2020 INSC 113

**NON-REPORTABLE**

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

**CIVIL APPEAL NO(s).652 OF 2020**
(arising out of SLP (Civil) No(s). 17418 of 2018)

VAIJINATH S/O YESHWANTA JADHAV
DECEASED BY L.R. AND OTHERS ...APPELLANT(S)

VERSUS

AFSAR BEGUM, WIFE OF
NADIMUDDIN, DECEASED BY
L.Rs. AND OTHERS ...RESPONDENT(S)

**JUDGMENT**

**NAVIN SINHA, J.**

The appellant assails the order dated 01.02.2010 dismissing his writ application and the affirmation of the same by the Division Bench dated 19.03.2018, in appeal.

2. The predecessor of the appellant was granted the status of a statutory tenant under Section 38E(1) of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as 'the Act') with regard to Survey No.189 and 202/AA in village Ghat Nandur on 01.02.1959. The original land owner Nadimuddin,

predecessor of the respondents nos.1 and 2 (hereinafter referred to as 'respondents'), filed an application under Section 44 of the Act for resuming the lands for personal cultivation. It was rejected on 22.04.1960. Nadimuddin did not challenge the rejection till his death on 21.01.1962. The statutory certificate was then issued to the appellant predecessor on 24.03.1970 after examination by the Agricultural Land Tribunal Ambajagai under Section 38E(2) of the Act. The respondents, sons of Nadimuddin, laid a fresh challenge to the certificate dated 24.03.1970 after the latter's death. It was rejected by the Deputy Collector on 19.04.1971, affirmed by the Maharashtra Revenue Tribunal (hereinafter referred to as "the Tribunal") on 09.11.1971. The respondents then filed Regular Civil Suit No.73/1972 for declaration of title with regard to the suit lands and that the certificate issued to the predecessor of the appellant by the Land Tribunal was null and void. The suit having been decreed, was reversed in appeal by the Extra Assistant Judge, Beed in Regular Civil Appeal No.122/1976 inter alia rejecting the challenge that the Land Tribunal did not follow the procedure before issuance of the certificate. The dismissal of the suit attained finality as the

respondents, legal heirs of Nadimuddin, did not challenge it before any superior forum.

3. On 26.05.1981, Afsar Begum, wife of Nadimuddin and mother of the respondents, filed a fresh appeal before the Deputy Collector challenging the certificate dated 24.03.1970 only with respect to Survey No.202/AA contending that she was unaware till January 1981 of the mutation entries in the name of the appellants. The Deputy Collector by order dated 20.01.1983 remanded the matter to the Additional Tehsildar. The Additional Tehsildar on 23.12.1987 held that in absence of proper entries in the tenants register, the predecessor of the appellant could not be held to be a protected tenant. The Deputy Collector in the appeal preferred by the appellant, on 30.12.1988 set aside the order of the Additional Tehsildar and ruled in favour of the appellant upholding the declaration of ownership rights under Section 38E(1) of the Act. Afsar Begum preferred a revision which was allowed by the Tribunal on 21.09.1990, affirmed by the Single Judge and the Division Bench, and which are impugned in the present proceedings.

4. Shri Vinay Navare, learned senior counsel appearing on behalf of the appellant, submitted that the status of the appellant as a protected tenant having achieved finality by the order of the Tribunal dated 09.11.1971 at the behest of the respondents read along with the dismissal of Regular Civil Suit No. 73/1972, it was not open for the wife of the deceased, who was none other than the mother of the respondents, to challenge the very same certificate 24.03.1970 by subterfuge, eleven years after its grant and ten years after the order of the Tribunal. Even if for the sake of argument, though not conceding, the order of the Tribunal dated 09.11.1971 was erroneous, it having attained finality, the Tribunal could not have virtually sat over its own earlier order as an appellate forum to arrive at a contrary finding. The appellant could not be vexed twice on the same issue, once by the sons of Nadimuddin and then belatedly by his wife Afsar Begum. The latter has since been deceased, and has been substituted by the respondents. The effect of the impugned order is that what was denied to the respondents directly will now be made available to them indirectly by virtue of litigation which was not at all bonafide. Reliance was placed on ***Cheeranthoodika Ahmmedkutty and another vs. Parambur***

***Mariakutty Umma and others,*** (2000) 2 SCC 417, ***R. Unnikrishnan and another vs. V.K. Mahanudevan and others,*** (2014) 4 SCC 434.

5. It was next submitted that the dismissal of the appeal preferred by respondents in their own status as legal heirs of Nadimuddin by the Tribunal on 09.11.1971, albeit on the grounds of limitation, nonetheless is a final order on merits relying on ***Shyam Sunder Sarma vs. Pannalal Jaiswal and others,*** (2005) 1 SCC 436.

6. Shri Vivek C. Solshe, learned counsel appearing on behalf of the respondents, submitted that the order of the Tribunal dated 21.09.1990 as affirmed by the High Court is well considered and reasoned. Merely because a certificate may have been issued erroneously to the appellant, nothing precluded the Tribunal from correcting that wrong as obviously the certificate was not properly obtained and procedures for issuance and enquiries were not followed. The High Court has essentially exercised supervisory jurisdiction in view of the perversity of findings upholding an

erroneous certificate. The mere fact that the errors were discovered on a fresh appeal preferred by the widow of the deceased does not detract or lend validity to the earlier certificate as the name of the appellant did not find place in the register of tenants.

7. We have considered the submissions on behalf of the parties and have been taken through the various orders passed in the two rounds of litigation preferred first by the respondents and then by Afsar Begum. The respondents do not dispute the status of the appellant as a tenant. The attempt at restoration of the lands by Nadimuddin for personal cultivation was rejected on 22.04.1960 and was never questioned by Nadimuddin till his demise on 21.01.1962. What is sought to be disputed by the respondents, the legal heirs of Nadimuddin, is the appellant's status as a protected statutory tenant. Originally the respondents questioned the same with regard to the Survey Nos. 202/AA and 189. Subsequently Afsar Begum confined the challenge to the former only acknowledging the status of the appellant as a protected tenant on the latter. The appellants' predecessor was granted statutory status as far back as 01.02.1959 under Section 38E(1). Final certificate under Section

38E(2) was then granted to the appellant on 24.3.1970 by the Land Tribunal and deposit of the necessary amount was made before the Land Tribunal. It is considered proper to set out Section 38E (2) and (3) of the Act as follows:

> "(2) A certificate in the prescribed form declaring him to be owner shall be issued by the Tribunal to every such protected tenant and notice of such issue shall simultaneously be issued to the landholder. Such certificate shall be conclusive evidence of the protected tenant having become the owner of the land with effect from the date of the certificate as against the landholder and all other persons having any interest therein:
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> xxxxx
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> (3) Within 90 days from the date specified in a notification under sub-section (1) every landholder of lands situated in the area specified in such notification shall file an application before the Tribunal for the determination of the reasonable price of his interest in the land which has been transferred to the ownership of a protected tenant under sub-section (1) [and if an application is not so filed within such period by a landholder but a certificate under sub-section (2) has been issued, the Tribunal may suo motu proceed to determine such price and thereupon] all the provisions of subsections (4) to [(9)] of section 38 shall *mutatis mutandis* apply to such application:
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> xxxxx"

8. Subsequent to the issuance of the statutory certificate, the respondents on 08.07.1970 preferred an appeal before the Deputy

Collector with the plea that Nadimuddin was a sick man and was therefore unable to challenge the declaration in due time. The Deputy Collector by his order dated 09.11.1971 after consideration of documentary evidence concluded that no such ailment of Nadimuddin had been presented which may have prevented him from pursuing his remedies evident from the application preferred by him under Section 44 of the Act and which stood rejected with finality on 22.04.1960. The dismissal of the appeal on grounds of limitation was upheld by the Tribunal. The respondents did not assail the orders. Two years later they filed Regular Civil Suit No. 73/1972 for declaration that they were the owners of the lands in Survey No. 202/AA and that under Section 38E certificate granted to the appellant was a nullity. The suit was decreed but the Appellate Court reversing the decree held that the findings of the Land Tribunal leading to the certificate dated 24.03.1970 could not be examined by the Civil Court and that no case has been made out by the respondents that the Land Tribunal had failed to follow the procedure under the Act and the Rules in awarding the certificate. The respondents did not prefer any challenge to the dismissal of their suit.

9. Ten years after the dismissal of the appeal filed by respondents, by the Deputy Collector on 09.11.1971, Afsar Begum, the widow of Nadimuddin and mother of the respondents, filed a fresh appeal before the Deputy Collector to challenge the statutory status order dated 01.02.1959 and the statutory certificate dated 24.03.1970. She did not assail the status of the appellant as a protected tenant with regard to Survey No.189. It is necessary to take note that the Land Tribunal had granted a composite certificate as protected tenant to the appellant on 24.03.1970 for both Survey Nos. 189 and 202/AA. The assertion that it was issued behind the back of Nadimuddin is falsified by the application preferred by Nadimuddin under Section 44 for resumption of the lands and which was rejected on 22.01.1960, but which finds no mention in her memo of appeal. The appeal asserted that she became aware only in 1981 of the mutation entries in the name of the appellant. We consider it proper to take notice of the fact that it was not the case of Afsar Begum that she was living separately from her two sons, and was therefore unaware of all facts to the knowledge of the

respondents not only with regard to Nadimuddin but also the applications preferred by the respondents and rejection of the same.

10. The Additional Tehsildar, Land Reforms, by his order dated 23.12.1987 held that the declaration of the appellant as protected tenant was procedurally defective because the name of the appellant did not find place in the tenants register. In the appeal preferred by the appellant, the Deputy Collector took notice of the original order of the Additional Tehsildar dated 29.04.1972 on an application preferred by the respondents admitting the status of the appellant as a protected tenant but that they had failed to pay the rent only. The Deputy Collector also held that the declaration of ownerships rights of the appellant over Survey No. 202/AA was therefore binding on the legal heirs of Nadimuddin and which included his widow, which could not be reopened. The Tribunal upholding the order of the Additional Tehsildar dated 23.12.1987 virtually sat over its own earlier order dated 09.11.1971 as an appellate forum, to arrive at a contrary finding that the grant of protected tenant status to the appellant was erroneous in view of the errors in the tenancy register, notwithstanding the findings in the civil suit also that there

appeared no irregularity in procedure by the Land Tribunal. The Land Tribunal being a statutory body, there shall be a presumption of correctness of the orders passed by it.

11. It was not the case of the respondents that the statutory certificate had been obtained by any fraud or misrepresentation by the appellant in which case undoubtedly it would have been open for reconsideration. The conclusion of the High Court that the issuance of the certificate was "fictitious, unfounded and useless" by reasons of being null and void is therefore completely unsustainable. The decisions on the earlier occasion had been rendered by a proper competent forum, after hearing the parties and on perusal of records. An erroneous decision by a proper forum, unless assailed before a superior forum will attain finality inter parties.

12. In the facts of the present case, we find it very difficult to allow the appellant to be vexed twice, once by the sons of the land owner, then by his widow. We also cannot loose sight of the facts in the present case that the ultimate beneficiary of the fresh orders shall

be the respondents even though they have lost their own challenge. Resultantly what was denied to the respondents directly shall now be available to them indirectly as Afsar Begum has since been deceased. The fresh round of litigation started by Afsar Begum was a mere subterfuge and an abuse of the process of law and courts by essentially what is a proxy litigation.

13. In ***R. Unnikrishnan and another*** (supra), it was observed as follows:

> "19. It is trite that law favours finality to binding judicial decisions pronounced by courts that are competent to deal with the subject-matter. Public interest is against individuals being vexed twice over with the same kind of litigation. The binding character of the judgments pronounced by the courts of competent jurisdiction has always been treated as an essential part of the rule of law which is the basis of the administration of justice in this country. We may gainfully refer to the decision of the Constitution Bench of this Court in *Daryao* v. *State of U.P.* where the Court succinctly summed up the law in the following words: (AIR p. 1462, paras 9 & 11)
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>> "*9.* … It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation.
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>> * * *
>>
>> *11.* … The binding character of judgments pronounced by courts of competent jurisdiction

> is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis."
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> 20. That even erroneous decisions can operate as res judicata is also fairly well settled by a long line of decisions rendered by this Court. In *Mohanlal Goenka* v. *Benoy Kishna Mukherjee* this Court observed: (AIR p. 72, para 23)
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> > "*23.* There is ample authority for the proposition that even an erroneous decision on a question of law operates as 'res judicata' between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as 'res judicata'."
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> 21. Similarly, in *State of W.B.* v. *Hemant Kumar Bhattacharjee* this Court reiterated the above principles in the following words: (AIR p. 1066, para 14)
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> > "*14.* ... A wrong decision by a court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review which the law provides."

14. At this juncture we also consider it appropriate to take note of the submissions that the dismissal of the appeal by the respondent on grounds of limitation on 09.11.1971 gave a quietus to the matter on merits also as observed in ***Shyam Sunder Sarma*** (supra) as follows :

> "9.1. In *Sheodan Singh* v. *Daryao Kunwar* rendered by four learned Judges of this Court, one of the questions that arose was whether the dismissal of an

appeal from a decree on the ground that the appeal was barred by limitation was a decision in the appeal. This Court held: (SCR pp. 308 H-309 B)

> "We are therefore of opinion that where a decision is given on the merits by the trial court and the matter is taken in appeal and the appeal is dismissed on some preliminary ground, like limitation or default in printing, it must be held that such dismissal when it confirms the decision of the trial court on the merits itself amounts to the appeal being heard and finally decided on the merits whatever may be the ground for dismissal of the appeal."

15. The impugned orders are therefore held to be unsustainable and are set aside. The appeal is allowed.

**..........................J.**
**(Ashok Bhushan)**

**..........................J.**
**(Navin Sinha)**

New Delhi,
January 30, 2020.