

(1981) 12 MAD CK 0067
In the Madras High Court

Kannu Konar

APPELLANT

Vs

The Revenue Divisional Officer and Others

RESPONDENT

Date of Decision : 16-12-1981

Acts Referred:

General Clauses Act, 1897 — Section 6(2)(b)(ii)

Citation : (1984) 97 LW 573 : (1982) 2 MLJ 230

Hon'ble Judges : T. Sathiadev, J

Bench : Division Bench

Judgement

T. Sathiadev, J.—Petitioner claims that third respondent had borrowed a sum of Rs. 1,500 on 20th March, 1971, and executed a registered mortgage deed in his favour hypothecating the properties situate in Pavithram Village, Thiruvannamalai Taluk. Again on 2nd February, 1975, the third respondent borrowed a sum of Rs. 700 and executed a promissory note. Thus, in all a sum of Rs. 2,200 having been borrowed under the aforesaid two transactions and when third respondent had not paid any amounts in discharge of the debts, he the third respondent filed application F.D.R. No. 3 of 1978 before the second respondent claiming relief under Tamil Nadu Act XXXI of 1976 for wiping off the entire debt on the ground that he is a small farmer. A counter-statement was filed by the petitioner and in spite of the petitioner claiming that third respondent was raising wet crops and there is a well situate in the lands and the net annual income from the lands will be not less than Rs. 4,000 per year, second respondent held that there are no sufficient materials to accept the claim of the petitioner and hence allowed the application of the third respondent.

2. On appeal, first respondent confirmed it by order, dated 7th November, 1978, without taking into consideration any of the materials placed by the petitioner herein. Aggrieved against the said orders, the writ petition, was filed.

3. Apart from other points, validity of Act XXXI of 1976 itself was challenged. Pending disposal of the writ petition, by order, dated 22nd February, 1979, operation of the Act, in so far as the petitioner was concerned, was stayed.

4. The foremost point taken now is that, consequent to Tamil Nadu Act III of 1979 (hereinafter referred to as Act), having been passed resulting in amendment of Act XXXI of 1976, the orders passed, can no longer be enforced and that it is for the third respondent to now establish the claim under the amended provisions of the Act.

5. Mr. M.N. Padmanabhan, learned Counsel for the petitioner refers to Section 5(2) and 5(3), which are as follows:

5(2). Every proceeding instituted under the provisions of the principal Act, in respect of such debt as is referred to in subsection (2) and pending before the Tahsildar or other authority on the date of the publication of this Act in the Tamil Nadu Government Gazette shall abate.

(3) Nothing contained in this section shall be deemed to invalidate any proceeding in which the order passed has been executed or satisfied in full before the date of the publication of this Act in the Tamil Nadu Government Gazette.

6. The resultant point to consider is, whether it can be held that the proceedings are still pending before the Tahsildar or other authority on the date of the publication of the amending Act. which came into force On 13th June, 1979, with effect from 29th July, 1976, or whether, the orders already passed by the respondents have been executed or satisfied in full before the date of the publication of the amending Act.

7. It is the contention of the petitioner, that except to pass orders, the further follow-up steps are yet to be initiated which had been stayed by this Court, and hence, the proceedings were pending on the date of the publication of the Act, whereas, Mr. R.S. Venkata-chari, learned Counsel for the third respondent, would plead that after the passing of the order, the only thing to be done is to take penal action for non-compliance u/s 10 of the Act, and that, the orders passed by respondents 1 and 2 have become final, and there was no question of any execution or they being satisfied in full as contended by the petitioner.

8. The Special Tahsildar, second respondent, while passing the order on 5th April, 1978, held that third respondent is entitled to relief under the Act and hence in exercise of his powers u/s 5(3) of the Act, ordered that the mortgage deed and pronote shall stand discharged and directed the creditor to produce them before the Special Tahsildar (Debt Relief), Thiruvannamalai, in the Taluk Office, on or before 6th June, 1978. This direction given by him had not been effected so far, since the matter had been taken up on appeal. Appellate authority having dismissed the appeal, further steps to comply with the directions aforesaid, are yet to be taken. In the meanwhile, this Court having stayed further proceedings, the position as on date is that, except to pass the orders to the effect that third respondent is entitled to the benefits under the Act, the orders passed, had not been executed or satisfied in full.

9. Section 5 comes into play where an application is made to the Tahsildar for return of movable property pledged by the debtor; whereas in the instant case, the property covered by the registered mortgage deed is immovable property. Therefore relief can be asked for, only u/s 6 of the Act.

10. Section 6(1) enables a debtor, referred to in Section 4(f) to make an application to the Tahsildar for an order releasing the mortgaged property and for the grant of certificate of redemption. As per Section 6(2)(a), which was in force when the application was filed on 15th February, 1978, on receipt of such application, Tahsildar is to hold an inquiry and pass an order releasing the mortgaged property and grant a certificate of redemption in the prescribed form which shall be admissible as evidence of such redemption in any proceedings before any Court or other authority; as per Section 6(2)(b), (ii) the Tahsildar shall also direct the creditor or transferee of the creditor to produce on or before the date fixed by him, the mortgage deed or other document, in order to make an endorsement of redemption on it. This direction was given by the second respondent in this case. It is only as per the section as it stood before Tamil Nadu Act, V of 1980 was passed amending Section 6(2)(a) and other sub-clauses; after passing the order u/s 2 (a), the Tahsildar had to carry out a further act, to bring the proceedings to a close. This is the executing part of the order. Hence, the contention of Mr. R.S. Venkatachari, learned Counsel for the third respondent that there was no pending proceedings before the Tahsildar in respect of the claims made by the third respondent, cannot be accepted. No doubt Section 10 of the Act, provides for penalty being imposed in the event of non-compliance with the orders, but that would not result in the orders being fully executed. Realising this position, in amending Act, XXXIX of 1979 in Section 5(3) it is stated that nothing contained in the said section shall be deemed to invalidate any proceedings in which the "order passed" has been "executed" or "satisfied in full" before the date of the publication of the Act. Hence, being fully aware that apart from passing the order, the Act itself contemplates, the manner in which such orders are to be "executed or satisfied in full", when such execution or full satisfaction had not been effected, it will have to be held that the proceedings are still pending, before the Tahsildar as provided u/s 5(2) of the Act. If proceedings are pending, at the time of commencement of the amending Act, they abate, as provided u/s 5(2).

11. Yet Mr. R.S. Venkatachari, learned Counsel for the third respondent would refer to the following three decisions, which are adverted to, by Mr. Vepa P. Sarathi, in his Interpretation of Statutes, and would contend that when the existing Act, is amended or replaced by a fresh legislation, Section 6(2)(b)(ii) of the General Clauses Act, would not be applicable and therefore the proceedings already initiated would not be again directed to be pursued with under the Amending Act.

12. In Qudrat Ullah Vs. Municipal Board, Bareilly, , it was held:

The general principle is that an enactment which is repealed is to be treated,

except as to transactions past and closed, as if it had never existed. However, the operation of this principle is subject to any savings which may be made, expressly or by implication, by the repealing enactment. If a contrary intention appears from the repealing statute, that prevails.

Again in *Jagir Singh Vs. Ranbir Singh and Another*, , it was held that statutory instruments, though deemed to be made under the corresponding provisions of the new Code, will have their vires tested like other statutory instruments made under the new Code. However, in the case of judicial orders made and sentences passed, such order and sentences which have attained finality and which created rights in persons do not have to answer the test of being consistent with the provisions of the new Code. The last decision referred to is the decision in *State of U.P. and Others Vs. Hindustan Aluminium Corpn. and Others*, , wherein it was held that moreover, it is well-settled that the true meaning of a provision of law should be determined on the basis of what it provides by its clear language, and with regard to the scheme of the law as a whole, and not merely by the place it finds in the formation of the Parts or Chapters. His contention is that, when the fresh legislation had come into play and when, quasi-judicial orders have been passed, they having attained finality, the plea that such orders are still pending, so as to treat them as abated, is unavailable to the petitioner.

13. These three decisions cited supra, themselves go to show that if there is a different intention expressed in the fresh legislation it would be enforceable. Section 5(1) states that, where any person, who was a debtor as defined u/s 2 (f) of the principal Act, as in force immediately before the date of publication of this Act (Amending Act), ceases to be debtor, by virtue of what is provided under the Amending Act, then "any debt due from such person shall be deemed never to have been discharged" and therefore the amended Act alone would be applicable, as, if it was in force at the relevant time. When such a clear intention is spelt out in the amending Act, the mere fact that before it was published, certain orders; have been passed, holding that the claimants are debtors under the Act, would not preclude the applicability of the amending Act to such of those persons, who have secured orders of relief, but such orders are not "executed or satisfied in full" on or before 13th December, 1979, i.e., the date of the publication of the Act in the Gazette.

14. Hence when the impugned orders passed are treated as pending before the Tahsildar as per Act XXXIX of 1979, they have abated. It is now open to third respondent to seek for relief under appropriate Acts, if so advised. If he is to file any application, under the amended provisions of the Act, it will have to be disposed of on the merits of the claim without reference to the impugned orders passed. Hence this writ petition is allowed. No costs.