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Sohan Lal and Ors Vs. State and Ors

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Court : Rajasthan Jodhpur

Decided On : Jul-31-2015

Appellant : Sohan Lal and Ors

Respondent : State and Ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :

ORDER
: S.B.CIVIL WRIT PETITION NO.3104/1997 Shri Sohan Lal & ORS.versus State of Raj.

& ORS.Date of Order :: 31st July, 2015 PRESENT HON'BLE Mr.JUSTICE ARUN BHANSALI Mr.M.S.Singhvi Senior Advocate assisted by Mr.Vineet Dave, for the petitioneRs.Mr.O.P.Boob, Govt.

Counsel for the respondents- ---- BY THE COURT: This writ petition has been filed by the petitioners aggrieved against order dated 01.04.1997 (Annexure-19) passed by the State Government, notices dated 29.05.1991 (Annexure-

16) and 20.12.1995 (Annexure-17) issued by the State Government and for quashing of the proceedings pending pursuanct to the notices.

The matter in question has got a chequered history; in the writ petition it is, inter alia, claimed that petitioners owned certain pieces of land in various Chaks in

undivided District Sr.Ganganagar; they were Khatedar-tenants of the lands falling in the said Chaks; during the settlement operations, Khatedars surrendered their holdings in exchange of other lands by orders of the competent authority; the Collector, Sr.Ganganagar cancelled the exchange granted by the competent authority by his orders dated 14.10.1977 and 16.10.1977; the orders were challenged by the petitioners by filing separate writ petitions, which were allowed vide orders dated 12.07.1978 on the ground 2 of violation of principles of natural justice.

The Collector issued notices on 02.08.1978 proposing to cancel the Khatedari rights and exchange of land granted to the petitioneRs.the notices were challenged by petitioners by filing revision petition before the Board of Revenue, Ajmer ('the Board').the Board by its judgment dated 09.05.1984 allowed the revision petition; the State Government filed review petition against the order dated 09.05.1984, which was rejected by the Board on 21.06.1988.

It is claimed that in view of the fact that the notices issued by the Collector were set aside, the petitioners were entitled to allotment of lands, which were given to them in exchange, therefore, the petitioners applied to the Collector, but having failed in their attempts to get the lands allotted, they moved an application to the State Government and the State Government by order dated 14.05.1986 directed the Collector to allot the lands to the petitioners in accordance with law; whereafter, several attempts were made by the petitioners and orders were passed by the State Government in this regard; however, when the lands were not allotted to the petitioners pursuant to the order dated 14.05.1986, the petitioners filed writ petition for implementation of the order passed by the State Government; the writ petition was allowed on 16.03.1990 and it was directed as under:- In the result, this writ petition is allowed, the respondents are directed to implement the order Annex.

2 within a period of four months from today.

However, in implementing the order Annex.

2, it is abundantly made clear that it has no relation to the allotment that has to be made u/s.13 A of the Rules of 1975.

The State Govt.

is however free to take any suitable action which is permitted to them according to law against the petitioners 3 on account of the alleged perpetuation of fraud by them against the Government.

This also disposes of the application filed by Mr.Acharya on behalf of certain persons for being impleaded as parties to the writ petition.

That application is rejected in view of the clarification made in this order hereinabove.

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The State preferred an appeal against the order dated 16.03.1990, which was dismissed by the Division Bench on 11.01.1993 and it was, inter alia, observed that Annexure-2 is an order which was passed by the Government on 14.05.1986, the order is binding on the appellants and they are bound to implement the same; against order dated 11.01.1993 State Government preferred Special Leave Petition before Hon'ble Supreme Court which was dismissed on 03.08.1993.

In the meanwhile, the State Government challenged the order dated 09.05.1984 passed by the Board by filing writ petitions, which were also dismissed by the Division Bench on 11.01.1993; against the judgment dated 11.01.1993 also State Government preferred Special Leave Petitions, which were dismissed by Hon'ble Supreme Court on 03.08.1993/15.01.1994 respectively.

While filing reply to the writ petition filed by the petitioners seeking implementation of order dated 14.05.1986 i.e.S.B.Civil Writ Petition No.3664/1988 the State took a stand that petitioners have obtained the allotment by fraud and, therefore, the State Government was proposing to cancel the same; the issue was considered by this Court in its order dated 16.03.1990 and it was observed that the State Government cannot take a decision suo moto and it can only take civil

proceedings if it was a case of fraud.

The observations made in the judgment read as under:- 4 The Govt.

cannot take any unilateral decision not to give effect to that exchange of land or to comply with the order Annex.2 in letter and spirit.

If it feel that any fraud has been committed by the petitioners against the Govt.

by claiming certain of land as its Khatedar tenants and have surrendered it in favour of the Govt.

to get an equal area of land in exchange through the agency of the Asst.

Settlement OfficeRs.then the Govt.

can at best take civil proceedings against them if such an opportunity is available to the Government according to law.

Otherwise, once a judicial forum has decided that the lands, which were surrendered by the petitioners were their Khatedari lands and the lands which were given to them in exchange were also recorded in their name as Khatedars then that order cannot be nullifield unilaterally by the Government without following the due process of law and consequently, the petitioners are entitled to get a direction issued, in their favour against the respondents to get this order Annex.2 executed in their favour.

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The petitioners on account of failure of the State in complying with the directions issued by this Court on 16.03.1999, filed S.B.Civil Contempt Petition No.171/1994, wherein, after notices were issued by this Court, the order was complied with by making allotment of land to the petitioners in compliance of the directions issued by this Court.

The State had in the meanwhile issued a notice dated 29.05.1991 (Annex.-16) proposing to cancel its order dated 14.05.1986; whereafter again a notice dated

20.12.1995 (Annex.-17) was issued by the State calling upon the petitioner to show cause as to why order dated 14.05.1986 be not revoked; the petitioners filed objections to the said notice requesting the State to drop the proceedings and also claimed that the same amounts to contempt of the Court; the objections raised by the petitioners were rejected by the State Government by its order dated 01.04.1997 (Annex.-19) on the ground that State has power to review under Section 85A of the Rajasthan Land Revenue Act, 1956 ('the Act').it is this order dated 01.04.1997 rejecting objections of the petitioners and the 5 notices dated 29.05.1991 and 20.12.1995, which are sought to be questioned by the petitioners in the present writ petition.

It is submitted by learned counsel for the petitioners that the order passed by the settlement authorities has become final; the order dated 16.03.1990 passed by this Court has also attained finality and, therefore, it is not open for the State Government to take action by itself to cancel the Khatedari rights of the petitioneRs.the land which has been surrendered to the Government by the petitioners after getting it entered as Khatedari land, did not belong to the State Government, the petitioners purchased it from original khatedars and since it was wrongly standing in their names the same was got entered in the names of the petitioners during settlement operations; the State Government being party to the dispute cannot decide the question by itself, the bias is inherent and implicit; it is further submitted that the notice issued by the respondents is contrary to the directions given by this Court while deciding petitioneRs.writ petition by order dated 16.03.1990, wherein, this Court kept it open for the respondents to take 'civil proceedings' only and the proceedings sought to be initiated cannot be termed as civil proceedings; the proceedings before the State is without jurisdiction as the respondents cannot review order dated 14.05.1986, which is only a consequential order unless the original order of exchange goes and the order of the High Court dated 16.03.1990 cannot be nullified.

It is further submitted that the State being a party to the proceedings cannot itself review the order, inasmuch as, the orders passed by the settlement officer cannot be reversed by 6 the State also; further, the action of the respondents amounts to undoing the order passed by the Board and upheld by this Court; it is prayed that

the writ petition filed by the petitioners be allowed.

Reliance was placed on Sunil Pannalal Banthia & Ors.v.City and Industrial Development Corpn.

Of Maharashtra LTD.& Anr.

: AIR 2007 SC1529and State of Karnataka v.

Shree Rameshwara Rice Mills.

Thirthahalli : (1987) 2 SCC160 Responding to the submissions made by learned counsel for the petitioneRs.learned counsel for the respondent-State submitted that there is no substance in the writ petition filed by the petitioneRs.it was contended that while deciding the writ petition, this Court kept it open for the State to take appropriate proceedings against the petitioners and in view thereof the petitioners cannot question the initiation of proceedings by the State; it is further contended that provisions of Section 85A of the Act confers wide powers on the State, wherein, the State Government may on its own motion or on the application of a party to a proceeding, review and may rescind, alter or confirm any order made by it under the Act and, therefore, the petitioners cannot question the jurisdiction in issuing notices and rejection of its preliminary objections by the State and, therefore, the writ petition filed by the petitioners deserves to be dismissed.

A further submissions has been made that the submissions made by the petitioners on the merits of the dispute cannot be raised in the present writ petition as at this stage it is premature to make these submissions as the State has so far not decided 7 proceedings and only the preliminary objections filed by the petitioners have been rejected.

It was prayed that the writ petition filed by the petitioners be dismissed.

Reliance was placed on Har Chand through LRs Hazarilal v.

State of Rajasthan : 1979 RLW62 During the pendency of this writ petition, by order dated 02.01.2014 it was directed that to decide the controveRs.involved in the case, the record of allotment made in the exchange to the petitioners was

required to be seen and, therefore, the Government Counsel was directed to produce the said record of allotment made in favour of petitioners for allotment of land in exchange; time was granted to the respondents on several occasions and ultimately by order dated 11.11.2014 the State was granted last opportunity to produce the record, failing which, it was directed that the petition shall be determined based on the material available on record; ultimately, when no record was produced, the matter was heard in absence of the record.

I have considered the rival submissions made by learned counsel for the parties and have perused the material placed on record.

The dispute between the parties as noticed hereinbefore arose on account of cancellation of the exchange order passed by the Collector by his order dated 14.10.1977 and 16.10.1977, which orders were quashed by this Court by its order dated 12.07.1978 being in violation of principles of natural justice, whereafter, the Collector issued notice seeking to cancel the Khatedari rights and exchange of land granted to the petitioneRs.8 The petitioners challenged the said action before the Board by filing revision petition; the Board in its order dated 09.05.1984 noticed that the petitioners were granted lands mentioned in Column 3 of the statement, in lieu of their khatedari land indicated in Column 2 of the statement by the Asst.

Settlement Officer during the couRs.of settlement operations in the area and gave out the details of the various lands belonging to the petitioners and the land given to them in exchange; it was further noticed that the land surrendered by the petitioners were taken over by the Government, entered into revenue record and were allotted to landless persons; the important aspect is that the judgment also notices that the said position was not contradicted by the learned Government Advocate.

The Board by its judgment after considering the entire dispute, came to the conclusion that the Collector had no power to reopen and question the correctness of the order passed by the settlement authorities either under the provisions of Rajasthan Colonisation Act, 1954 ('the Act of 1954') or under the provisions of the Act and it was directed that the position obtaining on the date of notice be restored

to the petitioneRs.The order dated 09.05.1984 passed by the Board, which quashed the show cause notice issued by the Collector seeking to cancel the exchange granted to the petitioners by the authorities of the Settlement Department remained unquestioned, though a review petition filed by the respondents was rejected on 21.06.1988.

After passing of the order by the Board, the petitioners 9 persuaded the Government to give the land in exchange, which ultimately led to passing of the order dated 14.05.1986 by the State Government.

The order reads as under:- " , :- ! ! % ' % (* * :- 15(5)(8) /76/14372 15.11.85 , * ' 7 * , , , , , ! % (.% ; ; ! , @ ' * (! % , ! ; ! , ! F ! : () * ! % (% -% ; ; (! , ;H , ! () ! % 7 (' ! ' () * (! % (; ! ' (* ! % ! * ! (! ! % % ; -% ; ; F % (F F ' 7 F ' : (O % F (" Whereafter, again when the land in question was not forthcoming, the petitioners filed S.B.Civil Writ Petition No.3644/1988; the State, inter alia, took a plea that on scrutiny of the facts it came to the notice of the Collector that the pieces of lands, which were surrendered by the petitioners for getting the land in exchange did not belong to them and, therefore, the Collector has requested the Government for modifying or cancelling the order dated 14.05.1986.

10 This Court after hearing the parties, directed as already noticed hereinbefore to implement the order dated 14.05.1986, however, the Court kept the State free to take any suitable action, which is permitted to them according to law on account of alleged perpetuation of fraud by them against the Government.

The direction of this Court has to be read in the context where the Court observed in the judgment as under:- The Govt.

cannot take any unilateral decision not to give effect to that exchange or land or to comply the order Annex.2 in letter and spirit.

If it feels that any fraud has been committed by the petitioners against the Govt.

by claiming certain pieces of land as it khatedar tenants and have surrendered it in favour of the Govt.

to get an equal area of land in exchange through the agency of the Asst.

Settlement Officers than the Govt.

can at best take civil proceedings against them if such an opportunity is available to the Govt.

according to law.

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Apparently, no action was taken as observed/left open by this Court by its order dated 16.03.1990; in the meanwhile, the order passed by the Board quashing the notice issued to the petitioners dated 09.05.1984 was challenged by way of filing writ petitions, the said writ petitions were dismissed and the appeal filed by the State against the order dated 16.03.1990 was also dismissed by the Division Bench.

The State preferred Special Leave Petitions against the dismissal of its writ petitions and special appeals, the Special Leave Petitions were dismissed by the Hon'ble Supreme Court on 03.08.1993.

The result of the orders passed by the Board on 09.05.1984 and this Court on 16.03.1990 has been that while the attempt made by the Collector to interfere with the order passed by the Settlement Authorities has been set aside by the Board and the directions issued by the State Government dated 14.05.1986 have been directed to be implemented by this Court 11 in the writ petition, which also stood affirmed; whereafter the respondents have sought to vary the order dated 14.05.1986 issued by it purportedly by issuing notices dated 29.05.1991 and 20.12.1995.

As the respondent sought to rescind the order dated 14.05.1986; the petitioners raised objections regarding the action of the respondents and inter alia contended that the order was in violation of the directions issued by this Court on 16.03.1990.

By the order dated 01.04.1997 (Annexure-19) the Revenue Minister, rejected the objections observing as under:- F (14.5.86 % F ; F F * (* % - ; ; * * ! ; ; (F * ' -% ; ;

85() ; ; -5 * F * , (; , ; ' (H F ((7 ! FW -% ; ; ! % ! F 7 14.5.86 , (; * F ' ; ' @ F * F (; (F* ' ; (F -% ; ; -85() * F * ; ; ; * ' F * ' (7 ' (20.12.95 3.5.1997 ' " It was, inter alia, held that under provisions of Section 85A read with Section 5 of the Act of 1954 the State is empowered to review, correct or amend its orders and regarding the State being a party in the writ petition and itself taking proceedings, it was observed that under Section 85A of the Act the State has the right and, therefore, it can review its order.

12 As noticed hereinbefore, the entire controveRs.pertained to the fact as to whether at the time of settlement, the lands were wrongly recorded in the name of the petitioners and rest all actions are consequential to the said settlement proceedings.

The Board categorically held that the Collector had no power to vary the settlement operations under any of the provisions of the Act of 1954 or the Act.

Even while issuing the notices dated 29.05.1991 and 20.12.1995, the entire effort pertains to recall of the order dated 14.05.1986; both the notices are confined to recall of the order dated 14.05.1986 without even indicating any action or proceedings on part of the State to reveRs.the foundational order in favour of the petitioners i.e.recording of lands in their names during the settlement proceedings.

The action of the respondents apparently without dealing with the said right / order which accrued to the petitioners during the settlement operations and to rescind or recall a consequential order passed by it appears to be an exercise in futility and only an attempt to take away the consequences of the rights, which accrued to the petitioners during the couRs.of settlement proceedings on account of land being recorded in their names.

Further, when this Court while passing the order dated 16.03.1990 observed taking of suitable action permissible to the respondents and, inter alia, observed that the State can at best take civil proceedings against the petitioners if available to the Government according to law, the summary procedure and exercise of power of review and that also only qua the consequential order appears to be beyond the scope of the liberty granted by this Court so as to undo the

consequence of 13 the action taken by the respondents pursuant to the directions issued by this Court on 16.03.1990.

The observations made by Division Bench in its order dated 11.1.1993, while dealing with the appeal filed by the State are very significant, wherein it was observed as under :- Annex.-2 is an order which was passed by the Government on 14.05.1986.

The order is binding on the appellants and they are bound to implement the same.

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There is also substance in the arguments advanced by learned counsel for the petitioners that in a matter of present nature the State cannot employ summary procedure by way of exercising its alleged power of review.

Hon'ble Supreme Court in the case of Government of Andhra Pradesh v.

Thummala Krishna Rao & Anr.

: (1982) 2 SCC134 inter alia, observed as under:- 8.....If there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recouRs.to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or title.

In the instant case, there is unquestionably a genuine dispute between the State Government and the respondents as to whether the three plots of land were the subject-matter of acquisition proceedings taken by the then Government of Hyderabad and whether the Osmania University, for whose benefit the plots are alleged to have been acquired, had lost title to the property by operation of the law of limitation.

The suit filed by the University was dismissed on the ground of limitation, inter alia, since Nawab Habibuddin was found to have encroached on the property more than 12 years before the date of the suit and the University was not in possession

of the property at any time within that period.

Having failed in the suit, the University activated the Government to evict the Nawab and his transferees summarily, which seems to us impermissible.

The respondents have a bona fide claim to litigate and they cannot be evicted save by the due process of law.

The summary remedy prescribed by Section 6 is not the kind of legal process which is suited to an adjudication of complicated questions of title.

That procedure is, therefore, not the due process of law for evicting the respondents.

14 10.

The conspectus of facts in the instant case justifies the view that the question as to the title to the three plots cannot appropriately be decided in a summary enquiry contemplated by Sections 6 and 7 of the Act.

The long possession of the respondents and their predecessors-in- title of these plots raises a genuine dispute between them and the Government on the question of title, remembering especially that the property, admittedly, belonged originally to the family of Nawab Habibuddin from whom the respondents claim to have purchased it.

The question as to whether the title to the property came to be vested in the Government as a result of acquisition and the further question whether the Nawab encroached upon that property thereafter and perfected his title by adveRs.possession must be decided in a properly constituted suit.

Maybe, that the Government may succeed in establishing its title to the property but, until that is done, the respondents cannot be evicted summarily.

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Further, Hon'ble Supreme Court in the case of Shree Rameshwara Rice Mills (supra) observed that a party to the agreement cannot be arbiter in its own case.

Interest of justice and equity require that where as party to a contract disputes the committing of any breach of conditions, the adjudication should be of a independent person or body and not by the other party to the contract.

The State has itself alleged that the petitioners have committed fraud during the settlement proceedings and is now seeking to adjudicate on the said aspect by way of exercising its jurisdiction of review, if such power was to be exercised by the State after having taken the stand, the issuing of show cause notice would be an empty formality and the State would essentially be judging its own cause, which would be ex facie against the principles of natural justice.

The directions passed by this Court in the earlier order dated 16.03.1990 wherein it was observed that State can take 'civil proceedings' also assumes significance in view of the above aspect also.

15 It is also significant to note that the State was directed to produce the record of allotment and despite grant of time over a period of one year, no response was forthcoming on part of the State, which further reflects on the stand sought to be taken by the State regarding the alleged fraudulent action of the petitioneRs.So far as the submissions made by learned counsel for the respondents regarding the power of the State under Section 85A of the Act are concerned, as discussed above the consequences of the present proceedings sought to be initiated by the respondents purportedly for the purpose of review of its order dated 14.05.1986 essentially would be to reveRs.the effect of orders passed during the settlement operations, which power is not available under the Act and, therefore, the State cannot under the garb of its power to review under Section 85A of the Act, undo the orders passed during the settlement operations.

The provisions of Section 23 of the Act in so far as relevant, read as under:- 23.

Controlling Power : (1) The control of all non- judicial matters connected with revenue in the State, other than matters connected with settlement, is vested in

the State Government and the control of all judicial matters and of all matters connected with settlement is vested in the Board.

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(emphasis supplied) The above provision clearly provides that the control of all non-judicial matters connected with revenue in the State 'other than matters connected with settlement' are vested in the State Government and control of judicial matters and of all matters connected with settlement are vested in the Board.

16 Even in the judgment cited by learned counsel for the respondents, this Court while dealing with the powers under Section 85A of the Act has observed as under:- 18.

No such limitations for review have been provided under Sec.

85A of the Act.

It may be, for the reasons, that the State Government is the highest authority in regard to non-judicial matters and matters not connected wit the settlement.

There are no restrictive provisions under Sec.

83 also, which provide for revision by the State Government in respect of non-judicial matters and matters not connected with the settlement.

There are restrictive provisions under Sec.

84, dealing with the powers of the Board relating to revision of orders in regard to the judicial matters and matters connected with settlement.

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The above aspects clearly go to show that in the present case the attempt on the part of the State to undo the settlement operations under the garb of exercising power of review is ex- facie against statutory provisions as well and therefore, cannot be sustained.

In view of the above discussion, the writ petition filed by the petitioners is allowed.

The order dated 01.04.1997 (Annexure-19) passed by the State Government and the notices dated 29.05.1991 (Annexure-16) and 20.12.1995 (Annexure-17) are quashed and set aside.

No order as to costs.

(ARUN BHANSALI).J.

A.K.Chouhan/- 1

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