

(1951) 12 MAD CK 0020

In the Madras High Court

Case No : Civil Miscellaneous Petition No's. 6914 and 13528 of 1950 and 490 of 1951

A.L.V.R. St. Veerappa Chettiar

APPELLANT

Vs

State of Madras and Another

RESPONDENT

Date of Decision : 13-12-1951

Acts Referred:

Constitution of India, 1950 — Article 226(1), 31(6)

Government of India Act, 1935 — Section 175(2)

Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 1, 3

Citation : AIR 1952 Mad 835 : (1953) ILR (Mad) 543 : (1952) 65 LW 226 : (1952) 1 MLJ 456

Hon'ble Judges : Rajamannar, C.J.; Venkatarama Ayyar, J

Bench : Division Bench

Advocate : R. Kesava Iyengar, for the Appellant; A.G. and V.P. Sarathy, for Govt. Pleader, instructed by State Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Rajamannar, C.J.—In these applications the validity of Madras Act XXVI (26) of 1048 (The Madras Estates (Abolition and Conversion

into Ryotwari) Act) is challenged. Of the many grounds on which it was challenged, several have become unavailable to the petitioners on account

of the Constitution (First Amendment) Act, 1951. and the recent decision of the Supreme Court which held that Act to be valid (vide -- "Shankari

Prasad Singh v. Union of India", 1951 SCJ 775. For instance, it is no longer open to the petitioners to contend that the Act has become void as

being inconsistent with, or taking away, or abridging, any of the rights conferred by any of the provisions of Part III of the Constitution.

2. But learned counsel for the petitioners contended that the Act is still liable to be challenged on other grounds. The first of such grounds pressed

before us was that it contravenes the provisions of Sub-section (2) of Section 299 of the Government of India Act, 1935. To this ground the

answer of the State is that this ground is not open to the petitioners in view of Article 31(6) of the Constitution which runs as follows:

Any law of the State enacted not more than 18 months before the commencement of this Constitution may within 3 months from such

commencement be submitted to the President for his certification; & thereupon, if the President by public notification so certifies, it shall not be

called in question in any court on the ground that it contravenes the provisions of Clause (2) of this article or has contravened the provisions of

Sub-section (2) of Section 299 of the Government of India Act, 1935.

It is common ground that there has been a certification by the President in accordance with this clause. But the petitioners' counsel attempted to

get out of this difficulty by putting forward two arguments. The first argument was that the President's certification could cure only irregularities and

like defects which do not substantially affect the validity of the Act, but where the impugned Act is void "ab initio" the President's certificate would

not save it. This argument was built upon a construction of the words "'any law of the State'" as meaning any valid enactment. In support of this

argument, learned counsel relied upon certain observations of Sinha J. in -- "Kameshwar Singh v. State of Bihar", 29 Pat 790 that learned Judge

said:

The opening words of the clause are -- "Any law of the State". They are not "Any Act passed by the State". Hence in order to attract the

operation of the clause, the first essential condition is that it must be a valid law of the State. In other words, the certification by the President may

cure an irregularity or an illegality in some details of the law in valid piece of legislation but it cannot cure a nullity. If the impugned Act was a nullity,

the certification by the President could not give life to something which was void "ab initio" and a law which is void "ab initio" is something which

was never in existence -- see in this connection the following observations of the Supreme Court of America in the case of "Norton v. Shelby

County", (1885) 118 US 178 , "An unconstitutional Act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no

office; it is, in legal contemplation, as inoperative as though it had never been

passed.

In the same case Das J. was apparently of a different view. In his opinion, Article 31(6) as worded would prevent the Court from calling into

question a law coming within the purview of that clause which is liable to be challenged only on the ground covered by that clause and which must

be held to be valid law because it can not be called into question on that ground which renders it invalid.

Thus there will be no question of reviving something which is dead or validating a nullity. A law passed by a competent Legislature is valid unless it

is declared invalid by a competent court of law. If the court cannot call it into question on a particular ground, that ground cannot be urged for its

invalidity either at the inception or at a subsequent stage; for to do so would nullify the provisions of Article 31(6) of the Constitution.

With great respect, I am in entire agreement with the opinion expressed by Das J. and I must express my respectful dissent from the observations

of Sinha J. on this point. I am clearly of opinion that the words ""any law of the State"" mean any Act, ordinance or order enacted by the State

without any reference to its validity.

3. Of course, this does not mean that it is not open to the petitioners to challenge the validity of the Act on other grounds. Article 31(6) does not

say that the Act shall not be called in question on any ground whatever. On the other hand, that clause expressly limits the effect of the certificate to

the only ground that it contravenes the provisions of Clause 2 of Article 31 or has contravened the provisions of Sub-section 2 of Section 299 of

the Government of India Act, 1935.

4. There was no attempt to argue, still less to convince us, that the Act is void because the acquisition was not for a public purpose, assuming that

that ground is still open to the petitioners.

5. But for the strenuous way in which the point was pressed on us, I would not have considered it necessary to deal except in a cursory way with

the contention of the petitioners" counsel that in spite of Article 31(6) declaring that the Act shall not be called in question on the particular ground

mentioned it is still open to the court to issue a writ of Certiorari or other appropriate writ practically achieving the same result. Reliance was

placed on the rule well established in England that though a statute might

purport to take away the right of certiorari in particular matters, nevertheless the Supreme Court would have power to quash the proceedings of an inferior court on the ground of excess of jurisdiction and similar grounds.

In the well known case of the -- "Colonial Bank of Australia v. Willan". (1874) L.R. 5 P.C. 417, Sir James Colvile pointed out that a statutory

enactment purporting to take away the right of certiorari would not have the effect of absolutely depriving the Supreme Court of its power to issue

a writ of certiorari to bring up the proceedings of the inferior court on the ground either of a manifest defect of jurisdiction in the tribunal that made

the order in Question or of manifest fraud in the party procuring it. The proposition is thus stated in Halsbury's Laws of England, 2nd Edn., Vol.

IX, at page 862:

Although certiorari is taken away, it may be granted, even on the application of the defendant, where the inferior court has acted without or in

excess of jurisdiction; for in such a case the court has not brought itself within the terms of the Statute taking away certiorari. Thus, certiorari will lie

although taken away where the subject matter of the inquiry was beyond the scope of the authority of the inferior court, either by reason of its

nature or by reason of the absence of some essential preliminary; and it will also lie where by reason of interest or prejudice the inferior court was

improperly constituted and was therefore without jurisdiction to entertain the cause.

I fail to see, however, how this rule of law can possibly apply to the present case. Firstly, the power and jurisdiction which this court is invested

with to issue writs in the nature of certiorari and prohibition can now be traced to Arts. 225 and 226 of the Constitution. When the same

Constitution also provides that a particular enactment shall not be called into question on the ground that it contravenes a particular provision, that

is to say, on the ground that it is for a particular reason illegal, it follows that to that extent there is no power or jurisdiction in this court to declare

that the enactment is void on that ground by the issue of a writ of certiorari or like writ. Secondly, the power of the superior court to quash

proceedings by certiorari can only be exercised against inferior courts or tribunals but cannot be exercised against the Legislature. The petitioner's

counsel is seeking for a wholly unwarranted application of the doctrine which reserves the power of a superior court to quash orders of inferior courts or tribunals.

6. The next ground on which the impugned Act was attacked was that the Provincial Legislature which passed the enactment was not competent to pass it. Entry 9 of List 2 of schedule VII to the Government of India Act, 1935 is ""compulsory acquisition of land"" and prima facie the Act in question is an Act relating to compulsory acquisition of land. But petitioners' counsel argued that there could not be real acquisition unless there was adequate compensation, and as for several estates the compensation is nil or practically nil, the Act which leads to that result cannot be deemed to be an Act relating to acquisition of land.

Some support was sought to be found in the observations of Das J. at page 885 of the decision in -- "Kameshwar Singh v. State of Bihar", 29 Pat

790 that it is only if the requirement of payment of compensation (either by fixing the amount or specifying the principles and the manner in which

the compensation is to be determined) is satisfied that a law authorising compulsory acquisition could be made. But surely Das J. was here referring

to the provisions of Sub-section (2) of Section 299 of the Government of India Act, 1935. The learned Judge was not dealing with the

competency of the Legislature to pass the enactment in question in exercise of the power conferred by Entry 9 in List 2 of Schedule VII.

In my opinion, there is no question of competency at all in this case. The law does relate to compulsory acquisition of interest in land, and

therefore, clearly falls within Entry 9 of List 2.

7. The last argument of Mr. Kesava Aiyangar, petitioners' learned counsel, was that the Act was void because the vesting of the property acquired

is declared by Section 3(b) of the Act to be in the Provincial Government, whereas according to Section 175(2) of the Government of India Act,

1935, the vesting should have been in His Majesty. No doubt, Section 3 does say that the entire estate acquired shall stand transferred to the

Government and vest in them free of all encumbrances, and ""Government"" is defined in Section 2(5) as ""the Provincial Government"". But, is this

inconsistent with Section 175(2) of the Government of India Act? That sub-section is in the following terms:

All property acquired for the purposes of the Federation or of a Province or for the exercise of the functions of the Crown in its relations with

Indian States as the case may be, shall vest in His Majesty for those purposes.

Prima facie it looks to me as if this sub-section only concerns property acquired for the purposes of the Federation or of the Province. It cannot be

said that the property of the zamindar or inamdar is being acquired under the Act for the purposes of either the Federation or of the Province.

Assuming it can be deemed so, the result would be that whatever the provincial statute might say, the property would vest in His Majesty u/s

175(2). But it would vest for the purposes of the Province. The declaration in Section 3 of the impugned Act only means that the vesting is for the

purposes of the Province. There is no substance in this highly technical contention.

8. I hold that Madras Act (XXVI (26) of 1948) cannot be held to be invalid on any of the grounds taken by the petitioners. The petitions are

therefore dismissed.

Venkatarama Aiyar, J.

9. I agree.