

A MAHAVIR JANGONDA PATIL
V.
DIRECTOR OF RESETTLEMENT & ORS.
Civil Appeal Nos. 6335-6336 of 2001

APRIL 22, 2009

B (HARJIT SINGH BEDI AND J.M. PANCHAL, JJ.)

Maharashtra Resettlement of Project Displaced Persons Act, 1976:

C Sections 11, 12, 15 – Section 15(1) Notification -
Compromise between brothers entered into thereafter – Effect
of – **Held:** In view of the clear legislative intent under section
12, any transfer by way of sale, partition etc. after the
Notification would be void – Where the statute itself is against
D a transfer it is the statute which will predominate vis-à-vis any
other consideration – Land Acquisition Act, 1894, Sections 4,
6.

*Addagada Raghavamma and Anr. Vs. Addagada
Chenchamma and Anr. [1964] 2 SCR 933 and State of Punjab
E vs. Amar Singh [1974] 2 SCC 70 – referred to.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No(s).
6335-6336 of 2001

F From the Judgement and Order dated 12.04.2001 of the
High Court of Judicature at Bombay in Review Application No.
71 of 2001 in Writ Petition No. 6063 of 1988 and dated
22.03.2001 in Writ Petition No. 6063 of 1988.

Chinmoy Khaladkar (for Vimal Chandra S. Dave), for the
Appellant(s).

G Arun Ramnath Pednekar (for Asha Gopalan Nair), for the
Respondent(s).

The following order of the Court was delivered :

These appeals are directed against the judgment and order dated 12.4.2001 in Review Application No.71 of 2001 passed by the Bombay High Court and the judgment and order dated 22.3.2001 passed by the Bombay High Court in Writ Petition No.6063 of 1988 dated 22.3.2001 whereby the Writ Petition filed by the present appellant has been dismissed.

In the writ petition a challenge has been made by the appellant to the notification under Section 15(1) dated 29th May, 1982 of the Maharashtra Resettlement of Project Displaced Persons Act, 1976 (hereinafter called the "Resettlement Act") and also for quashing the notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 issued by Respondent No.4.

Brief facts of the case are as under:-

Respondent No.6, through respondent No.3, issued a notification on 2nd November, 1978 under Section 11(1) of the Resettlement Act declaring the villages comprised therein to be covered under the benefited zones of Warna Project in Kolhapur District from the said date. The said notification included the appellant's village, Shriti. Respondent No.2 thereafter issued notification under Section 14(1) of the Resettlement Act on 24th December, 1981 provisionally declaring the area to be acquired under Section 16 for the said Warna Project. The Respondents also issued a notification under Section 15 of the Resettlement Act which was published in the government gazette on 29th May, 1982 finally declaring the areas covered by the benefited zone. Respondent No.4, on 1st September, 1983, issued a notification under Section 4 of the Land Acquisition Act intending to acquire the Petitioner's land bearing gat No.677 part, admeasuring 1 hectare 62 ares for the purpose of resettlement of persons affected by the Warna Project. The appellant lodged his objections to the notices issued pursuant to the Resettlement Act and the Land Acquisition Act and pointed out inter alia that on account of a compromise recorded in the year 1979, arising out a suit for

- A partition filed in 1967, the land had been partitioned amongst various members of the family and that the land holdings of the petitioner and his brothers had accordingly been reduced to less than 8 acres and the petitioner's land thus could be acquired in view of Section 16 of the Resettlement Act read along with the schedule appended thereto. The High Court in the impugned judgment held that as the compromise had been effected in the year 1979, i.e., after the date of notification dated 2.11.1978 issued under Section 11(1) of the Resettlement Act, the aforesaid compromise could not be taken into account as it was void ab initio and, accordingly, dismissed the Writ Petition. It is in this situation, the matter is before us.

We have heard learned counsel for the parties and have gone through the record.

- D Section 12 of the Resettlement Act, 1976 reads as under:

E "12. (1) Notwithstanding anything contained in any law for the time being in force, no land in the villages of areas specified in the notification under Section 11 shall, after publication of that notification in the official Gazette, and until the Deputy Director makes a declaration to the effect that all proceedings for the acquisition of lands in the benefited zone area completed, be -

- F (a) transferred, whether by way of sale (including sale in execution of a decree of a Civil Court or of an award or order of any other competent authority) or by way of gift, exchange, lease or otherwise.

- G (b) sub-divided including sub-division by a decree or order of any court or any other competent authority), or

- (c) partitioned (including partition by a decree or order of any court or any other competent authority), except with the permission in writing of the State Government.

- H (2) The State Government may refuse to give such

permission if in its opinion the transfer, sub-division or partition of land is likely to defeat the object of this Act, or may give such general or special permission, subject to such conditions, if any, as it may deem fit to impose to carry out the object of this Act or may give such general or special permission, subject to such conditions (if any) as it may deem fit to impose to carry out the object of this Act, including a condition that the grant of such permission shall be without prejudice to the area of land liable to be compulsorily acquired under section 16, on the basis of any holding as it existed immediately before the grant of such permission.

(3) Any transfer, sub-division, partition of land made in contravention of sub-section (1) or of any condition imposed under sub-section (2) shall be void and inoperative.

(4) The State Government may, by general or special order, delegate its powers under sub-section (1) and (2) to all or any of the Collectors of Districts who are ex-officio Deputy Directors (Land), subject to such conditions and limitations, if any as may be specified in the order."

A perusal of Section 12 reveals that after the land has been notified under Section 11, any sub-division of the land by means of partition etc., shall be deemed to be void. Admittedly, the compromise in the matter was after the date of notification in the year 1978. The learned counsel for the appellant has, however, forcefully submitted that in view of the judgment of this Court in *Addagada Raghavamma And Anr. v. Addagada Chenchamma And Anr.* [1964] 2 S.C.R. 933, once the partition had been effected even if by a compromise, it would relate back to the date when the intention to separate had been expressed by the parties and this date would be the year 1967, when the suit had been filed. Undoubtedly, some of the observations in the aforesaid judgment do support the arguments raised by the

A learned counsel, but in this very judgment the Supreme Court has observed that the principle of retroactivity, unless a legislative intention was clearly to the contrary, would save vested rights. It would be clear that this observation by itself makes a distinction as to the retroactive nature of the compromise effected i.e. in case where the legislative intention is to the contrary. We find herein a clear legislative intent as Section 12 of the Resettlement Act clearly stipulates that any transfer by way of sale, partition etc. after the date of notification under Section 11, would be void.

C The learned counsel for the respondent has also taken us to a judgment of this Court in the case of *State of Punjab v. Amar Singh* (1974) 2 SCC 70 which is a judgment rendered under Section 10-A of the Punjab Security of Land Tenures Act, 1953. The principle laid down in the afore-cited case has been noticed in this judgment as well in paragraph No.33 in the following words:

E "Another argument was suggested that the order, even though passed on a compromise was as valid and binding as one passed on contest. May be, that as a broad proposition one may assent to it. But where a compromise goes against a public policy prescription of a stature or a mandatory direction to the Court to decide on its own certain foundational facts, a razi cannot operate to defeat the requirement so specified or absolve the Court from the duty. The resultant order will be ineffective. After all, by consent or agreement, parties cannot achieve what is contrary to law and a decree merely based on such agreement cannot furnish a judicial amulet against statutory violation. For, "by private agreement, converted into a decree, parties cannot empower themselves to do that which they could not have done by private agreement alone". (See Mulla: Civil Procedure Code, Vol. II, P. 1300).

H The true rule is that "the contract of the parties is not the

less a contract, and subject to the incidents of a contract, A
because there is superadded the command of the Judge".

It is, therefore, obvious that where the statute itself is
against a transfer, it is the statute which will pre-dominate vis-a-
vis any other consideration.

B

We, thus, find no merit in these appeals. Dismissed,
however with no order as to costs.

G.N.

Appeals dismissed.