

(2014) 06 CAL CK 0034

In the Calcutta High Court

Case No : Writ Petition Nos. 31, 32, 07 and 23 of 2014 and W.P. Nos. 382 and 383 of 2013

Jagadish Das and Others

APPELLANT

Vs

The Andaman and Nicobar Administration and Others

RESPONDENT

Date of Decision : 12-06-2014

Acts Referred:

Citation : (2015) 2 WBLR 279

Hon'ble Judges : A.K. Banerjee, J; Tapabrata Chakraborty, J.

Bench : Division Bench

Advocate : K.M.B. Jayapal, for the Appellant; S.K. Mandal, for the Respondent

Final Decision : Dismissed

Judgement

Tapabrata Chakraborty, J. The writ applications would relate to a common question of law having great similarity of facts. We intend to dispose of all the applications by a common judgment and order.

FACTS;

(i) The writ application being No. 031 of 2014 had been preferred stating, inter alia, that the Administration conferred tenancy in respect of the land in question in favour of the petitioners' predecessor, he constructed a building there upon and after his death the said land was mutated in the name of the writ petitioner along with other heirs. Surprisingly thereafter, a revenue case was initiated against the petitioner and a notice was issued by the respondent No. 2 alleging, inter alia, that the building in the said land had been erected in contravention OF Rule 165(1)(a) of the Andaman & Nicobar Islands Land Revenue and Land Reforms Rules, 1968 (hereinafter referred to as the said Rules). By the said notice the petitioner was asked to alter or demolish the building to the extent necessary for compliance of Sub-Rule (a) of Rule 165 within a period of fifteen days or in the alternative to appear before the authority on 10th of January, 2013. Pursuant to the said notice the petitioner appeared before respondent No.

2 and he was heard. Subsequent thereto a further notice was issued to the petitioner by the respondent No. 2 on 1st April, 2013 asking the petitioner to again appear for hearing on 9th April, 2013. Accordingly, the petitioner appeared before the respondent No. 2 on the scheduled date. Thereafter, the petitioner was communicated an order dated 14th of August, 2013 issued by the respondent No. 2. The said order had been challenged in the instant writ application.

(ii) The writ application being WP No. 032 of 2014 had been preferred challenging an order dated 14th August, 2013 issued by the respondent No. 2 and the facts involved in the said writ application are almost identical to the facts of the earlier writ application being WP No. 031 of 2014.

(iii) The writ application being WP No. 007 of 2014 had been preferred by the writ petitioner stating, inter alia, that he is a recorded tenant of the land in question. Pertaining to the construction made upon the said land, the respondent No. 2 issued notice in the month of December, 2012 stating, inter alia, that the building in the said land had been erected in contravention of the Rule 165(1)(a) of the said Rules. Pursuant to the said notice the petitioner filed an application for condonation/exemption, but the same was not considered and the respondent No. 3 passed an order dated 14th August, 2013, inter alia, directing the respondent No. 4 to alter/demolish the offending portion of the petitioner's building. The said order was appealed against by the petitioner and the said appeal was dismissed by an order dated 10th December, 2013 issued by the respondent No. 2 and the same had been challenged through the instant writ application.

(iv) The facts of the writ application being WP No. 023 of 2014 are almost identical to the facts of the writ application being WP No. 007 of 2013 and the subject matter of challenge of the instant writ application is also an order dated 10th December, 2013 passed by the respondent No. 2.

(v) The writ application being WP No. 382 of 2013 had been preferred challenging an order dated 7th November 2013 passed by the respondent No. 2 and the facts of the instant writ application are also identical to the facts of the earlier writ application being WP No. 023 of 2014.

(vi) The writ application being WP No. 383 of 2013 had been preferred challenging an order dated 7th November, 2013 passed by the respondent No. 2 and the facts of the writ application are also identical to the earlier writ application being No. 382 of 2013.

CONTENTIONS:

2. Mr. Jayapal, learned Advocate appearing for the writ petitioners in the WP No. 031 of 2014 and WP No. 032 of 2014, submits that the Rule 165 of the said Rules has, no statutory force as it had not been enacted in terms of Section 210 of the Andaman & Nicobar Islands Land Revenue and Land Reforms Regulations,

1966 (hereinafter referred to as the said Regulations). Mr. Jayapal draws the attention of this Court to Section 210 of the said Regulation and submits that the rule making power of competent authority is restricted to the matters under the sub-clauses (i) to (x1) of Section 210(2). Under the said provision no jurisdiction stands conferred upon the competent authority under Section 210(1) to frame any rule pertaining to construction of any building maintaining the set back.

3. According to Mr. Jayapal Rule 165 of the said Rules has no statutory force and accordingly the order impugned in the writ applications are without jurisdiction and not sustainable in law.

4. In support of his submission, Mr. Jayapal had relied upon the following judgments:

- a) State of Karnataka and Another Vs. H. Ganesh Kamath and Others, .
- b) General Officer Commanding-in-Chief and Another Vs. Dr. Subhash Chandra Yadav and Another, .
- c) Kunj Behari Lal Butail and Others Vs. State of H.P. and Others, .
- d) Addl. District Magistrate (Rev.) Delhi Admn. Vs. Shri Siri Ram, .
- e) St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Another, .
- f) State of Tamil Nadu and Another Vs. P. Krishnamurthy and Others, .
- g) State of Kerala and Others Vs. Unni and Another, .
- h) A.P. Electricity Regulatory Commission Vs. R.V.K. Energy Pvt. Ltd. and Another, .
- i) Global Energy Ltd. and Another Vs. Central Electricity Regulatory Commission, .
- j) Pratap Chandra Mehta Vs. State Bar Council of M.P. and Others, .
- k) Union of India (UOI) and Others Vs. S. Srinivasan, .

5. Mrs. Nag, learned Advocate appearing for the writ petitioners in WP No. 007 of 2014, WP No. 023 of 2014, WP No. 382 of 2013 and WP No. 383 of 2013, adopts the submissions made by Mr. Jayapal and adds that the power of the Chief Commissioner to make rules under Section 210(1) is a general power and that such power is restricted to the matters as spelt out under Section 210(2).

6. Mrs. Nag further submits that the "Naksha Nazaria" on the basis of which the appellate authority had rejected the appeals had not been supplied to the petitioners and that as such the petitioners had no opportunity to deal with the same.

7. According to Mrs. Nag, the denial of the respondents to supply the said Naksha Nazaria to the petitioners tantamounts to blatant violation of the

principles of natural justice.

8. Mr. Mandal, learned senior Advocate appearing for the Administration, submits that the contention of the petitioners to the effect that rule 165 of the said rules is ultra vires the provisions of the said regulation is absolutely fallacious.

9. According to Mr. Mandal, a close perusal of the provisions of Section 210 would reveal that jurisdiction had been conferred upon the Chief Commissioner to make rules for the purpose of carrying into effect the provisions of the Regulations and that it cannot be construed that such general power is restricted only to the provisions earmarked under clause (i) to (x1) under Section 210(2). Mr. Mandal further submits that rule 165 of the said Rules had been framed on the basis of the authority conferred under Section 210.

10. Mr. Mandal also draws attention of this Court to the provision of Section 146 of the said Regulations and submits that the authority to frame Rule 165 also stands conferred under the provision of Section 146(ii) of the said Regulations.

11. So far as argument of Mrs. Nag to the effect that the principles of natural justice had been violated by the respondents, Mr. Mandal submits that all the documents relied upon concerned respondent towards issuance of the impugned orders had been provided to the petitioners and ample opportunity of hearing had been granted to them.

12. Mr. Mandal further submits that the petitioners had appeared before the concerned authority and had categorically prayed for grant of exemption as provided under Rule 165(2) of the said Rules of 1968.

OUR VIEW:

13. We have heard the submissions made by the learned Advocates and have considered materials on record.

14. The argument of Mrs. Nag to the effect that the respondents had acted in blatant violation of the principles of natural justice is not sustainable inasmuch as it would be explicit from the pleadings that the petitioners responded to the initial notice given by the Tehsildar in connection with the concerned revenue cases and the petitioners participated in the said proceedings. Having participated in the said proceeding and having made the prayer for exemption in terms of the provisions of Rule 165(2) of the said Rules, the petitioners cannot contend that there had been a breach of the principles of natural justice.

15. The petitioners were granted inspection of documents including the Naksha Nazaria and that as such the petitioners had not suffered any prejudice.

16. The legal propositions which can be culled out from the judgments cited by Mr. Jayapal are as follows:

"a) The conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling

Act or which is inconsistent therewith or repugnant thereto.

b) The right of the petitioner conferred by the Act cannot be whittled down and or curtailed by the Rules.

c) A delegated power to legislate by making rules "for carrying out the purpose of the Act" is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself."

17. A close scrutiny of the provisions of the Section 210 of the said Regulations would reveal that the Chief Commissioner had been conferred the power to make rule for the purpose of carrying into effect the provisions of the said Regulations. Section 210(2) categorically provides that the authority to make rule under the matters specified under clauses (i) to (x1) is without prejudice to the generality of the power conferred under Section 210(1). There is no dispute that all land in the Union Territory of Andaman & Nicobar Islands is vested to the Government and the authority to issue license had been conferred upon the Chief Commissioner under Section 146 of the said Regulations and the Chief Commissioner had also been conferred the power to restrict the ambit of such license and to define the purpose towards such license.

18. A particular provision of the statute is to be interpreted, keeping in mind the very purpose for which statute was enacted. It is well settled that invalidating a statute is a grave step and must therefore, be taken in very rare and exceptional circumstances. Judicial self-restraint must be maintained while exercising the power of judicial review of legislation. There is always presumption in favour of constitutionality of statutory provision and the burden is always upon the person to attack it to show that there had been clear transgression.

19. In the instant case the petitioners had not been able to show any such clear transgression. The petitioners had also not been able to establish that Rule 165 of the said Rules travels beyond the scope of the enabling Regulations. On the contrary the petitioners had made applications seeking exemption under the provisions of Rule 165(2) of the said Regulations.

20. The object of the said regulations is to consolidate the "law relating to land revenue, powers of revenue officers, rights and liabilities of holders of land, land tenures and other matter relating to land, in the Union Territory of the Andaman and Nicobar Islands."

21. Clause (x1) of Section 210(2) of the said Regulations also confers authority to frame Rules for any other matter which is to be, or may be prescribed.

22. A composite reading of the provisions of the said Regulations along with its object reveals that the comprehensive jurisdiction conferred upon the Chief Commissioner includes the authority to frame the Rule 165 which pertains to matters relating to land and that as such the argument of the petitioner to that effect that the said Rule 165 has no statutory force, is unsustainable in law.

23. In the backdrop of such discussion we are of the opinion that the Rule 161 of the said Rules is not ultra vires the provisions of the said Regulations and accordingly the challenge of the petitioners pertaining to validity of the said Rule 165(1) stands negated.

RESULT:

24. The writ applications are dismissed.

25. The dismissal of the writ applications, however, will not in any manner, prejudice the petitioners' right to avail exemption in terms of Rule 165(2) and in the event such applications had been made by the petitioners, the same should be disposed of by the competent authority, in accordance with law, expeditiously. There shall be no order as to costs.

A.K. Banerjee, J.

I agree.