

PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
PRAVIN JETHALAL KAMDAR (DEAD) BY LRS.

DATE OF JUDGMENT: 07/03/2000

BENCH:
S.S.Ahmad, Y.K.Sabharwal

JUDGMENT:

Y.K.SABHARWAL J.

The respondent, now represented through his legal heirs, is the original plaintiff in a suit for declaration and possession filed against the appellant - State of Maharashtra and others. The suit was filed on 22nd August, 1976, seeking a declaration that the order dated 26th May, 1976 by which the right of pre-emption was exercised by defendants 1 and 2 (State of Maharashtra and Deputy Collector and Competent Authority Urban Land Ceiling, Nagpur respectively) to purchase the property in question and the sale deed dated 23rd August, 1976, obtained from the plaintiff in pursuance of the said order was null and void and do not confer any right title or interest in the property in favour of defendants. A decree for possession was also sought against refund of Rs.2,60,000/- received by the plaintiff under the sale deed dated 23rd August, 1976. The facts in brief and in respect whereof, there is hardly any dispute are.

The Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'the Act') came into force for the State of Maharashtra w.e.f. 17th February, 1976. The plaintiff claims that he was not holding any land in excess of the ceiling limit prescribed under the Act and, therefore, was under no obligation to file a return under Section 6(1) of the Act before the competent authority. The plaintiff wanted to sell the suit property to his relations and business acquaintances with whom he entered into an agreement of sale dated 31st March, 1976 for sale of the suit property for consideration of Rs. 2,60,000/-. Section 27(1) of the Act required the plaintiff and the prospective purchaser to obtain permission from the competent authority under the Act to sell the suit property. According to the plaintiff, the application for grant of the said permission to sell the property to prospective purchaser was rejected by the competent authority by order dated 26th May, 1976 and further by the same order, the competent authority exercised option to buy the property on behalf of the State of Maharashtra. The plaintiff was offered the same consideration which was to be paid to the plaintiff by the prospective purchaser, i.e., Rs.2,60,000/-. Thus, pursuant

to the order dated 26th May, 1976, passed under Section 27 of the Act, a sale deed dated 23rd August, 1976 was executed between the plaintiff and the State of Maharashtra and possession was also taken over by defendant no. 3, namely, Deputy Commissioner of Sales Tax, Eastern Division, Nagpur. Since then, the suit property is in possession of defendant no. 3.

In *Maharao Sahib Shri Bhim Singhji v. Union of India and Ors.* [(1981) 1 SCC 166], this Court upheld the validity of the Act except Section 27(1) insofar as the said provision imposed a restriction on transfer of any urban or urbanisable land with a building or a part of on such building, which was within the ceiling limit. Section 27(1) to the extent it sought to affect the right of a person to dispose of his urban property within the ceiling limit was held invalid. In view of this decision, the plaintiff claimed in the suit that the order dated 26th May, 1976 and sale deed executed pursuant thereto on 23rd August, 1976 were null and void since what was sought to be sold to the prospective purchaser was the property within the ceiling limit and the plaintiff was entitled to a decree of declaration that the impugned order and the sale deed are illegal and invalid and do not confer right of ownership on defendants. The possession taken pursuant to above was claimed to be illegal and thus the plaintiff is entitled to recovery of possession besides damages for wrongful use and occupation at the average market rental value of the property. It has also been pleaded that the plaintiff was ready and willing to return the amount of Rs.2,60,000/- paid to him under the sale deed dated 23rd August, 1976.

The suit was dismissed by the trial court. In the appeal reversing the decision of the trial court, the High Court has passed a decree for possession in favour of the plaintiff on his deposit of sum of Rs.2,60,000/- which has been directed to be paid to the defendants/appellants. Under these circumstances, the State of Maharashtra has filed the present appeal.

Article 58 of the Limitation Act, 1963, prescribes limitation of three years from the date when the right to sue first accrues to obtain a declaration. Under Article 65, the period of limitation prescribed for filing a suit for possession of immovable property or any interest therein based on title is 12 years from the date when possession of the defendants becomes adverse to the plaintiff. The contention urged on behalf of the State Government was that Article 58 of the Limitation Act was applicable as the plaintiff had sought declaration about the invalidity of the order dated 26th May, 1976 and sale deed dated 23rd August, 1976 and that the period of limitation of three years had to be computed from 26th May, 1976 and, therefore, the suit filed on 22nd August, 1988 was hopelessly barred by time. This contention was rejected by the High Court as also by the trial court. The contention urged on behalf of the plaintiff and which has been accepted is that the suit is basically for possession of the property based upon title and the sale deed dated 23rd August, 1976 and the order dated 26th May, 1976 being void ab initio and without jurisdiction, a plea about its invalidity can be raised in any proceedings and it is not necessary to claim any declaration and thus Article 65 which deals with suit for possession based on title would be applicable from the date, the possession of the defendant becomes adverse to the

plaintiff. The High Court held that in view of the order and the sale deed being null and void and without jurisdiction, the same have no existence in the eyes of law and the plea about invalidity of these documents can be raised in any proceedings and no separate declaration is necessary to be sought. It held that the suit for possession would be governed by Article 65 of the Limitation Act, 1963. It was further held that a suit is within time even from the date when the possession of the suit property was taken on the execution of the sale deed on 23rd August, 1976.

As already noticed, in Bhim Singhji's case (supra), Section 27(1) insofar as it imposes a restriction on transfer of any urban or urbanisable land with a building or a portion of such building, which is within the ceiling area, has been held to be invalid. Thus, it has not been and cannot be disputed that the order dated 26th May, 1976, was without jurisdiction and nullity. Consequently, sale deed executed pursuant to the said order would also be a nullity. It was not necessary to seek a declaration about the invalidity of the said order and the sale deed. The fact of plaintiff having sought such a declaration is of no consequence. When possession has been taken by the appellants pursuant to void documents, Article 65 of the Limitation Act will apply and the limitation to file the suit would be 12 years. When these documents are null and void, ignoring them a suit for possession simpliciter could be filed and in the course of the suit it could be contended that these documents are nullity. In *Ajudh Raj and Ors. v. Moti S/o Mussadi* [(1991) 3 SCC 136] this Court said that if the order has been passed without jurisdiction, the same can be ignored as nullity, that is, non-existent in the eyes of law and is not necessary to set it aside; and such a suit will be governed by Article 65 of the Limitation Act. The contention that the suit was time barred has no merit. The suit has been rightly held to have been filed within the period prescribed by the Limitation Act.

Next, it was contended that simply on account of Section 27(1) to the extent stated above having been declared unconstitutional, it does not follow that the petitioner is entitled to equitable relief particularly when he accepted the sale consideration and executed the sale deed. Reliance has been placed on the decision of *Mafatlal Industries Ltd. and Ors. v. Union of India & Ors.* [(1997) 5 SCC 536] holding that equitable considerations cannot be held to be irrelevant in case of claim for refund under Section 72 of the Contract Act or in a writ petition filed under Article 226 or 32 of the Constitution. That was a case where refund was not directed despite invalidity of the provisions under which duties had been paid or collected as person claiming the refund had passed on the burden of duty to others and had not suffered any prejudice or loss and, therefore, no directions were issued for refund. It was held that under these circumstances there is no question of reimbursement to such a person. The principles laid down in *Mafatlal Industries'* case have no applicability to the facts of the present case. It cannot be said that the plaintiff has not suffered any prejudice or loss. It is not a case of a voluntary sale. The plaintiff had to execute the sale deed on account of an illegal and without jurisdiction order made under Section 27(1) of the Act in respect of property within the ceiling limit. If the plaintiff has retained the sum of Rs.2,60,000/- all these

years, at the same time, defendants have also retained the possession of the property. The plaintiff on his own did not want to sell the property to the defendants/appellants. The fact that the same amount of consideration as mentioned in the agreement of sale was paid to the plaintiff by the defendants, is of no relevance. On the facts of the case, it cannot be held that there are any equitable considerations against the plaintiff to warrant the denial of relief of possession granted to him by the High Court.

For the foregoing reasons, the appeal is dismissed leaving the parties to bear their own costs.

JUDIS