
Sankar Chandra Saha Vs Badal Krishna Pal

CO. No. 3654 of 2009

Court: Calcutta High Court

Date of Decision: May 20, 2011

Acts Referred:

Constitution of India, 1950 " Article 227#Industrial Disputes Act, 1947 " Section 33(2)

Citation: (2011) 4 CHN 602

Hon'ble Judges: Soumitra Pal, J

Bench: Single Bench

Advocate: Amal Krishna Saha and Sankar Biswas, for the Appellant; Siva Prosad Ghosh for the opposite parties, for the Respondent

Judgement

Soumitra Pal, J.

This revisional application under Article 227 of the Constitution of India has been filed by the petitioner, who is the

defendant No.1 in the suit, challenging the order dated 23rd October, 2009 passed by the learned Civil Judge (Senior Division), 1st Court at

Barasat in Title Suit No. 144 of 2004, whereby the report dated 21st August, 2009, prepared by the Additional District Magistrate (RMO),

North 24-Parganas, Barasat, holding the market value of the property in question at Rs.35,00,000/-, was accepted.

2. In this matter, facts which immediately preceded the passing of the impugned order require consideration. It appears that aggrieved by an order

dated 28th November, 2007 passed by the learned Court below in the said title suit, the defendant No.1 filed a revisional application being CO.

4344 of 2007 which was allowed by order dated 15th December, 2008, the relevant portion of which is as under :-

The learned Court below is directed to remand the matter to the Collector for reassessment, in the light of the observation made hereinabove. The

learned Court below is also directed to give appropriate direction upon the Collector so that the report is made available before the learned Court

below within the shortest possible time, in order to ensure expeditious disposal of the suit.

The learned Court below is directed to hear out and dispose of the suit, immediately upon receipt of the report of the Collector in terms of this

order, within a period of twelve months, but not later than sixteen months therefrom, without granting unnecessary adjournment to the parties.

3. As seen, the High Court by its order had directed the learned Court below to remand the matter to the Collector for reassessment in the light of

the observation made therein. Pursuant to the said order, the learned Trial Judge remanded the matter along with the order dated 15th December,

2008 passed in CO. 4344 of 2007 to the Collector for reassessment of valuation of the suit property in the light of the observation made by the

High Court. Consequently, on 31st March, 2009 the Collector filed a report regarding reassessment which was not accepted by the learned Trial

Judge on the ground that the direction of the High Court was not followed and the Collector was directed to send a complete reassessment report.

On 26th May, 2009 a reassessment report was again sent by the Collector. However, the matter was again remanded to the Collector, as

according to the learned Trial Judge, the Collector failed to follow the order of the High Court. Thereafter, reassessment report dated 21st August,

2009 prepared by the Additional District Magistrate assessing the market value of the suit property at Rs. 35,00,000/- was furnished. In the Court

below the petitioner filed written objection to the reassessment report. The plaintiff filed his counter-objection. Thereafter, the parties were heard

and the order under challenge was passed.

4. It is an admitted position that though High Court by its order dated 15th December, 2008 in CO. 4344 of 2007 had directed the learned Court

below to remand the matter to the Collector for reassessment in the light of the observation made therein, however, reassessment was not done by

the Collector as directed. According to the petitioner, though neither in the written objection in the Court below nor in the instant revisional

application there was/is any pleading that in view of the direction of the High Court the Additional District Magistrate had no jurisdiction to

reassess the valuation, High Court in its revisional jurisdiction under Article 227 of the Constitution of India can suo motu intervene by exercising its

jurisdiction as it is a pure question of law and no investigation of fact is required.

5. Learned Advocate appearing on behalf of the opposite parties has submitted that as neither in the written objection filed in the Court below nor

in this revisional application no statement has been made that serious injustice has been done and the right of the petitioner has been affected and as

the reassessment made by the Additional District Magistrate in his report is a technical mistake, no interference with the order impugned is required

and the report may be accepted. However, submission is made that the learned Court below should be cautioned as it overlooked the fact that the

Collector did not carry out the directions of the High Court.

6. Learned Advocates for the parties have relied on several judgments which shall be dealt with appropriately.

7. The question is whether High Court while exercising its power of superintendence under Article 227 of the Constitution of India, can suo motu

revise an order if it is patently wrong though neither in the written objection to the reassessment report prepared by the Additional District

Magistrate filed in the Court below ground was taken nor in this revisional application ground has been taken that the learned Court below erred in

passing the order impugned accepting the reassessment report since it was not in compliance with the order passed by the High Court. Admittedly,

High Court by its order dated 15th December, 2008 passed in CO. 4344 of 2007 directed the Court below to remand the matter to the Collector

for reassessment. Thus, by the said order a jurisdiction was carved out by the High Court within which the Collector was required to perform his

duty. However, as noted, instead of the Collector, the Additional District Magistrate had reassessed and had filed the report. Hence, it is apparent

that the Collector did not reassess the valuation. Therefore, the learned Judge in the Court below had erred in accepting the reassessment report

furnished by the Additional District Magistrate and, thus, did not perform his duty so cast. Hence, in my view, there was dereliction of duty on the

part of the learned Judge in the Court below as he failed to ensure that the directions of the High Court were carried out. In such a case, unless

High Court suo moto intervenes, grave injustice would be done as otherwise it would undermine the authority of the High Court, particularly when

Article 227 of the Constitution of India has bestowed on every High Court the power of "superintendence over all Courts and Tribunals throughout

the territories in relation to which it exercises jurisdiction" except the powers of superintendence over any Court or tribunal constituted by or under

any law relating to the Armed Forces. That apart, since the report dated 21st August, 2009 was prepared by the Additional District Magistrate

and not by the Collector, the learned Judge in the order impugned erred in observing "seen the report of collector dt. 21.8.09". Moreover, as seen,

as the direction of the High Court contained in the order dated 15th December, 2008 passed in C. 0.4344 of 2007, was not complied with, the

learned Judge in the impugned order also erred in holding that "there is no necessity for remanding the matter to the collector when the order of the

Hon"ble Court" has been "complied with". So far as the judgments cited by the learned Advocate for the petitioner are concerned, the law laid

down by the Supreme Court in Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil, wherein it has been held that power under Article

227 can be exercised by the High Court suo motu as a custodian of justice" (paragraph-48), in the context of the case, is appropriate. Therein it

has been also held "On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main

object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory

[paragraph-49(1)] Law laid down in Ranjit Kumar Ghose Vs. Secretary, Indian Psycho-Analytical Society and Others, , wherein it has been held

that ""the power under Article 227 can be exercised even suo motu by the Court as the custodian of all the justice within the limits of the territorial

jurisdiction and for the vindication of its position as such"" is applicable to the facts of the case. In this regard it may be noted that In Re :

Dwarkanadas Raghubir Prosad Chowdhury & Anr. : 1987 (1) CLJ 479, High Court in a revisional application under Article 227 of the Constitution

of India had set aside an order passed by the learned Munsif, although the said order was not challenged in revision, by holding that ""The High

Court is not so powerless and its powers are not so limited to preclude it from doing justice between the parties in the exercise of its revisional

powers, merely because Rule was not issued at the initial stage on the particular ground or grounds concerned"", (paragraph 4) The unreported

judgment in CO. 1931 of 2010 (Shew Shankar Shaw @ Shew Sankar Das vs. Gour Hari Maity & Ors.), supports the stand taken by the

petitioner since the High Court while allowing the revisional application directed the Collector to assess the valuation since he did not do so

personally, as directed. So far as the judgments relied on by the opposite parties are concerned, the judgments of the Apex Court in Radhey

Shyam and Another Vs. Chhabi Nath and Others, and Sneha Gupta Vs. Devi Sarup and Others, are not applicable as in the instant case the

question is not of correcting mere errors or with regard to the disputed questions of fact but whether the Lower Court, while passing the impugned

order, had followed the directions of the High Court. Rather the law laid down in paragraph 41 in Sneha Gupta (supra) supports the case of the

petitioner since it has been held that High Court ""could intervene, if there existed an error apparent on the face of the record....."" In my view, as

reassessment of valuation was not done by the Collector as directed by the High Court but by the Additional District Magistrate, which the learned

Court below had overlooked, the error, as evident from the records, is palpable. The judgment in Filmistan (P) Ltd. Vs. Balkrishna Bhiwa and

Another, where the workmen did not press the contention based upon section 33(2) proviso (b) of the Industrial Disputes Act, 1947 and

therefore, it was held that it was presumed that the plea was abandoned, is not applicable to the facts of the case in hand, as though the petitioner

did not take the point in the written objection in the Court below or in the revisional application regarding illegal assumption of jurisdiction by the

Additional District Magistrate, the Court below was under an obligation to ensure compliance of the direction of the High Court by the Collector.

The judgment in Ahmedabad Mfg. and Calico Ptg. Co. Ltd. Vs. Ram Tahel Ramnand and Others, is not applicable to the facts of this case as the

failure of the lower court in ensuring compliance of the directions contained in the order passed by the High Court was not a mere error. Since in

the instant case the question is of non-compliance of the directions of the High Court, the law laid down in paragraph 55 in Sandur Manganese &

Iron Ores Ltd. vs. State of Karnataka & Ors., 2010(6) Supreme 569 is not applicable. The judgment in Vinaykishore Punamchand Mundhada &

Anr. vs. Shri Bhumi Kalpataru & Ors., 2010(6) Supreme 153 is not applicable to the case in hand as the question of reappreciating the evidence

available on record does not arise. The judgment of the Apex Court in G. Suryakumari & Anr. vs. B. Chandramouli & Ors., 2009 (8) Supreme

573 is not applicable since whether a particular ground was taken before the Trial Court or the First Appellate Court is not the real issue but the

core issue is whether the Lower Court had ensured that the Collector had complied with the order of the High Court or not. The judgment in

Employees" State Insurance Corporation vs. Puma Distributors, 2005 (1) CLJ (Calcutta) 230 relied on by the opposite parties rather supports the

case of the petitioner as therein it has been held that an aggrieved party moving an application under Article 227 of the Constitution of India must

satisfy that there was mistake apparent on the face of the record and such mistake does not require any deep probe. Similarly, as the impugned

order resulted in grave injustice to the petitioner, the judgment in Manojit Nag Chowdhury Vs. Saptaparni Co-operative Housing Society and

Another, , relied on by the opposite party, supports the case of the petitioner. Since the learned Judge in the Court below did not ensure

compliance of the order passed by the High Court, in an application under Article 227 for the ends of administration of justice, in my view, as the

error is patent and does not require any interpretation, High Court should suo motu intervene though no ground has been pleaded by the petitioner.

Therefore, the order dated 23rd October, 2009 passed by the learned Civil Judge (Senior Division) 1st Court, Barasat in T.S. 144 of 2004

(Badal Krishna Pal vs. Sankar Chandra Saha & Ors.) cannot be sustained and is, thus, set aside and quashed. Hence, the application is allowed.

The learned Court below is directed to remand the matter to the Collector for reassessment. The learned Court below is also directed to give

appropriate direction upon the Collector so that the report is made available before the learned Court below within the shortest possible time in

order to ensure expeditious disposal of the suit. Since the suit is pending since 2004, the learned Court below is directed to hear out and dispose

of the suit immediately upon receipt of the report of the Collector in terms of the order passed on 15th December, 2008 in CO. 4344 of 2007

within a period of eight months but not later than twelve months therefrom without granting unnecessary adjournment to the parties.

8. There will be no order as to costs.

9. Let urgent photostat certified copy of this order, if applied for, be furnished to the appearing parties on priority basis.