
(2010) 11 MAD CK 0006

In the Madras High Court

Case No : W.A. No. 1862 of 2010 and M.P. No. 1 of 2010

Shanmugam and Others

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 141
Land Acquisition Act, 1894 — Section 4(1)

Citation : (2010) 11 MAD CK 0006

Hon'ble Judges : K.K. Sasidharan, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : V. Ayyadurai, for S.U. Srinivasan, for the Appellant; Malarvizhi Udayakumar, Spl. Govt. Pleader for RR1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Sasidharan, J.—The Appellant challenges the order dated 14 July, 2010 in W.P. No. 2089 of 2001 rejecting their prayer to forbear

the Respondents from interfering with their peaceful possession and enjoyment of the subject property.

THE BACKGROUND FACTS:

2. The immovable property having an extent of 1.51 acres in S.F. No. 492/1A in Telungupalayam Village of Coimbatore District absolutely

belonged to the family of the Appellants.

3. The Government of Tamil Nadu initiated proceedings for acquiring the said land for providing house sites to Adi Dravidars and a notification to

that effect was issued on 23 February, 1979 u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as ""Central Act""). When the

proceedings were in progress, the Tamil Nadu Acquisition of Lands for Harijan

Welfare Schemes Act, 1978 (hereinafter referred to as "the State Act") came into force with effect from 24 August, 1979.

4. Section 20 of the State Act provides that the Land Acquisition Act, 1984 shall cease to apply to any land which is required for the purpose

specified in Section State and such land shall be acquired by the Government only in accordance with the provisions of the said State Act. This

made the Government to convert the proceedings under the State Act as provided u/s 22 of the Act. Accordingly, notice u/s 4(2) of the State Act

was issued to the land owners. This was followed by publication of notice u/s Tamil Nadu Acquisition of the Act on 10 July, 1980 and ultimately, it

culminated in passing the award on 20 March, 1981.

5. While the matters stood thus, a Division Bench of this Court declared the State Act as unconstitutional, as per judgment dated 9 September,

1981 in Ananthi Ammal v. State. This prompted the Appellants to file W.P. No. 10312 of 1981 for issuance of a Writ of Mandamus restraining

the Respondents from taking any further action under the State Act with respect to the property in question.

6. The learned Single Judge allowed the writ petition along with other writ petitions as per common order dated 28 January, 1982. Accordingly,

the proceedings initiated under the State Act were quashed.

7. In view of the subsequent developments, the statutory authority decided to acquire the subject land once again by issuing notice u/s 4 of the

Central Act. The notification was issued on 25 November, 1982. In the meantime the Supreme Court was pleased to set aside the judgment of the

Division Bench of this Court in State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, and declared that the State Act was

constitutionally valid. While allowing the State appeal as per judgment dated 22 November, 1992, the Supreme Court observed that the

proceedings initiated under the State Act would be valid in view of the declaration of Law. Since the Supreme Court upheld the validity of the

State Act, the Respondents initiated further proceedings to take possession of the property. The Respondents appear to have taken possession on

2 March, 2000. This made the Appellants to file a fresh writ petition praying for a writ of Mandamus to forbear the Respondents from interfering

with their alleged peaceful possession and enjoyment of the land.

8. Before the learned Single Judge, the Appellants contended that the original proceedings initiated under the Central Act and later converted as a proceeding under the State Act were dropped by issuance of a fresh notification under the Central Act on 25 November, 1982. Therefore, they

contended that it was not open to the Respondents to re-open the earlier proceedings once again and to take possession.

9. The learned Single Judge was of the view that in view of the declaration of Law by the Supreme Court validating the State Act, the Respondents

were fully justified in proceeding with the land acquisition proceedings, which culminated in passing the award. Accordingly, the writ petition was

dismissed. It is the said order which is challenged in this writ appeal.

SUBMISSIONS:

10. The learned Counsel for the Appellants made two substantial contentions.

(i) Because of the subsequent initiation of proceedings u/s Tamil Nadu Acquisition of the Central Act, the earlier acquisition was deemed to have

been dropped.

(ii) The learned Single Judge was pleased to issue a writ of Mandamus as per order dated 28 January, 1982. The Respondents have not

challenged the said order and as such, it has become final. Therefore disregarding the said writ, it was not open to the Respondents to take

possession of the property.

11. The learned Government Pleader supported the order passed by the learned Single Judge.

DISCUSSION:

12. The proceedings to acquire the subject land were initially taken under the Central Act. It was subsequently converted as a proceeding under

the State Act. After complying with the statutory requirements, the Respondents have issued declaration u/s 6 and it was followed by an award

dated 20 March, 1981. It was the said award which was challenged in W.P. No. 10312 of 1981.

13. The learned Single Judge found that the State Act had already been declared as unconstitutional by a Division Bench of this Court in Ananthi

Ammal's Case and as such, it was not open to the Respondents to proceed with the process of acquisition under the State Act. It was only in such

circumstances, the writ petition was allowed.

14. The first question is as to whether the subsequent initiation of proceedings u/s Tamil Nadu Acquisition of the Central Act would invalidate the

earlier acquisition under the State Act. The acquisition of the property invoking the provisions of the State Act attained finality on account of the

award dated 20 March, 1981. So, there was a valid award passed in respect of the subject property. It is a matter of record that the award was

set aside by the learned Single Judge not on consideration of the individual merits of the case. It was set aside by following the earlier decision of

the Division Bench declaring the State Act as unconstitutional.

15. It is also true that subsequent to the order dated 28 January, 1982, the Respondents have issued a fresh notification u/s Tamil Nadu

Acquisition of the Central Act. The said notification has to be construed only as a consequential notification on account of quashing the initial

proceedings under the State Act.

16. Subsequently, the Supreme Court in State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, declared that the State Act was

constitutionally valid. In view of the categorical pronouncement of the Supreme Court declaring the State Act as constitutional and setting aside the

judgment of the Division Bench of this Court, all proceedings initiated under the State Act including the award passed by the Land Acquisition

Officer would stand revived. Because of these subsequent developments, the proceedings initiated by the State Government u/s Tamil Nadu

Acquisition of the Central Act consequent to the decision of the Division Bench in Anandhi Ammal's case as well as the order passed by the

learned Single Judge dated 28 January, 1982 have only to be ignored.

17. The subsequent initiation of proceedings under the Central Act are really not a substitution of the proceedings at the instance of the

Respondents. It was a compelling necessity, on account of declaring the State Act as unconstitutional. The moment the Supreme Court declared

the State Act as valid, all proceedings quashed on account of the earlier judgment of the Supreme Court would get revived. Therefore, the

Respondents were fully justified in taking possession of the property on the basis of the award passed under the State Act on 20 March, 1981.

18. The next contention of the learned Counsel for the Petitioner pertains to the

writ issued by the learned Single Judge as per order dated 28

January, 1982 restraining the Respondents from taking possession.

19. The writ was issued not on consideration of the merits of the case pleaded and proved by the Appellants. Before the learned Single Judge the

Appellants contended that the Division Bench had already declared the State Act as unconstitutional and as such, it was not open to the

Respondents to proceed in accordance with the provision of the said Act. The learned Single Judge clearly recorded that the Division Bench has

struck down the Act as being discriminatory in comparison to the provisions of the Central Act and therefore, violative of Article 14 of the

Constitution of India and as such, he was bound by such ruling. It was only in such circumstances, the writ petition was allowed resulting in issuing

a writ of mandamus. Therefore the only basis for issuing the writ was the earlier judgment of the Division Bench in Ananthi Ammal's case.

20. The basis for issuing the writ has gone on account of the subsequent judgment of the Supreme Court declaring the Act as constitutionally valid.

When the very basis for issuing the mandamus was declared to be bad Law by the Supreme Court, there was no question of enforcing the writ.

21. The judgment of the Supreme Court was pronounced on 22 November, 1994. The said judgment had the effect of recalling the writs issued by

the Court in the subject matter as it was issued only on account of the Law declared at that point of time, which was subsequently over ruled by

the Supreme Court. Therefore, there was no requirement on the part of the Respondents to approach the Court once again to challenge the order

dated 28 January, 1982.

22. The Law declared by the Supreme Court under Article 141 of the Constitution of India is binding on all authorities. Merely because no appeal

was filed against the order dated 28 January, 1982 in W.P. No. 10312 of 1981, it cannot be said that the view expressed by the High Court in the

said order following the earlier judgment of the Division Bench would prevail notwithstanding the binding judgment pronounced by the Supreme

Court declaring the earlier decision as bad Law.

DOCTRINE OF ECLIPSE:

23. The State Act was very much in operation till it was declared as unconstitutional by the Division Bench. The said judgment was taken up by the

State before the Supreme Court. Therefore, it was a case attracting the doctrine of eclipse. The State Act was eclipsed when the Division Bench

declared that it was unconstitutional and invalid. However, the moment the Supreme Court passed a judgment upholding the validity of the Act, the

Act revived. Therefore, the proceedings initiated under the earlier Act would automatically revive as a consequent to the subsequent declaration of

Law by the Supreme Court.

24. In *Shenoy and Co., Represented by its Partner, Bele Srinivasa Rao Street, Bangalore and Others Vs. Commercial Tax Officer, Circle II,*

Bangalore and Others, , the issue before the Supreme Court was regarding abolition of octroi by the State of Karnataka by invoking Karnataka

Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1979. The Act was challenged by the traders before the High

Court of Karnataka. The High Court allowed the writ petitions and issued a writ of Mandamus against the State Government forbearing them from

taking any proceedings under the State Act. The State Government took the matter in appeal before the Supreme Court. The Supreme Court by

its judgment dated 25 September, 1980 allowed the appeal setting aside the judgment of Karnataka High Court and the Act was upheld.

Subsequently, the State Government enacted Entry Tax Act, 1981 repealing the earlier Act. This was followed by Karnataka Act 12 of 1981.

When the authorities initiated action under the New Act, the traders, who were original writ Petitioners before the High Court in the earlier round

of litigation, filed a writ petition before the High Court of Karnataka contending that notices issued to them were bad inasmuch as, the writ of

mandamus issued in their favour by the High Court in the earlier judgment survived and was effective, since the State had not filed appeals against

them. It was their contention that the State had filed appeal only against Hansa Corporation and as such, the judgment of the Supreme Court in

State of Karnataka and Another Vs. Hansa Corporation, would bind only the Hansa Corporation and it would not operate against them. The High

Court of Karnataka accepted the contention of the State that the judgment of the Supreme Court was binding on all and no one could escape from

it. The matter was once again challenged before the Supreme Court. The Supreme Court considered the doctrine of eclipse and the effect of a writ

of mandamus after declaring the Law as valid and made the legal position clear in the following words.

24. A writ or an order in the nature of mandamus has always been understood to mean a command issuing from the Court, competent to do the

same, to a public servant amongst others, to perform a duty attaching to the office, failure to perform which leads to the initiation of action. In this

case, the Petitioners-Appellants assert that the mandamus in their case was issued by the High Court commanding the authority to desist or forbear

from enforcing the provisions of an Act which was not validly enacted. In other words, a writ of mandamus was predicated upon the view that the

High Court took that the 1979 Act was constitutionally invalid. Consequently the Court directed the authorities under the said Act to forbear from

enforcing the provisions of the Act qua the Petitioners. The Act was subsequently declared constitutionally valid by this Court. The Act, therefore,

was under an eclipse, for a short duration; but with the declaration of the law by this Court, the temporary shadow cast on it by the mandamus

disappeared and the Act revived with its full vigour, the constitutional invalidity held by the High Court having been removed by the judgment of

this Court. If the law so declared invalid is held constitutionally valid, effective and binding by the Supreme Court, the mandamus forbearing the

authorities from enforcing its provisions would become ineffective and the authorities cannot be compelled to perform a negative duty. The

declaration of the law is binding on everyone and it is therefore, futile to contend that the mandamus would survive in favour of those parties against

whom appeals were not filed.

25. Therefore the issue involved in this writ petition is substantially covered by the judgment of the Supreme Court in SHENOY AND CO., case.

The State was fully justified in reviving the proceedings after removing the eclipse.

26. The Supreme Court while declaring the State Act as valid, also observed that in cases where the proceedings under the Central Act had

already been started to acquire lands for Harijan Welfare Scheme, they might have been revived and completed in the interregnum and as such it is

clear that the provisions of Section 22 shall have no effect in such cases where awards have been made.

27. The learned Counsel for the Appellants placed reliance on the judgment of the Supreme Court in Raghunath and Others Vs. State of

Maharashtra and Others, . This judgment was cited in support of his contention that subsequent notification would supersede the earlier notification.

28. The issue involved in Raghunath case was relating to a notification issued under the Central Act. The original notification u/s Tamil Nadu

Acquisition was issued on 22 June, 1982 followed by a declaration u/s 6. When the declaration was challenged before the High Court, a statement

was made on behalf of the State that the declaration u/s 6 was being withdrawn. Subsequently, a fresh declaration u/s 6 was issued. Between the

date of withdrawal of the earlier writ petition consequent to the withdrawal of Section 6 declaration and the issuance of second declaration u/s 6,

the Government had issued a fresh notification u/s 4 of the Land Acquisition Act. It was found that some of the lands were common in both the

notifications. The Supreme Court found that no declaration u/s 6 was passed in furtherance of the second notification. It was only in such

circumstances, the Supreme Court observed that in view of the subsequent notification u/s 4, it has to be inferred that the State Government had

superseded the earlier notification by a latter one.

However the facts of the present case are entirely different. The original proceeding was under the Central Act. It was substituted by the provisions

of the State Act, consequent to the introduction of State Act. When the State Act was declared unconstitutional, the Respondents initiated action

under the Central Act. The State Act was subsequently revived on account of the declaration of Law by the Supreme Court. This made the State

Government to revive the proceedings initiated under the State Act. Therefore, the facts of Regunath case cannot be applied to the facts of the

present case. The initial notification and the subsequent notification were not under the same Act. It was under two different enactments. Therefore,

it cannot be said that the subsequent notification under the Central Act superseded the earlier notification under the State Act. The subsequent

notification was in fact a consequential one following the declaration of Law by the Supreme Court.

DISPOSITION:

29. Therefore we are of the considered view that the State was well within their jurisdiction to take possession of the property on the basis of the award passed under the State Act. We are in full agreement with the views expressed by the learned Single Judge.

30. In the result, the writ appeal is dismissed. Consequently, the connected Mp is closed. No costs.