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Court : Kolkata

Decided On : May-17-2007

Reported in : 2007(3)CHN683

Judge : Bhaskar Bhattacharya and ;Kishore Kumar Prasad, JJ.

Acts : West Bengal Land Reforms and Tenancy Tribunal Act, 1955 - Sections 2(7), 3A(3), 14T, 14T(3) and 14V; ;[West Bengal Estates Acquisition Act, 1953](#) - Section 57B(2); ;[Constitution of India](#) - Articles 226, 227 and 300A

Appeal No. : W.P.L.R.T. No. 197 of 2007

Appellant : Niranjan Chatterjee and ors.

Respondent : State of West Bengal and ors.

Advocate for Def. : Sitaram Samanta, Adv.

Advocate for Pet/Ap. : Kishore Mukherjee, Adv.

Judgement :

1. This application under Article 226/227 of the [Constitution of India](#) is at the instance of unsuccessful applicants before the West Bengal Land Reforms and Tenancy Tribunal and is directed against the order dated 6th March, 2007 passed by the said Tribunal in O.A. No. 3110 of 2005 (LRTT) thereby dismissing the application filed by the writ petitioners. In dismissing the application filed by the

writ petitioners, the Tribunal was of the opinion that the B.L. & L.R.O concerned was under no obligation to honour the decree passed by a Civil Court declaring title of the predecessor-in-interest of the writ petitioners in the property and passing a further decree for the permanent injunction restraining the State respondent from disturbing the possession of the decree holder. The Tribunal further came to the conclusion that ignoring the said decree the proceeding Under Section 14T(3) of the Act should continue.

2. Therefore, two questions arise for consideration in this application under Article 226 of the [Constitution of India](#).

First question that arises for determination in this writ application is whether a tribunal constituted under West Bengal Land Reforms and Tenancy Tribunal Act, can declare that a decree for declaration of the title and permanent injunction in favour of the writ petitioner was a nullity as the same was passed in violation of the provisions contained in Section 57B(2) of the West Bengal Estates Acquisition Act, notwithstanding the fact that State of West Bengal was a party to such decree, and such decree has attained finality.

3. It is now settled position of law that entry in a record-of-rights does not create any title nor does it extinguish the title of lawful owner but the entry has a presumption of correctness which is, of course, rebuttable. In such a situation, if a Civil Court declares title of a person in respect of a property and restrains the State of West Bengal from disturbing the possession of the plaintiff in the suit property, the presumption arising out of entry in the record-of-rights stands rebutted. The law is equally settled that a party, after suffering a decree for declaration of title and permanent injunction, cannot ignore such decree without challenging such decree before appropriate forum at the appropriate time. In the case before us, the State of West Bengal having accepted the decree passed by the Civil Court, the same has attained finality and therefore, a Tribunal constituted under West Bengal Land Reforms and Tenancy Tribunal Act is incompetent to declare that a decree passed by a Civil Court is a nullity.

4. At this juncture, it will not be out of place to refer to the decision of the Supreme Court in the case of State of Punjab and Ors. v. Gurdev Singh, Asoke Kumar

reported in AIR 1991 SC page 2219 where the respondent before the Supreme Court wanted to argue that an order of dismissal of service was illegal, inoperative and not binding on the respondents. They wanted the Court to declare that the dismissal was void and inoperative and not binding on them and they continue to be in service. In that context, the Supreme Court observed that if an act was void or ultra vires it is enough for the Court to declare it so and then it collapsed automatically. The aggrieved party can simply seek a declaration that such act was void and not binding upon him; the Supreme Court, however, observed that even if an order which was not made in good faith, and was void, was still an 'act capable of legal consequences'. It bore, the Supreme Court proceeded, no brand of invalidity upon its forehead and unless the necessary proceedings were taken under the law to establish the cause of invalidity and to get it quashed or otherwise upset, it would remain as effective for its ostensible purpose as the most impeccable of orders.

5. The Supreme Court further quoted with the approval the following observations of Prof. Wade in Administrative Law, 6th Edn. at page 352:

The truth of the matter is that the Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiffs lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is in reality valid. It follows that an order may be void for one purpose and valid for another, and that it may be void against one person but valid against another.

6. Ultimately, the Supreme Court held that a party aggrieved by the invalidity of the order was required to approach the Court for relief of declaration that such order against him was inoperative and not binding upon him, and that he should approach the Court within the prescribed period of limitation, and if the statutory time limit had expired, the Court even could not grant declaration sought for.

7. Even in a subsequent case of Tayabbhai M. Bagasarwalla and Anr. v. Hind Rubber Industries Pvt. Ltd. and Ors. reported in : [1997]2SCR152 , the Supreme

Court in clear terms asserted that even a party guilty of disobedience of an order passed by an authority without jurisdiction could not escape punishment on the plea that the order was passed by an authority having no jurisdiction or that it was a nullity.

8. It is, therefore, clear that once the State of West Bengal has suffered a decree for declaration of title and permanent injunction in respect of a property and such decree has attained finality by lapse of time, it cannot refuse to correct the record-of-rights in tune with the decree passed by the Civil Court.

9. We have already indicated that the Tribunal constituted under the provision of the West Bengal Land Reforms and Tenancy Tribunal Act, is not vested with any authority to declare that a decree passed by a Civil Court is without jurisdiction and, therefore, in the case before us, the Tribunal below acted without jurisdiction in approving the contention of the State-respondent that it could ignore the decree passed by the Civil Court and maintain the record-of-rights which is at variance with the decree it has suffered.

10. Consequently, if in the meantime, after passing of decree, the State has inducted any person by treating the property as a vested property, it shall revoke such patta and put the writ petitioner to the possession of the property in compliance of the decree for permanent injunction which it has suffered. It is needless to mention that the pattadar, being licensee of the State/judgment-debtor, cannot have any additional right, and is bound by the decree passed against his licensor. In such a case, those licensees must be removed from the property within two months from today.

11. We, therefore, set aside the order passed by the Tribunal and directed the B.L. & L.R.O concerned to correct the record-of-rights strictly in accordance with the decree passed in favour of the writ petitioner/his predecessor. The record must be corrected within one month from the date of communication of this order.

12. The next question that arises for determination in this application is whether in view of the Division Bench decision of this Court in the case of *Paschim Banga Rajya Bhumijibi Sangha v. State of West Bengal* reported in 1999(2) CLJ page

285, declaring the provision contained in Section 14V vis-a-vis the definition of the land as contained in Section 2(7) and Section 3A(3) of the West Bengal Land Reforms Act as ultra vires Article 300A of the Constitution as the amount payable for acquisition of land was without any just principle and also illusory, the State can continue with the process of vesting in terms of Section 14T of the said Act.

13. We are quite conscious of the fact that against the said decision, the State of West Bengal has preferred a special leave application before the Supreme Court of India and has obtained an interim order staying the operation of the order impugned therein by which certain further conditions are also imposed upon the State.

14. Therefore, the question that arises for determination is, simply because in an application for grant of special leave, the Supreme Court has stayed the operation of an order passed by the Division Bench of this Court declaring a statutory provision as ultra vires the [Constitution of India](#) as an interim measure by imposing further conditions upon the State in those cases, whether a citizen who is not a party to the previous litigation can be deprived of the benefit of doctrine of precedent in resisting the action of the State on the ground that it could not invoke the ultra vires provision of the statute against him.

15. Before entering into such question, we propose to take notice of the actual orders of stay passed by the Apex Court in those proceedings.

16. It appears from the order dated March 20, 1998 that the order of the Division Bench of the High Court was stayed subject to the order of status quo regarding possession on spot to be maintained by both the parties. It further appears from a subsequent order dated December 16, 1999 that another Bench in a different matter being special leave to Appeal (Civil) No. 1416 of 1997 passed an interim order directing that status quo regarding possession on the spot should be maintained by both sides in connection with the members of the petitioner Sangha who were before the High Court in the writ petition out of which the said proceedings arose. By further order dated April 17, 2004, on various applications filed by about thirteen thousands persons, the Supreme Court further ordered that if any order of vesting had been passed in respect of the lands of persons who

were parties before the High Court out of which the proceedings arose, those order of vesting should not be implemented until further order. On November 24, 2003, the Supreme Court further ordered that the State should ensure that notwithstanding the order of vesting that might have been passed and the mutation that might be effected in the revenue records, no third party should be inducted or allowed to enter upon or squat on such properties till the disposal of the appeals.

17. After hearing the learned Counsel for the parties and after going through the aforesaid position of fact, we find that the Supreme Court by those interim order has, no doubt, stayed the operation of the order of the Division Bench of this Court by directing the parties to maintain status quo but at the same time, has even restrained the State from inducting the third parties on the lands which were the subject matters before the Apex Court. Such interim order is binding upon the parties to the proceedings but the law is equally settled that by mere passing of an interim order staying the operation of a judgment with certain further conditions, the existence of the said judgment is not wiped out and at the same time, for such interim order inter parties, the authority of a decision as a precedent is never undermined. Unless a decision is set aside by the Superior Court, the said decision remains effective as a precedent though may not be binding upon the parties to the proceeding where the superior Court has granted interim order. Moreover, once a provision has been declared ultra vires the [Constitution of India](#), the State cannot invoke the said 'ultra vires provision' against the citizens of the country simply because an interim order of stay of operation of the order declaring the provision as ultra vires has been passed in an appeal against such order. The object of granting interim order is to see that the relief claimed in the appeal may not become in appropriate or the appeal does not become infructuous for not granting such interim order; but by mere grant of interim stay, the effect of a binding precedent is not destabilized. Over and above, the interim orders of the stay granted by the Supreme Court clearly indicate that the said Court never intended that notwithstanding the decision of the High Court declaring a part of the provisions of vesting as ultra vires the Constitution, the State would nevertheless be free to proceed with the process of vesting during the pendency of the proceedings before the Supreme Court and that is why status quo as regards

possession had been maintained and even, the State has been restrained from creating any 'third party interest' in the lands in question.

18. At this stage it will be profitable to refer to the following observations of the Supreme Court in the case of *Narcotics Control Bureau v. Dilip Prahlad Namade* reported in AIR 2004 SC 2950 where the Court pointed out that there was no scope of laying down a law at the interlocutory stage:

Coming to the plea regarding long passage of time it is to be noted that the two orders passed by this Court in SLP (Crl.) Nos. 1136/2002 and 434/2003 referred to above do not lay down any principle of law of invariable nature to be universally applied. Furthermore, disposal of SLP against a judgment of the High Court does not mean that the said judgment is affirmed by such dismissal. The order passed in any SLP at threshold without detailed reasons does not constitute any declaration of law or constitute a binding precedent, (see *Union of India and Ors. v. Jaipal Singh*. 2003(7) Supreme 676). This Court cannot and does not reverse or modify the decree or order appealed against while deciding the petition for special leave to appeal and that too when the SLP was being dismissed. What is impugned before this Court can be reversed or modified only granting leave and then assuming appellate jurisdiction over it. If the order impugned before this Court cannot be reversed or modified at the SLP stage obviously that order cannot also be affirmed at the SLP stage (see *Kunhayammed and Ors. v. State of Kerala and Anr.* : [2000]245ITR360(SC) and *Ramnik Vallabhdas Madvane and Ors. v. Taraben Pravinlal Madhavani* 2004(8) Supreme 208).

(Emphasis supplied)

19. At this juncture, it will not be inappropriate to refer to the following observations of the Supreme Court in the case of *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, Madras* reported in : [1992]2SCR999 , while pointing out the difference between an order of stay of operation of the order impugned and an order quashing the order itself:

While considering the effect of an interims order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and

stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the appellate authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the appellate authority would be restored and it can be said to be pending before the appellate authority after the quashing of the order of the appellate authority. The same cannot be said with regard to an order staying the operation of the order of the appellate authority because in spite of the said order, the order of the appellate authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the appellate authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the appellate authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the appellate authority.

20. Therefore, the effect of the order of stay in a pending appeal before the Apex Court does not amount to 'any declaration of law' but is only binding upon the parties to the said proceedings and at the same time, such interim order does not destroy the binding effect of the judgment of the High Court as a precedent because while granting the interim order, the Apex Court had no occasion to lay down any proposition of law inconsistent with the one declared by the High Court which is impugned.

21. We, therefore, find substance in the contention of the writ petitioner that a Division Bench of this Court having declared the provision contained in the West Bengal Land Reforms Act regarding vesting without making any lawful provision for compensation for such vesting in the Act as ultra vires the [Constitution of India](#), the State cannot be permitted to proceed with the said provision of vesting against

the petitioner so long adequate provision is not made in the statute for compensation.

22. We, thus, respectfully follow the decision of the Division Bench of this Court in the case of Paschim Banga Rajya Bhumijibi Sangha (supra), which is still binding upon us as a valid precedent and consequently, set aside the order passed by the Tribunal on the ground that without making lawful provision of compensation for vesting in the West Bengal Land Reforms Act, the State cannot go on with the process of vesting against the writ petitioner.

23. The order impugned herein as well as the proceedings of vesting are set aside; the writ application is allowed to the extent indicated above. This order, however, will not stand in the way of the State in continuing with the process of vesting if adequate lawful provision is incorporated in the Act for compensation for the vested land.

24. The writ application, thus, succeeds to the extent indicated above.

25. There will, however, no order as to costs.

26. Urgent xerox certified copy of this order, if applied for, be given to the parties within a week after reopening of the Court.