D.L.F. Housing & Construction Company ... vs Sarup Singh And Others on 12 September, 1969

Equivalent citations: 1971 AIR 2324, 1970 SCR (2) 368, AIR 1971 SUPREME COURT 2324

Author: I.D. Dua

Bench: I.D. Dua, C.A. Vaidyialingam

PETITIONER:
D.L.F. HOUSING & CONSTRUCTION COMPANY PRIVATE LTD., NEW

Vs.

RESPONDENT:
SARUP SINGH AND OTHERS

DATE OF JUDGMENT:
12/09/1969

BENCH:
DUA, I.D.
BENCH:
DUA, I.D.
VAIDYIALINGAM, C.A.

CITATION:
1971 AIR 2324 1970 SCR (2) 368
1969 SCC (3) 807

ACT:
Code of Civil Procedure (Act, 5 of 1908) ss. 115, 151 and 141-Jurisdiction of the High Court under.

HEADNOTE:
The appellant company filed a suit against the respondents in the court of the Senior Subordinate Judge, Gurgaon, for the specific performance of an agreement for the purchase of' certain land by the company from the respondents. Part of the land in question became the subject of proceedings under the Land Acquisition Act, 1894 , and dispute relating to compensation was referred to the Court of the District Judge. The court fixed the compensation at over Rs. 2 Iakhs. A dispute as to apportionment of the compensation was also. referred under s.' 30 of the Land Acquisition Act

to the court but the proceedings were stayed by the Additional District Judge, pending decision of the suit for specific performance by the Senior Subordinate Judge. The suit was dismissed and thereupon the respondents applied to the Additional District Judge for continuation of proceedings under s. 30 and for payment of compensation to them. The appellant company resisted the application on the ground that it had filed an appeal in the High Court against the decree of the Senior Subordinate Judge. The Additional District Judge after hearing both parties stayed the proceedings under s. 30 pending disposal of the company's appeal by the High Court. On a revision application under s. 115 C.P.C. filed by the respondents, the High Court ordered on March 18, 1969 that a sum of not more than Rs. 1,78,000 out of the compensation for the acquired land be paid to the respondents who must undertake not to sell the rest of the land during the pendency of the appeal. The Additional District Judge after hearing the parties judicially interpreted the order to. mean that Rs. 1,78.000 were to be paid to the respondents after the conclusion of the proceedings under' s. 30. The respondents again moved the High Court with an application under s. 151/141 C.P.C. for a clarification of its earlier order whereupon by order dated May 8, 1969 the High Court ordered immediate payment. The company challenged the High Court's orders dated March 18, 1969 and May 8, 1969 in an appeal before this Court. It was contended on its behalf that in making its first order the High Court exceeded its jurisdiction u/s 115 C.P.C. and in making the clarificatory order ex-parte it violated the rules of natural justice.

HELD: (i) The position is firmly established that while exercising its jurisdiction under s. 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) o.f this section on their plain reading quite clearly did not cover the present case because it had not been shown that the learned Additional Sessions Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) of the section also did not apply

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to the present case. The words "illegally" and "with material irregularity" as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may relate either to breach of some provision of law of to

material defects of procedure. affecting the ultimate decision, and not to errors of either fact or of law, after the prescribed procedure has been complied with. [375 D--G]

The High Court had not adverted to the limitation imposed on its power under s. 115 of the Code and had treated the revision as if it was an appeal. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal could hardly justify interference on revision under s. 115 of the Code when there was no illegality or material irregularity committed by the Additional Sessions Judge in his manner of dealing with the question. The order of the High Court dated March 18, 1964 had therefore to be set aside. [375 F-H]

Rajah Amir Hassan Khan v. Sheo Baksh Singh, I I Indian Appeals 237: Balakrishna Udayar v. Vasudeva Aiyar, 44 Indian Appeals 261; Keshav Deo v. Radha Kissan. [1953] S.C.R. 136 applied.

(ii) The ex-parte order dated May 8 1969 was equally difficult to sustain. The High Court had proceeded to make an order virtually and in effect reversing the judicial order made by the learned Additional Judge in favour of the appellant. This could, more appropriately be done only on appeal or revision after notice to the party affected and not on an application under ss. 151/141 C.P.C. Such an application in the. circumstances was misconceifed. [376 C, F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1575 of 1969. Appeal by special leave from the judgment and order dated March 18, 1969 and May 8, 1969 of the Punjab and Haryana High Court in Civil Revision No. 1014 of 1968 and C.M. No. 1863 of 1969.

S.V. Gupte and Ravinder Narain, for the appellant. K.R. Chaudhuri, for the respondents.

The Judgment of the Court was delivered by Dua, J. By means of an agreement dated August 9, 1963, the appellant-company agreed to purchase from the respondents, land measuring 264 kanals and 12 marlas. A sum of Rs. 1,87,000 was. paid as earnest money. The sale deed was to be registered by April 30, 1964. As it was not so registered, both parties blamed each other for the breach. In May, 1966 the Government issued a notification under s. 4 of the Land Acquisition Act which was followed by a notification under s. 6 in September 1966 acquiring 104 kanals and 18 marlas of land out of the land agreed to be sold. The Collector made an award of the compensation for the acquired land, against which a reference was made to the Court of the District Judge. In May, 1968 the compensation was enhanced to a sum over Rs. 2 lakhs. In the mean time on April 15, 1967, the appellant,company instituted a suit for specific performance of the agreement dated August 9, 1968. This suit was dismissed by the Court of the Senior Subordinate Judge, Gurgaon on August 13, 1968.

A Regular First Appeal (No. 216 of 1968) against the dismissal of the suit is pending in the Punjab and Haryana High Court.

It appears that the dispute as to apportionment of compensation under s. 30 of the Land Acquisition Act was also referred to the Court. In view of the institution of the suit for specific performance, an application was apparently made in the Court of the learned Additional District Judge dealing with the reference under the Land Acquisition Act to stay those proceedings pending the decision of the suit by the learned Senior Subordinate Judge. On February 28, 1968 the learned Additional District Judge took the view that the entire matter in his Court was covered by the civil suit, it being further observed in the order that even the question of the jurisdiction of the Senior Subordinate Judge to determine the amount of compensation was to be first decided by the civil court. On this view, the reference proceedings were stayed pending the decision of the civil court.

After the dismissal of the suit, the respondents applied to the Court of the learned Additional District Judge for continuing the proceedings and for making an order of payment of compensation in their favour. This prayer was Contested by the appellant-company on the ground that an appeal against the decree dismissing the suit had already been presented in the High Court and that the proceedings for payment of compensation should continue to remain stayed pending the disposal of the appeal. The learned Additional District Judge after hearing both sides decided on August 30, 1969 to continue the order of stay pending the decision of the appeal by the High Court. According to him, the question whether the original agreement had become frustrated or was alive and deserved to be specifically enforced, would have an important bearing on the question of apportionment of compensation.

The respondents preferred a revision to the High Court against this order and a learned Single Judge on March 18, 1969 reversed the order continuing stay of the proceedings under s. 30 and further directed payment of Rs. 1,78,000 to the respondents. The order of payment of this amount was framed in the following words :--

> "I do feel that in view of the fact that the suit filed by the respondent-company has been dismissed, prima facie, it is reasonable that the proceedings under section 30 of the Act should continue, but the petitioners may not be allowed actual payment of more than Rs. 1,78,000. The balance of the amount due in respect of the land of the petitioners shall be kept with the Government to be disbursed in accordance with the decision in the regular first appeal. This will, however, be subject to the further condition that the petitioners will file an undertaking in this Court that they shall not dispose of or otherwise transfer any interest by creating any encumbrance over the balance of the land which was the subject-matter of the agreement dated the 9th of August, 1963, without the permission of the Court. Learned counsel for the petitioners appearing before me have agreed to this condition being imposed."

The concluding portion of that order may also be reproduced:

> "..... I accept this revision petition and direct that the proceedings under section 30 of the Act be continued, but the petitioners will not be paid more than Rs. 1,78,000 and the balance will remain undisbursed till the decision of the regular first appeal If the appeal is accepted, this amount shall be treated as part of the consideration that has to be paid by the respondent-company. Till the decision of the appeal or till further orders of this Court, the petitioners will not dispose of the balance of the land, which is the subject matter of the agreement, without the permission of the Court."

Before the learned Additional District Judge, the question arose as to whether under the order of the High Court dated March 18, 1969, the sum of Rs. 1,78,000 was to be paid immediately or after the decision of the reference under s.

30. The parties apparently desired the learned Additional Judge to decide this question judicially on a consideration of the circumstances of the case. Both parties were accordingly heard and the learned Additional District Judge in a detailed order dated April 19, 1969 expressed his conclusion thus :--

> "To my mind it seems that the decision of the reference under section 30, is to take place first and it is thereafter that the applicants shall be paid amount upto Rs. 1,78,000. In these circumstances, it is ordered that the proceedings u/s 30 be restored and should continue. The cheque will be given only after the decision of the reference u/s 30. The revision before the Hon'ble Judge was only against the order staying the proceedings and there was no revision regarding the non-payment of the amount as that was not the question before this court and no orders were passed by this court in that connec-
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> tion. As such, the intention of the Hon'ble Judge in passing the orders Seems to be that the amount may not be paid to any of the parties now but after the decision of the reference u/s 30. I order accordingly."

The learned Additional District Judge. also fixed May 21, 1969 .,for the evidence of the parties. It appears that instead of challenging on merits the order dated April 19, 1969 in the High Court by way of revision, the respondents filed in that Court on May 6, 1969, an application under ss. 151/141 C.P.C. for clarification of its order dated March 18, 1969. This application was placed before the High Court for preliminary hearing on May 8, 1969 and the learned Single Judge recorded the following order without giving notice to the appellant :-

> "My orders are clear that the amount of Rs. 1,78,000 may be paid to the petitioners. The order further directs the petitioners not tO dispose any part of the land which was the subject-matter of the agreement. With these observations, this petition is filed."

It is against these two orders that the present appeal by special leave has been presented and the short argument pressed by Shri Gupte was that the order of the High Court dated March 18, 1969 is unsustainable because there was no jurisdictional infirmity made out in the order of the learned Additional District Judge dated August 30, 1968, which would justify interference on revision under s. 115 C.P.C. In regard to the order dated May 8, 1969, it was further complained that this order was made ex parte without notice to the appellant. It was contended by Shri Gupte that in face of the judicial order dated April 19, 1969 made by the learned Additional District Judge after hearing both sides at 'length, it was not open to the High Court to record the ex parte .order dated May 18, 1969 without affording to the appellant an opportunity for supporting the view. taken by the learned Additional District Judge.

The submissions made by Shri Gupte, in our opinion, possess merit. The revisional jurisdiction has been conferred on the High Court by s. 115, C.P.C. in these terms :--

> "115. The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such Subordinate Court appears-
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> (a) to have exercised a jurisdiction not. vested in it by law or
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> (b) to have failed to exercise a jurisdiction so vested. or
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> (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit."

The mass or reported cases only serve to show that the High Courts do not always appreciate the limits of their jurisdiction under this section. The legal position was authoritatively laid down by the Privy Council as far back as 1894 in Rajah Amir Hassan Khan v. Sheo Baksh Singh(1). The Privy Council again pointed out in Balakrishna Udayar v. Vasudeva Aiyar(2) that this section is not directed against the conclusions of law or fact in which the question of jurisdiction is not involved. This view was approved by this Court in Keshav Deo v. Radha Kissan(3) and has since been reaffirmed in numerous decisions.

The position thus seems to. be firmly established that while exercising the jurisdiction under s. 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case.

was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words "illegally" and "with material irregularity" as used in this clause do not cover either errors of fact or

of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to. errors either of fact or of law, after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power under s. 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under s. 115 of the Code when there. was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal.

(1) 11 Indian Appeals 237. (2) 44 Indian Appeals 261.

L2 Sup. CI/70--12 (3) [1953] S.C.R. 136.

The respondents submission that the order made by the High Court on March 18, 1969 was a consent order, is unsustainable. The agreement mentioned in that order is obviously the agreement by the respondents (petitioners in the High Court) to the condition imposed on them, to file an undertaking in that Court not to. dispose of or ,otherwise transfer any interest by creating encumbrance over the remaining land which, was the subject-matter of the agreement dated August 9, 1968, without the previous permission of the Court. There is nothing in the order of the High Court or on the record to which our attention was drawn, showing or even suggesting that the appellant had agreed to the revision being allowed. The order of the High Court dated March 18, 1969 must, therefore, be set aside.

The ex parte order dated May 8, 1969 is equally difficult to sustain. In para 5 of the respondents application dated May 6, 1969 under s. 151/141 Civil P.C. presented in the High Court, a reference was clearly made to the order passed by the learned Additional District Judge on April 19, 1969. It was averred in this paragraph :--

> "That the learned District Judge by his order dated 19-4-69, has interpreted the High Court's order wrongly and has held that the intention of the Hon'ble Judge in passing the order dated 18-3-69, seemed to be that the amount may not be paid to any of the parties now but only after the decision of the reference under Section 30 of the Land Acquisition Act. Thus he has fixed the case under Section 30 of the Act for evidence on 21-5-69."

It seems that at the stage of preliminary hearing the attention of the High Court was not drawn to this fact and that Court proceeded to make an order virtually and in effect reversing the judicial order made by the learned Additional District Judge in favour of the appellant. This could more appropriately be done only on appeal or revision from the order dated April 19, 1969 after notice to the party affected and not on an application under ss. 151/141 Civil P.C. Such an application in the circumstances was misconceived. The ex parte order is thus unsustainable and must be set aside.

This appeal accordingly succeeds and the impugned orders are set aside with costs.

We would like to make it clear that it will be open to the parties, if so advised, to approach the High Court by appropriate proceedings for the speedy disposal of the appeal.

R.K.P.S. Appeal allowed.