
(2015) 01 KL CK 0007

In the High Court Of Kerala

Case No : Writ Petition(C) No. 33302 of 2014

Sayed Mohammed Koya Thangal P.

APPELLANT

Vs

Administrator, Union Territory of Lakshadweep and Others

RESPONDENT

Date of Decision : 21-01-2015

Acts Referred:

Constitution of India, 1950 — Article 254

General Clauses Act, 1897 — Section 1(3), 3(ii), 5

Land Acquisition Act, 1894 — Section 11, 24, 24(1), 24(1)(b), 24(2)

Citation : (2015) 1 ILR Ker 534 : (2015) 1 KHC 359 : (2015) 1 KLJ 648 : (2015) 1 KLT 453

Hon'ble Judges : V. Chitambaresh, J.

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

V. Chitambaresh, J.—The property of the petitioner was acquired for constructing New Government Senior Basic School at Amini Island and Ext. P2 Award was passed on 24/10/2013 under the Land Acquisition Act, 1894 ["the Old Act" for short]. The petitioner contends that the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 ["the New Act" for short] received the assent of the President on 26/09/2013. It is the case of the petitioner that the New Act should be deemed to have come into operation with effect from 26/09/2013 itself and that Ext. P2 Award could not have therefore been passed under the Old Act on 24/10/2013. The reliefs sought in the writ petition are to quash Ext. P2 Award and to direct the second respondent Land Acquisition Collector to pass an Award under the New Act within the permitted time failing which the proceedings be declared as lapsed. I heard Mr. Sabu George, Advocate on behalf of the petitioner and Mr. S. Radhakrishnan, Standing Counsel on behalf of the Lakshadweep Administration.

2. Section 1(3) of the New Act as regards its commencement is categorical that it shall come into force on such date as the Central Government may by notification in the Official Gazette appoint. The New Act came into force on 01/01/2014 vide SO 3729 (E) dated 19/12/2013 published in the Gazette of India, Extra, Part II, Section 3(ii), No. 2839 dated 19/12/2013 as revealed from the records. It is trite law that any Central Act shall come into operation on the day on which it receives the Presidential assent if it is not otherwise expressed that it would come into operation on a particular day only. Section 5 of the General Clauses Act, 1897 ["the Act" for short] is eloquent and is extracted hereunder:

"5. Coming into operation of enactments.--(1) 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,--

(a) in the case of a 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."

(emphasis supplied)

It is expressly stated in the New Act that it would come into force on such date as the Central Government may by notification in the Official Gazette appoint which in the instant case is 01/01/2014 about which there could be no quarrel. The plea that the New Act should have deemed to come into force on the date on which it received the Presidential assent on 26/09/2013 cannot be countenanced in the light of Section 1(3) thereof and Section 5 of the Act. The decision in State of Kerala and Others Vs. Mar Appraem Kuri Company Ltd. and Another, relied on by the petitioner has no relevance which only dealt with the repugnancy between two Acts in the context of Article 254 of the Constitution of India. The repeal of the Old Act under Section 114 of the New Act is of course subject to the saving clause found in Section 24 of the New Act which specifies the cases wherein only the land acquisition process under the Old Act shall be deemed to have lapsed.

Section 24(1) of the New Act is 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) clarifies that proceedings shall continue under the provisions of the Old Act if an Award under Section 11 thereof had already been made and the compensation due has necessarily to be worked out under the Old Act only. Ext. P2 Award in the instant case had already been made under the Old Act much before the commencement of the New Act and the petitioner cannot aspire for determination of the compensation under the New Act. The petitioner has no case that an Award was made five years or more prior to the commencement of the New Act and that physical possession of the land has not been taken or the compensation not paid. Therefore no question of the proceedings of the land acquisition getting lapsed arises under Section 24(2) of the New Act and the petitioner has to be rest contented with Ext. P2 Award passed under the Old Act. The prayer of the petitioner to have an Award passed in accordance with the New Act within the time permitted failing which the proceedings be declared as lapsed cannot therefore be acceded to and is hereby rejected.

The Writ Petition is dismissed. No costs.