CASE NO.:
Appeal (civil) 2023 of 2004

PETITIONER:
M. Meenakshi & Ors

RESPONDENT:
Metadin Agarwal (D) By LRs. & Ors

DATE OF JUDGMENT: 29/08/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T
W I T H
CIVIL APPEAL NOS.2024 & 8265 OF 2004

S.B. SINHA, J :

The heirs and legal representatives of the Original Defendant in a suit for specific performance of contract and the subsequent purchaser are before us in these appeals which arise out of a judgment and order dated 10.09.2003 passed by a Division Bench of the Andhra Pradesh High Court in Letters Patent Appeal Nos. 168 and 169 of 1996 whereby and whereunder the judgment and decree passed by a learned Single Judge dated 05.11.1996 affirming a judgment and decree dated 30.04.1990 passed by the Additional Chief Judge-cum-Spl. Judge for SPE & ACB Cases, City Civil Court, Hyderabad, was set aside.

The Defendant in the suit together with his other co-sharers were owners of Survey No.71, West Marredpalli, Secunderabad. A proceeding under the Urban Land (Ceiling & Regulation) Act, 1976 (for short, 'the 1976 Act') was initiated against them. In the said proceeding at the hands of the landholders, excess land was directed to be vested in the Central Government. The owners were allowed to retain 1000 sq. metres of land each.

Allegedly, on that premise a piece of vacant land bearing Plot No.2 in Survey No.71 measuring 1000 sq. metres which had been allotted to the defendant was allowed to be retained by him. On or about 27.06.1978 he (original Owner) entered into an agreement with the Plaintiff for sale in respect thereof on a consideration of Rs.50/- sq. yard . As on the said date, a proceeding under the 1976 Act was pending, the agreement to sell was subject to the grant of permission by the competent authority under the said Act. It stipulated that in the event of refusal on the part of the competent authority to grant such permission, the advance paid to the Defendant would be refunded. It was further stipulated that in the event of refusal on the part of the vendor to execute the sale deed upon obtaining permission, if any, not only the amount paid by way of advance was to be refunded but also damages to the extent of Rs.15,000/- was to be paid by the Defendant to the Plaintiff. The application under Section 26 of the 1976 Act filed for seeking permission to sell the said land was rejected by the competent authority by an order dated 24.08.1978.

An application was filed under Section 10 of the 1976 Act on 29.04.1980 which was again rejected by an order dated 26.06.1980 stating that no vacant land measuring 1000 sq. metres was available, in view of the order passed in the proceedings under the 1976 Act and as such no permission could be granted. A clarification of the said order was sought for. Allegedly, on the ground that permission to sell the vacant land had been rejected by a notice dated 26.06.1980, the agreement was sought to be cancelled by the Respondent on the premise that the same stood frustrated.

The Plaintiff-Respondent in C.A. No.2023 of 2004 thereafter filed a suit for specific performance of contract.

The learned Trial Judge decreed the said suit in part. While rejecting the prayer for grant of specific performance of contract, the Defendant was directed to refund the amount of advance as also damages of Rs.15,000/- together with interest @ 6% p.a.. An appeal was preferred thereagainst by the Plaintiff-Respondent and by a judgment and order dated 05.11.1996, a learned Single Judge of the High Court dismissed the appeal. Be it placed on record that the learned Single Judge appointed a Advocate-Commissioner for taking measurement of land in question; whereupon a report was filed. A Letters Patent Appeal was filed by the Plaintiff-Respondent before a Division Bench of the High Court and by reason of the impugned judgment, the said Letters Patent Appeal had been allowed.

In the said suit an order of status quo was passed. Allegedly, in violation of the said order, all co-sharers sold portions of the house property which could be retained by them under the 1976 Act.

Mr. Deepankar Gupta, the learned Senior Counsel appearing on behalf of the Appellants, urged that : (i) The High Court acted illegally and without jurisdiction in ignoring the orders passed by the competent authority under the 1976 Act; (ii) The decree for specific performance granted by the Division Bench is contrary to the statutory provisions contained in the 1976 Act; (iii) The Division Bench could not have interfered with the judgment by the learned Trial Judge as also the learned Single Judge of the High Court refusing to exercise their jurisdiction under Section 20 of the Specific Relief Act, 1963, and interference therewith by the Division Bench was unwarranted; and (v) The High Court could not have directed cancellation of the deed of sale in favour of the subsequent purchaser.

Mr. L. Nageshwara Rao, the learned Senior Counsel appearing on behalf of the Respondents, on the other hand, submitted that : (i) Although some of the findings arrived at by the High Court cannot be supported, but having regard to the fact that 1000 sq. metres of vacant land, which was the subject-matter of the agreement for sale being outside the purview of the vacant land under the 1976 Act, the learned Trial Judge and consequently the learned Single of the High Court committed a manifest error in so far as they failed to take into consideration that Section 20 of the 1976 Act would not be applicable; (ii) The learned Trial Court having found that the Defendant had been held guilty of commission of fraud, could not have deprived the Plaintiff-Respondent from obtaining a decree for specific performance of contract; (iii) The Advocate-Commissioner appointed by the Trial Judge as also the learned Single Judge having found that the subject-matter of the agreement for sale executed by the Appellant in favour of Meenakshi and others was identical to that of the suit land, the Division Bench cannot be said to have committed any illegality in granting the decree for specific performance of contract; (iv) The learned Trial Judge as also the learned Single Judge committed a serious error in denying a decree for specific performance of contract on a premise that the period of twelve years have elapsed since the agreement for sale and, thus, the alternative prayer for grant of damages would suffice; (v) It was not a case where the contract was a contingent one, but being a completed one, a suit for specific performance of contract was maintainable and there was no bar on the part of the Division Bench in passing a decree therefor; (vi) The Division Bench of the High Court exercised plenary jurisdiction in an intra-court appeal and thence both question of fact as also of law could be gone into and, thus, it cannot be said to have committed any illegality in interfering with the judgments of the learned Trial Court as also the learned Single Judge of the High Court.

It is not disputed that the parties to the agreement were aware of the proceedings pending before the ceiling authorities. It is also not in dispute that the Central Government was the appropriate authority to deal with the matter as the lands pertained to a cantonment area. The agreement envisaged that the Defendant would obtain necessary sanction from the

competent authority. It was made clear that he had not submitted any lay out nor had he got any sanction therefor.
Clauses 8 and 9 of the said agreement read as under :

"If the second party fails to pay the balance consideration of Rs.44,800/- (Rupees forty four thousand either hundred only) by the due date, and refuses to purchase after permission is granted, the second party shall forfeit the advance of Rs.15,000/- (Rupees fifteen thousand only) paid by them to the first party. If the first party fails to execute the sale deed by the due date, after the permission is granted, the first party shall not only refund to the second party the advance sum of Rs.15,000/- but shall also pay to the party an additional sum of Rs.15,000 as damages.

In case permission to sell to the second party is refused by the ceiling authority, then the first party shall refund to the second party, the advance sum of Rs.15,000/- (fifteen thousand only) within one month from the date of refund."

The lands in question admittedly were described in the plan annexed to the agreement which shows that the same was lying west to a 30 ft. road. The Respondents themselves had annexed a plan, from a perusal whereof it appears that six co-sharers were allotted 6000 sq. metres of lands \026 four in one block and two in another, apart from their house properties situate on the eastern side of the said road.

The plots in question were marked with the letters '1', '2', '3', '4', '5' and '6'. A big chunk of land was held to be the excess land under the 1976 Act at the hands of the Appellants and their co-sharers. The lands belonging to Syed Abdul Razak was marked with the letter '2'.

In the land ceiling proceedings, in response to the Defendant's letter dated 30.07.1980, the competent authority by its letter dated 08.08.1980 rejected the application for grant of permission under Section 26 of the 1976 Act stating :

"Out of your prescribed ceiling limit of 1000 sq. mtrs. your individual share of urban properties including built up area/vacant land are as under :

S.No.
Name
Built up area including appurtenant lands in sq. mts.
Vacant land in sq. mtrs.
1.
Mr. S.A. Razak
563.25
436.75
2.
Mr. S.A. Rahman
563.25
436.75
3.
Miss Hahmooda Begum
281.62

718.38
4.
Mrs. Sharafunisa
281.62
718.38

You are advised to submit a plan showing the built up area and vacant land, as shown above, to be retained by you, as per prescribed ceiling limit."

No vacant land admeasuring 1000 sq. metres, according to the authorities, was, thus, available for transfer to third parties.

The Division Bench commented that having regard to the Muslim law of inheritance and succession, the competent authority should not have jumped to the conclusion that the declarant wanted to retain the built up area and also apportioning the built up area and vacant land between the male members and the female members of the family. The Division Bench made a terse comment against the competent authorities by raising a question as to how permission had been granted in favour of the cooperative society while rejecting similar application in favour of the Plaintiff while declining such permission in favour of the Respondent. The learned Judges purported to have addressed themselves to the question as regards the propriety, legality and/or validity of the order passed under Section 9 of the Act and came to the conclusion that even after alienating 26972 sq. metres of land to the society, the family still owned excess lands which would be about 5261 sq. metres including 2253 sq. metres of land wherever buildings were standing.

Relying upon certain decisions, the Division Bench opined that a decree for specific performance could have been granted, stating :

"\005In this case also the defendant having entered into agreement to sell open land of thousand metres each to the plaintiffs took a round about turn by selling the vast extent of property along with other family members which was declared as surplus land to Murthy Housing Cooperative Society Limited with the active connivance of the competent authority in obtaining a letter Ex.A-16/ B10 dated 26.6.1980 wherein the competent authority says that area sought to be sold include built up area which is absolutely false and the competent authority made such a statement in collusion with the defendant who in fact helped him in alienating about 30,000 square metres of land which is declared as surplus land circumventing the provisions of Urban Land Ceilings Acts more so after the entire procedure contemplated under the Act is over\005.Hence the order of competent authority is only camouflage to avoid the completion of the sale transaction. In the light of the foregoing discussion, we cannot agree with the reasoning given by the trial court as well as the Learned Single Judge in dismissing the suits, since the land offered for sale do not contain any built up area either as per the agreement of sale or any of the maps that were filed before various authorities\005"

The competent authority under the 1976 Act was not impleaded as a party in the suit. The orders passed by the competent authority therein could not have been the subject-matter thereof. The Plaintiff although being a person aggrieved could have questioned the validity of the said orders, did not chose to do so. Even if the orders passed by the competent authorities were bad in law, they were required to be set aside in an appropriate

proceeding. They were not the subject matter of the said suit and the validity or otherwise of the said proceeding could not have been gone into therein and in any event for the first time in the Letters Patent Appeal.

It is a well-settled principle of law that even a void order is required to be set aside by a competent court of law inasmuch as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not non est. An order cannot be declared to be void in a collateral proceeding and that too in absence of the authorities who were the authors thereof. The order passed by the authorities were not found to be wholly without jurisdiction. They were not, thus, nullities.

The Division Bench proceeded on a rather curious premise. It took into consideration extraneous and irrelevant factors, some of which we would notice a little later.

We fail to appreciate the manner in which the Division Bench not only went into the legality of the orders passed by the competent authority made under the 1976 Act but also made comments about their alleged personal involvement therein. The High Court had no jurisdiction to make such comments and pass strictures against the said authority.

Once it is held that the orders passed by the competent authority could not have been the subject-matter of a decision in the suit, it must be held that the entire approach of the Division Bench was unsound in law. It posed unto itself wrong questions leading to wrong answers.

The learned Trial Judge albeit concluded that the Defendant was guilty of fraud, but the said finding had been arrived at on the premise that he could not have entered into an agreement for sale of 1000 sq. metres of vacant land when the same was not available. It was held :

"68. To sum up, it is evident that in Ex. A1, the defendant knowingly has made a false declaration that the 1000 sq. metres of vacant land which he has agreed to sell under Ex.A1 is the land allowed by the competent authority to be retained by him under the Act. While actually it includes a portion of the building and the contracted land is land outside the ceiling area. When Ex.A1 land is not land within the ceiling limit, Section 26 of the Act does not apply\005"

It further observed :

"69.Thus, defendant by making a false declaration in Ex.A1 has induced the plaintiff to enter into Ex.A1 contract and has not been made any efforts to perform the contract or at least make amends for that fraud played by him. It may be mentioned that making a false declaration knowing it to be false and having no intention to perform is nothing short of fraud.

70. On account of this fraud perpetuated on the plaintiff, plaintiff can either insist upon specific performance or seek damages. I have already stated above that directing specific performance would prolong the stalemate and uncertainty for good length of time and that it is not interests of even the plaintiff to have such a relief because it depends upon a contingency and the relief may or may not ultimately materialize. The best remedy under the circumstances would be to grant the alternative relief of damages asked for by the plaintiff."

It was, therefore, not a case where the Trial Court found that the Defendant had committed a fraud on the statutory authorities or on the court. The expression 'fraud' in our opinion was improperly used. It must be noticed that admittedly when the agreement was entered into, the proceedings under the 1976 Act were pending. The parties might have proceeded under a misconception. It is also possible that the Defendant had made misrepresentation to the Plaintiff; but the question which was relevant for the purpose of determination of the dispute was as to whether having regard to the proceedings pending before the competent authority under the 1976 Act, the Defendant could perform their part of the contract. The answer thereto, having regard to the order of the competent authority dated 08.08.1980, must be rendered in negative.

Mr. Nageshwara Rao may be right in his submission that in a given case, it is possible to pass a decree for specific performance of contract, although there exists a clause for obtaining a sanction from the competent authority. But in the instant case, rightly or wrongly the competent authority had refused to grant such sanction. It refused to grant sanction not on the ground that Section 26 was attracted; but on the ground that 1000 sq. metres of vacant lands which had been the subject-matter of agreement were not available, in view of the fact that the Defendant and their co-sharers were permitted to retain only their residential houses and the lands appurtenant thereto.

It was, therefore, not a case where a notice under Section 26 of the 1976 Act could have served the purpose and in the event, the competent authority did not exercise its statutory right of perception within the period stipulated thereunder, the Defendant was free to execute a deed of sale in favour of any person he liked.

Strong reliance has been placed by Mr. Nageshwara Rao on a decision of this Court in HPA International etc. v. Bhagwandas Fatehchand Daswani and Others etc. [(2004) 6 SCC 537]. Our attention in particular has been drawn to the following observations :

"In the case before us, we have not found that the vendor was guilty of rendering the suit for sanction infructuous. It did terminate the contract pending the suit for sanction but never withdrew that suit. The vendee himself prosecuted it and rendered it infructuous by his own filing of an affidavit giving up his claim for the interest of reversioners. In such a situation where the vendor was not in any manner guilty of not obtaining the sanction and the clause of the contract requiring the Court's sanction for conveyance of full interest, being for the benefit of both the parties, the contract had been rendered unenforceable with the dismissal of the sanction suit."

The said observations were made in the fact situation obtaining therein.

In this case, we are concerned with a situation where the sanction, it will bear repetition to state, has expressly been refused.

Dharmadhikari, J. in that case itself has noticed a judgment of the House of Lords in New Zealand Shipping Co., Ltd. v. Scoiete Des Ateliers Et. Chantiers De France [(1918-19) AER 552] wherein it was held that a man shall not be allowed to take advantage of his own wrong which he himself brought about.

The parties were aware of the proceedings under the 1996 Act. The Plaintiff-Respondents were also aware that sanction under the said Act is necessary. The consequence for non-grant of such sanction was expressly

stipulated. Even the parties were clear in their mind as regards the consequences of willful non-execution of a deed of sale or willful refusal on their part to perform their part of contract.

We may notice that Lord Atkinson in New Zealand Shipping (supra) took into consideration the inability or impossibility on the part of a party to perform his part of contract and opined that the principle that man shall not be permitted to take advantage of his own wrong, which he himself brought about.

Our attention has rightly been drawn by Mr. Gupta to the deed of sale executed by the Defendant in favour of others. By the said deeds of sale all the six co-sharers have sold portions of their house properties and lands appurtenant thereto. The total land sold to the purchasers by all the six co-sharers was below 900 sq. metres.

The comment made by the Division Bench that the competent authority under the 1976 Act failed to take into consideration the Muslim law of inheritance and succession is again besides the point. Each of the claim petition by the Appellants and their co-sharers was determined having regard to the 1976 Act. The Muslim law of inheritance and succession may not have any role to play. In any event, the same could not have been the subject-matter of a decision at the hands of the Division Bench.

We have noticed the reports of the Commissioner appointed both by the Trial Court and the learned Single Judge of the High Court. The Commissioner appointed by the Trial Judge in his report stated :

"\005I also found some numbers were painted in black on the compound wall inside the western compound wall as 3-42-67 and I also found one small brick mound near to middle unfinished room touching western compound wall. I also found some numbers on the gate painted in black as 65-66-67-68-69 while I was proceeding with the execution of warrant some persons brought a board and tied it to the gate which contains some letters painted as "this land and construction area Cantonment H. No.3-42-65 to 3-42-69 belong to Murthy Cooperative Housing Society-Trespasser will be prosecuted."

It was, therefore, accepted that the plots mentioned therein had already been sold to Murthy Cooperative Housing Society. The said cooperative society, it is beyond any cavil of doubt, purchased the land from the original owners pursuant to or in furtherance of the exemption accorded in that behalf by the competent authority in exercise of its power under Section 20 of the 1976 Act. The land sold to the cooperative society which might have included the vacant land and which was the subject-matter of the agreement but was not the subject-matter of the suit. They were not parties thereto. The sanction accorded in their favour by the competent authority had never been put in question.

The Advocate-Commissioner appointed by the Trial Court, observed :

"Opinion and Observation :

Taking all the aforesaid facts and circumstances I conclude that the plot no.2 in Survey no. 71 as mentioned in agreement of sale Ex.A-2 in the trial court and the house no. 3-9-51/A,B,C and D situated in Survey no.71/part, west Marredpally on which I conducted the local inspection are the same."

The learned Commissioner, therefore, only inspected Plot No.2

situated in Survey No.71 and not the lands which were the subject-matter of sale in favour of the subsequent purchasers.

The High Court, in our considered view, also committed a manifest error in opining that the Appellants should have questioned the orders passed by the competent authority. If they have not done so, the same would not mean that the Division Bench could go thereinto suo motu.

Furthermore, Section 20 of the Specific Relief Act confers a discretionary jurisdiction upon the courts. Undoubtedly such a jurisdiction cannot be refused to be exercised on whims and caprice; but when with passage of time, contract becomes frustrated or in some cases increase in the price of land takes place, the same being relevant factors can be taken into consideration for the said purpose. While refusing to exercise its jurisdiction, the courts are not precluded from taking into consideration the subsequent events. Only because the Plaintiff-Respondents are ready and willing to perform their part of contract and even assuming that the Defendant was not entirely vigilant in protecting their rights in the proceedings before the competent authority under the 1976 Act, the same by itself would not mean that a decree for specific performance of contract would automatically be granted. While considering the question as to whether the discretionary jurisdiction should be exercised or not, the orders of a competent authority must also be taken into consideration. While the court upon passing a decree for specific performance of contract is entitled to direct that the same shall be subject to the grant of sanction by the concerned authority, as was the case in Mrs. Chandnee Vidya Vati Madden v. Dr. C.L. Katial and Others [AIR 1964 SC 978] and Nirmal Anand v. Advent Corporation (P) Ltd. and Others [(2002) 5 SCC 481]; the ratio laid down therein cannot be extended to a case where prayer for such sanction had been prayed for and expressly rejected. On the face of such order, which, as noticed hereinbefore, is required to be set aside by a court in accordance with law, a decree for specific performance of contract could not have been granted.

Mr. Nageshwara Rao contended that the plea as regards maintainability of the suit should not be permitted to be raised before this Court. We do not agree with the counsel inasmuch as, inter alia, the plea which has been raised herein by the Defendant is that it was not a fit case where the Division Bench should have interfered with the discretionary jurisdiction exercised by the learned Trial Judge as also by the learned Single Judge.

There cannot be any doubt that in exercise of its letters patent jurisdiction, the Appellate Court may review findings of fact as well as law arrived at by a learned Single Judge, but while doing so, it must bear in mind its limitations. It is now well-settled principle of law that the courts would not normally interfere with the discretionary jurisdiction exercised by the courts below.

In Manjunath Anandappa Urf Shivappa Hanasi v. Tammanasa and Others [(2003) SCC 390], it was held :

"There is another aspect of the matter which cannot be lost sight of. The plaintiff filed the suit almost after six years from the date of entering into the agreement to sell. He did not bring any material on record to show that he had ever asked Defendant 1, the owner of the property, to execute a deed of sale. He filed a suit only after he came to know that the suit land had already been sold by her in favour of the appellant herein. Furthermore, it was obligatory on the part of the plaintiff for obtaining a discretionary relief having regard to Section 20 of the Act to approach the court within a reasonable time. Having regard to his conduct, the plaintiff was not entitled to a discretionary relief."

It was further observed :

"It is now also well settled that a court of appeal should not ordinarily interfere with the discretion exercised by the courts below."

The findings of the Division Bench, in our considered opinion, therefore, cannot be sustained.

For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeals are allowed. However, in the facts and circumstances of the case, the parties shall pay and bear their own costs.