
(2003) 09 MAD CK 0103
In the Madras High Court
Case No : Writ Appeal No. 2117 of 1999

M.R. Kavitha

APPELLANT

Vs

The District Collector, North Arcot Ambedkar District and The
Special Tahsildar, Adi-Dravidar Welfare

RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 5A, 6

Citation : (2004) 1 LW 287 : (2003) 3 MLJ 782 : (2004) WritLR 20

Hon'ble Judges : S.K. Krishnan, J;R. Jayasimha Babu, J

Bench : Division Bench

Advocate : V. Ayyadurai, for the Appellant; S. Gomathi Nayagam, Special Govt.
Pleader (L.A.), for the Respondent

Final Decision : Allowed

Judgement

R. Jayasimha Babu, J.—Act 31 of 1978 was struck down by this Court as unconstitutional on 09.09.1981. That decision was reversed by the Supreme Court on 22.11.1994 in the case of State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, . While upholding the validity of the Act, the Court held that the provisions of Section 2 of the Special Act will have no application in cases where awards have been made under the Land Acquisition Act. That judgment has been understood uniformly as enabling the State to regard the acquisition as having been completed under the Land Acquisition Act only in cases where awards were passed under that Act for acquisition of lands for the purposes covered by the Special Act provided the award had been passed before 22.11.1994.

2. Any proceeding for acquisition for the purpose set out in the special enactment will have to be under that Special enactment only and not under the Land Acquisition Act.

3. In the case on hand, the State issued a notification u/s 4(1) of the Special Act

on 25.11.1995. But no enquiry u/s 4(2) of the Act preceded the issue of notification u/s 4(1) of the Act. The notification was sought to be sustained by the State by relying upon an enquiry held by it u/s 5A of the Land Acquisition Act, pursuant to a notification issued under that Act in the year 1992. A declaration u/s 6 of the Act had also been issued under the Land Acquisition Act after that enquiry.

4. Section 22 of the Act refers to proceedings "...started before the commencement of this Act for the acquisition of any land for the Harijan Welfare Scheme under the Land Acquisition Act.". It is evident that, that Section 22 is applicable only to proceedings which were commenced before Act 31 of 1978 commenced. That Act came into force on 24th September 1979. Section 22, therefore, can have application only in respect of the proceedings initiated under the Land Acquisition Act prior to 22nd September 1979. Anything done thereafter could only have been done under the Special enactment.

5. The view taken by the learned single Judge in the order under appeal that a proceeding initiated under the Land Acquisition Act long after the Special Act had been brought into force could be tagged on to a proceeding taken under the Special enactment, is not a view that can be sustained. Section 22 does not save anything which was done under the Land Acquisition Act after the Special Act came into force.

6. The fact that, that Special Act had been struck down by this Court and was later upheld by the Supreme Court does not alter the date of the commencement of the Act. When the Supreme Court declare that the Act was constitutional it is to be regarded as being constitutional from the very inception and not merely from the date of pronouncement of the judgment of the Supreme Court. The declaration that had been made by the High Court that the Act was unconstitutional stood effaced by the judgment of the Supreme Court. The Supreme Court while disposing of the appeal made an exception for the purpose of saving the action taken under the Land Acquisition Act only to cases where awards had been passed under that Act after the proceedings had been initiated under that Act at a time when the declaration made by the High Court regarding the unconstitutionality was still in force. The date of the judgment of the Supreme Court cannot be equated to the date of the commencement of the Act.

7. The order under appeal is therefore set aside and the writ appeal allowed.