

Union Of India vs M/S K.C.Sharma And Co.. on 14 August, 2020

Equivalent citations: AIRONLINE 2020 SC 686

Author: R. Subhash Reddy

Bench: M.R. Shah, R. Subhash Reddy, Ashok Bhushan

C.A.Nos.9049-9053 of 2011

REPO

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9049-9053 OF 2011

Union of India & Anr.

....A

Versus

M/s. K.C. Sharma & Co. & Ors.

....Res

JUDGMENT

R. Subhash Reddy, J.

1. The Union of India through Secretary (Revenue) and another, have filed these appeals aggrieved by the judgment and decree dated 21.05.2007 passed by the High Court of Delhi in R.F.A.Nos.204-8/2006. By the aforesaid impugned judgment, the High Court has allowed the Regular First Appeals, preferred by the respondents, by setting aside judgment and decree dated 04.01.2006 passed in Suit No.203 of 2005 by the Addl. District Judge, Delhi.

2. Necessary facts in brief are as under :

The land admeasuring 36 bighas 11 biswas comprising in Khasra Nos.14/9, 12, 17, 18, 19, 20/1, 23 and 24 belonged to Gaon Sabha Date: 2020.08.14 14:39:02 IST Reason:

Luhar Heri, Delhi. The large extent of land in the village, including the aforesaid land, was acquired by the Government by initiating C.A.Nos.9049-9053 of 2011 proceedings under Land Acquisition Act, 1894 (for short, 'the Act'). The notification under Section 4(1) of the Act was issued on 27.01.1984 and declaration under Section

6 of the Act came to be published on 20.09.1984. By passing the Award bearing No.101/86-87 on 19.09.1986, possession of the land was taken by the Government. In the award proceedings, as the respondents have claimed compensation on the ground that the land was given to them on lease by Gaon Sabha, the matter was referred to the Civil Court under Sections 30 and 31 of the Act, for apportionment of the amount of compensation. In the aforesaid reference proceedings, preferred under Sections 30 and 31 of the Act, it was the claim of the respondents that as the land was not fit for cultivation, it was granted on lease to the respondents to remove the “shora” and to make the land fit for cultivation. It is their case that in view of the lease granted by the Gaon Sabha, they have spent huge amount for removal of “shora” and made the land fit for cultivation, and continued in possession by cultivating the same for more than 30 years.

In the aforesaid proceedings referred under Sections 30 and 31 of the Act, the Civil Court has passed the judgment and decree on 28.09.1989, declaring that the respondents-claimants are entitled for compensation to the extent of 87% and remaining 13% is to be paid to the panchayat/Gaon Sabha.

3. Nearly after three years of the aforesaid judgment and decree in the proceedings under Sections 30 and 31 of the Act, some villagers have filed Writ Petition No.1408/1992 alleging that the respondents were C.A.Nos.9049-9053 of 2011 not the lessees of the land in question and they have claimed compensation in collusion with ex-Pradhan of the Gaon Sabha. The said writ petition was disposed of by the High Court of Delhi on 21.02.1997. In the aforesaid order the High Court has permitted the Additional District Magistrate to intervene in the pending proceedings under Section 18 of the Act and place on record the available material to substantiate their case. At the same time it was kept open to the legal heirs of the original lessee to support their contention that there is a lease and they are entitled to claim compensation for the land acquired. The relevant portion of the order dated 21.02.1997 passed in the writ petition reads as under :

“We are not to be understood as deciding anything regarding the rights of the parties one way or the other. The A.D.M. is hereby directed to file his intervention application within one month from the date of receipt of this order and the learned Addl. District Judge is directed not to dispose of the application for enhancement before a decision is rendered on the intervention application of the A.D.M. It will be open to the A.D.M. to consider, apart from intervention in the matter, whether any separate proceedings are to be initiated or not for the recovery of the compensation already paid.”

4. In view of the observations made by the High Court in the writ petition, Gaon Sabha/ Panchayat has filed application under Order 1 Rule 10 of the Code of Civil Procedure to implead it in the proceedings under Section 18 of the Act. In the aforesaid proceedings it was held that in view of the judgment and decree passed in proceedings under Sections 30 and 31 of the Act holding that the respondents-claimants are entitled for compensation to the extent of 87%, the Civil Court has C.A.Nos.9049-9053 of 2011 held that Panchayat is entitled only to seek

enhancement of compensation to the extent of their 13% share.

5. Further, in view of the observations made by the High Court, a suit was filed by the appellants, initially before the High Court of Delhi, which was subsequently transferred to the Court of Additional District Judge, Delhi on the ground of pecuniary jurisdiction and same was numbered as Suit No.203 of 2005. The said suit was filed seeking declaration that the judgment and decree dated 28.09.1989 was obtained by fraud as such they are entitled for recovery of Rs.11,20,707/- with interest @ 18% p.a. In the aforesaid suit mainly it was the case of the appellants-

plaintiffs that the said decree was obtained by fraud in collusion with ex- Pradhan, and created a resolution showing that the said land was leased in their favour for a period of five years from 04.04.1981. It was their specific case that since the ex-Pradhan of the Gaon Sabha was in collusion with the respondents-defendants and due to such fraud committed by them upon the court they could obtain order and decree as such the same was assailed in the suit.

6. The said suit was decreed by judgment and decree dated 04.01.2006 and aggrieved by the same respondents-defendants have preferred First Appeals in R.F.A.Nos.204-8/2006 before the High Court of Delhi. The High Court, by appreciating the documentary and oral evidence on record, has come to the conclusion that appellants-plaintiffs have not pleaded necessary particulars so as to show how fraud was committed upon the court which decided the reference under Sections C.A.Nos.9049-9053 of 2011 30 and 31 of the Act. Further by recording a finding that Gram Panchayat wanted to give the said land on lease to make the land fit for cultivation by removing "shora" and the said proposal was signed by all the members of the Gaon Sabha and only after approval from the Dy. Director, Panchayat, it was put to auction. It was further held by the High Court that in the auction proceedings there were as many as six bidders and as the bid of the respondents was highest at Rs.89/- per acre same was accepted. It is further held by the High Court that the proposal regarding acceptance of the bid was also approved by the Dy. Director vide letter dated 16.04.1981 and only thereafter respondents took possession of the land and paid the money through various receipts which are part of the record. Further the High Court has held that the entries made in the revenue records support the plea of the respondents that they continued in possession by cultivating the land and as, every action of the Gaon Sabha from the stage of proposal to create lease and acceptance of lease was approved by Dy. Director, there is no case made out by the appellants to show that lease was created only with the collusion of the ex-Pradhan of the Gaon Sabha. With the aforesaid findings the appeals filed by the respondents were allowed and judgment and decree of the trial court was set aside. Hence, these civil appeals, by plaintiffs.

7. We have heard Ms. Aishwarya Bhati, learned Additional Solicitor General for the appellants and Sri Jayant Bhushan, learned senior advocate appearing for the respondents-defendants. C.A.Nos.9049-9053 of 2011

8. Learned Additional Solicitor General appearing for the appellants has mainly contended that respondents have claimed compensation by playing fraud. It is submitted that there is no lease deed as such in favour of the respondents and the only rights which were conferred on the respondents

were to remove the “shora” on the land in question so as to make the land fit for cultivation. It is submitted that in absence of any lease deed executed by the Gram Panchayat in favour of the respondents, at best it can be treated as a licence for removal of “shora” only and same cannot be treated as a lease. The learned ASG has submitted that as the judgment and decree which was questioned in the suit was obtained by fraud, the suit was rightly decreed by the trial court but same was reversed by the High Court without appreciating their case in proper perspective. It is submitted by learned ASG that in any event having regard to claim made by the respondents-defendants they are not entitled for compensation to the extent of 87%. In support of her pleading that as much as the judgment and decree dated 28.09.1989 is obtained by fraud and the same is a nullity and it is vitiated, she has placed reliance on the following judgments of this Court :

1. S.P. Chengalvaraya Naidu (Dead) by LRs v. Jagannath (Dead) by LRs & Ors.¹
2. A.V. Papayya Sastry & Ors. v. Govt. of A.P. & Ors.²
3. Madhukar Sadbha Shivarkar (Dead) by LRs v. State of Maharashtra & Ors.³ 1 (1994) 1 SCC 1 2 (2007) 4 SCC 221 3 (2015) 6 SCC 557 C.A.Nos.9049-9053 of 2011
4. Satluj Jal Vidyut Nigam v. Raj Kumar Rajinder Singh (Dead) through LRs⁴
5. Shrist Dhawan (Smt.) v. M/s. Shaw Brothers⁵
6. Meghmala & Ors. V. G. Narasimha Reddy & Ors.⁶ It is submitted that above said case law supports the case of the appellants that as the decree was obtained by fraud, same is a nullity and vitiated and same can be set aside at any point of time. Further learned ASG, in support of her argument that the transaction from the Gaon Sabha is to be construed as a licence but not a lease and to draw the difference between ‘lease’ and ‘licence’, placed reliance on the judgments of this Court in the case of Associated Hotels of India Ltd. v.

R.N. Kapoor⁷; C.M. Beena & Anr. V. P.N. Ramachandra Rao⁸; and Bharat Petroleum Corporation Ltd. v. Chembur Service Station⁹.

9. On the other hand Sri Jayant Bhushan, learned senior counsel appearing for the respondents has contended that judgment and decree passed in proceedings under Sections 30 and 31 of the Act has become final. It is submitted that in view of the finality attained to such judgment and decree, only question which arose for consideration in the suit was whether such judgment and decree was obtained by fraud or not. In support of the plea of fraud, the only contention of the appellants was that there was no lease and resolution for grant of lease was obtained in collusion with the ex-Pradhan of the Gaon Sabha. It is submitted by 4 2018 (11) SCALE 383 = (2019) 14 SCC 449 5 (1992) 1 SCC 534 6 (2010) 8 SCC 383 7 (1960) 1 SCR 368 8 (2004) 3 SCC 595 9 (2011) 3 SCC 710 C.A.Nos.9049-9053 of 2011 learned senior counsel that it is clear from the evidence on record that the decision to grant lease of the land was taken by Gaon Sabha and all the members are signatories and only after approval of the Dy. Director, Panchayat land was leased. It is submitted that lease was

granted by conducting auction and as much as the original respondent-defendant was the highest bidder lease was granted by parting possession to the respondents. It is submitted that as the respondents continued in possession which is evident from the evidence produced as reflected in the revenue records, it is not open for the appellants to plead that respondents are to be considered only as licensees but not lessees. It is submitted that as the trial court has not properly appreciated the evidence on record and decreed the suit, same is rightly set aside by the High Court and there are no grounds to interfere with the same. The learned senior counsel has submitted that though no lease deed has been executed and registered, respondents are entitled to the benefit of Section 53A of the Transfer of Property Act, 1882. To support his contention, he has relied on judgments of this Court in the case of *Maneklal Mansukhbhai v. Hormusji Jamshedji Ginwalla & Sons 10 and Hamzabi & Ors. v. Syed Karimuddin & Ors.*¹¹. Further, in support of his argument that the fraud has to be established by pleading with sufficient proof, he has relied on judgment of this Court in the case of *Ranganayakamma & Anr. V. K.S. Prakash (D) by LRs & Ors.*¹². 10 AIR 1950 SC 1 11 (2001) 1 SCC 414 12 (2008) 15 SCC 673 C.A.Nos.9049-9053 of 2011

10. Having heard the learned counsel on both sides, we have perused the material on record.

11. In this case we are not concerned with the correctness of the judgment and decree dated 28.09.1989 passed in the proceedings under Sections 30 and 31 of the Act. In the suit filed in Suit No.203 of 2005 a declaration is sought to the effect that the judgment and decree dated 28.09.1989 is obtained by playing fraud. In support of their case the only pleading was that there was no lease in fact and same was created by creating resolution in collusion with the ex-Pradhan of Panchayat. From the material and evidence on record we are in agreement with the view taken by the High Court. In view of the rival claims for compensation matter was referred under Sections 30 and 31 of the Act and it was held that respondents are entitled to compensation to the extent of 87% whereas Gaon Sabha was held entitled only to the extent of 13%. The said judgment has become final. Same was not questioned in any appeal. Without filing any appeal against the judgment and decree dated 28.09.1989, a separate suit is filed mainly on the ground that the said judgment and decree is obtained by fraud. From the material placed and evidence produced, it is clear that the land in question was 'banjar' land having "shora" and Gram Panchayat wanted to give the said land on lease to make the same fit for cultivation by removing "shora". Such proposal was agreed to by all the members of Gaon Sabha and proposal as such was sent to Dy. Director, Panchayat for approval. The Dy. Director of Panchayat has approved C.A.Nos.9049-9053 of 2011 the same by deciding that the minimum bid should be for Rs.75/- per acre. Only after receipt of such approval from the Dy. Director, Panchayat, land was auctioned on 04.04.1981 for grant of leasehold rights. In the auction conducted there were as many as six bidders and bid of the respondent was the highest which was at Rs.89/- per acre and was accepted. Even such acceptance of proposals was again sent to Dy. Director for approval and the Dy. Director vide letter dated 16.04.1981 approved the acceptance of the bid in favour of the respondent for a period of five years. Thereafter the respondent was put in possession and he continued in possession by paying bid amount to the Gram Panchayat. The revenue records produced also reveal that the name of the respondent was entered as possessor and cultivator. In the light of such documentary evidence it cannot be said that lease was obtained by the respondents in collusion with ex-Pradhan. It is to be noted that it was not an act of ex-Pradhan of the Gaon Sabha and from the stage of proposal same was approved by the Dy. Director, only

thereafter by conducting open auction respondents were granted lease.

12. Though the learned Additional Solicitor General appearing for the appellants has relied on several judgments in support of her plea that as the judgment and decree was obtained by fraud same is a nullity and vitiated, but in a given case whether such decree was obtained by fraud or not, is a matter which is to be judged with reference to pleadings and the evidence on record. When the judgment and decree is assailed only on the ground that lease was created in collusion with the ex-Pradhan, C.A.Nos.9049-9053 of 2011 as the same is contrary to evidence, the only plea of the respondents was rightly not accepted by the High Court. As at every stage the proceedings for grant of lease were approved by the competent authority/Dy. Director, Panchayat, as such it cannot be said respondents have obtained lease in collusion with ex-Pradhan of the Panchayat. Except such a vague plea, there were no particulars how the fraud was played. It is fairly well settled that fraud has to be pleaded and proved. More so, when a judgment and decree passed earlier by the competent court is questioned, it is necessary to plead alleged fraud by necessary particulars and same has to be proved by cogent evidence. There cannot be any inference contrary to record. As the evidence on record discloses that fraud, as pleaded, was not established, in absence of any necessary pleading giving particulars of fraud, we are of the view that no case is made out to interfere with the well reasoned judgment of the High Court. The case law in this regard submitted by the learned ASG for the appellants would not render any assistance to support their plea. Further cases referred in the case of Associated Hotels 7 and C.M. Beena⁸ also will not come to the rescue of the case of the appellants in any manner. As it is clear from the evidence that the respondents were put in possession and they continued in possession by cultivating the land the said judgments would not render any assistance in support of the case of the appellants. On the other hand in the case of Maneklal Mansukhbhai¹⁰ relied on by learned senior counsel for the respondents it is clearly held by this Court that defence under Section 53A of the C.A.Nos.9049-9053 of 2011 Transfer of Property Act, 1882 is available to a person who has agreement of lease in his favour though no lease has been executed and registered. Similar proposition is also approved in the judgment of this Court in the case of Hamzabi¹¹ wherein this Court has held that Section 53A of the Transfer of Property Act, 1882 protects the possession of persons who have acted on a contract of sale but in whose favour no valid sale deed is executed or registered. As it is clear that respondents were put in possession and the Panchayat has acted upon their proposal for grant of lease said case law supports the case of the respondents.

13. For the aforesaid reasons, we do not find any merit in these appeals so as to interfere with the impugned judgment. Accordingly, these civil appeals are dismissed with no order as to costs.

.....J. [ASHOK BHUSHAN]J. [R. SUBHASH REDDY]J. [M.R. SHAH] New Delhi.

August 14, 2020.