Safiya Bee vs Mohd. Vajahath Hussain @ Fasi on 16 December, 2010

Equivalent citations: AIR 2011 SUPREME COURT 421

Author: Cyriac Joseph

Bench: Cyriac Joseph, V.S. Sirpurkar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10664 OF 2010
(arising out of S.L.P.(C) No. 21199 of 2007)

Safiya Bee .... Appellant

v.

Mohd. Vajahath Hussain alias Fasi ....Respondent

JUDGMENT

CYRIAC JOSEPH, J.

1. Leave granted.

2. According to the appellant Safiya Bee, vide a registered Sale Deed dated 5th February, 1969, she had purchased from one Mohd. Hussain houses bearing Nos. 2-5-254, 2-5-255 and 2-5- 256 along with the appurtenant lands. The respondent Mohd. Vajahath Hussain alias Fasi forcibly occupied the house bearing No. 2-5-256 (re-numbered as 4-3-65). The building has a plinth area of 1114 sq.ft. and the appurtenant vacant land has an area of 9341 sq.ft. Alleging that the respondent is a `land grabber', the appellant filed L.G.O.P. No. 5 of 1990 under Section 7-A of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (hereinafter referred to as "the Act") before the Special Tribunal, Adilabad seeking possession of the house and the appurtenant land from the respondent. The respondent contested L.G.O.P. No. 5 of 1990 and contended that he was not a land grabber, that he, his mother and his brothers were in possession of the disputed property in their own rights under law and that they were the owners of the disputed property. He also disputed the claim of the

appellant that she had purchased the property as per registered Sale Deed dated 5th February, 1969. He alleged that the registered Sale Deed was a fabricated and concocted document and that late Mohd. Hussain was not in a position to sell the property as he was not of sound mind at the relevant time. According to the respondent, the appellant did not have the financial capacity to purchase the house and there was no need for Mohd. Hussain to sell the house.

3. After considering the pleadings in the case and the evidence adduced, the Special Tribunal allowed the application on 13th June, 1997 and directed the respondent to deliver the property to the appellant. In its order dated 13th June, 1997 passed in L.G.O.P. No. 5 of 1990, the Special Tribunal held that:

> (a) Mohd. Hussain executed the registered Sale Deed dated 5th February, 1969 in respect of the disputed property in favour of the appellant after receiving the consideration;
>
> (b) The appellant is the owner of the disputed property;
>
> (c) Mohd. Hussain was in sound state of mind till his death;
>
> (d) The respondent could not establish that Mohd. Hussain had gifted the northern portion of the house to his younger son Mohd.

Zafar Hussain and the southern portion with its open land to his elder son Shaukat Hussain;

(e) The respondent has grabbed the disputed property and being a `land grabber' he is liable to be evicted from the disputed land; and

(f) The mother and the brothers of the respondent are not in possession of the disputed property and the respondent alone has been in possession of the property after grabbing it.

4. Aggrieved by the order dated 13th June, 1997 of the Special Tribunal in L.G.O.P. No. 5 of 1990, the respondent filed an appeal being L.G.A. No. 30 of 1997 in the Special Court constituted under the Act. By its judgment dated 30th October, 1998, the Special Court allowed the appeal holding that the application was not maintainable before the Special Tribunal. Accordingly, the Special Court set aside the order of the Special Tribunal in L.G.O.P. No. 5 of 1990 and directed the Special Tribunal to return the application to the appellant herein for presentation to a proper court if so advised. In the judgment dated 30th October, 1998, the Special Court held that since the application of the appellant was in respect of a house property which was alleged to have been grabbed by the respondent, it was not maintainable before the Special Tribunal. According to the Special Court, if an existing building itself is grabbed, the same will not fall within the jurisdiction of the Special Tribunal or the Special Court and if land is grabbed and thereafter structures are raised, it may fall within the jurisdiction of the Special Tribunal or the Special Court. It was also made clear by the Special Court that in view of its decision that L.G.O.P. No. 5 of 1990 was not maintainable before the Special Tribunal, it was not going into the merits of the case.

5. Challenging the judgment dated 30th October, 1998 of the Special Court, the appellant herein filed W.P. No. 35561 of 1998 in the High Court of Andhra Pradesh. By its judgment dated 4 th July, 2000, the High Court allowed the writ petition, set aside the judgment of the Special Court and remitted the matter back to the Special Court for fresh hearing and disposal as to whether property has been grabbed by the respondent and whether he is liable to be evicted delivering possession of the property to the appellant. To hold that L.G.O.P. No. 5 of 1990 was maintainable before the Special Tribunal, the High Court relied on Section 2(c) of the Act which states that land includes rights in or over land, benefits to arise out of land and buildings, structures and other things attached to the earth or permanently fastened to anything attached to the earth. The High Court also pointed out that the word `land', as defined in other statutes and as decided by the High Court and the Supreme Court in similar matters, includes super-structure, building etc. unless they are excluded from the definition of `land' by a Special Act. The High Court accepted the contention of the appellant that the Act applies not only to lands but also to lands with building.

6. The above judgment in W.P. No. 35561 of 1998 was accepted by the respondent as it was not challenged by him before any higher forum. Thus, the said judgment became final and binding on the respondent.

7. On the basis of the remand of the matter by the High Court, L.G.A. No. 30 of 1997 was again heard and disposed of by the Special Court on 16th November, 2000. As per the judgment dated 16th November, 2000, the appeal was dismissed, the order of the Special Tribunal was upheld and the respondent herein was directed to deliver possession of the petition schedule property to the appellant herein within a period of two months. While dismissing the appeal, the Special Court held that the Sale Deed dated 5th February, 1969 relied upon by the appellant was true and valid and was binding on the respondent. The Special Court also rejected the contention of the respondent that there was an oral gift of the property in the year 1954. Though the learned counsel for the respondent tried to contend that the respondent had perfected his title by adverse possession, the said contention was not entertained by the Special Court on the ground that the respondent had not raised any plea or led any evidence in that regard and such a point was not argued before the Special Tribunal and no finding was recorded by the Special Tribunal.

8. Thereupon the respondent herein filed W.P. No. 304 of 2001 in the High Court of Andhra Pradesh challenging the judgment dated 16th November, 2000 of the Special Court in L.G.A. No. 30 of 1997. When the writ petition was heard by the High Court, the main question raised related to the jurisdiction of the Special Tribunal to consider the application in L.G.O.P. No. 5 of 1990 filed by the appellant herein as it was in respect of a house property with its appurtenant land. It was contended on behalf of the writ petitioner that the Special Tribunal had no jurisdiction to deal with the house property and, therefore, the impugned orders were without jurisdiction. It was also contended that the remand order passed by the High Court in the earlier W.P. No. 35561 of 1998 was in the nature of an interlocutory order and was passed without considering the relevant provisions of the Act and hence the order was without jurisdiction, a nullity and would not operate as a bar. However, on behalf of the respondent in the writ petition (appellant herein), it was contended that the remand order which had become final and binding would operate as res judicata and that the buildings and structures existing on the land would be covered by the definition of `land' in Section 2(c) of the Act.

It was also pointed out that the extent of the open land was much more than the extent of the area covered by the building. After noticing the contentions of the parties, the High Court proceeded to consider the following questions :

(i) Whether the property in question is a building or land? and

(ii) Whether the Special Tribunal has jurisdiction to entertain an application in respect of a house property with its appurtenant open land?

9. In its judgment dated 18th April, 2007, the High Court found that the conclusions reached by the Special Tribunal were well founded upon the oral and documentary evidence, that the Special Court too, on re-appraisal of the evidence, concurred with the conclusions reached by the Special Tribunal and that there were concurrent findings of the Special Tribunal and the Special Court on the contentious issues between the parties. After considering the particulars furnished by the appellant in the different columns of the application filed before the Special Tribunal, the High Court observed that the property in dispute was the house bearing Municipal No. 4-3-65 with its appurtenant open land. Even though the question of jurisdiction of the Special Tribunal to consider and decide the application in L.G.O.P. No. 5 of 1990 had already been considered and decided in the earlier W.P. No. 35561 of 1998, the High Court proceeded to again consider the question of maintainability of the said application before the Special Tribunal. By way of justification for such consideration, the High Court has stated in the judgment that "since the decision of the court while remitting the matter to the Special Court for fresh disposal was mainly dependant upon the interpretation of a provision of the Act, which is a pure question of law involving the interpretation process, such a decision will not operate as res judicata". The High Court has held that "if an application is filed seeking possession of building along with its appurtenant land because the building in question is in existence on the land and is surrounded by the vacant land, it cannot be said that it is a case of grabbing of land, but it is certainly a case of occupation of a building". According to the High Court, the Act applies to the lands but not to the buildings and when it is alleged that the land is grabbed, the land along with the existing super- structure or building thereon can together reflect as property in dispute and in such a case the Special Tribunal or the Special Court has jurisdiction to adjudicate. But if the application is for seeking possession of building along with its appurtenant land, the Special Tribunal or the Special Court has no jurisdiction to adjudicate the dispute. The High Court has drawn a distinction between "building with its appurtenant land" and "land along with building". Based on such reasoning, the High Court has held that since the dispute in the case was in respect of a building with its appurtenant land, the matter would not come squarely within the jurisdiction of the Special Tribunal. The High Court has also observed that even though the applicant seemed to have a good case on the factual aspect, unfortunately the applicant approached a wrong forum which had no jurisdiction to adjudicate. As per the judgment dated 18th April 2007, the High Court allowed the writ petition and set aside the judgment dated 16th November, 2000 of the Special Court as well as the order dated 13th June, 1997 of the Special Tribunal.

10. The appellant has filed this appeal against the said judgment dated 18th April, 2007 of the High Court in W.P. No. 304 of 2001. We have heard the learned counsel for the parties and have considered the materials placed on record.

11. The basic question to be considered is whether the High Court was correct in holding that the appellant's application under Section 7-A of the Act was not maintainable before the Special Tribunal "as the property in dispute was a building with its appurtenant land". The Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 was enacted to prohibit the activity of land grabbing in the State of Andhra Pradesh and to provide for matters connected therewith. As per Section 1(3), the Act applies to all lands situated within the limits of urban agglomeration as defined in Clause (n) of Section 2 of the Urban Land (Ceiling and Regulation) Act, 1976 and a Municipality. As per Section 1(3-A), the Act applies also to any other lands situated in such areas as the Government may, by notification, specify. Section 2(e) defines `land grabbing' as hereunder:

> " `land grabbing' means every activity of grabbing of any land (whether belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person) by a person or group of persons, without any lawful entitlement and with a view to illegally taking possession of such lands, or enter into or create illegal tenancies or lease and licences agreements or any other illegal agreements in respect of such lands, or to construct unauthorised structures thereon for sale or hire, or give such lands to any person on rental or lease and licence basis for construction, or use and occupation, of unauthorized structures; and the term `to grab land' shall be construed accordingly."

Section 2(c) defines `land' as hereunder:

> " `land' includes rights in or over land, benefits to arise out of land and buildings, structures and other things attached to the earth or permanently fastened to anything attached to the earth"

The above definition of `land' makes it clear that the expression `land' includes "buildings, structures and other things attached to the earth". In view of such inclusive definition of `land', grabbing a building attached to the earth amounts to land grabbing for the purposes of this Act. Hence, the High Court erred in holding that the Act applies to the land but not to the buildings. The High Court was clearly wrong in holding that "if an application is filed seeking possession of building along with its appurtenant land, because the building in question is in existence on the land and is surrounded by the vacant land, it cannot be said that it is a case of grabbing of land". In our view, if a building along with the land on which it stands is the subject matter of the application under Section 7-A of the Act, such application is maintainable before the Special Tribunal. The distinction drawn by the High Court between "building with appurtenant land" and "land along with building" is artificial and hyper-technical and it defeats the very purpose of the legislation. In the light of the definition of `land' under Section 2(c) of the Act, both the above descriptions practically mean the same thing vis-`-vis `land grabbing' and there is no logic or justification for drawing a distinction between them. Hence, the High Court erred in holding that the application filed by the appellant was not maintainable before the Special Tribunal.

12. It is to be noted that in Column 10 of the application submitted by the appellant, Survey Number and Sub-Division Number of the land were given as:

"House No.4-3-65, 2-5-256 (old) and open land comprising of 9341 square feet."

In Column 11, the extent of land was stated as:

"Open land 9341 square feet, Plinth area of the house 1114 square feet. "

Against Column 14 relating to summary of claim made and the provision of law under which it is preferred, the entry was as follows:

"The house and appurtenant land i.e. house bearing No.4-3-65 corresponding to old No.2-5-256 belongs to the petitioner. The petitioner purchased the said house under registered sale deed dated 5.2.1969. The respondent forcibly occupied the house and since then he is in the occupation of the said house and open land. The registered sale deed was attested by the following two witnesses:

1. Syed Afzal, s/o Syed Shabbir Hussain, r/o Adilabad

2. Late Shaikh Ahmed s/o Shaikh Abdulla r/o Adilabad.

Late Ameerulla Khan was the scribe to the document." It is also to be noted that the registered Sale Deed referred to above was in respect of not only the building but also the courtyard and backyard. From the above-mentioned entries in the application filed by the appellant, it is clear that the subject matter of the dispute was not only the building having plinth area of 1114 sq.ft. but also the open land comprising an area of 9341 sq.ft. In the summary of claim, the appellant's application had raised the claim specifically in respect of "house and appurtenant land". It was specifically alleged that the respondent forcibly occupied the house and since then he is in the occupation of the said house and open land. In such circumstances, it cannot be said that the subject matter of the dispute was only the building. The subject matter of the dispute was the building and the appurtenant open land.

13. The High Court also erred in holding that only occupation of the open land and construction of a building thereon can be treated as land grabbing and that occupation of a building along with open land cannot be treated as land grabbing under the Act. When the land along with the building existing thereon is occupied, it will amount to land grabbing.

14. In the light of the above discussion, we hold that the application filed by the appellant under Section 7-A of the Act before the Special Tribunal was maintainable and that the Special Tribunal had necessary jurisdiction to adjudicate the dispute raised therein.

15. In view of our finding that the application filed by the appellant before the Special Tribunal was maintainable and that the Special Tribunal had jurisdiction to adjudicate the dispute raised therein, the impugned order of the High Court is liable to be set aside and the order of the Special Tribunal and judgment of the Special Court are liable to be restored. Therefore, we consider it unnecessary to examine the correctness of the finding of the High Court that the decision of the High Court in the

earlier W.P. No. 35561 of 1998 did not operate as res judicata for considering the maintainability of the application and the jurisdiction of the Special Tribunal in the later W.P. No. 304 of 2001.

16. However, even assuming that the decision in W.P. No. 35561 of 1998 did not operate as res judicata, we are constrained to observe that even if the learned Judges who decided W.P. No. 304 of 2001 did not agree with the view taken by a Co-ordinate Bench of equal strength in the earlier W.P. No. 35561 of 1998 regarding the interpretation of Section 2(c) of the Act and its application to the petition schedule property, judicial discipline and practice required them to refer the issue to a larger Bench. The learned Judges were not right in over-ruling the statement of the law by a Co-ordinate Bench of equal strength. It is an accepted rule or principle that the statement of the law by a Bench is considered binding on a Bench of the same or lesser number of Judges. In case of doubt or disagreement about the decision of the earlier Bench, the well accepted and desirable practice is that the later Bench would refer the case to a larger Bench.

17. In Union of India and Anr. v. Raghubir Singh (Dead) by LRs. Etc. [(1989) 2 SCC 754], (paras 27 and 28), a Constitution Bench of this Court held:

> "27. What then should be the position in regard to the effect of the law pronounced by a Division Bench in relation to a case realising the same point subsequently before a Division Bench of a smaller number of Judges? There is no constitutional or statutory prescription in the matter, and the point is governed entirely by the practice in India of the courts sanctified by repeated affirmation over a century of time. It cannot be doubted that in order to promote consistency and certainty in the law laid down by a superior Court, the ideal condition would be that the entire Court should sit in all cases to decide questions of law, and for that reason the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in Divisions, each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges. We may refer to a few of the recent cases on the point. In John Martin v. State of West Bengal, (1975) 3 SCC 836, a Division Bench of three Judges found it right to follow the law declared in Haradhan Saha v. State of West Bengal, (1975) 3 SCC 198, decided by a Division Bench of five Judges, in preference to Bhut Nath Mate v. State of West Bengal, (1974) 1 SCC 645 decided by a Division Bench of two Judges. Again in Indira Nehru Gandhi v. Raj Narain, 1975 Supp. SCC 1, Beg J held that the Constitution Bench of five Judges was bound by the Constitution Bench of thirteen

Judges in Kesavananda Bharati v.

State of Kerala, (1973) 4 SCC 225. In Ganapati Sitaram Balvalkar v. Waman Shripad Mage, (1981) 4 SCC 143, this Court expressly stated that the view taken on a point of law by a Division Bench of four Judges of this Court was binding on a Division Bench of three Judges of the Court. And in Mattulal v. Radhe Lal, (1974) 2 SCC 365, this Court specifically observed that where the view expressed by two different Division Benches of this Court could not be reconciled, the pronouncement of a Division Bench of a larger number of Judges had to be preferred over the decision of a Division Bench of a smaller number of Judges. This Court also laid down in Acharya Maharajshri Narandraprasadji Anandprasadji Maharaj v. State of Gujarat, (1975) 1 SCC 11 that even where the strength of two differing Division Benches consisted of the same number of Judges, it was not open to one Division Bench to decide the correctness or otherwise of the views of the other. The principle was reaffirmed in Union of India v. Godfrey Philips India Ltd., (1985) 4 SCC 369 which noted that a Division Bench of two Judges of this Court in Jit Ram Shiv Kumar v. State of Haryana, (1981) 1 SCC 11 had differed from the view taken by an earlier Division Bench of two Judges in Motilal Padampat Sugar Mills v. State of U.P., (1979) 2 SCC 409 on the point whether the doctrine of promissory estoppel could be defeated by invoking the defence of executive necessity, and holding that to do so was wholly unacceptable reference was made to the well accepted and desirable practice of the later bench referring the case to a larger Bench when the learned Judges found that the situation called for such reference.

28. We are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court. ....."

In Central Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra and Anr. [(2005) 2 SCC 673], (para 12), a Constitution Bench of this Court summed up the legal position in the following terms :

"(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co-equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co-equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions :

(i) The abovesaid rules do not bind the

discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and

(ii) In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing."

The above principles and norms stated with reference to the Supreme Court are equally relevant and applicable to the High Court also.

18. For the reasons stated above, we allow the appeal and set aside the impugned judgment dated 18th April, 2007 in W.P. No. 304 of 2001. The order dated 13th June, 1997 of the Special Tribunal in L.G.O.P. No. 5 of 1990 and the judgment dated 16th November, 2000 of the Special Court in L.G.A. No. 30 of 1997 are upheld. The respondent is directed to deliver the petition schedule property to the appellant within a period of two months from today, failing which, the Revenue Divisional Officer concerned shall deliver the petition schedule property to the appellant within a period of two months after the expiry of the period of two months mentioned above.

.....J. (V.S. Sirpurkar) .....J. (Cyriac Joseph) New Delhi;

December 16, 2010.