

DOLHIN PADHARO DEVI

v.

INDRAJEET TIWARY & ANR.

(Civil Appeal Nos. 1609-10 of 2001)

JANUARY 31, 2008

**[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]**

*Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 – s. 43 – Ceiling proceedings – challenged in writ petition questioning jurisdiction of the authorities concerned – Dismissal of – Subsequent suit for declaration that order of ceiling authorities was without jurisdiction – Maintainability of the suit – Held: In view of the fact that the ceiling authorities had the jurisdiction to decide the dispute raised and the plea of jurisdiction was discussed in earlier writ petition, the suit is barred in terms of s. 43.*

*Jurisdiction – Of civil court – Exclusion of – By statutory provision – held: Such bar cannot operate in cases where the plea raised before civil court goes to the root of the matter and if upheld lead to conclude the impugned order a nullity.*

**Ceiling court passed an order in respect of applications u/s 16 (3) of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961. The same was unsuccessfully challenged by the appellant, in writ petition before High Court wherein issue relating to jurisdiction of the authorities under the Act was also raised. Thereafter, the appellant filed a Title Suit for declaration that the orders passed by the Ceiling Court were without jurisdiction and were not binding on the appellant (purchaser). Respondent No.1-defendant filed objection regarding maintainability of the suit in view of the bar in terms of s. 43 of the Act. The objection was rejected. In Civil Revision, High Court allowed the**

A objection. Review against the order of High Court was also dismissed. Hence the present appeals.

Dismissing the appeals, the Court

B HELD: 1. The jurisdiction of the civil appeal to deal with civil right can be excluded by legislature, but the statutory provision in this regard must be express and clear. The bar created under the relevant provisions of a statute excluding the jurisdiction of the civil court cannot however operate in cases where the plea raised before C the civil court goes to the root of the matter and could, if upheld, lead to the conclusion that the impugned order is a nullity. If the proceedings of the orders passed are completely without jurisdiction then the bar to the maintainability to the suit in the ordinary civil court would D not apply. [Para 6] [245-B, C, D]

E 2. The High Court noted that a plain reading of Section 43 of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 shows that while a suit is not maintainable against an order passed F under the Act, the jurisdiction of the authority passing such order can be decided by a civil court. Since the High Court observed that it is not in dispute that the authorities who passed the order in the ceiling cases and/ or appeal petitions had such jurisdiction to decide the dispute raised G under s. 16(3) of the Ceiling Act and since the issue relating to such jurisdiction was also raised by the plaintiff in his earlier writ petitions, which were rejected by this court, the High Court was right in holding that the title suit filed by the present appellant was not maintainable in terms of s.43 of the Act. [Paras 6 and 7] [245-E, F, G; 246-A]

*Ram Swarup and Ors. v. Shikar Chand and Anr.* AIR 1966 SC 893 – relied on.

H CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1609-10 of 2001.

From the final Order and Judgment dated 28.4.1997 and 11.12.1998 of the High Court of Judicature at Patna in Civil Revision No. 1297/1993 and Civil Review No. 155/1997 respectively.

Akhilesh Kumar Pandey, Sudhanshu Saran and Shefali Jain for the Appellant.

Manish Mohan, Umang Shankar, Pankaj Prakash, Sandeep Chaturvedi and Ugra Shankar Prasad for the Respondents.

The Judgment of the Court was delivered by

**Dr. ARIJIT PASAYAT, J.** 1. Challenge in these appeals is to the judgment rendered by a learned Single Judge of the Patna High Court dismissing the Civil Revision filed and the order in the Review Petition. Before the High Court challenge was to the order passed by learned Munsif, Bikramganj in T.S. No. 162 of 1992 by which the Objection Petition, filed by the defendant-Petitioner before the High Court viz. respondent No.1 in the present appeal, was rejected. His stand was that in view of Section 43 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short the 'Act') the suit was incompetent.

2. Factual position in a nutshell is as follows:

Two pre-emption applications under Section 16(3) of the Act were filed by the pre-emptier defendant Respondent No.1, herein. They were registered as Ceiling Case Nos. 19 and 20 of 1973. The plaintiff i.e. purchaser filed objection. The Deputy Commissioner of Lands Reforms, Sasaram rejected both the Petitions. Thereafter the appeals bearing Nos. 49 of 1974 and 52 of 1975 were filed which were allowed by learned Additional Collector. Purchaser-plaintiff, the appellant herein, challenged the same up to the High Court in CWJC Nos. 5970 and 5971 of 1983 and raised an issue relating to jurisdiction of the Authorities under the Act. The High Court by a common order and judgment dated 11<sup>th</sup> October, 1991 dismissed the writ petitions. After

A dismissal of the two writ petitions, the purchaser-plaintiff (appellant herein) filed Title Suit No. 162 of 1992 in the Court of Munsif, Bikramganj for declaration that the orders passed by the Ceiling Court in Ceiling Case Nos. 19 & 20 of 1973 were without jurisdiction and not binding on the purchaser. The present  
B respondent No. 1 appeared and filed a petition before the Court below relating to maintainability of the suit. It was pointed out that the said suit was barred in terms of Section 43 of the Act and the Court below had no jurisdiction to entertain the said suit, against an order passed under the Act. Learned Munsif,  
C after hearing the parties, rejected the application and therefore the Civil Revision was filed. The defendant respondent No.1 in the present appeal, relied on a decision of the High Court in the case of *Nand Kishore Singh v. Satya Narain Singh & Ors.* (AIR 1978 Patna 315). The High Court after considering  
D the ratio of the said decision and the factual position held that the question relating to jurisdiction of the authorities under the Act was specifically in issue in the writ petitions. By judgment dated 11<sup>th</sup> October, 1991, the writ petitions were dismissed. Therefore it was held that the title suit filed by the  
E present appellant was not maintainable in terms of Section 43 of the Act.

3. In support of the appeals, learned counsel for the appellant submitted that the view of the High Court is clearly wrong and the reasoning of the High Court cannot be  
F maintained.

4. Learned counsel for the respondents on the other hand supported the impugned order of the High Court.

5. Section 43 of the Act reads as follows:  
G

“43. Bar of jurisdiction of Civil Court :

(1) Save and except as provided in this Act, no civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act,  
H

required to be settled, decided or dealt with by the Board of Revenue (x x x x), the appellate authority or the Collector.

- (2) No order of the Board of Revenue, (x x x x) the appellate authority or the Collector made, under this Act, shall be questioned in any court."

6. It is firmly established that the jurisdiction of the civil appeal to deal with civil right can be excluded by legislature, but the statutory provision in this regard must be express and clear. The bar created under the relevant provisions of a Statute excluding the jurisdiction of the Civil Court cannot however operate in cases where the plea raised before the Civil Court goes to the root of the matter and could, if upheld, lead to the conclusion that the impugned order is a nullity. This position was highlighted by this Court in *Ram Swarup and Ors. v. Shikar Chand. & Anr.* [AIR 1966 SC 893]. If the proceedings of the orders passed therein are completely without jurisdiction then the bar to the maintainability to the suit in the ordinary civil court would not apply. The High Court noted that a plain reading of Section 43 of the Act shows that while a suit is not maintainable against an order passed under the Act, the jurisdiction of the authority passing such order can be decided by a Civil Court. The following observations of the High Court are relevant:

"9. In the present case, it is not in dispute that the S.B.L.R. and/or the Additional Collector, who passed the order in the ceiling cases and/ or appeal petitions had such jurisdiction to decide the dispute raised under Section 16(3) of the Ceiling Act.

10. The issue relating to such jurisdiction was also raised by the plaintiff-opposite party in his earlier writ petitions, which were rejected by this court.

7. In view of the aforesaid position, the High Court held that the title suit filed by the present appellant was not

A maintainable in terms of Section 43 of the Act.

8. In view of what has been stated by this court in *Ram Swaroop's* case (*supra*) and the observations of the High Court at paragraphs 9 & 10 quoted above, the inevitable conclusion is that the appeals are without merit and deserve dismissal

B which we direct.

K.K.T.

Appeals dismissed.