
(2008) 10 KAR CK 0024

In the Karnataka High Court

Case No : Writ Appeal No's. 781 and 784 of 2008

Mrs. Manaoranjitham

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 22-10-2008

Acts Referred:

Citation : (2009) 3 KarLJ 130

Hon'ble Judges : P.D. Dinakaran, C.J.;V.G. Sabhahit, J

Bench : Division Bench

**Advocate : Nalini Chidambaram for H.S. Dwarakanath, for the Appellant;
Niloufer Akbar, A.G.A. for Respondent-1 and Jayakumar S. Patil for King and
Partridge, for Respondent-4, for the Respondent**

Judgement

P.D. Dinakaran, C.J.—Writ Appeal No. 784 of 2008 is directed against the order dated 7-3-2008 wherein the appellant, who is the petitioner in Writ Petition No. 26068 of 2005 before the learned Single Judge sought to challenge the preliminary notification dated 29-1-2003 and the final notification dated 5-7-2003 issued in land acquisition proceedings initiated by the 2nd respondent herein. Similarly, appellant in Writ Appeal No. 781 of 2008 had preferred Writ Petition No. 26064 of 2005 challenging the very same acquisition proceedings in respect of his property.

2. It is true that the land acquisition proceedings initiated by the 2nd respondent has already culminated in an order in Writ Appeal No. 72 of 2004 and connected matters before this Court which was also subsequently confirmed by the Supreme Court in Civil Appeal Nos. 3492 to 3494 of 2005 and connected matters by order dated 20-4-2006 State of Karnataka and Another Vs. All India Manufacturers Organization and Others, . While the civil appeal was pending before the Supreme Court, the appellants-writ petitioners herein filed C.C. No. 8869 of 2005 seeking leave of the Apex Court to prefer third party SLP as they were not parties in Writ Appeal No. 72 of 2004 and connected matters on the ground that appellants-writ petitioners were not given notice before acquiring

their lands. The Apex Court, by its order dated 30-9-2005 disposed of the said LA. in C.C. No. 8869 of 2005 as hereunder:

The petitioners herein were not parties either before the learned Single Judge or before the Division Bench. According to the petitioners their land was acquired without notice to them. Prima facie we are of the opinion that if that be so the remedy of the petitioners lies in laying challenge to the acquisition proceedings before the High Court. The learned Senior Counsel for the petitioner insists that in the event of the project being quashed their land would be automatically released and, therefore, the petitioner would like to await the decision in the connected matters.

Let this matter await the decision in appeals arising out of 12563 to 12568 of 2005 and the connected matters.

3. Before disposing the above SLPs by order dated 20-4-2006, the appellants-writ petitioners, without prejudice to their rights in the matter pending before the Court, also independently filed Writ Petition Nos. 26068 and 26064 of 2005 respectively on 2-12-2005. The learned Single Judge, taking note of the above facts and circumstances into consideration, by order dated 7th March, 2008 dismissed the writ petitions observing as follows.-

4. In view of the submission made before the Supreme Court that the petitioner is willing to await the decision in the connected matters before the very Court, the petitioner cannot agitate the same relief in two different Courts on the same point of issue. When the petitioner is already pursuing his remedy before the Supreme Court he cannot be permitted to seek relief in this Court.

4. Thereafter, the petitioner moved the Supreme Court in I.A. No. 3 of 2008 in C.C. No. 8869 of 2005 to withdraw C.C. No. 8869 of 2005. Accordingly, the Supreme Court, by order dated 1-10-2008 dismissed the SLP which reads as hereunder:

Taken on board.

Learned Counsel for the petitioner seeks permission to withdraw the petition. Permission is granted. The SLP is dismissed as withdrawn.

Accordingly, C.C. No. 8869 of 2005 was also dismissed as withdrawn.

5. Now, according to Smt. Nalini Chidambaram, learned Senior Counsel appearing for the appellants-writ petitioners that in view of the order dated 30-9-2005 made in C.C. No. 8869 of 2005 and order dated 1-10-2008 made on I.A. No. 3 of 2008 in C.C. No. 8869 of 2005, they are entitled to challenge the preliminary notification dated 29-1-2003 and final notification dated 5-7-2003 referred to above as the Apex Court itself observed in order dated 30-9-2005 that the remedy of the petitioner lies in challenge to the acquisition proceeding"s before the High Court.

6. Sri Jayakumar S. Patil, learned Senior Counsel appearing for respondent 4

contended that while permitting the appellants to withdraw the above C.C. No. 8869 of 2005 by its order dated 1-10-2005 the Supreme Court has not granted any liberty to the appellants-writ petitioners and as such they cannot be permitted to challenge the acquisition proceedings.

7. What is relevant to be noted here is that the present writ petitions had been filed even before withdrawal of C.C. No. 8869 of 2005 before the Supreme Court, obviously based on the observation of the Apex Court in order dated 30-9-2005 that the remedy of the petitioner lies in laying challenge to the acquisition proceedings before the High Court. In our considered opinion, liberty to challenge the preliminary notification dated 29-1-2003 and final notification dated 5-7-2003 has to be read into the order dated 1-10-2008. Therefore, without testing the legal contentions raised by the petitioner in W.P. No. 26068 of 2005 in challenge to the aforesaid notifications and the corresponding objection raised by the contesting respondents, it may not be proper to dismiss the writ petition in limine.

8. It is fairly admitted by both sides that the facts and circumstances of the case and the contentions raised in Writ Appeal No. 784 of 2008 are identical and similar to and equally applicable in Writ Appeal No. 781 of 2008.

9. Therefore, the order dated 7th March, 2008 passed in Writ Petition Nos. 26068 and 26064 of 2005 are set aside and the matter is remitted to the learned Single Judge and the parties are at liberty to move the learned Single Judge for expedite disposal of the cases.

10. Appeals are disposed of accordingly.