

*** THE HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI**

+ CIVIL MISCELLANEOUS APPEAL No.330 OF 2013

% Dated 07.03.2024

Union of India and 4 Others
Rep by its Secretary Ministry Of Defence New Delhi and 4
others
...Appellants/Petitioners/Respondents

\$ Mrs. D.Divya Reddy and 4 Others
...Respondents/Respondents/Claimants

! Counsel for Appellants: Deputy Solicitor General of India

^ Counsel for Respondents: Sri Sumon

<GIST:

> HEAD NOTE:

? Cases referred

1. Civil Appeal No.2402 of 2019 of the Honourable Supreme Court of India.

THE HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI
CIVIL MISCELLANEOUS APPEAL No.330 OF 2013

J U D G M E N T:

Aggrieved by the Order dated 07.04.2012 in O.P.No.947 of 2009 (impugned Order) passed by the learned II Additional Chief Judge, City Civil Courts, Hyderabad (for short 'learned Chief Judge'), wherein the Original Petition filed by appellants-petitioners to set aside the Award dated 29.04.2009 passed by the Sole Arbitrator-respondent No.5, was dismissed upholding the Award on all aspects except findings with regard to title.

02. For the sake of convenience, hereinafter, the parties will be referred as per their array before the learned Arbitrator.

03. Claimants submitted their claims statement before the learned Arbitrator for recovery of the property bearing bungalow No.219/1, admeasuring Ac.1.85 in Sy.No.170 at situate at Old Staff Lines, Gymkhana Ground, Secunderabad (Thokatta village) contending that the said bungalow was obtained by appellants herein on

lease by virtue of Lease Deed dated 21.06.1952 entered into between Ghousunnissa Begum and Defence Estates Officer. One Sri G.Narsing Rao Cullapah was the original owner and possessor of bungalow bearing No.219 (old 224) and he sold the said bungalow to Mrs.Sultanee Begum under registered document in the month of December, 1868, which was registered with Quarter Master General as he was the authority for keeping the track of transfers. After the death of Sultanee Begum, her son Mr. Nawab Mirja Parvarish Ali Khan succeeded to the property and he sold the same in favour of Molvi Abdul Hayee Shah Saheb Inmziul Kadri under a Registered Sale Deed dated 24.11.1922 bearing document No.975/22.

04. Thereafter, Molvi Abdul Hayee Shah Saheb Inmziul Kadri constructed one more bungalow and got the same assessed as No.219/1 and he has gifted the property in favour of his daughters viz., Raheemunnisa Begum alias Hadis Bibi, Ghousunnisa Begum alias Nafis, Bakatunnisa Begum through Registered Gift Deed No.797/1935. As per the gift deed, the bungalow bearing No.219/1 together with

appurtenant land was gifted to Ghousunnisa Begum alias Nafis. There was error in the document with regard to number of the bungalow and the same was subsequently rectified under Rectification Deed No.9/46. Smt.Ghousunnisa Begum being absolute owner and possessor of bungalow bearing No.219/1 agreed to hire the building to respondents under Hiring Deed dated 21.06.1952 on a monthly rental of Rs.179/-. Lease commenced from 18.02.1952.

05. The bungalow which was leased, not being used for several decades and became damaged and currently in dilapidated condition. Smt.Ghousunnisa Begum sold bungalow bearing No. 219/1 to one Sri D.Radhakrishna Reddy under Registered Sale Deed dated 02.08.1962 vide Document No.1118 of 1962 and delivered constructive possession and tenancy was attained in favour of Sri D.Radhakrishna Reddy, who executed a Will deed during his lifetime and bequeathed the said property in favour of his grandchildren who are the claimants. Sri D.Radhakrishna Reddy expired on 11.06.1988 and

claimants being legatees succeeded to the property and became absolute owners.

06. The bungalow bearing No.219/1 was always treated as private property and the then Nizam gifted 13 villages to Britishers vide Gazette Notification No.41, Hyderabad Residency dated 28.08.1906 A.D., for establishing cantonments which included Thokatta Village but never transferred right, ownership or title in respect of the villages. Therefore, Cantonment Act and Orders passed by Governor General were never applicable to 13 villagers given by Nizam. After sale in favor of Sri D.Radhakrishna Reddy, respondents paid rents to Sri D.Radhakrishna Reddy but the same were being received by him under protest.

07. The Military Estate Officer addressed a letter dated 25.01.1974 *inter alia* claiming that subject property is governed by GGO 179/1836. It is the specific case of petitioners-appellants that GGO 179/1836 is not applicable to the Nizam Territory and mentioning of applicability of GGO 179 in the sale deed executed by

Ghousunnissa Begum was under coercion, as military authorities did not accord sanction for selling the property by her and she was in need of money. Claimants further claimed that late Radhakrishna Reddy requesting for de-hiring bungalow but respondents did not respond positively. Therefore, he has got issued notice in terms of Section 106 of the Transfer of Property Act. For de-hiring the bungalow, the respondents put up unreasonable conditions, but during his lifetime, Sri D.Radhakrishna Reddy did not give any undertaking as demanded. Because of various disputes, respondents sought opinion from the then Attorney General and he has given opinion dated 06.01.1992 stating that the subject property is private property. In spite of their repeated requests for vacating the premises are not complied by respondents, for which claimants initiated proceedings before the learned Arbitrator in terms of arbitration clause in the hire agreement.

08. It is the case of respondents that bungalow bearing No.219 belongs to the Central Government

(Ministry of Defence) and the same is classified as 'B' and placed under the management of the Defence Estates Officer. The purchase of property under Registered Sale Deed dated 02.12.1868 by Sultanee Begum was not valid and the same was just certified but right was not transferred. The original holder of the property enjoyed ownership rights only in respect of superstructures, but the ownership of land in question and trees standing thereon continued to vest with Central Government. The right of occupancy over land is popularly known as old grant. Under the terms of said grant, the holder of occupancy right will not hold the premises or the same cannot be used for any other purposes other than residential and the holder of occupancy rights cannot transfer the rights of the land without prior permission in writing from the Central Government. The land is resumable by the Central Government after issuance of notice of resumption on payment of assessed compensation for the authorized structures. The Special Officer while preparing GLR during the year 1933 recorded the name of

one Sri Syed Shah Abdullah Bhoy as holder of occupancy in respect of bungalow.

09. During the year 1962, Ghousunnissa Begum along with Sri D.Radhakrishna Reddy proposed to purchase bungalow No.219/1 comprised in GLR Sy.No.464 admeasuring Acs.01.85 applied seeking permission for transferring this holding in favour of Sri D.Radhakrishna Reddy. In their application, both of them acknowledged the Government rights whereupon no objection for transfer of property was granted subject to condition that the sale deed should be registered as per the draft sale deed submitted to the respondents' office. The sale deed wherein Sri D.Radhakrishna Reddy categorically deliberated about the transfer of bungalow only and not about land subject to limitation laid down in GGO 179 dated 12.09.1836. The subject bungalow No.219/1 is falling in part of revenue Sy.No.170 of Thokatta. According to pahani patrika Rev.Sy.No.170 of Thokatta village is recorded as Sarkari Abadi. Sri D.Radhakrishna Reddy fully aware that Ghousinnisa Begum was holding only

occupancy rights and proprietary rights but the land comprising GLR Sy.No.464 (bungalow No.219/1) is held on Old Grant terms. Lease by Smt.Ghousunnissa Begum is for an indefinite period and rents were being paid to Sri D.Radhakrishna Reddy. Dehiring request made by Radhakrishna Reddy were sanctioned on the conditions (i) the owner shall accept Government right to resume the right at any time after giving due notice and paying compensation for authorized structures, (ii) dehiring shall be quoted as a plea for exemption from resumption as and when such exemption becomes necessary, (iii) surrounding land will not be transferred to the owner on ownership basis, (iv) the owner will not be allowed to construct additional building on land. But Sri D.Radhakrishna Reddy requested that building be dehired without any condition. As per the policy laid down in Government of India, Ministry of Defence a letter No.F11013/73/D(Lands)/Vol.III dated 18.06.1982, the bungalows held on hiring by the Government where the sites are held by occupancy holders on resumable tenure will not be dehired. As per Clause 16 of the Lease, the

matter shall be referred to Arbitrator to be appointed by Government of India. The purchaser D.Radhakrishna Reddy is bound by hiring agreement. The opinion of the Attorney General of India is not binding on respondents. Respondents submitted that claimants are not entitled for any relief and the prayer of the claimants deserves to be rejected.

10. Sole Arbitrator-respondent No.5 was appointed by way of Order of this Court dated 13.09.2007 in Arbitration Application No.32 of 2007 and after conducting Arbitration proceedings and on hearing both sides, learned Arbitrator passed an Award dated 29.04.2009 in favour of claimants holding that they are lawfully entitled to the subject property and that respondents are bound to deliver vacant possession of the same to claimants as sought for and also directed respondents to vacate the schedule premises i.e., bungalow bearing No.219/1, admeasuring Ac.1.85 guntas in Sy.No.170 at Old Staff Lines, Gymkhana Road, Secunderabad (Thokotta Village) and handover the vacant and peaceful possession of the same to claimants.

11. Aggrieved by the same, the petitioners-appellants filed Original Petition before the learned II Additional Chief Judge, Hyderabad vide O.P.No.947 of 2009, however, the same was dismissed upholding the Award on all aspects except findings with regard to title. Aggrieved by the same, appellants have filed the present Civil Miscellaneous Appeal to set aside the impugned Order dated 07.04.2012 in O.P.No.947 of 2009 passed by the learned II Additional Chief Judge, City Civil Courts, Hyderabad.

12. Heard learned Deputy Solicitor General of India appearing on behalf of appellants and Sri C.Sumon, learned counsel for respondents and perused the record.

13. Now the point for consideration is:

Whether the impugned Order dated 07.04.2012 passed in O.P.No.947 of 2009 by the learned II Additional Chief Judge, City Civil Courts, Hyderabad, is liable to be set aside?

POINT:

14. It is the case of the learned Deputy Solicitor General of India appearing on behalf of appellants that the

subject property bungalow bearing No.219 belongs to the Central Government (Ministry of Defence) classified as B(3) under management of Defence Estate Officer and is held on Old Grant terms governed under GGO No.179/1836 and that grantee is only having occupancy rights over the land and the ownership rights are vested with the Ministry of Defence, Government of India and that the learned Chief Judge failed to appreciate the fact that the entries made in pahani produced by appellants in clear and categorical terms reveal the nature of the land as the Government land and that as per Clause 18 of the Lease Deed dated 21.06.1952 the subject matter of reference was only regarding the termination of the lease and handing over possession. Hence, prayed this Court to allow this Civil Miscellaneous Appeal.

15. It is the case of the learned counsel for respondents that the scope of interfering with the arbitration award is very limited until and unless there is error apparent on the face of the record and there is perversity in the award. The learned Chief Judge rightly

set aside the findings of the learned Arbitrator with regard to the title of the subject property and came to a correct conclusion in confirming the direction to evict respondents from the subject property and prayed this Court to dismiss this Civil Miscellaneous Appeal.

16. As seen from the Agreement of Lease dated 21.06.1952 there is no mention about the application of GGO 179 of 1836 and it is evident that the property is leased out and all the terms of are mentioned. The proceedings before the learned Arbitrator were pursuant to the arbitration clause in the said Agreement of Lease dated 21.06.1952. Learned Arbitrator has invoked Section 116 of Evidence Act, which is statutory estoppel against the tenant for denying the title of landlord. Respondents are trying to distinguish that the bungalow was permitted to be constructed as an old grant and the same can be resumed at any time by the Union of India in terms of GGO 179 of 1836.

17. The main crux of the case is that in pursuant to Agreement dated 21.06.1952, the building which was

leased out, lessor wants back the building and claimants are claiming title to the subject property under Arbitration proceedings. The fact remains that the arbitral dispute is only with regard to rights of lessor and lessee pursuant to agreement of lease.

18. As seen from the Award passed by the learned Arbitrator, a dispute of title was raised and certain findings were given by the learned Arbitrator. It is pertinent to state that proceedings in question were not for resumption of old grant nor for declaration of title and such proceedings are certainly outside arbitral clause in Agreement dated 21.06.1952. Therefore, there is no scope for declaring the title of claimants in the arbitral proceedings. Hence, the learned Chief Judge cannot be found fault in setting aside the findings over the title of the subject property in view of Section 34 (2)(a)(iv) of the Arbitration and Conciliation Act, 1996.

19. In ***Vidya Drolia and Others v. Durga Trading Corporation***¹ the Honourable Supreme Court held that:

¹ Civil Appeal No.2402 of 2019

“In Booz Allen & Hamilton Inc., it was held that in eviction or tenancy matters governed by special statutes and where the tenant enjoys statutory protection, only the specified court has been conferred jurisdiction. In Himangni Enterprises relying on the said ratios holds that though the Delhi Rent Act is not applicable, it does not follow that the Arbitration Act would be applicable so as to confer jurisdiction on the arbitrator. Even in cases of tenancies governed by the Transfer of Property Act, the dispute would be triable by the civil court and not by the arbitrator.”

20. It is apt to mention here that the left over remedy for either parties is to file a civil suit before competent jurisdictional Civil Court for agitating their claim over the subject property but they cannot claim their title through the arbitral proceedings.

21. In such circumstances, this Court is of the considered view that the learned Arbitrator after adjudicating all the aspects has rightly passed the award on all other aspects except giving finding over the title of the subject property, which was already been rightly set aside by the learned Chief Judge and the interference of this Court in the impugned Order is unwarranted, more

particularly, when the scope of interference in the arbitral awards passed under Sections 34 and 37 of the Arbitration and Conciliation Act, is very minimum.

22. In view of the above facts and circumstances, viewed from any angle, this Court is of the opinion that the learned Chief Judge after considering all the aspects has passed the impugned Order. The appellant failed to make out any of the grounds to set aside the impugned Order. There are no merits in this Civil Miscellaneous Appeal and accordingly, the same is liable to be dismissed.

23. Accordingly, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

As a sequel, pending Miscellaneous applications, if any, shall stand closed.

JUSTICE M.G.PRIYADARSINI

Date: 07-MAR-2024
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