(2015) 03 KL CK 0153

In the High Court Of Kerala

Case No : W.A. No. 385 of 2015

Sayed Mohammed Koya Thangal P.	APPELLANT
Vs	
Administration of the Union Territory of Lakshadweep and Others	RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

- Constitution of India, 1950 — Article 107, 111, 168, 200, 245
- General Clauses Act, 1897 — Section 5, 5(1)
- Kerala Chitties Act, 1975 — Section 4(1a)
- Land Acquisition Act, 1894 — Section 11, 4, 4(1), 6, 9
- Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 1, 1(2), 1(3), 114, 24(1)

Citation : (2015) 3 ILR Ker 409 : (2015) 2 KHC 525 : (2015) 3 KLT 112

Hon'ble Judges : Ashok Bhushan, C.J;A.M. Shaffique, J

Bench : Division Bench

Advocate : P.B. Krishnan, P.M. Neelakandan, P.B. Subramanyan, Sabu George and S. Nithin, for the Appellant; S. Radhakrishnan, SC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, C.J—This Writ Appeal has been filed against the judgment and order dated 21/01/2015 dismissing WP (C) No. 33302 of 2014 filed by the petitioner-appellant. Brief facts giving rise to the Writ Petition are: Properties having an extent of 100 sq mts. in Sy. No. 275/9, 2010 sq. mts. in Sy. No. 278/1, 680 Sq. mts. in Sy. No. 280/2 and 80 Sq. mts. in Sy. No. 280/10 were notified under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to "as the 1894 Act") by Notification dated 20/03/2012. Eighty per cent of the compensation was paid in advance. Declaration under Section 6 of the Act was published in the Gazette on 27/03/2012. Notice under Section 9 was issued on 17/11/2012. Award was passed by the Land Acquisition Collector on 24/10/2013 determining the compensation for acquisition of the land. Petitioner claimed to have been informed on 01/07/2014 about disbursement of 20%

balance compensation. Petitioner filed the Writ Petition praying for the following reliefs:

(i) Issue a Writ of certiorari or any other order or direction in the nature thereof calling for the records leading to Ext. P2 and quash the same.

(ii) Issue a Writ of mandamus or any other order or direction in the nature thereof directing respondent No. 2 to pass an award pursuant to Ext. P1 in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) within the permitted time failing which the land acquisition proceedings be declared to have lapsed."

2. Before the learned Single Judge submission which was pressed on behalf of the petitioner was that Ext. P2 award dated 24/10/2013 ought to have been prepared in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) (hereinafter referred to as "the 2013 Act") which enactment having received the assent of the President on 26/09/2013 should be deemed to have come into operation with effect from 26/09/2013 and the award dated 24/10/2013 could not have been made under the 1894 Act. The submission made by the learned counsel for the petitioner was not accepted by the learned Single Judge. The learned Single Judge held that the 2013 Act having contemplated that the Act shall come into force on such date as the Central Government may by Notification in the Official Gazette appoints and the Central Government vide Notification dated 19/12/2013 having appointed 01/01/2014 as the date from which the Act was to come into force, there was no infirmity in the award dated 24//10/2013 having prepared under the 1894 Act. The further contention that the acquisition had lapsed under Section 24(2) was also repelled holding that there being no case that the award was made five years or more prior to the commencement of the Act benefit of Section 24(2) is not available. The Learned Single Judge by judgment dated 21/01/2015 dismissed the Writ Petition against which this Writ Appeal is filed.

3. We have heard Shri P.B. Krishnan, learned counsel for the petitioner and Shri S. Radhakrishnan, learned counsel appearing for the respondents.

4. Learned counsel for the petitioner reiterated the same submissions which were raised before the learned Single Judge. Learned counsel for the petitioner submitted that 2013 Act having received the assent of the President on 26/09/2013, the Act shall deemed to have become law and come into operation with effect from 26/09/2013 and the Notification dated 19/12/2013 notifying 01/01/2014 as the date of coming into force of the 2013 Act is inconsequential. The 2013 Act had become a law on the date on which it was assented by the President and thus the award dated 24/10/2013 should have been made only under the 2013 Act and not under the 1894 Act. He further submitted that 20% balance compensation having not been received till the enforcement of the 2013

Act, the entire acquisition proceedings had lapsed by virtue of Section 24(2) of the 2013 Act. Learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in State of Kerala and Others Vs. Mar Appraem Kuri Company Ltd. and Another, AIR 2012 SC 2375 : (2012) 174 CompCas 339 : (2012) 5 SCALE 266 : (2012) 7 SCC 106 : (2012) 114 SCL 47 : (2012) AIRSCW 3498 .

5. Shri S. Radhakrishnan, learned counsel appearing for the respondents refuting the submissions of the learned counsel for the petitioner contended that Section 1(3) of the 2013 Act having itself contemplated day of enforcement of the Act, i.e., such date as the Central Government may by notification in the Official Gazette appoint, the 2013 Act never came into operation from the date of assent of the President. The submission of the learned counsel for the petitioner that the 2013 Act shall be deemed to be enforced on the date the Bill was assented by the President is not correct. He further submitted that Section 24(2) has no application in the present case since the award was passed not before five years or more from the date of enforcement of the 2013 Act.

6. We have considered the submissions of the learned counsel for the parties and perused the records.

7. From the submissions made by the parties and pleadings on record, only two issues arise for consideration in the present Writ Appeal.

(I) Whether the 2013 Act shall be deemed to have come into force, i.e., come into operation on the date on which the Act was assented by the President, i.e., 26/09/2013 or it came into operation with effect from 01/01/2014 which is the date notified by the Central Government by Gazette Notification dated 19/12/2013 as per Section 1(3) of the 2013 Act?

(II) Whether 20% balance compensation having not been paid to the petitioner prior to 01/01/2014, the entire acquisition proceedings stand lapsed?

8. For answering the first Issue it is necessary to look into the statutory scheme of the 2013 Act. Section 1 of the 2013 Act contains heading "Short title, extent and commencement" which is quoted as below:

"1. Short title, extent and commencement.--(1) This Act may be called the Right to Fair Compensation and the Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. It extends to the whole of India except the State of Jammu and Kashmir.

3. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that the Central Government shall appoint such date within three months from the date on which the Right to Fair Compensation and Transparency in Land Acquisition and Resettlement Act, 2013 receives the assent of the President."

The Bill namely, the Right to Fair Compensation and the Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 was assented by the President on 26/09/2013 and published in the Gazette of India dated 27/09/2013. Prior to the aforesaid enactment land acquisition was regulated by the 1894 Act which was repealed under Section 114 of the 2013 Act. Section 5 of the General Clauses Act, 1897 deals with coming into operation of enactments, which is quoted as below:

"5. Coming into operation of enactments.--(1) Where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent--

(a) in the case of Central Act made before the commencement of the Constitution, of the Governor-General, and

(b) in the case of an Act of Parliament, of the President

(2) xxxx xxxx xxxx

(3) Unless the contrary is expressed, a "Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement."

Section 5 of the General Clauses Act thus contemplated that "where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent". Thus the Central Act shall come into operation on the date on which it received the assent except "where the Act is not expressed to come into operation on a particular day". Section 1(3) of the 2013 Act expressed the date on which the Act shall come into force which is clear from the words "it shall come into force on such date as the Central Government, may by Notification in the Official Gazette appoint". Thus enforcement of the Act has already been contemplated in Section 1(3), general provisions of Section 5 of the General Clauses Act that it shall come into operation on such date on which it received the assent is not applicable. In the present case, there is no dispute that the Notification was issued by the Central Government under Section 1(3) on 19/12/2013 fixing the date as 01/01/2014 as the date for commencement of the 2013 Act.

9. The Apex Court in State of Orissa Vs. Chandrasekhar Singh Bhoi, etc., AIR 1970 SC 398 : (1969) 2 SCC 334 : (1970) 1 SCR 593 held that law cannot be said to be in force unless it is brought into operation by legislative enactment or by the exercise of authority by a delegate empowered to bring into operation. The following was laid down by the Supreme Court in paragraph 5:

"5. Before the High Court it was urged on behalf of the land-holders that when the principal Act was enacted it became law in force, and the ceiling limit prescribed thereby became effective even though Chapter IV was not extended by a notification under Section 1(3) of the Act, and since the subsequent legislation seeks to restrict the ceiling limit and to vest the surplus land in the

Government under Section 45 as amended, there is compulsory acquisition of land which may be valid only if the law provides for payment to the land-holder for extinction of his interest, the market value of that part of the surplus land which is within the ceiling limit under the principal Act. This argument found favour with the High Court. In their view the expression "law in force" must be "construed only in the constitutional sense and not in the sense of its actual operatives", and on that account it must be held that "there was a ceiling limit already provided by the principal Act as it was law in force within the meaning of that expression as used in the second proviso to Article 31A". They proceeded them to hold that Section 47 of the Act as amended provided for payment of compensation at a rate which is less that the market value of the land falling within the ceiling limit as originally fixed under Act 16 of 1960, and the guarantee of the second proviso to Article 31A of the Constitution is on that account infringed. We are unable to accept this process of reasoning. The right to compensation which is not less than the market value under any law providing for the acquisition by the State of any land in an estate in the personal cultivation of a person is guaranteed by the second proviso only where the land is within the ceiling limit applicable to him under any law for the time being in force. A law cannot be said to be force unless it is brought into operation by legislative enactment, or by the exercise of authority by a delegate empowered to bring it into operation. The theory of a Statute being in operation in a constitutional sense" though it is not in fact in operation has, in our judgment, no validity."

Further, in Common Cause Vs. Union of India (UOI) and Others, AIR 2003 SC 4493 : (2003) 2 JT 270 Supp : (2003) 8 SCALE 463 : (2003) 8 SCC 250 : (2003) 4 SCR 471 Supp the Apex Court held that the Legislature itself provided that the date of coming into force of the Act would be a date to be notified by the Central Government, Section 5 of the General Clauses Act would have no application. The following observations are made by the Apex Court in paragraph 28:

"28. The submission that by virtue of Section 5 of General Clauses Act, the Act has come into force is misconceived. Section 5 of the General Clauses Act has no application. Section 5 is applicable only when the Act does not express any date with effect from which the Act would come into force. It will apply to such cases where there is no provision like Section 1(3) of the Act or Section 1(2) of the 44th Constitutional Amendment. When the Legislature itself provides that the date of coming into force of the Act would be a date to be notified by the Central Government, Section 5 of the General Clauses Act will have no application. It is plain and evident from the language of the provision. Section 5(1) provides that ''where any Central Act is not expressed to come into operation on particular day, then it shall come into operation on the day on which it receives the assent''. Sub-clause (3) provides that ''unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into operation immediately on me expiration of the day preceding its commencement''. In simple words it would mean that unless otherwise provided a Central Act would come into operation on the date it receives Presidential assent and is construed as coming into operation immediately on the date preceding its commencement. Thus, if a Central Act is assented by the President on 23/08/1995 then it would be construed to have come into operation on the mid-night between 22nd and 23rd August, 1995. Sub-section (3) has to be read as a corollary to sub-section (1). Sub-section (1) provides that the Act would come into operation on the date it receives the assent of the President where a particular day w.e.f. which the Act would come into force is not prescribed whereas sub-section (3) provides the exact time of the day/night when the Act would come into force. It would not apply to cases where the Legislature has delegated the power to the executive to bring into force the Act from a date to be notified by publication in the Official Gazette."

Another judgment of the Apex Court which is relevant is Haji Lal Mohd. Biri Works, Allahabad through Abdul Hamid Vs. The state of U.P. and Others, AIR 1973 SC 2226 : (1973) 2 CTR 313 : (1974) 3 SCC 137 : (1974) 1 SCR 25 : (1973) 32 STC 496 . The U.P. Sales Tax (Second Amendment) Act (3 of 1984) received the assent of the President on 25/01/1964. The Amendment Act was published in the Gazette on 01/02/1964. Question arose before the Apex Court as to which is the date on which the Act shall be treated to have come into force. The Apex Court held that the Act shall be treated to have come into force not on the day when it received the assent of the President but on the date on which it was published in the Official Gazette. The following was laid down by the Apex Court in paragraph 9:

"9. There was some argument before us on the point as to when U.P. Act 3 of 1964 came into force. This Act received the assent of the President on January 25, 1964 but was published in the Official Gazette on February 1, 1964. It was submitted on behalf of the appellant that the Act came into force on the date it received the assent of the President. As against that, Mr. Manchanda on behalf of the respondents stated that the Act came into force on February 1, 1964, the day it was published in the Official Gazette. The stand taken by Mr. Manchanda in this respect is correct because according to Clause (b) of sub-section (1) of Section 5 of the U.P. General Clauses Act, 1904 (U.P. Act No. 1 of 1904) where any Uttar Pradesh Act is not expressed to come into force on a particular day, then in the case of an Uttar Pradesh Act made after the commencement of the Constitution, it shall come into operation on the day on which the assent thereto of the Governor or the President, as the case may require, is first published in the Official Gazette. It may also be mentioned that in para 33 of the writ petition filed in the High Court the appellant too had taken the stand that the U.P. Act 3 of 1964 had come into force on February 1, 1964."

10. The judgment which has been relied on by the learned counsel for the petitioner, State of Kerala v. Mar Appraem Kuri Co. Ltd. (supra), was a case where the question arose regarding repugnancy of the Kerala Chitties Act, 1975 to the Central Chit Funds Act, 1982. Question to be answered has been noted by the Apex Court in paragraph 9. In the above case, the Central Chit Funds Act,

1982 was made by the Parliament which was assented by the President on 09/08/1982. The following was noted in paragraphs 9 and 10:

"9. (i) Whether making of the law or its commencement brings about repugnancy or inconsistency as envisaged in Article 254(1) of the Constitution?

(ii) The effect in law of a repeal.

Inconsistencies in the provisions of the Kerala Chitties Act, 1975 vis-a-vis the Central Chit Funds Act, 1982.

10. The impugned judgment of the Division Bench has accepted the contention advanced on behalf of the private chitty firms that there are inconsistencies between the provisions of the two Acts, (see paras 13, 14 and 15 of the impugned judgment)."

The Central Act, 1982 had not been in force in the State of Kerala and the Notification was not issued till the matter was considered by the Apex Court. Amendment was made in the State Act, namely, Kerala Chitties Act 23 of 1975. Thus the main issue was as to whether the amendment has become repugnant under Article 254 of the Constitution of India to the Central Act, 1982 which law was already made although not in force. In the said context, the following was laid down by the Apex Court in paragraphs 49, 50, 51, 61 and 81:

"49. In Clause (1) of Article 254 the significant words used are ''provision of a law made by the Legislature of a State'', ''any provision of a law made by Parliament which Parliament is competent to enact'', ''the law made by Parliament, whether passed before or after the law made by the Legislature of such State'', and ''the law made by the Legislature of the State shall, to the extent of repugnancy, be void''. Again, Clause (2) of Article 254 speaks of ''a law made by the Legislature of a State'', ''an earlier law made by Parliament'', and ''the law so made by the Legislature of such State''. Thus, it is noticeable that throughout Article 254 the emphasis is on law - making by the respective Legislatures.

50. Broadly speaking, law - making is exclusively the function of the Legislatures (see Article 79 and Article 168). The President and the Governor are a part of the Union or the Legislatures of the States. As far as the Parliament is concerned, the legislative process is complete as soon as the procedure prescribed by Article 107 of the Constitution and connected provisions are followed and the Bill passed by both the Houses of Parliament has received the assent of the President under Article 111. Similarly, a State Legislation becomes an Act as soon as a Bill has been passed by the State Legislature and it has received the assent of the Governor in accordance with Article 200. It is only in the situation contemplated by Article 254(2) that a State Legislation is required to be reserved for consideration and assent by the President. Thus, irrespective of the date of enforcement of a Parliamentary or State enactment, a Bill becomes an Act and comes on the Statute Book immediately on receiving the assent of the President

or the Governor, as the case may be, which assent has got to be published in the Official Gazette.

51. The Legislature, in exercise of its legislative power, may either enforce an Act, which has been passed and which has received the assent of the President or the Governor, as the case may be, from a specified date or leave it to some designated authority to fix a date for its enforcement. Such legislations are conditional legislations as in such cases no part of the legislative function is left unexercised. In such legislations, merely because the Legislature has postponed the enforcement of the Act, it does not mean that the law has not been made.

61. The entire above discussion on Article 245, Article 246, Article 250, Article 251 is only to indicate that the word ''made'' has to be read in the context of law - making process and, if so read, it is clear that to test repugnancy one has to go by the making of law and not by its commencement.

81. Applying the tests enumerated hereinabove, we hold that the Kerala Chitties Act, 1975 became void on the making of the Chit Funds Act, 1982 on 19/08/1982, (when it received the assent of the President and got published in the Official Gazette) as the Central 1982 Act intended to cover the entire field with regard to the conduct of the Chits and further that the State Finance Act No. 7 of 2002, introducing Section 4(1a) into the State 1975 Act, was void as the State Legislature was denuded of its authority to enact the said Finance Act No. 7 of 2002, except under Article 254(2), after the Central Chit Funds Act, 1982 occupied the entire field as envisaged in Article 254(1) of the Constitution."

The Apex Court in the above case held that repugnancy shall arise when the law is made by the Parliament. It was held that repugnancy shall arise notwithstanding that the Central Act has not been in force by issuance of Notification. Thus the issue which was considered in the above case was an entirely different issue in different context and in no manner help the petitioner in the present case. Petitioner''s case that the award dated 24/10/2013 should have been made under the 2013 Act cannot be accepted since by 24/10/2013 the 2013 Act has not been in force which was notified in the Gazette on 19/12/2013 only with effect from 61/01/2014.

11. There is another reason for not accepting the submission of the learned counsel for the petitioner. Section 24(1) of the 2013 provides as follows:

"24. Land acquisition process under Act. No. 1 of 1894 shall be deemed to have lapsed in certain cases.--(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),--

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed."

Section 24(1)(b) clearly provides that "where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed". Thus Section 24(1) clearly contemplated that when award under Section 11 of the 1894 Act has already been made, the proceedings shall continue as if the 2013 Act has not been come into force. In the present case since the award has already been made before the commencement of the 2013 Act, the entire proceedings has to continue under the 1894 Act. The submission that the award ought to have been made under the 2013 Act cannot be accepted.

12. Now we come to the second Issue regarding lapse of the acquisition proceedings since petitioner submitted that he was not made the payment of the balance compensation of 20% before the commencement of the 2013 Act, i.e., before 01/01/2014. Section 24(2) is quoted below:

"24(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the land Acquisition Act, 1894 (1 of 1894), where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of the Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

The key words in Section 24(2) are "... where an award under the said Section 11 has been made five years or more prior to the commencement of the Act...". Thus Section 24(2) applies where award was made five years or more prior to the commencement of this Act and the physical possession of the land has not been taken or compensation has not been paid. The object was to lapse those proceedings where even after 5 years of making of the award, compensation was not paid and physical possession not taken before the commencement of the Act. Section 24(2) was enacted with different purpose and object. In the present case the award having made on 24/10/2013, Section 24(2) is not attracted.

In the above view of the matter, we are of the view that the second submission of the learned counsel for the petitioner has also no legs to stand. The Issue is answered accordingly.

We do not find any merit in the appeal. The Writ Appeal is dismissed.