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Sava Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Aug-03-2000

Reported in : 2000(4)WLC524; 2001(1)WLN291

Judge : B.J. Shethna and; Sunil Kumar Garg, JJ.

Acts : Land Acquisition Act, 1894 - Sections 4, 6 and 11-A; Indian Penal Code (IPC), 1860 - Sections 161 and 185; Prevention of Corruption Act, 1988 - Sections 5; Code of Criminal Procedure (CrPC) , 1973 - Sections 407 and 482

Appeal No. : D.B. Civil Special Appeal No. 539 and 6 Ors. Appeals of 1997

Appellant : Sava

Respondent : State of Rajasthan and ors.

Advocate for Def. : Lalit Kawadia, Adv.

Advocate for Pet/Ap. : D.R. Bhandari, Adv.

Judgement :
ORDER

Shetha, J.

1. All these appeals are disposed of by this common order as they are arising out of the common judgment and order dated 27.2.1997 passed by learned Single

Judge of this Court dismissing the writ petition no. 3293/95 and 7 other allied petitions. However, out of those 8 petitioners, only 7 have challenged the said judgment and order by way of these appeals and one of them has not challenged qua him, the order has become final.

2. Firstly, learned counsel Mr. Bhandari for all the appellants tried to raise the submission that their cannot be partial admission of the matter. He also submitted that the has never conceded before the learned Single Judge (Mr. P.K. Palli, J. as he then was) that he did not want to challenge to the notifications issued under Sec. 4 and 6 of the Land Acquisition Act, 1894 (for short the Act). Inspite of this, his Lordship observed in writ petition no. 3293/95 that the learned counsel Mr. Bhandari conceded that no challenge is being laid to these documents/notifications issued under Sec. 4 and 6 of the Act. He submitted that earlier, the appellants have challenged the impugned notifications issued under Sec. 4 and 6 of the Act and when the award came to be passed, the same was also challenged by way of amending the petitions. He, therefore, submitted that the learned Single Judge committed a grave error in not allowing him to address the Court on the legality and validity of the notifications issued under Sec. 4 and 6 of the Act.

(3). It clearly appears from para no. 2 of the impugned judgment and order dated 27.2.97 passed by the learned Single Judge that learned counsel Mr. Bhandari for the petitioners was specifically asked a question as to whether any challenge was being laid to the notifications issued u/S. 4 and 6 of the Act? To that Mr. Bhandari conceded that there was no challenge. In that view of the matter, it is difficult for us to accept the submission made by learned counsel Mr. Bhandari at the bar that it had never conceded the challenge to notifications issued under Sec. 4 and 6 of the Act, He submitted that he had also filed an affidavit to that effect but the same was not considered by the learned Single Judge while dismissing the writ petition by the common order.

(4). We have specifically asked Mr. Bhandari as to whether he has filed review petition to which he stated that he has not filed the same because his Lordship was already transferred. Be that as it may. Whether the learned Judge was there

or not or is transferred, would not make any difference particularly when such a clear out statement is recorded by the learned Single Judge in the order. If in reality, it was not conceded by Mr. Bhandari men immediately, it was expected of him to approach the learned Single Judge by way of review by pointing out that he had not made any statement and conceded his challenge to Sections 4 and 6 of the Act. In this way, if we permit this and accept the submissions made by learned counsel Mr. Bhandari before us that though he has not conceded and his concession was wrongly recorded in the order, then we would be condemning the learned Judge behind his back without giving him an opportunity which is not at all proper.

(5). We are fortified in our view by the judgment of the Hon'ble Supreme Court in the case of State of Maharashtra vs. Ramdas Shrinivas Nayak and anr. reported in (1). In Ramdas's case (supra), a complaint was filed against the Chief Minister of Maharashtra charging him with offences punishable u/S. 161, 185 of Penal Code and Sec. 5 of Prevention of Corruption Act. The complaint was not entertained by the Magistrate as it was not maintainable without sanction u/S. 6 of the latter Act. The complainant preferred a revision before the High Court purporting to be one under Sec. 407 and 482 Cr.P.C. During the pendency of revision, the C.M. resigned. While dismissing the revision, the High Court noticed that an application had been made to the Governor of the State for grant of requisite sanction and observed that the application should not be decided by Law Minister or any other Minister but that it deserved to be decided by the Governor in his individual discretion. This observation was made in consequence of an express concession made by the Government Counsel. In special leave petition, the Government counsel denied that he had made any concession and that the Supreme Court may peruse the written submissions made by the counsel before the High Court.

(6). The Hon'ble Supreme Court in that case held the that Judge's record was conclusive. Neither lawyer nor litigant may claim to contradict it except before the Judge himself, but nowhere else. The court could not launch into inquiry as to whattranspired in the High Court. The Court is bound to accept the statement of the Judges recorded in their judgment as to what transpired in court. It cannot allow the statement of the Judges to be contradicted by the statements at the Bar

or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence, if a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there.....

(7). In view of the above, the statement made by learned counsel Mr. Bhandari that he never conceded the challenge to the notifications issued u/S. 4 and 6 of the Act before the Hon'ble Mr. Palli, J. (as he then was) cannot be accepted.

(8). Then, the only question remains regarding the award being lapsed or not as provided under Sec. 11-A of the Act. Learned counsel Mr. Bhandari for the appellants vehemently submitted that the notification has to be published in the Official Gazette as provided u/S. 6(2) of the Act and the date of publication u/S. 6 in the Official Gazelle was 16.1.92 whereas the award was passed on different dates in the months of April and May, 95, which lapsed as per Sec. 11-A of the Act because the publication should be within two years from the date of award. This very contention was raised before the learned Single Judge of this Court and the same was not accepted by him in view of the judgment of the Hon'ble Supreme Court in the case of Krishi Utpadan Mandi Samiti vs. Markand Singh (2).

(9). The learned Single Judge has pointed out that the declaration was published in the official gazette on 16.1.92 and the same declaration was affixed at the conspicuous place on 2.3.93 and thereafter the same was published in the local daily newspaper dated 3.3.91, 12.7.93 and 13.7.93. He, therefore, took the last date of publication as 13.7.93. If we take that as last dale of publication, then the award was passed in April and May, 1995 which was less than the period of two

years, therefore, in our considered opinion, the learned Single Judge has not committed any error in taking the view in dismissing of the writ petitions.

(10). We may add that initially u/S. 6(2) of the Act, every declaration was required to be published in the Official Gazette but later on Sec. 6(2) was amended by the Act 68 of 1984 and the said notification was also required to be published in two daily newspapers circulating in the locality in which the land is situate of which one shall be in the regional language, and the Collector is required to cause public notice of the substance of such declaration to be given at convenient places in the said locality. It makes it clear that the last day of the dates of such publication and giving of such public notice will be referred to as the date of publication of declaration. This clearly clinches the issue against the petitioners.

(11). Thus, there is no substance in the second submission raised by learned counsel Mr. Bhandari for the petitioners.

(12). In view of the above discussion, we do not find any substance or merits in all these appeals, accordingly, they fail and arc dismissed.

(13). Stay petitions are also dismissed.

(14). Interim relief granted earlier stands vacated forthwith.

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