

MobIn Vs. Kausar

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Court : Delhi

Decided On : Dec-10-2012

Judge : G.P. Mittal

Appellant : Mobin

Respondent : Kausar

Advocate for Pet/Ap. : Mr. S.D. Ansari

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

3. d December, 2012 Pronounced on:

10. h December, 2012 + R.P.691/2012 in CM(M) No.1196/2012 MOBIN Through: Petitioner Mr.S.D. Ansari, Advocate Versus KAUSAR Respondent Through: Nemo. CORAM: HON'BLE MR. JUSTICE G.P.MITTAL JUDGMENT G. P. MITTAL, J.

1. By virtue of this Petition, the Petitioner seeks review of the order dated 05.11.2012 passed by this Court whereby the Petition under Article 227 of the Constitution challenging the order dated 31.10.2012 passed by the Rent Control Tribunal(the Lower Appellate Court) was dismissed.

2. The Petitioners grievance is that the Appellant never got an opportunity to prove that the Delhi Rent Control Act, 1958(the Act) has not been extended to the area

where the suit property is situated and this Court erred in holding that the Petitioner had an opportunity to plead and prove this fact during the trial.

3. An Eviction Petition under Section 14(1)(e) of the Act was filed by the Respondent before the Rent Controller Delhi. The Petitioner filed an Application seeking leave to defend the Petition. In the leave to defend, the Petitioner did not aver that the Act is not extended to the area or that the tenancy premises is not covered under the provisions of the Act. By a detailed order dated 17.01.2011, the leave to defend was dismissed by the learned Additional Rent Controller.

4. The Petitioner filed a Civil suit for declaration with consequential relief of injunction against the Respondent stating that no Notification under Section 1(2) of the Act has been issued in respect of the area of Jafrabad and thus the decree passed by the Rent Controller was a nullity. The plaint in the Civil suit was rejected under Order VII Rule 11 CPC on the ground that the plea of non-applicability of the Act was not at all taken before the Court of Learned Additional Rent Controller. The Civil Court held that there was an appropriate remedy of challenging an order passed under Section 14(1)(e) of the Act which could be availed by the Petitioner.

5. The Petitioner filed a Revision Petition before this Court wherein it was, inter alia, pleaded that the tenancy premises was not covered under the provisions of the Act and thus the Additional Rent Controller lacked inherent jurisdiction to entertain and decide the eviction case. The Petitioner also pleaded that a suit filed by him was dismissed by the Court of Civil Judge, Karkardooma Court, Delhi. The Revision Petition was dismissed by the learned Single Judge of this Court by an order dated 05.03.2012.

6. The Respondent took out the execution of the eviction order. It was at this stage that the Petitioner preferred objections to the execution wherein again a plea was taken that the provisions of the Delhi Rent Control Act have not been extended to the area of Jafrabad. The objections were dismissed by the learned Additional Rent Controller by an order dated 03.10.2012. The Appeal filed against dismissal of the objections was dismissed by the Lower Appellate Court by an order dated 31.10.2012. The Petition under Article 227 was dismissed by this Court by an order dated 05.11.2012 which is sought to be reviewed.

7. It is urged by Mr. S.D. Ansari, learned counsel for the Petitioner that since the Petitioner did not have an opportunity to prove that the Delhi Rent Control Act was not extended to the area of Jafrabad, there was an error apparent in the order dated 05.11.2012 where it was stated that the Petitioner had an opportunity to plead and prove these facts during the trial of the Eviction Petition and even in the civil suit.

8. The learned counsel for the Petitioner relies on *Sarup Singh & Anr. v. Union of India & Anr.*, JT 201.(13) SC 6. where it was held that if a decree is found to be nullity, the same can be challenged and interfered with at any subsequent stage and even at the stage of execution proceedings. The learned counsel heavily relies on *Chiranjilal Shrilal Goenka v. Jasjit Singh & Ors.*, 1993(27) DRJ 10. that a decree passed by the Court without jurisdiction is a nullity and is non est. Invalidity of the decree could be set up whenever it is sought to be enforced. The learned counsel further relies on a judgment of the learned Single Judge of this Court in *Rafi Ahmad Khan v. Jalaludin* (RSA No.210/2010) decided on 01.04.2011 where on facts it was found that the Notification under the Act was not extended to the area of Jafrabad.

9. I have earlier mentioned the round of litigation taken by the Petitioner. As stated earlier, the Petitioner in the leave to defend did not plead that the provisions of Section 1(2) of the Delhi Rent Control Act were not extended to the area of Jafrabad. He filed a civil suit which resulted in rejection of the plaint as the plea was not raised before the Rent Controller. The plea was specifically raised in RC Revision Petition No.258/2012 which came to be dismissed by a learned Single Judge by an order dated 05.03.2012. Although, the plea of non-extension of the provisions of the Act to Jafrabad was specifically raised, but it seems to have not been pressed by the Petitioner.

10. A similar question came for consideration before a Division Bench of this Court in *Shri Kishan Chand v. The Union of India & Anr.*, ILR (1976) I Delhi 457 where the question of empowerment of Shri S. Prasada, Deputy Secretary to the Government of India to entertain a Revision Petition under Section 33 of Displaced Persons (Compensation & Rehabilitation) Act (1954) was not raised before the

Deputy Secretary. The same was not raised before the Lower Appellate Court. It was held that the fact that no Gazette Notification was issued empowering Shri S. Prasada, Deputy Secretary to entertain a Revision Petition under Section 33 was not entirely one of law but involves an inquiry into the fact as to whether there was such Notification or not. It was held that the Appellant could not be permitted to plead in the Second Appeal that the authorization of Shri S. Prasada, Deputy Secretary was not by a Gazette Notification. Para 20 of the report is extracted hereunder: (20) The eighth contention of the learned counsel was that Section 33 of the Act empowered the Central Government to exercise revisional powers, that the revision filed by Kishan Chand under Section 33 of the Act was disposed of by Shri S. Prasada, Deputy Secretary to the Government of India, that the Central Government had not delegated its powers under Section 33 to him as provided in Section 34(1) of the Act, that Shri Prasada was not, therefore, competent to exercise the power of revision under Section 33, and that his order (Exhibit P. 17), dated May 6, 1960, was consequently one passed without jurisdiction. There is no force in this contention also. Exhibit P. 18 is an Office Order, dated June 23, 1959, issued by the Secretary, Ministry of Rehabilitation, Government of India, whereby Shri S. Prasada, Deputy Secretary, Ministry of Rehabilitation, was authorised to deal with cases under Section 33 of the Act, with effect from March 12, 1959. When the aforesaid order was pointed out, the learned counsel sought to argue that it was only an office order and had not been gazetted as required by the provision in Section 34(1) of the Act. It is true that Section 34(1) empowers the Central Government to direct by notification in the Official Gazette that any power exercisable by it under the Act may be exercised by such officer subordinate to it as may be specified in the notification. But, the plea that the authorization was not gazetted was not taken specifically in the trial court. In his plaint, Kishan Chand merely pleaded in a general manner that the Deputy Secretary had not the delegated powers of the Central Government. In reply thereto, it was averred in paras 8, 9(h) and 10 of the written statement filed on behalf of the Union of India (defendant

1) that the order under Section 33 was rightly made, that the Deputy Secretary rightly exercised his power in dismissing the revision under Section 33, and that the officer who passed the order was fully competent to do so. The Office Order

(Exhibit P.

18) appears to have been produced and marked on behalf of the plaintiff Kishan Chand. He also got marked another order, Exhibit P.20, passed by Shri Prasada in another case under Section 33 of the Act. Yet, the objection that the authorization was only by an Office Order and not by a Gazette notification was not raised or urged in the trial Court and consequently the same was not considered by the learned Subordinate Judge in his judgment. If the aforesaid objection had been specifically put forward at the earliest stage in the trial court, the opposite party would have had the opportunity to adduce necessary evidence and meet the objection. It was raised in the grounds of appeal but does not appear to have been urged before the lower appellate court. It is an established principle that objection as to competency or jurisdiction of an officer or a court should be specifically put forward at the earliest stage in the proceedings so that the opposite party would be able to explain or rectify the defect, if any. Raising it at the appellate stage would place the opposite party at a disadvantage, and courts do not permit the same in the interest of justice and fair play to the opposite party. The plea that there was no gazette notification is not entirely one of law, but involves an inquiry into the fact as to whether there was such notification or not. In the circumstances, the learned counsel for the appellant cannot be permitted to plead that the authorization of Shri Prasada was not by a Gazette Notification.

11. The question about non-applicability of the Act to the area of Jafrabad was not raised before the Additional Rent Controller. It was raised in the Revision Petition but appears to have not been pressed and, therefore, not answered by this Court. The Petitioner, in the circumstances, was not entitled to raise this issue before the executing court. In *Manojkumar Narottamdas Pandit v. Vadodara Mahanagar Sevasadan*, Special Civil Application No.2935 of 2011 and Civil Application No.3637 of 2012 decided on 13th September, 2012 by a learned Single Judge of Gujarat High Court, it was held as under: It is settled law that an issue raised but not pressed and not answered by the Court in favour of the party raising the said issue is deemed to have been rejected by the Court. In the present case, legality of the departmental inquiry having been challenged by the petitioner but not having been accepted by the Court is deemed to have been rejected by the

Labour Court and for this reason also the Corporation is not estopped in law in relying upon the finding of the departmental inquiry for taking fresh action against the petitioner for proved charges of misconduct.

12. There is no dispute about the proposition of law that the question of lack of inherent jurisdiction can be raised at any stage but it would be possible only when that lack of inherent jurisdiction is apparent on the face of it. If the lack of jurisdiction has to be proved by pleading certain facts, such a plea cannot be permitted to be raised in the execution. The authorities Sarup Singh and Chiranjilal Shrilal Goenka are, therefore, not attracted to the facts of the present case.

13. I have gone through Rafi Ahmad Khan relied on by the learned counsel for the Petitioner. The same does not come to the rescue of the Petitioner as I have already observed above that it was a mixed question of law and fact as to of which revenue estate Jafrabad was part of and whether the provisions of the Act were extended to that or not.

14. Thus, there is no error apparent on the face of record. The Petition is devoid of any merit; the same is accordingly dismissed. (G.P. MITTAL) JUDGE DECEMBER 10 2012 pst

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