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ITEM NO.1A
(For Jt.)

COURT NO.11

SECTION IVA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 1361 OF 2006

TARABAI Appellant (s)

VERSUS

GOVT. OF KARNATAKA & ORS. Respondent(s)

WITH Civil Appeal NO. 3789-3791 of 2007

Date: 03/09/2013 This Appeal was called on for judgment today.

For Appellant(s)

Mr. Rajesh Mahale,Adv.

Mr. R.D. Upadhyay,Adv.

For Respondent(s)

Mr. R.D. Upadhyay,Adv.

Mr. P.R. Ramasesh,Adv.

Mr. Azeem A.Kalebudde,Adv.

Ms. Anitha Shenoy,Adv.

Mr. Rajesh Mahale,Adv.

Hon'ble Mr. Justice H.L. Gokhale pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mrs. Justice Ranjana Prakash Desai.

The appeals are dismissed, though without any order as to costs.

[SUMAN WADHWA]
AR-cum-PS

[SNEH LATA SHARMA]
COURT MASTER

Signed Non-Reportable order is placed on the file.

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1361 OF 2006

Tarabai (Dead) Through L.Rs.

... Appellant (s)

Versus

Govt. of Karnataka & Ors.
Respondent (s)

...

WITH

CIVIL APPEAL NO.3789-3791 OF 2007

J U D G E M E N T

H.L. Gokhale J.

These appeals are filed to challenge a common judgment and order dated 30.9.2005 passed by a learned Single Judge of Karnataka High Court in Regular Second Appeal No.137/2001 and RSA No.215/2001. Both the appeals, which were decided by the learned Single Judge, were concerning the land which was owned by the appellant Tarabai (now deceased) along with her family members. The land consisted of 2 acres 16 guntas in Survey No.16/1A and 1B in Jangamarakoppa Village in District Hubli. The Assistant Commissioner, Dharwad had initiated acquisition proceedings for acquiring the said land by publishing a notification under the Land Acquisition Act, 1894, for the purposes of constructing an administrative building for the benefit of the Small Scale Industries Development Corporation. The Chief Manager, Industrial State Zone-2, Hubli, of this corporation is respondent no.2 in these appeals.

2. Initially the acquisition proceedings were challenged by the above referred appellant by filing a Writ Petition bearing No. 366/1969 before the Karnataka High Court, but during the pendency of the petition a compromise was arrived at, whereby, the respondent No.2 agreed to re-convey the land to the extent of 1.16 acres to the appellant. This was on the condition that the respondent No.2 would use the remaining 1 acre land for building the administrative block. The appellant was also required to use the re-conveyed parcel of land for industrial purposes. The compromise was taken on record and the said Writ Petition was disposed of by the High Court by its order dated 11.12.1970.

3. The appellant received the compensation for the 1 acre of land, and a deed of reconveyance was executed on 25.8.1971 with respect to the remaining parcel of land. It, however, so transpired that the administrative block was not constructed immediately. On the other hand, the said parcel of land was allotted to one M/s Basanth Tiles (appellant in RSA No.137/2001). On coming to know about this development, the appellant filed Original Suit No.519/1984 on 8.10.1984 in the Court of First Additional Munsiff at Hubli. The appellant contended that the respondent No.2 had acted in contravention of the compromise, and the allotment of land in favour of M/s Basanth Tiles was illegal. The appellant, therefore, sought specific performance of the compromise, and return of the said land of 1 acre. It was, however, pointed out by Deputy Commissioner, Dharwad, respondent No.3 herein (defendant No.3 in the suit) that the allotment in favour of M/s Basanth Tiles was in fact a mistake, and they had taken steps to withdraw the same on 16.8.1984 i.e. well before the filing of the suit. M/s Basanth Tiles who were defendant No.4 in the said suit contested the same by contending that they were bona-fide purchasers of the said parcel of land, and had carried out certain developments on the land. It was claimed that they had constructed a bore well and a compound wall around the property.

4. The Trial Court framed various issues, recorded the evidence thereon, and examined the relevant documents, particularly the compromise memo arrived at between the parties, and dismissed the suit by its judgment and order dated 22.2.1992.

(i) The Trial Court held that the Government had become absolute owner in view of the compulsory acquisition of the property, and since the respondent No.2 had not obtained the sanction of the State Government to enter into the compromise, the memo of compromise had no legal force. It

was further held that the respondent No.2 could not have withdrawn the land from acquisition. The Trial Court, therefore, held that the appellant had failed to establish the necessary ingredients to get a decree of specific performance.

(ii) It was also held by the Trial Court that since the notice under Section 80 of C.P.C. was sent on 31.10.1978, and since it was replied to on 12.3.1979, the suit which was filed on 8.10.1984 was clearly beyond the period of limitation. Thus on both these counts the Trial Court dismissed the suit.

5. The appellant filed a Regular Appeal bearing no.56/1992 against this judgment in the Court of Additional Civil Judge (Sr. Division), Hubli.

(i) The Appellate Court reversed the findings of the Trial Court. The First Appellate Court held that the respondent No.2 had admitted in the written statement that the compromise was legal, and had been acted upon, and therefore it could not be contended that the compromise was not enforceable. In para 20 of the judgment it was also observed that though the Government of Karnataka was not a signatory to the compromise, it had not opposed it, and its consent could always be deemed and inferred from its conduct. The Appellate Court also did not accept the plea of the respondent No.2 that the plot was kept for constructing an administrative building. If that was so, it would not have been allotted to M/s Basanth Tiles. The Court, therefore, held that the respondents had acted in contravention of the compromise and, therefore, the appellant was entitled to enforce the same.

(ii) As far as limitation is concerned, the First Appellate Court held that the limitation will have to be calculated from the date of allotment of said land to M/s Basanth Tiles which was 30.5.1984, and therefore the filing of the suit on 8.10.1984 was within limitation. (iii) The

First Appellate Court, however, accepted the contention of M/s Basanth Tiles that it had effected improvement on the land and, therefore, directed the appellant to pay an amount of Rs.1,50,000/- to them to get possession of the suit land. The Court also directed the appellant to refund the amount of compensation to respondents No.1 to 3 which the appellants had received. On these terms, the First Appellate Court directed the land to be re-conveyed to the appellants.

(iv) The Court held that the appellants were always ready and willing to perform their part of the contract but there was a breach on the part of respondent No.2 and, therefore, the decree had to be passed. The appeal was therefore allowed by its judgment and order dated 30.10.2000, and thereby the suit filed by the appellant was decreed.

6. The Government of Karnataka carried the matter to the High Court in Regular Second Appeal No. 215/2001, and M/s Basanth Tiles also filed RSA No.137/2001. Both these appeals were heard and decided by a Single Judge of the Karnataka High Court together. The questions of law, though not very precisely spelt out, but considered by the High Court in its judgment were as follows:-

"(i) Whether the First Appellate Court is justified in law in granting a decree for reconveyance in the absence of any de-notification made by the State Govt. under Section 48 of the Land Acquisition Act ?

(ii) Whether in the facts and circumstances of the case, the respondent No.6 being a bonafide purchaser and when the petitioners were entitled only for damages, was the First Appellate Court justified in decreeing the suit for reconveyance ?

(iii) Whether the suit was barred by limitation?

(iv) Whether there is any mandatory compliance of Section 80 C.P.C, prior to the institution of suit?

(v) Whether the compromise memo, alleged to have been filed before the Court in Writ Petition No.366/1969 is not binding on the respondent - Govt. since it had not signed the compromise memo?"

7. The High Court answered the above questions as follows:-

"(i) That the lower Appellate Court had committed an error in granting a decree for reconveyance although there was no

cause of action for the plaintiff to move to the Civil Court to seek an order of reconveyance. This was because the respondent authorities took steps to revoke the allotment made in favour of Basanth Tiles, and proceeded to act in terms of the compromise well before the suit was filed. Besides there was no notification withdrawing the concerned land from the acquisition under Section 48 of the Land Acquisition Act. The first question of law was therefore held in favour of the Government.

(ii) Neither was the plaintiff entitled to reconveyance, nor was M/s Basanth Tiles entitled to retain possession of the suit property, having regard to the stand of the Government and also the circumstances in which the allotment was made in their favour. As far as the claim of M/s Basanth Tiles for the improvements was concerned, the High Court found that the suit had been filed immediately after coming to know about the allegedly illegal allotment made in favour of M/s Basanth Tiles. Therefore, the improvements if any, would be minimal, and if any improvement had been so made after filing of the suit, those would be at the risk of M/s Basanth Tiles. The High Court, therefore, rejected the contention of M/s Basanth Tiles for any damages.

(iii) On the issue of limitation, the High Court held in favour of the appellant that the real starting point of the limitation was the date of the alleged breach by respondent Nos. 1 to 3 when they allotted the suit land to M/s Basanth Tiles on 30.5.1984. The suit was therefore held to be within limitation.

(iv) The High Court held that the issue of a mandatory notice under Section 80 C.P.C. was not seriously contested by the respondents at the appropriate stage, and in fact there was a notice issued as early as in 1978, calling upon the respondents to re-convey the property in terms of the compromise. The conduct of the respondents throughout showed that the suit had not been seriously objected to or contested on this point. Under such circumstances the contention could not be permitted to be raised for the first time in the Second appeal. The issue was therefore decided in favour of the appellants.

(v) It could not be said that the compromise entered into between the parties was not binding on the Government. However, the requirement of the third defendant/respondent was shown to be still surviving, and the allotment of land to M/s Basanth Tiles was made erroneously, and steps were taken for canceling this allotment even before filing of the suit. Besides there was no time limit provided for constructing the administrative building. Such being the case, the petitioner-plaintiff had no cause of action."

8. For the aforesaid reasons the High Court allowed the appeal in RSA No. 215 of 2001 filed by the Government, and dismissed RSA No. 137 of 2001 filed by M/s Basanth Tiles. No order was made with respect to cost. The High Court held that the Government was entitled to take back possession of the said land from M/s Basanth Tiles. Being aggrieved by this judgment and order the Civil Appeal No. 1361 of 2006 has been filed by Tarabai (Dead) through her L.Rs., and Civil Appeal No. 3789-3791 of 2007 is filed by M/s Basanth Tiles.

9. As far as the Civil Appeal No.1361 of 2006 preferred on behalf of Tarabai by her L.Rs. is concerned, these appellants can not have any grievance with respect to the finding of the High Court that the suit filed by her was within limitation. The High Court has rendered a finding that the contention with respect to the alleged non-issue of the notice under Section 80 could not be permitted to be raised for the first time in the second appeal, when this contention was not raised seriously at any stage earlier. These appellants can certainly not have any objection with respect thereto. In fact a finding was rendered in their favour by the High Court that there was a notice issued as early as in 1978 for seeking reconveyance of the property in terms of the compromise

concerned.

10. The main grievance which Tarabai through her L.Rs have with respect to the High Court judgment is concerning the finding that there was no cause of action for Tarabai to move the Civil Court to seek an order of reconveyance. This observation of the High Court was based on a finding of fact that the Government had moved to revoke the allotment made to M/s Basanth Tiles even before the filing of the suit by Tarabai. In fact the Trial Court had held that the Government and its officers had not acted in contravention of the compromise. Therefore, there was no reason for the First Appellate Court to reverse this finding of fact which is based on the material on record. Thus, there was no breach of the compromise on the part of the Government which would necessitate her to file a suit for specific performance. Once it is held that the Government retracted its steps well in time, there could not be any decree of specific performance based on the alleged breach of the compromise. The finding of the High Court in this behalf, therefore, cannot be disturbed at the instance of the appellant-Tarabai.

11. Similarly, it cannot be disputed that there was no notification issued for withdrawing the land from acquisition as required under Section 48 of the Land Acquisition Act. The concerned parcel of land, therefore, continued to remain with the Government. There was undoubtedly delay on the part of the Government in taking steps which it was expected to take, namely, to construct the administrative building, but that by itself cannot be a ground for decree of specific performance. In the circumstances, there is no substance in the appeal filed by Tarabai through her L.Rs.

12. (i) As far as the appeal filed by M/s Basanth Tiles is concerned, they cannot be unhappy with respect to the dismissal of the suit filed by Tarabai. Their only grievance can be with respect to the observations of the High Court that Government can recover the land from M/s Basanth Tiles. It is submitted on their behalf that these observations could not be made in a suit filed by Tarabai against the Government. Here we must note that the sole reason for Tarabai to file her suit was this very allotment. Once the Government specifically contended and established that steps for cancellation of the allotment were initiated before filing of the suit, the suit had to fail. It was accepted by the Government that there was an error in allotting the land to M/s Basanth Tiles. The claim of M/s Basanth Tiles could only be through the Government. If there was an error on the part of Government in making the allotment, the Government could certainly retract its steps, cancel the allotment and proceed to recover the land, by due process. M/s Basanth Tiles has not raised any plea such as that of promissory estoppel against the Government to claim any right. The observations made by the High Court are to be seen in this context.

(ii) M/s Basanth Tiles were essentially aggrieved by these observations and not so much with respect to the observations that they were not entitled to any damages. The High Court has explained as to why no such claim for damages could be made against the Government in the present suit.

13. Although various authorities were cited on behalf of both the appellants on certain peripheral issues, inasmuch as the principal issues involved in the matter were as discussed earlier hereinabove, and since there was no effective challenge on those aspects, it is not necessary for us to go into those submissions. We may, however, add that though the impugned decision arrived at by the learned Judge is a correct one, we wish that he would have been more careful in the manner in which the judgment is written.

14. Both the appeals are, therefore, dismissed, though without any order as to costs.

.....J.
[H.L. Gokhale]

.....J.
[Ranjana Prakash Desai]

New Delhi

Dated : September 3, 2013