
(2004) 11 MAD CK 0055

In the Madras High Court

Case No : Writ Appeal No. 2892 of 2004 and W.A.M.P. No. 5338 of 2004

Sriram Educational Trust

APPELLANT

Vs

State of Tamil Nadu and C. Sekar

RESPONDENT

Date of Decision : 04-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Transfer of Property Act, 1882 — Section 105

Citation : (2004) 4 MLJ 716 : (2005) WritLR 178

Hon'ble Judges : B. Subhashan Reddy, C.J;A. Kulasekaran, J

Bench : Division Bench

Advocate : T.V. Ramanujam, for T.V. Krishnamachari, for the Appellant; S. Srinivasan, Government Advocate for RR1 to 3 and J. Thilakraj, for R5, for the Respondent

Final Decision : Dismissed

Judgement

A. Kulasekaran, J.—This Writ Appeal listed today for admission and we heard the learned Senior counsel appearing for the appellant,

learned Government Advocate for the respondents 1 to 3 and the learned counsel for the respondents 4 and 5.

2. This writ appeal is directed against the order dated 22-07-2004 made in W.P. No. 2225 of 2000 by learned single of this Court K.P.

Sivasubramaniam, J. The said writ petition was filed by the appellant herein for Writ of Certiorari to call for the records on the file of the first

respondent in respect of G.O. Ms. No. 495 dated 16-09-1999 passed by the first respondent rejecting the demand of the appellant/Trust to

entrust 4 acres of lands along with 12.25 acres of land comprised in Survey No. 141/2B, Perumalpattu Village, Thiruvallur District.

3. Larger extent of lands comprised in Survey No. 141/2B. The land to an extent

of 4 acres in the said Survey No. 141/2B was originally assigned to one Chellappa, an Ex-service man by an Order of the Tahsildar, Thiruvallur dated 10-06-1967. The said assignment was cancelled by the District Revenue Officer by order dated 28-06-1979 stating that the lands were not cultivated for a period of three years and the same was allowed to be encroached; the monthly income of the assignee had not been ascertained; that the assignment was made without evicting the encroachment by the local harijans and local Panchayat had not been consulted. An appeal was filed by the said Chellappa against the cancellation before the Board of Revenue, which was rejected on the ground that the same was filed belatedly. The said Chellappa filed W.P. No. 11704 of 1987 before this Court and obtained interim injunction on 25-11-1987 thereby the cancellation was stayed. The writ petition No. 11704 of 1987 was disposed of on 30-01-1996 setting aside the cancellation and remitted back to District Revenue Officer. The said Chellappa died on 10-02-1996. The District Revenue officer by order dated 14-05-1998 cancelled the assignment on the ground that not furnished proof of cultivation for a period of three years after assignment. The fourth respondent herein, wife of Chellappa filed an appeal before the Commissioner, against the Order of the District Revenue Officer/2nd respondent herein, who, by order dated 03-02-1999 set aside the order of the District Revenue Officer, cancelling the assignment. It is to be kept in view while disposing of the writ Petition No. 11704 of 1987, the learned single judge T. Jayarama Chouta, J has pointed out that the Government has taken a conflicting stand i.e., on the one hand that the encroachers were in occupation and on the other hand, the assignee has not commenced cultivation within a period of three years; and the second respondent, following the said finding and also on consideration of merits allowed the appeal on 03-02-1999 as stated above.

4. While the proceedings in relation to cancellation of assignment were pending, the appellant herein requested for larger extent of land, inclusive of the lands in dispute, for setting up Polytechnic, to satisfy the requirements of 19.91 acres of lands. The Government passed G.O.Ms. NO. 281 dated 29-03-1996 allotting the extent of 16.3 acres of land in Survey No. 141/2B in favour of the appellant institution, inclusive of the land in

dispute. Pursuant to the said Government Order, the District Revenue Officer, by order dated 10-07-1998 granted lease of an extent of 16.25

acres of land for a period of three years, however the possession of 4.00 acres was not delivered.

5. On coming to know the order dated 03-02-1999, the appellant herein filed an appeal before the Government on 17-02-1999 to set aside the

order of CLA dated 03-02-1999 stating that he was in possession as a lessee. The 4th respondent objected to the said request. The first

respondent passed G.O. Ms. No. 495 dated 16-09-1999 thereby declined to interfere with the order of the CLA dated 03-02-1999 stating that

the claim of the appellant to restore the extent of 4 acres of land cannot be accepted and lease, if at all, would be restricted only to 12.25 acres

and difference in lease amount paid if any, be adjusted towards rent for the future period. Challenging the said order, the appellant has filed the

Writ Petition, which is under appeal.

6. The learned single Judge, while dismissing the writ petition, which is the subject matter of this appeal pointed out the above said aspects and also

found that the appellant has no locus standi as an intervener, besides the appellant cannot have any better right than the assignor/ Government; that

the lease period also over already and possession of the appellant can be ranked as encroacher or trespasser; by the communication dated 20-01-

2003 the Government has called upon the Collector to submit a report as to why no action has been taken to evict the appellant herein from the

said land as the lease expired on 30-06-2001. The learned single Judge also pointed out an order dated 17-03-2004 passed in WP No. 12493 of

1996, filed by one Jaya Thennarasu, challenging the G.O. Ms. No. 281 revenue dated 29-03-1996 in granting lease to an extent of 16.25 acres of

land, inclusive of 4 acres of land in dispute, in favour of the appellant herein, wherein the appellant herein was cited as seventh respondent. In the

said writ petition, Mrs. Prabha Sridevan, J has held that lease in favour of the appellant has come to an end on 30-06-2001 and the possession of

the appellant subsequent to that was in the nature of encroachment. Nothing is stated that any appeal is preferred against the said order by the

appellant.

7. Mr. T.V. Ramanujam, learned Senior counsel appearing for the appellant

submitted that lease hold right in respect of the land, including 4 acres was granted by the Government under G.O. Ms No. 281 dated 29-03-1996 and the appellant is vested with the said lease hold right as such he has every locus standi to maintain the writ petition; that the order dated 13-02-1999 has been passed by the second respondent herein behind the back of the appellant; similarly, the order passed by the Government of Tamil Nadu in G.O. Ms. No. 495 dated 16-09-1999 also passed without affording opportunity of hearing to the appellant; and the appellant has applied for renewal of lease, while so, the possession of the appellant cannot be treated as trespasser or encroacher.

8. The learned counsel appearing for the respondents 4 and 5 Mr. Thilakraj submitted that the order passed in W.P. No. 11704 of 1987 is conclusive and final; that the order dated 14-05-1998 passed by the third respondent, cancelling the assignment was also set aside by the second respondent by order dated 03-02-1999, which was also confirmed by the first respondent in G.O.Ms No. 495 dated 16-09-1999, while so, the order dated 29-03-1996, granting lease, inclusive of the land in dispute in favour of the appellant, passed by the first respondent is without jurisdiction and opposed to Law. Even assuming any lease in favour of the appellant, pending proceedings challenging the cancellation of assignment by the respondents 4 and 5, it would be subject to the decision by the final authority.

9. The learned Government Advocate appearing for the respondents 1 to 3 reiterated the reasons assigned by the respondents 1 and 2 and argued that the writ petition filed by the appellant is not maintainable.

10. The assignment of 4 acres of land was made to the predecessors of the respondents 4 and 5 as early as 10-06-1967. Assignment means to transfer or formally make over for another. The assignment or transfer implies covenants relating to land, such as covenants entered into between the parties is enforceable by, or bind, their successors in title. In generic sense, it means every kind of transfer of property from one person to another person.

11. It is seen from the order of assignment dated 10-06-1967 that Patta was also issued in favour of the predecessors of the respondents 4 and 5 subject to certain conditions. Assignment was cancelled by the third respondent

on 28-06-1979. An appeal preferred before the second respondent was also dismissed on the ground that the same was filed belatedly. The said Chellappa filed WP No. 11704 of 1997 which was disposed of on 30-01-1996. Till the disposal of the said writ petition, interim order was granted in favour of the predecessors of the respondents 4 and 5. Chellappa died on 10-02-1996. The fourth and fifth respondents preferred appeal against the order of cancellation for the second time by the third respondent, which was allowed on 03-02-1999. Whereas, the lease was granted in favour of the appellant to an extent of 16.25 acres of land including 4 acres of land by G.O.Ms No. 281 on 29-03-1996 only.

12. It is seen from the above dates and events that lease was granted to the appellant, pending the proceedings initiated by the predecessors of the respondents 4 and 5 and pursued by them challenging the cancellation of the assignment. The cancellation was ultimately set aside by the second respondent on 03-02-1999, which was confirmed by the first respondent in G.O.Ms No. 495 dated 16-09-1999, hence, the lease initially granted on 29-03-1996 also not valid. In other words, the respondents 1 to 3 are not competent to grant the lease during the relevant period.

13. The word lease defined u/s 105 of the Transfer of Property Act means that lease of immovable property, transfer of right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. A person who did not have right or lost the right cannot create any lease in favour of others, any such lease made by such person shall be only void lease.

14. On the date of execution of lease, the authorities were not competent to grant lands to an extent of 4 acres to the appellant since the same was already assigned to predecessors of respondents 4 and 5. Hence, the authorities have finally clarified and admitted, by order dated 08-11-1999 that 4 acres of land not leased out to the appellant. The said order was passed pursuant to G.O.Ms. No. 495 dated 16-09-1999 passed by the first respondent. The records placed before us show that the appellant has filed WP No. 2225 of 2000 on 03-02-2000, which is the subject

matter of this writ appeal. It is stated by the respondents 4 and 5 that even prior to the filing of this appeal, permission was granted by the

Tahsildar, Thiruvallur to the fourth respondent to sell 2 acres of land to the 5th respondent on 25-01-2000. On 27-01-2000, sale deed was also

executed by the fourth respondent in favour of fifth respondent.

15. The learned single Judge, taking into consideration of the above said facts rightly dismissed the writ petition holding that the appellant has no

legal right to assert any claim over the land in dispute, even the alleged possession is not legal and the appellant has no locus standi to question the

assignment proceedings since the same is only between the authorities and the respondents 4 and 5. We confirm the above finding of the learned

single Judge.

16. It is argued by the learned Senior counsel appearing for the appellant that the respondents 1 to 3 have not given opportunity to the appellant

before passing the respective orders, which amounts to violation of principles of natural justice. To consider the said arguments, it may be relevant

to look into the decision reported in Aligarh Muslim University and Others Vs. Mansoor Ali Khan, wherein the Honourable Supreme Court held in

Para Nos. 20, 21, 22 and 24 as follows:-

20. As pointed recently in M.C. Mehta Vs. Union of India (UOI) and Others, ; there can be certain situations in which an order passed in violation

of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person

concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to

result in revival of another order which is in itself illegal as in Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, , it is not

necessary to quash the order merely because of violation of principles of natural justice.

21. In M.C. Mehta it was pointed out that at one time, it was held in Ridge v. Baldwin (1964) AC 40 that breach of principles of natural justice

was in itself treated as prejudice and that no other ""de facto"" prejudice needed to be proved. But, since then the rigour of the rule has been relaxed

not only in England but also in our country. In S.L. Kapoor Vs. Jagmohan and Others, Chinnappa Reddy, J. followed Ridge v. Baldwin and set

aside the order of supersession of the New Delhi Metropolitan Committee rejecting the argument that there was no prejudice though notice was

not given. The proceedings were quashed on the ground of violation of principles of natural justice. But even in that case certain exceptions were

laid down to which we shall presently refer.

22. Chinnappa Reddy, J. in S.L. Kapoor Vs. Jagmohan and Others, , laid down two exceptions (at p.395 of SCC) (at p.147 and 148 of AIR)

namely, ""if upon admitted or indisputable facts only one conclusion was possible"", then in such a case, the principle that breach of natural justice

was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or indisputable facts, it is not necessary to

quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this

exception.

24. The ""useless formality"" theory, it must be noted, is an exception. Apart from the class of cases of ""admitted or indisputable facts leading only to

one conclusion"" referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views

expressed in regard to this theory have been elaborately considered by this Court in M.C. Mehta Vs. Union of India (UOI) and Others, referred

to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Singham,

Megarry, J. and Staughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade,

D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court will be prejudging the

issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We

do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.

17. In the above judgment, the Honourable Supreme Court held that there can be certain situations in which an order passed in violation of natural

justice need not be set aside under Article 226 of the Constitution of India. The situations are that quashing the order which is in breach of natural

justice is likely to result in revival of another order which is in itself illegal. If

upon admitted or indisputable facts leading only to one conclusion, it is not necessary to quash the order which was passed in violation of natural justice and the said theory becomes useless. The ratio laid down in the above Judgment squarely applicable to the facts and circumstance of the case on hand. Hence, we reject the arguments that the alleged violation of principles of natural justice advanced by the learned counsel appearing for the appellant.

18. In view of the above said facts, we do not find any merit in the writ appeal and the same is dismissed. No costs. Connected WAMP is closed.