

(2006) 06 KAR CK 0050

In the Karnataka High Court

Case No : Writ Petition No's. 17426 and 17427 of 2004

Sri Sadashiva Mahaganapathi Temple

APPELLANT

Vs

The Land Tribunal, Smt. Devaki, Leela and Krishna

RESPONDENT

Date of Decision : 02-06-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 6 KarLJ 295

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Pundikai Ishwara Bhat, for the Appellant; Ramesh B. Aneppanavar, HCGA for Respondent No. 1 and B. Ramesh, for M.V. Sheshachala, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—Sri Sadashiva Mahaganapathi Temple of Suratkal is before me in WP No. 17426 Of 2004 challenging the order of the Land Tribunal, Mangalore dated 8.2.1977. Petitioner is also challenging the order dated 11.2.2006 passed by the Land Tribunal, Moodabidri and is also assailing the correctness of the order dated 8.2.1977 passed by the Land Tribunal, Mangalore in LRT(2) No. 1379/76-77.

2. Petitioner temple is one of the oldest temples and is governed by the provisions of the Madras Hindu Religious and Charitable Endowment Act, 1951. Petitioner temple is the absolute owner of the property bearing Sy.No. 141/23 measuring 0.89 acres. The above property has been in actual enjoyment and possession of the petition temple since several decades, including as on 1.3.1974. The land in question is a non-agricultural Punja land. It was never tenanted to any one much less to one Devaki. The second respondent Devaki applied for grant of occupancy rights in respect of a portion of the land bearing Sy.No. 141/27 measuring 0.441/2 acres of land, of which petitioner temple is not the owner. Second respondent was not a tenant under the petitioner temple, nor

is in possession and cultivation of any portion of the land in question. The Land Tribunal without enquiry has now passed an order dated 8.2.1977.

3. Petitioner states that during the second week of February 2000, the petitioner temple was surprised to receive notice from the Assistant Director of Land Records, Mangalore that on 23.2.2000 he is going to inspect Survey No. 141/23 for the purpose of plotting. Petitioner made enquiries and learnt that the Land Tribunal was pleased to grant occupancy rights in favour of the second respondent as per Annexure-B. Petitioner has challenged the correctness of the said order before this Court in WP No. 30365 of 2000.

4. The Land Tribunal thereafter took up the matter for enquiry in respect of the claim made by one Ramaiah Poojary relating to the portion of Survey No. 30365/2000, measuring 0.14 acre of Suratkal village. Second respondent filed an impleading application contending that she is the necessary party. Thereafter, the Tribunal refused to interfere with the order dated 8.2.1977 and rejected the claim made by Ramaiah Poojary in terms of Annexure- A.

5. Notice was issued. On receipt of notice, the contesting respondents have chosen to enter appearance. The contesting respondents would say that the order was passed on 8.2.1977 ordering grant of occupancy rights to the extent of 27 cents. Proceedings were initiated by the Tahsildar and Form-10 was granted 9.2.1979. RTC also stood transferred in the name of the second respondent. It is further stated that a writ petition was filed in WP No. 30365 of 2000 and this Court rejected the said writ petition in terms of the order dated 19.6.2001. That order becomes final. It is contended that the petition is barred by res judicata and constructive res judicata. The contesting respondents want this petition to be dismissed.

6. WP No. 17427 of 2004 is filed by the very temple challenging the order dated 17.2.1977 in terms of Annexure-B in this writ petition. Same facts and same grounds are narrated in this writ petition as well. Contesting respondents have entered appearance and the contesting respondents also would reiterate same objections. In this case also, the contesting respondents would say that the writ petition was filed in WP No. 30366 of 2000 challenging the very order dated 17.2.1977. Same came to be rejected by this Court. It is further stated that the order of the Land Tribunal was given effect to by way of grant of Form No. 10 and also by effecting revenue entries. It is further contended that the petition is barred by the principles of res judicata and constructive res judicata. The contesting respondents want the petition to be dismissed.

7. Heard the learned Counsel for the parties and perused the material placed on record.

8. Sri Pundikai Ishwara Bhat, learned Counsel for the petitioner would argue that the material facts and material circumstances would show that the Land Tribunal has committed a serious error in ordering grant of lands to the contesting respondents in the case on hand. He would refer to Form-7 and other material

documents to say that the Land Tribunal has committed a serious error in granting the land to the contesting respondents. He would also argue that these lands are necessary for the temple in terms of the writ averments. He would also say that the contesting tenant is not entitled for any occupancy rights since land in question is a Punja land. He attacks the order of the Land Tribunal in terms of the ground raised in this petition.

9. Per contra, learned Counsel for the contesting respondents would argue that in terms of the earlier rejection of the writ petition, these petitions cannot be considered by this Court. In reply, Sri. Bhat, learned Counsel for the petitioner would argue that the order of the Land Tribunal is without jurisdiction and hence this Court can certainly consider the case on merits despite earlier order.

10. After hearing, I have carefully perused the material on record.

11. It is seen that the contesting respondent tenant filed Form-7 and the same has been considered in terms of Annexure-B dated 17.2.1977. The said order is challenged on several grounds.

12. It is admitted before me that the very orders were challenged by this very temple in WP No. 30365 of 2000 and WP No. 30366 of 2000. Learned Judge of this Court has chosen to dismiss those petitions not only for delay and laches but also on merits. That order has been passed on 17.7.2001. It has become final. After the orders of the Land Tribunal reaching finality, in the light of the order of this Court, it is not open to the petitioner to challenge the very orders in subsequent writ petitions. Hence, I am clear in my mind that the present writ petitions are to be rejected solely on the ground of rejection of earlier writ petitions filed by the very petitioner challenging the very orders.

13. However, Sri. Bhat, learned Counsel for the petitioners would place before me several judgments to say that the earlier order of the Land Tribunal is a nullity in the eye of law. He relies on Kiran Singh and Others Vs. Chaman Paswan and Others, , to say that a decree passed without jurisdiction is a nullity.

Jingra Moolya Vs. Balakrishna, , is a judgment of this Court, in which this Court ruled that the orders without jurisdiction is a nullity and is of no consequences in determining the rights in respect of the concerned land.

Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, , was pressed into service for the purpose of res judicata. In the said case, the Supreme Court has ruled as follows:

A question relating to jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of that Court. If by an erroneous interpretation of the statute the Court holds that it has no jurisdiction, the question would not operate as res judicata.

(underling is supplied)

He would also rely on Workmen of Cochin Port Trust Vs. Board of Trustees of The

Cochin Port Trust and Another, , to say that dismissal of SLP need not necessarily bar entertainment of a writ petition under Articles 226 on the same grounds. The Apex Court ruled that the technical rule of res judicata, although a wholesome rule based upon public policy, cannot be stretched too far to bar the trial of identical issues in a separate proceeding.

He further relies on a decision of this Court reported in Mahaveer Chambanna Kallimani and Others Vs. State of Karnataka and Others, , to say that the res judicata would not apply in such cases.

Each one of these cases is not at all applicable to the facts of this case. In none of these cases, courts have considered with regard to the second writ petition challenging an order which has been already accepted by this Court in a writ petition filed by the very petitioner. Therefore, none of these judgments would apply to the facts of this case.

14. On the other hand, the Supreme Court has noticed in AIR 1979 SC 551 Ishwardas v. The State Of Madhya Pradesh and Ors., that "in order to sustain the plea of res judicata it is not necessary that all the parties to the two litigations must be common, and that all that is necessary is that the issue should be between the same parties or between parties under whom they or any of them claim." In the case on hand, the issue is the same and it is between the same parties in the light of the earlier writ petitions. The Supreme Court in its later judgment reported in Ashok Kumar Srivastav Vs. National Insurance Company Limited and Others, - has ruled that a decision rendered in a writ petition operates as res judicata in subsequent judicial proceedings.

15. This Court in Jain Cloth Stores and Ors. v. Smt. Narangi Bai and Ors. 2004 (2) KCCR 1181, has also noticed a ruling of the Supreme Court in Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Ltd. and Others Vs. State of Maharashtra and Others, reading as under:

There is ample authority for the proposition that even an erroneous decision on a question of law operates as res judicata between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as res judicata. A decision in the previous execution case between the parties that the matter was not within the competence of the executing Court even though erroneous is binding on the parties.

16. In the light of the later pronouncement by the Apex Court with regard to constructive res judicata or res judicata, the present case is hit by the said principle. Petitioners having challenged the same earlier and having failed, cannot be permitted to challenge once again by raising different grounds or same grounds in a subsequent litigation. Orders have reached finality in terms of the earlier orders. Hence, the argument of the respondent is to be accepted by this Court.

17. Both the orders, in the circumstances, cannot be interfered with in the light

of the earlier orders passed by this Court in terms of Annexures R1 and R2. Orders are also given effect to by issuing Form-10 by way of change of revenue entries. Any interference at this stage would unsettle a settled issue. I am not inclined to exercise my discretion in a matter like this.

18. I see from the writ averments that the petitioner has challenged the correctness of the order of Land Tribunal. They have not stated as to what happened to the said writ petitions. It is only after the respondents entered appearance this Court has come to know that the earlier writ petitions were rejected. This Court expects the temple authorities to provide all details to the court for proper appreciation of the material facts. It is rather unfortunate that a trustee of a temple has not chosen to provide necessary material details at the time of filing of the writ petition. This Court would express its displeasure in the matter. It is seen that the petitioner is fairly aged and that therefore I would leave the matter without any fresh action except expressing my displeasure in the matter.

19. Petitioner has however chosen to say that this land is being used for annual Utsav of the temple. It is also being used during Anna Santarpane (Public Feeding) during festivals of the temple. If that is so, it is always open to the petitioner to approach the respondents for continuing such usage of the land, if true in terms of paragraph-9 of the writ petition.

20. It is also stated in the writ petitions that the petitioners are aggrieved by the order at Annexure-A. But, surprisingly, Annexure-A is not challenged. Hence, no opinion is expressed on Annexure-A, particularly in the light of another writ petition pending on the file of this Court at the instance of another tenant.

21. Petition stands rejected.