

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 19552 OF 2013

Deo Kalya Patil & Ors.

...Petitioners

Versus

Nagindas Shamjibhai Shah Thr. Lrs. & Ors.

...Respondents

J U D G M E N T

Chelameswar, J.

1. The petitioners herein are the plaintiffs in suit No .632 of 2010 on the file of the Special Civil Judge (Senior Division), Thane and the respondents are the defendants therein. For the sake of convenience they are referred to in this judgment as they are in the suit. The suit is filed with the prayers as follow:-

- (a) it be declared that the suit lands were agricultural lands on 1.4.1957;
- (b) if be declared that the predecessor-in-title – Kalya Padya Patil of the Plaintiffs was lawfully in possession and cultivating the suit lands on 1.4.1957 as tenant thereof and consequently had become the deemed purchaser thereof and the Plaintiffs being the heirs of said Kalya Padya Patil are therefore entitled to the benefits conferred upon him by the provisions of B.T. & A.L. Act.
- (c) It be declared that the Sale transactions that took place after the Tillers Day i.e. dated 22.3.1960, 21.10.1963 and 30.5.1964 which were recorded in the Mutation Entry Nos. 357, 466 and 467 respectively, are illegal, bad in law, void ab-initio and not binding upon the Plaintiffs.
- (d) It be declared that the proceedings i.e. Tenancy Case No. 22 of 1964 and 23 of 1964 initiated by the predecessor-in-title of Defendant Nos. 1 to 6 were not maintainable hence, the orders dated 30.1.1965 passed in the said proceedings are without jurisdiction, nullity and not binding upon the Plaintiffs.
- (e) It be declared that the Plaintiffs being the heirs of the said Kalya Padya Patil (since deceased) are entitled to the entire compensation which was wrongly awarded by the CIDCO to the Defendant Nos. 1 to 6.
- (f) It be declared that the Plaintiffs being the heirs of the said Kalya Padya Patil (since deceased) are entitled to the allotment of land/plots as per the 12.5% scheme framed by the CIDCO.
- (g) The Hon'ble Court may be pleased to issue perpetual injunction to restrain the Defendant No. 7, its servants, agents, officers, etc. from allotting lands under 12.5% scheme by it in favour of Defendant No. 1 to 6 or any person claiming under them.
- (h) Pending the hearing and final disposal of this suit and injunction application, the Hon'ble Court may be pleased to grant an Ad-Interim Injunctions in terms of clause (g) above.
- (i) To award any other relief this Hon'ble Court may deem fit and proper in the circumstances of the case.
- (j) To award the cost of the suit."

2. Along with the suit, the plaintiffs filed an application for injunction against the 7th defendant (City and Industrial Development Corporation) from allotting any land under a scheme said to have been propounded by the 7th defendant in favour of any one of the defendants or persons claiming through the defendants. By an order dated 23.12.2010 of the trial court, the injunction as prayed for was granted. The defendants appealed to the High Court. The said appeal was disposed of by setting aside the order of the trial court with a further direction:

“16.....that the original Defendant No. 7 CIDCO is at liberty to scrutinize the application made by the original Defendant Nos. 1 to 6/Appellants before me and in the event the CIDCO decides to allot the land under 12.5% scheme in their favour and issues an Allotment letter, that order and direction of the CIDCO and all steps in furtherance thereof shall abide by the outcome of this civil suit, namely, Special Civil Suit No. 632 of 2010.”

along with certain observations, the details of which may not be necessary for the present purpose.

3. Aggrieved by the same, the plaintiffs preferred the instant SLP.

4. The litigation has a long and checkered history. It is the admitted case that both the parties claim their respective rights in the suit scheduled property through a common predecessors in interest Ibrahim Shahabuddin and Mariamba Mohammed. The plaintiffs claim that their predecessor in title one Kalya Padya Patil (for short “Kalya Patil”) was the tenant of the suit scheduled property. The plaintiffs do not describe what exactly is their relationship with Kalya Patil either in the cause title or in the body of the plaint (copy of the plaint is placed on the record of this Court), except saying that they are the “heirs and legal representatives of Kalya Patil who died on 27.7.1963”.

5. It is the case of the plaintiffs that Kalya Patil’s name is entered as a protected tenant in the concerned revenue records “the plaintiff states that in the survey that took place in 1946, the said Kalya Patil (deceased) was found in possession of following 14 survey numbers forming part of suit lands..... Accordingly, his name was mutated in the revenue records as a protected tenant by effecting Mutation Entry No. 289.”

6. It is also the case of the plaintiffs that the predecessor in interest of the defendants one Mavjibhai Gohil “had purchased certain lands along with the suit lands in 1944 from Ibrahim Shahabuddin and Mariamba Mohammed.”

7. On 30th June, 1964, the suit scheduled property along with other properties was acquired under the provisions of the Maharashtra Industrial Development Act.

8. In the year 1977, the plaintiffs filed tenancy application No. 23 of 1979 seeking enquiry under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the “Tenancy Act”). The said case was dismissed on 11.12.1980. Plaintiffs carried the matter in Appeal No. 2/1981 unsuccessfully. By an order dated 25.2.1983, the said appeal was also dismissed. The whole process is described in the plaint at para 30 as follows:-

“The Plaintiff state that the said case No. 23/79 was dismissed on 11.12.1980 by the Additional Tehsildar. The Plaintiffs, therefore, filed Tenancy Appeal No. 2 of 1981 before the Sub-Divisional Officer. The Sub-Divisional Officer dismissed the Appeal on 25.2.1983. The Plaintiffs, thereafter, filed Tenancy Application No. 202 of 1983 before the Maharashtra Administrative Tribunal. The Hon’ble Tribunal allowed the Revision by its order dated 9.12.1985

and set aside the orders dated 11.12.1980 and 25.2.1983 and directed that question of tenancy of the Plaintiffs be determined from the year 1977. In short the matter was remanded for fresh enquiry in respect of tenancy rights of the Plaintiffs.”
(Plaint)

9. The order of the Maharashtra Administrative Tribunal dated 9.12.1995 was challenged by the predecessors in interest of the defendants in Writ Petition No. 3446 of 1986.

“32. The Plaintiffs state that the said Nagindas Shah (deceased), Smt. Jayalaxmi (deceased) and Rasikabai challenged the said order dated 9.12.1985 by filing Writ Petition No. 3446 of 1986. On 24th August, 2000, the said petition was disposed of finally by the Hon’ble Mr. Justice T.K. Chandrashekhar Das. The Plaintiffs file copy of the Judgement and Order 24.8.2000 and shall rely upon the same. The Hon’ble High Court remanded the matter back to the Tahsildar for fresh enquiry as to decide what was the character of the suit land on 1.4.57. The Defendants predecessor-in-title therefore filed Special Leave Petition in the Hon’ble Supreme Court, which was dismissed.”

10. In view of the Order passed by the High Court on 24th August, 2000, remanding the matter for fresh enquiry, the Tehsildar by his Order dated 12.8.2002 held that the plaintiffs are the protected tenants of the suit land as on 1.4.1957. The defendants carried the matter in Appeal No. 163 of 2002 in the Court of the Sub-Divisional Officer, Thane. The said appeal was allowed on 8.5.2003.

11. Aggrieved by the said appellate order, the plaintiff carried the matter in revision Application No. 292/B/2003 before the Commissioner, Konkan Division, Mumbai. Along with the revision, the plaintiffs sought a stay of the operation of the appeal order dated 8.5.2003 when the interim order was declined. Plaintiffs preferred a writ petition No. 6116 of 2003 challenging the said order. The High Court, by its order dated 2.12.2003, directed the District Commissioner to consider the said application on merits while directing the stay of the execution of the appellate order dated 8.5.2003 in favour of the defendants. The Commissioner, once again considered the case on merits in obedience to the order of the High Court, and stayed the order dated 8.5.2004. Challenging the same, the plaintiff again filed another Writ Petition No. 5652 of 2004. During the pendency of the said writ petition, on 14.7.2004 the High Court directed that no land be allotted in favour of the defendants pursuant to the scheme dated 16.12.1990, referred to supra.

12. On 18.12.2009, the revision No. 292/B/2003 came to be dismissed. As a consequence, writ petition No. 5652 of 2004 also came to be dismissed holding that in the background of the above-mentioned intensely contested facts, writ petition is not an appropriate remedy and granted liberty to the plaintiffs to file a suit. Hence Suit No. 632 of 2010.

13. In the said suit, the plaintiffs filed an application under Order XXXIX Rule 1 & 2 CPC with a prayer as follows:

“It is, therefore, prayed pending hearing and disposal of this Suit and this Application, the Hon’ble Court may be pleased to issue ad-interim ex-parte injunction against the Defendant No.7, its servant, agents, officers, etc. from allotting any land under 12.5% scheme to Defendant No.1 to 6 or any person claiming under them.”

14. By an order dated 23.12.2010, the learned Jt. Civil Judge, S.D., Thane allowed the application. The operative portion of the order reads as follows:

“37) The foregoing facts would make it clear that many more questions have been raised in the dispute, which require adjudication on its own merits for which there definitely exists a prima-facie case and the triable issues.

The question raised by plaintiffs, have its concern with legal rights and its declaration, for the reasons of which at this juncture, no interference can be jumped at that the wrong, if any, would be capable of being compensated in money terms. But as the question of legal rights and legal character is involved in the dispute, the only logical

interference prevails at this juncture that in the event of withholding the relief probability cannot be ruled out that intermediate damages would be caused to plaintiffs.

Parties are litigating for years together right from the year 1963 onwards till date. And during crucial period of such litigation, suit property was ordered to be preserved in status-quo so as to protect the rights and interests of the rightful persons. Such rights are yet to be finally decided, for which present suit is claimed to have instituted. This being the factual position, no interference surfaces in a fashion that granting the relief would anyway have adverse effect of any sort, especially on defendants No.1 to 6, who claim themselves to be beneficiaries under the scheme, particularly when plaintiffs also claim entitlement to the similar benefit which is claimed by defendants No.1 to 6. And being so, unless and until legal status and character of the persons competent and entitled to declaration of rights sought herein, is not so finally declared, any action on the part of defendant No.7 would amount to unnecessary haste, not at all warranted in available situation, for the reasons of which balance at this juncture definitely tilts in plaintiffs favour. As such, the points are replied accordingly, with order to follow:

ORDER

1. Application Exh.5 is allowed.
2. Defendant No.7 is temporarily restrained from making allotment of land under 12.5% scheme in favour of Defendants No.1 to 6 until disposal of main suit."

15. Aggrieved by the same, the defendants carried the matter in appeal to the High Court of Bombay which came to be allowed by the order impugned herein. The High Court noticed various proceedings reiterated by the plaintiffs without success and opined that the Courts below ignored the said fact

while granting the injunction. The relevant portion of the said order reads as follows:

“14. To my mind, there is a serious issue which needs to be tried as to whether the status as claimed and the declaration sought can be given in the facts and circumstances by the Civil Court. As held this issue cannot be ignored and, equally, maintainability of the proceedings. The Plaintiffs do not dispute that their predecessor has not been successful in obtaining that declaration. The last order in the list of dates and events, namely, that of the Maharashtra Revenue Tribunal dated 8th December, 2009 records all findings against the original Plaintiffs.

15. When such serious issues were raised with regard to the maintainability of the proceedings and after checkered litigation, then, the Trial Court should not have restrained the CIDCO from making allotment of the land under 12.5% in favour of the Appellants/Original Defendant Nos.1 to 6 until disposal of the main suit. There is nothing in the impugned order which would enable me to hold that the original Plaintiffs have made out a strong prima facie case, that the balance of convenience is in their favour or that irreparable loss and injury would be caused to them if merely the CIDCO processes the application of the Defendant Nos.1 to 6/Appellants before me and makes any allotment in their favour.”

JUDGMENT

16. The plaintiffs in their pleadings of Suit No.632 of 2010 at para 19 have admitted that in the prior proceedings initiated by the predecessors-in-title of the plaintiffs Deo Kalya, Rama Kalya, Halya Kalya and Smt. Barkibai Kalya made statements to the effect that their names were wrongly entered in the

revenue records through oversight. The said paragraph reads as follows:

“In order to deprive the plaintiffs from participating in acquisition proceedings and claiming proportionate share in the compensation, the predecessors in title of defendants 1 to 6 without having locus and valid title deliberately filed Tenancy Case No.22/64 against Rama Kalya Patil and four others and 23/64 against Deo Kalya Patil to seek negative declaration that they were not concerned with the 49 Acres of the suit lands. In the said proceedings the predecessors in title of Defendants 1 to 6 by taking undue advantage of their poverty and illiteracy managed to procure depositions of Deo Kalya, Rama Kalya, Halya Kalya and Smt. Barkibai Kalya on 23.1.1965 against their own interest to the effect that their names were wrongly entered in the revenue records through oversight. The Tenancy Awal Karkun without holding any enquiry accepted depositions of the said persons as it is and deleted their names by his orders dated 30.1.1965. Copies of the depositions are filed herewith and the plaintiffs shall rely upon the same. The copies of the Orders dated 30.1.1965 are filed herewith and the plaintiffs shall rely upon the same.”

17. We do not wish to examine the implication of the said statement as such examination by this Court at this stage is, in our opinion, likely to adversely effect the rights of the parties in the suit one way or the other but it is a relevant factor which ought to be kept in mind before granting an interim order, such as the one passed by the trial Court.

18. Shri Dushyant Dave, learned senior counsel for the plaintiffs submitted that since the Tenancy Act is meant for protecting the interest of the tenants, the High Court (by the impugned judgment) ought not to have interfered with the interim injunction granted by the trial Court.

19. In response, Shri Harish N. Salve, learned senior counsel for the defendants submitted that the plaintiffs have already parted with their rights by assigning their rights, title or interest, whatever they assert in the disputed property, in favour of a third party for a consideration of an amount of Rs.8,39,14,001/-.

20. In our opinion, the petition such as the one on hand ought to have been dismissed on the simple ground that it arises out of an interlocutory order during the pendency of the suit. The legality of such interlocutory order has already been considered by an appellate Court which is a constitutional Court. But in matters where the stake is huge, such as the one on hand, passionate arguments are advanced before this

