

(2011) 08 MAD CK 0421

In the Madras High Court

Case No : Writ Petition No. 12036 of 2003 and W.M.P. No's. 15087 and 15088 of 2003

Murugesan, Mahalakshmi and S. Jeeva

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 23-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 254, 254(2)

Limitation Act, 1963 — Article 226

Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 — Section 4(1), 4(2), 5

Citation : (2011) 08 MAD CK 0421

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Ashok Viswanath, for the Appellant; R. Ravichandran, AGP, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The three Petitioners have filed the present writ petition, seeking for a declaration that the Tamil Nadu Acquisition of Land and Harijan Welfare Scheme Act, 1978 (Tamil Nadu Act 31 of 1978) and the procedure prescribed therein and the Rules made thereunder has become void under Article 254 of the Constitution of India as it had been inconsistent and repugnant to the Land Acquisition (Amendment) Act (Central Act 68 of 1984) amending the Land Acquisition Act No. 1 of 1894 and for a consequential declaration that the notice of the second Respondent viz., District Collector, Villupuram published in the Villupuram Government Gazette dated 29.08.1996 was also void in so far as it relates to Petitioner's land in S. No. 17/6 of Mel Maavilangai Village, Tindivanam Taluk.

2. When the matter came up on 24.03.2003, the said writ petition was posted for maintainability. Subsequently, when the matter came up on 29.10.2003, it was stated by the learned Government Pleader that the Petitioners were not the

original owners of the property, but encroachers and a notice for removal of encroachment had been given and it is at that stage, the Petitioners had filed the writ petition. Whereas, the Petitioners contended that they had purchased the property under a sale deed. Since they not produced the sale deed, the matter was adjourned for production of sale deed.

3. The writ petition was not admitted and no orders were passed in the application for dispensing with the production of original records as well as in the application for interim stay of dispossession. Therefore, when the matter came up on 23.06.2011, this Court directed the learned Government Pleader to produce the original records relating to the acquisition in view of the contention raised by the learned Counsel for the Petitioners that there was no satisfaction by the District Collector. Accordingly, the original records were produced and circulated for perusal by this Court and this Court had also perused the said file.

4. Heard the arguments of Mr. Ashok Viswanath, learned Counsel for the Petitioners and Mr. R. Ravichandran, learned Additional Government Pleader appearing for the Respondents.

5. In so far as the challenge to the vires of T.N. Act 31 of 1978, it must be noted that the said issue is no longer res integra in the light of the judgment of the Supreme Court in State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, , wherein the Supreme Court upheld the vires of the said enactment as a special law on the field and with a further direction that all acquisition in respect of Harijan Welfare Scheme should only be proceeded under the State Act and not under the Central Act. In that judgment itself, the Supreme Court had stated that a particular enactment cannot be compared with any other enactment for the purpose of finding out the vires of the said enactment and no such comparison can be made. In that case, the comparison with the Central Act was not allowed to be raised in upholding the Central Act. The Contention of the Petitioner that the subsequent amendment to the Central Act by Land Acquisition Amendment Act, 68/1994 will automatically invalidate the Tamil Nadu Act 31/1978 in terms of Article 254(2) does not arise. Merely because the public purpose found in the Central Act as per the amendment is wider in nature, that does not invalidate the T.N. Act 31/1978 which is intended specially to acquire the land for Harijan Welfare Scheme.

6. According to the Petitioners, by the amendment of the Central Act, the term public purpose has been amplified and which includes provision for providing house sites and therefore, in the light of the amendment, Central Law will occupy the field as there exists a repugnancy between the subsequent central amendment and the state law made by the Parliament.

7. Since the Petitioners raised the question of repugnancy under Article 254 of the Constitution, it is necessary to refer to certain decisions of the Supreme Court which will have a bearing on the said issue.

8. The Supreme Court in M. Karunanidhi Vs. Union of India and Another, has held

that presumption is always in favour of the constitutionality of a statute and before any repugnancy can arise, certain conditions must be satisfied and there can never be any repeal by implication unless the inconsistency appears on the face of the two statutes. In paragraphs 24 and 35, the Supreme Court had observed as follows:

24. It is well settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied:

1. That there is a clear and direct inconsistency between the Central Act and the State Act.
2. That such an inconsistency is absolutely irreconcilable.
3. That the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

35. On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge:

1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.
2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.
3. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.
4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.

9. The Supreme Court while permitting the law to be made by both Central and State Government has held that in order to find the inconsistencies, it should be seen whether by abiding the State law without flouting or violating the Central law, then it cannot be a case of repugnancy and the laws of complementary to each other. Both laws can stand together. Reference may be made to the judgment of the Supreme Court in *Ram Chandra Mawa Lal, Varanasi and Others Vs. State of Uttar Pradesh and Others*, . In paragraph 50, the Supreme Court had observed as follows:

Is the alleged inconsistency irreconcilable or intolerable one?

50. There are degrees of inconsistency in the context of conflict of laws. There can be apparent or surface inconsistency which may be considered as a non-hostile, tolerable, benign, one, subject to the unquestioned power of the Centre to override the State if so minded. On principle, every apparent inconsistency cannot be presumed to be hostile or intolerable. More so when the Centre does not even raise a whisper of discord. One of the tests for ascertaining whether the inconsistency is an irreconcilable or intolerable one, is to pose this question: Can the State law be obeyed or respected without flouting or violating the Central law in letter and spirit? If the answer is in the affirmative, the State law cannot be invalidated. Not at any rate when the State law merely "promotes" the real object of both the laws, and is in the real sense "supplementary" or "complementary" to the Central law. In the present case the test answers in favour of the validity of the impugned State notification. The Central notification is not violated if the dealers sell the fertilizers from out of the existing stocks acquired at the lower rates, for, both the notifications fix the maximum selling price and the maximum selling price fixed under the State notification is not higher than that fixed under the Central notification. What is more, the State notification "promotes and serves" the object and purpose of both the Centre and the State. "Promotes and serves", in the sense, that the manifest object of fixing maximum ceiling price is to make available to the cultivators who grow the food for the Nation to obtain the inputs at reasonable prices and to protect them from exploitation so that the food production is not retarded. It is not contended even by the Petitioners, for the very good reason that it is incapable of being so contended, that the object of the price regulation is to enable the dealers to make unconscionable profit. Thus the impugned State notification promotes rather than "defeats", the "life-aim" of Central as also the State notifications. It "helps" rather than "hurts" the objectives and goals of the Centre, and there is no conflict whatsoever of "interest", "purpose", or "perspective". The State has done only that which the Centre presumably would have readily done if it was fully aware of the situation from all angles of vision. For, the only impact of the impugned notification is that the "cultivator" for whose protection the price regulation is essentially made, is saved from exploitation without hurting the legitimate claim of the dealer, who, in any case, gets his fixed profit margin of Rs 45 per ton.

10. The Supreme Court had an occasion to consider the effect of provisions relating to retrenchment under Chapter V-A of the ID Act, 1947 as well as restrictions imposed on the employer on terminating the service of an employee u/s 41 of the Andhra Pradesh Shops and Establishments Act. It was found that subsequent to the Central Act, the State enactment had received the assent of the President. Notwithstanding the fact that the State enactment did not have the provisions relating to retrenchment, the Supreme Court found that while the right of parties can be derived from the Central Act, there is no impediment for the workman to agitate such right granted under the Central Act in a forum provided under the State enactment. The said view was laid in Krishna District

Co-operative Marketing Society Limited, Vijayawada Vs. N.V. Purnachandra Rao and Others, . In paragraph 7, the Supreme Court had observed as follows:

10. The result of the above discussion is that if the employees are "workmen" and the management is an "industry" as defined in the Central Act and the action taken by the management amounts to "retrenchment" then the rights and liabilities of the parties are governed by the provisions of Chapter V-A of the Central Act and the said rights and liabilities may be adjudicated upon and enforced in proceedings before the authorities u/s 41(1) and Section 41(3) of the State Act.

11. The Supreme Court vide its judgment in Pt. Rishikesh and Another Vs. Salma Begum (Smt), has held that merely because there is subsequent Central Act on the same issue is enacted, it does not automatically result in a repugnancy. Unless they are in coalition course, there is no necessity for the State legislature to re-enact the law to make it valid. In this context, it is necessary to refer to paragraph 21 of the said judgment, which reads as follows:

21. The condition precedent to bring about repugnancy should be that there must be an amendment made to the principal Act under the Central Act and the previous amendment made by a State Legislature or a provision made by a High Court must occupy the same field and operate in a collision course. Since the State Act as incorporated by Act 37 of 1972 and the Explanations to Rule 5 by Act 57 of 1976, Rule 5 was not occupied by the Central Act in relation to the State of U.P., they remain to be a valid law. We may clarify at once that if the Central law and the State law or a provision made by the High Court occupy the same field and operate in collision course, the State Act or the provision made in the Order by a High Court being inconsistent with or in other words being incompatible with the Central Act, it becomes void unless it is re-enacted, reserved for consideration and receives the assent of the President after the Central Act was made by Parliament i.e. 10.9.1976.

In the light of the above legal precedents, the contentions raised to the contrary has to be necessarily rejected.

12. On the question of satisfaction expressed by the District Collector for acquiring the land, it is seen from the records that the houseless Adi-Dravidars of Melmavillangai Village, Tindivanam Taluk requested for provision of house sites. An enumeration was taken and found 30 houseless Adi-Dravidar families have to be provided with such house sites. There was no suitable poramboke lands or assessed dry waste lands available at the disposition of the Government. Therefore, dry lands adjacent to the existing Adi Dravidar Colony was selected for acquisition for providing house sites for the Adi Dravidars of the village. Accordingly, 1.16 acres were identified in respect of R.S. No. 17/5 and R.S. No. 17/6. The District Collector, Villupuram District authorised the Special Tahsildar (ADW), Tindivanam by proceedings dated 09.09.1995 to perform the functions under the Act. The objections were called for u/s 4(2) of the Tamil Nadu

Acquisition of Land for Harijan Welfare Schemes Act, 1978 and enquiry was conducted in the village on 14.11.1995. One Venkatasamy S/o. Varadha Reddiar, owner of the land measuring 0.14.0 Hectares in R.S. No. 17/5 gave his consent for acquisition. The land in S. No. 17/6 stood registered in the name of Varadha Reddiar S/o Narayanan Reddiar and M. Chellaperumal. It was stated that the said Chellaperumal had no right over the land and that the Varadha Reddiar was the actual owner. He had objected to the acquisition of the land on the ground that he had already sold the land to some other persons and he requested for alternate land near the colony to be acquired. But his objection was overruled on the ground that the said Varadha Reddiar was a wealthy land owner and he will not loose by the acquisition of very small portion of the land to the extent of 1.16.0 acres.

13. The said Varadha Reddiar and his son Kuppusamy filed a writ petition before this Court being W.P. No. 14207 of 1996 and obtained an interim stay of dispossession alone on 01.10.1996. In the meanwhile, the acquisition was approved and an Award was passed on 25.01.1997. But due to the interim stay, possession was not taken over. The notification u/s 4(1) was published in the District Gazette on 29.08.1996. The amount due to the land owners were deposited in the Sub-Court on 01.10.1996. This Court by an order dated dismissed the writ petition on 25.10.2002 stating that there was no case for interference as the provisions of Section 4(1) and 4(2) were followed. Pursuant to the order passed by this Court, the possession of the lands were taken over but at that time, it was found that the lands were encroached by several persons.

14. In respect of the S. No. 17/6, which was owned by Varadha Reddiar, it was encroached by Kaliammal and 7 others that included Murugesan, the first writ Petitioner and Jeeva W/o. Singaravelan, the third writ Petitioner. Likewise, S. No. 17/5, was used by three persons for storing their Hay Stake. When they were given notice for removing the encroachment and to give vacant possession, the Petitioners who were encroachers filed the present writ petition and since it was informed by the learned Special Government Pleader (Land Acquisition) in his letter dated 23.04.2003 that this Court had ordered status quo, possession was deferred.

15. The Petitioners have also submitted their objections. The second Respondent overruled the said objection and submitted a report before the first Respondent, who in turn observed that the objections are without merits and ordered acquisition of the Petitioners property. Accordingly, a notification u/s 4(1) of the Act has been published. Thereafter, Award notice was served on the Petitioners and the Petitioners have come before this Court. The acquisition is not liable to be interfered with as the provisions of Section 4(1) as well as 4(2) have been followed strictly. This Court do not find any irregularity or illegality to interfere with the acquisition proceedings impugned in this writ petition.

16. Though the learned Special Government Pleader's letter dated 23.04.2003 proceeds on the basis that there was an order of status quo granted by this

Court, there is no such order found in the records. Therefore, based upon the Special Government Pleader's letter, the Respondents have not taken possession and has considerably delayed the matter for over 8 years.

17. The Petitioners in their affidavit have claimed that they have purchased the land through registered sale deed for valuable consideration. So far the first Petitioner is concerned, he claims to have purchased the land on 15.04.1999, which was registered as Document No. 411 of 1999 before the Sub Registrar Office at Avaraipakkam. The second and third Petitioners have purchased the land through separate sale deeds with Document Nos. 1447 of 1999 dated 29.11.1999 and Document No. 98 of 2002 dated 01.02.2002 respectively before the same Registrar office.

18. Despite the direction issued by this Court on 29.10.2003 to produce those documents, the Petitioners have not produced the said documents. In the typed set filed in support of the writ petition except producing a true copy of the Gazette Notification dated 29.08.1996, they have not filed any document. Infact the Gazette Notification produced by them is a notification issued u/s 4(1) of the T.N. Act 31/78. Once that notification is issued, it had attained finality and the land automatically stand vested to the Government by Virtue of Section 5 of the Act.

19. In the present case, the Award has been passed by the Award No. 8/96-97 on 15.01.1997. In the absence of any stay of further proceedings in W.P. No. 14207 of 1996 and that writ petition itself came to be dismissed on 25.10.2002, there was no impediment for possession being taken over by the Respondents. Though a writ appeal was filed by the second Petitioner in that writ petition with a petition to condone the delay, the learned Counsel for the present Petitioners, who was also the counsel in that defective writ appeal was not able to state the outcome of the said writ appeal. Pending condonation of delay, the stay petition was dismissed by a Division Bench on 14.10.2004. Subsequent to the passing of the Award, compensation has also been deposited. It must be noted that one of the land owner Venkatasamy S/o. Varadha Reddiar had given consent for the acquisition.

20. In the present case, the Petitioners have no locus standi to challenge the acquisition as they are third parties and they have no right to be heard on the issue. Even their so called purchase of the land from the original land owner is illegal as the purchase had taken place long after the Award had been passed. Even the original owner's challenge was repelled by this Court in W.P. No. 14207 of 1996. Though the learned Counsel for the Petitioners relied upon certain decisions which were rendered in the context of original land owner assailing the acquisition proceedings on various grounds which are available to him, this Court is not inclined to refer to those decisions as the writ petition is liable to be rejected on the ground of locus standi of the Petitioners. As noted already, the Petitioners were subsequent purchasers and they have no locus standi to challenge the acquisition proceedings by getting into the shoes of the original

land owner.

21. In this context, it is necessary to refer to the judgment of the Supreme Court in *State of Orissa Vs. Dhobei Sethi and Another*, . In paragraphs 3 and 4, it was held as follows:

3. As regards the second writ petition, namely, OJC No. 1573 of 1978, the Petitioner therein cannot raise this objection because he is a subsequent purchaser and that the High Court was unjustified in allowing the writ petition.

4. As regards OJC No. 43 of 1977, in view of the fact that the notification was issued as early as on 16-7-1970, the writ petition having been filed after 7 years, the High Court ought to have dismissed the writ petition on the ground of laches. We, therefore, hold that the High Court has not properly exercised its power under Article 226 of the Constitution in upsetting the notification dated 16-12-1970 after a lapse of 7 years.

22. In the present case, even the original land owners' challenge was negated by this Court as noted above. Therefore, those findings stare at the face of the present Petitioners. Assuming for a moment that the Petitioners have right to challenge any acquisition proceedings by stepping into the shoes of the original owner or with any independent right inasmuch as final notification was published in the Gazette on 29.08.1996 and the writ petition itself came to be filed only after a period of 7 years in the year 2003, even on ground of delay, the writ petition is liable to be rejected.

23. In this context, it is necessary to refer to the judgment of the Supreme Court in *Banda Development Authority, Banda Vs. Moti Lal Agarwal and Others*, . In paragraphs 17 to 19, it was held as follows:

17. It is true that no limitation has been prescribed for filing a petition under Article 226 of the Constitution but one of the several rules of self-imposed restraint evolved by the superior courts is that the High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallised rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the Petitioner on merits.

18. In *State of M.P. v. Bhailal Bhaithe* Constitution Bench considered the effect of delay in filing writ petition under Article 226 of the Constitution and held: (AIR pp.1011-12, paras 17 & 21)

17. ...It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it.... It is not easy nor is it desirable to lay down any Rule for

universal application. It may however be stated as a general Rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus.

21. ...Learned Counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Art 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable.

19. In matters involving challenge to the acquisition of land for public purpose, this Court has consistently held that delay in filing the writ petition should be viewed seriously and relief denied to the Petitioner if he fails to offer plausible explanation for the delay. The Court has also held that the delay of even few years would be fatal to the cause of the Petitioner, if the acquired land has been partly or wholly utilised for the public purpose.

24. In the light of the above, the writ petition stands dismissed. However, there will be no order as to costs. Connected miscellaneous petitions are closed.