of Moti Dei for exemption under Section 20 of the Act was rejected by the competent authority on 11-8-1983. An appeal filed by Moti Dei challenging the decision of the Authority under the Act did not succeed. Moti Dei filed O.J.C. No. 718 of 1988 before this Court challenging the orders of the Original Authority and the Appellate Authority. By judgment dated 22-1-1992, which is reported in (1992) 73 Cut LT 409, *Sidheswar Sahoo v. Special Officer and Competent Authority*, this Court set aside the order of the competent authority as affirmed by the appellate authority to the extent they related to the area covered by a dwelling house and remanded the proceeding to the competent authority for redetermination, in terms of the observations made in that judgment. It is not made clear before us as to what happened subsequent to that remand. Opposite party Nos. 3 and 4 have urged that while the matter was pending the Urban Land (Ceiling and Regulation) Repeal Act, 1999 came into force and subsequently on the basis of the Statutory Resolution of the State Legislature published in the Extraordinary Gazette Notification dated 26-4-2002, the proceeding must be taken to have abated.

3. Meanwhile opposite party Nos. 3 and 4 had filed a suit for specific performance of the agreement for sale executed by Moti Dei in their favour. Pending that suit, Moti Dei died and the petitioner herein was impleaded as her legal representatives. The petitioner chose not to contest the suit and an ex parte

decree for specific performance was passed on 1-5-1991. By that decree, the defendant, the petitioner herein, was directed to execute the sale deed within three months of the decree and providing further that on his failure to do so, the sale deed will be executed by the Executing Court. The decree-holders approached the Court for execution of the decree and the sale deed complaining that the Judgment-debtor had failed to perform his obligation under the decree. They also deposited the balance sale consideration. By order dated 23-4-1994, the Executing Court exempted the decree holder from obtaining permission from the competent authority under the Act. Meanwhile, an attempt made by the judgment-debtor to get the ex parte decree set aside did not succeed, the trial Court rejected that application. The appeal filed against that order was also dismissed and the revision filed in this Court also did not succeed. Thus, the defendant failed to get the ex parte decree set aside. Meanwhile, the Executing Court approved the draft sale deed produced by the decree holders. At that stage, the judgment-debtor filed Misc. Case No. 504 of 1994 invoking Section 47 of the Code of Civil Procedure challenging the executability of the decree. According to the judgment-debtor, the agreement for sale executed by Moti Dei and the decree passed by the Court for specific performance of that agreement, were both void in view of Section 5(3) read with Section 10(1) and Section 42 of the Urban Land (Ceiling and Regulation) Act. The agreement for sale entered into by Moti Dei was void in law in view of the prohibition contained in the Act and the ex parte decree for sale passed on the basis of such a void agreement and against the terms of the Statute, was itself void and this contention can be raised by the judgment-debtor in execution so as to contend that the decree was inexecutable. The decree holders resisted this contention by pointing out that the agreement for sale was not void for all purposes; that in any event, the execution of the decree validly obtained by the decree holders cannot be resisted by taking recourse to the provisions of the Act; that it was not open to the judgment-debtor to raise such contention at the stage of execution and that the objection was liable to be overruled. The Executing Court took the view that in view of the relevant provisions of the Act relied on by the judgment-debtor, it had to be held that the agreement for sale executed by Moti Dei could not confer any valid right on the decree holders and consequently, the decree granted by the Court for specific performance itself lacked jurisdiction and

hence the decree was inexecutable. The revision filed by the decree holders, in the District Court (in the State of Orissa the power under Section 115 of the Code of Civil Procedure is conferred on the District Court subject to pecuniary jurisdiction) was allowed by that Court taking the view that the provisions of the Act relied on by the judgment-debtor could not invalidate a decree passed by the Civil Court in a suit for specific performance of the agreement for sale, and that the object raised by the Judgment-debtor was not tenable. But, it directed that the decree be executed noticing that sale effected was subject to the claim for exemption under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976. This decision of the District Court in revision was challenged by the judgment-debtor before this Court by filing this writ petition on 29-7-1996.

4. The Act relied on by the judgment-debtor was repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999. The said repealing enactment was adopted by the State Legislature as can be seen from the notification dated 26-4-2002. Thus, as on today, when this matter was taken up for hearing, the Act stands repealed by virtue of the Repealing Act, 1999. In other words, as on today, the judgment-debtor is not entitled to or is not in a position to invoke any provisions of the Urban Land (Ceiling and Regulation) Act, 1976 to raise a contention that the decree for specific performance was void or that the agreement for sale on which it was based was void, for violation of the provisions of the Act. One could even say that the decree in any event had come out of the eclipse.

5. Naturally, in this situation, learned counsel for the judgment-debtor tried to place reliance on Section 3 of the Repealing Act by contending that the land had vested under Section 10(3) of the Act on the rejection of the claim of Moti Dei for exemption under Section 20(1) of the Act and by the determination made by the authorities under the Act to the effect that an extent of Ac. 0.535.8 kadies of land was being held by her in excess of the ceiling area. The said adjudication relied on by the learned counsel does not any more survive in view of the fact that this Court in O.J.C. No. 718 of 1988 set aside the order for surrender on 22-1-1992. No doubt, this Court confirmed certain findings of the original authority as affirmed by the appellate authority and directed a fresh enquiry only into the question whether the area occupied by a dwelling house situated in the property can be excluded or

exempted under the Act. But, the fact remains that the determination was set aside and the matter was remanded for a fresh determination. That apart, the reliance placed on the saving provision in Section 3 of the Repealing Act is of no avail to the judgment-debtor in view of the fact that admittedly, the land was not taken over by the State Government before the coming into force of the Repealing Act. As a matter of fact, as we have noticed, actually the proceeding has not been completed before the Repealing Act was adopted by the State Legislature with the result that there has been no final determination of the extent liable to be surrendered by Moti Dei or her legal representative and no taking over of possession of any extent of land held by Moti Dei. It is therefore, clear that the judgment-debtor in this case cannot raise a claim based on Section 3(1)(a) of the Repealing Act that notwithstanding the repeal of the Act, he is entitled to raise a claim based on that Repealed Act.

6. When an enactment is repealed, unless a contrary appears in the repealing enactment, Section 6 of the General Clauses Act would be attracted and the same would save the rights that had accrued to a party under the Repealed Statute. As observed by their Lordships of the Supreme Court in *State of Punjab v. Mohar Singh Pratap Singh*, AIR 1955 SC 84, in such cases, the line of enquiry is not whether the rights were preserved by the Repealing Act, but, whether there was anything in the Repealing Act that destroys the rights that had accrued. Here, the judgment-debtor not being able to rely on Section 3 of the Repealing Act, cannot validly raise a contention that a right or defence had accrued to him under the repealed enactment and that would be available to him notwithstanding the repeal and even if he had not raised such a contention during the trial of the suit. The mere right to raise a defence cannot be understood as a vested right. A mere right to take advantage of an enactment which was in force is not a right vested or accrued right. (See *Abbots v. Ministry of Land's*, 1895 AC 425 and *Sakhar Ram v. Manik Chand*, AIR 1963 SC 354). Except as to transaction past and closed, a statute after its repeal is as completely obliterated as if it had never been enacted. The result is that all the proceedings pending at the time of repeal must be rendered ineffective unless the repealing statute provides otherwise, because a mere right existing at the date of a repealing statute to take advantage of provisions of a statute is not a right accrued. See *Dolumal v. State of M.P.*, AIR

1971 Madh Pra 127. When this proceeding is taken up for consideration, we find that the provisions of the Act relied on are not in the Statute Book. Hence, we have necessarily to proceed on the basis that the Act relied on is no more in force, and since that right is not preserved specifically by the repealing enactment. Viewed from any angle, it is clear that the judgment-debtor cannot put forward any valid claim based on the Urban Land (Ceiling and Regulation) Act, 19/6. The objection has therefore to be overruled on that short ground.

7. That apart, it appears to us that the agreement for sale entered into by Moti Dei had ripened into a decree for specific performance. Whatever may be the effect of prohibition contained in the Urban Land (Ceiling and Regulation) Act, 1976, when once a decree for specific performance was granted by the Court, the decree could not be challenged on the ground that it is without jurisdiction. We find that this position is covered by a Full Bench decision of the Gujarat High Court in *Shah Jitendra Nanalal v. Patel Lallubhai Ishverbhai*, AIR 1984 Guj 145. With respect, we are inclined to agree with the ratio of that decision. Learned counsel argued that that was a case where the claim for exemption under Section 20 of the Act was pending when the decree was passed whereas in the case on hand, the claim under Section 20 of the Act had been rejected when the suit for specific performance was filed, even though the application was pending when the agreement for sale was entered into. But, in view of the fact that the Act itself has been repealed, and based on the Repealing Act the judgment-debtor cannot raise any claim as we have indicated earlier, this distinction sought to be made by the learned counsel does not have much force. That apart, to the agreement for sale the ratio of the decision of the Full Bench of the Gujarat High Court referred to above is clearly applicable, and as far as Moti Dei is concerned, she is bound by the agreement and after her, her legal representative, her so who claims through or under her is also bound by the said agreement. In view of the order of remand passed by this Court in O.J.C. No. 718 of 1988, the proceeding under the Act had also not culminated in a final order for surrender and the question of taking over of possession did not arise. Since by this time, the very Act has been repealed, this distinction sought to be made, even if it is sound, loses its significance.

8. It appears to us that the objections sought to be raised by the petitioner in Execution were objections which might and ought to have been raised by him in defence to the suit. Not having raised these pleas, in defence to the suit, and having allowed the Court to pass a decree, decreeing specific performance of the agreement for sale, the judgment-debtor, in our view, is debarred by the finality of the decree from raising the contention in execution. In any event, the contentions cannot be entertained by the Executing Court on the principle that the judgment-debtor might or ought to have raised these contentions in defence to the suit and before the decree was passed.

9. Thus, viewed from any angle we are of the view that there is no reason to interfere with the decision of the revisional Court challenged in this proceeding. But, learned counsel for the judgment-debtor pointed out that the revisional Court which was only exercising jurisdiction during the Execution, should not have modified the decree as it were and directed the inclusion of a clause in the sale deed that the transfer thereunder was subject to the exemption under Section 20 of the Act. According to us, if pursuant to the remand made by this Court, the authority had held that Moti Dei was entitled to retain a portion of the land and was liable to surrender the balance, the agreement for sale would have been binding on Moti Dei and her legal representative to the extent she was found entitled to retain or which she was entitled to get exempted under the Act. Therefore, nothing turns on the District Court directing that the clause in question be inserted in the sale deed. Moreover, the decree for specific performance was for execution of the sale deed and while directing the sale deed to be executed, the Court was entitled to take note of the law prevailing and direct the insertion of the necessary safeguard and a provision so as to bring the sale deed consistent with the provisions of the Relevant Act. Now that the very Act has been repealed by the Repealing Act, no question of exemption under Section 20(1) of the Act now arises. The direction of the District Court to insert such clause in the sale deed is now found to be unnecessary. Therefore, we modify that direction and direct the Executing Court to execute the sale deed in terms of the decree and as provided for in the Specific Relief Act.

10. Subject to the above, the writ petition is dismissed.

11. After we pronounced the judgment, learned counsel for the petitioner sought leave from this Court to appeal to the Supreme Court. We are not satisfied that the case involves any substantial question of law of general importance which in our opinion requires to be decided by the Supreme Court. Therefore, we do not find sufficient reason to grant the leave prayed for. The prayer is rejected.

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