

(1994) 08 KAR CK 0038
In the Karnataka High Court
Case No : W.A. No's. 745 and 1080 of 1994

State Government Houseless Harijan Employees Association	APPELLANT
Vs	
State of Karnataka	RESPONDENT

Date of Decision : 31-08-1994

Acts Referred:

Land Acquisition Act, 1894 — Section 4 (1), 6 (1)

Citation : (1994) ILR (Kar) 2947 : (1995) 1 KarLJ 67

Hon'ble Judges : M. Ramakrishna, J;J. Eswara Prasad, J

Bench : Division Bench

Advocate : T. Radhakrishna, for the Appellant; U.L. Narayana Rao, Senior Advocate and Shobha Patil, for R4 and R5, H. Subramanya, Senior Advocate and Kumar and Kumar, for R6, L.M. Pandurangaswamy, HCGP for R1 to R3, for the Respondent

Judgement

Ramakrishna, J.—The facts and the circumstances and the Question of Law arising in these two Appeals being common, we dispose of them by the following Common Order, referring to the averments stated in W.A.No. 745 of 1994.

2. For the sake of convenience, we go by the ranks of the parties in this Appeal.

3. Brief facts of the case necessary for the disposal of these Appeals are as follows:-

The appellant in both the Appeals is a Society called "State Government Houseless Harijan Employees Association", Barline Road, Tumkur, registered under the provisions of the Karnataka Societies Registration Act, 1960 (the Act for short), the main object of which being to distribute sites to its members by acquiring certain lands. On the recommendation of the District and State Level Acquisition Committee, respondent-1 State acquired in the year 1987 15 acres of land in Sy.No. 49/1 of Maralur village, Kasaba Hobli, Tumkur Taluk under the Notifications under Sections 4(1) and 6(1) of the Land Acquisition Act and when the Land Acquisition Officer called upon the appellant to deposit Rs. 19,01,915,

the latter did so. Thereafter an award came to be passed on 15-9-1992.

Respondents 4 to 6, owners of the land, aggrieved by the acquisition of land filed W.P. No. 21438 of 1991 impleading amongst others the appellant as respondent-4 on the ground that it was not lawful for the appellant to acquire land for housing purpose but withdrew it on 6-7-1993 following the letter dated 5-7-1993 of respondent-1 State to respondent-3 Land Acquisition Officer not to give possession of the land to the appellant-Society. Aggrieved by this letter, the appellant filed W.P. No. 27025 of 1993 against the respondents and one S. Shafi Ahmed, local M.L.A., for a declaration that the said letter was illegal and void and for a direction to them not to interfere with the acquisition proceedings. During the pendency of this Writ Petition, respondent-1 is stated to have issued a notification No. RD 177/AQT/91 dated 2-8-1993 denotifying the land acquired already under Sections 4(1) and 6(1) Notifications. Therefore, the appellant Society had to file an application (I.A.No. III) for amendment of the prayer by substituting additional prayer. It had also filed I.A.No. VI for interim direction not to proceed with the denotification, pending disposal of the Writ Petition. In the meanwhile, the appellant also filed applications (I.As.IV and V) seeking to implead certain persons as respondents. The learned single Judge, by his common Order dated 10-12-1993, allowed I.As. III, IV and V and rejected I.A.No. VI.

It is the case of the appellant that pursuant to the order allowing I.A.III for amendment of the prayer, amendment was, in fact, not carried out and consequently the rejection of I.A.No. VI for interim direction had no relevance. But, subsequently, however, the appellant filed W.P. No. 44142 of 1993 seeking to quash the denotification dated 2-8-1993. During the pendency of this Petition, it also filed a Memo for Leave of the Court to withdraw W.P. No. 27025 of 1993, which was strongly opposed by the respondents. However, the learned single Judge taking both the Writ Petitions together for hearing, by his Order dated 8-2-1994 impugned herein permitted the appellant to withdraw W.P. No. 27025 of 1993 but dismissed the other W.P. No. 44142 of 1993. Hence the appellant has filed these Appeals - W.A.No. 745 of 1994 against dismissal of W.P. No. 44142 of 1993 and W.A. No. 1080 of 1994 against permission to withdraw W.P. No. 27025 of 1993.

4. We have heard the learned Counsel on both sides.

5. Sri T. Radhakrishna, learned Counsel for the appellant, having taken us through the grounds of Appeal, Order made by the learned Single Judge and the reasoning thereon and also the averments in W.P. No. 44142 of 1993, submitted that the learned Single Judge was not justified in dismissing the said Writ Petition on the ground of suppression of fact of filing the earlier Writ Petition viz., W.P. No. 27025 of 1993 by the appellant, placing reliance on the decision of the Supreme Court in G. Narayanaswamy Reddy (dead) by L.Rs. and another Vs. Government of Karnataka and another, the facts of which, according to the learned Counsel, are entirely different from those of the present case. Therefore,

his submission is that the Order under Appeal cannot be sustained and the same be set aside.

6. Sri U.L Narayana Rao, learned Senior Counsel for respondents 4 to 6, argued in support of the order appealed against. He submitted that regard being had to the averments contained in paragraphs 6 and 13 of W.P. No. 44142 of 1993, it was clear that the appellant made a false statement to his knowledge which amounted to suppression of fact. Therefore, the learned Single Judge rightly held that for his own conduct, the appellant had to lose his case. This view of the learned Single Judge must be held to be correct.

7. Sri Subramanya Jois, learned Senior Counsel appearing for the contesting respondents, supporting the order under Appeal, also argued on the line of argument of Sri U.L. Narayana Rao. He submitted that the appellant had not come to the Court with clean hands, inasmuch as he intentionally suppressed the material facts in particular rejection of I.A.No. VI filed in W.P. No. 27025 of 1993 and his failure to obtain interim order of stay, and the statement contained in paragraph-13 was false to his knowledge. He therefore submitted that the learned Single Judge being justified in coming to the said conclusion, his order impugned herein need not be interfered with.

8. The learned Single Judge has observed in paragraph-17 of the Order under Appeal as follows:-

"In view of the conduct of the petitioner in trying to pervert the system and over-reach the Court, I dismiss writ petition No. 44142 of 1993 with costs, without considering the same on merits. Advocate fees Rs. 2,000/-"

9. Paragraph-18 thereof pertains to the other Writ Petition. It reads:

"Writ Petition No. 27025 of 1993 is permitted to be withdrawn in view of the memo filed by the petitioner."

10. Let us extract paragraphs 6 and 13 of W.P. No. 44142 of 1993 to appreciate the rival contentions taken on both sides. Paragraph-6 reads:

"The petitioner had filed a writ petition in W.P. No. 27025 of 1993, the moment it came to know that the first respondent had issued instructions on 5-7-1993 to the third respondent to stop further proceedings in the acquisition of the land in question challenging the instruction issued in letter dated 5-7-1993 (Annexure-E). This Hon"ble Court was pleased to issue an ad-interim order on 2-8-1993 staying all further proceedings in pursuance of the letter at Annexure-E and restraining the respondents 1 and 2 and also Divisional Commissioner from proceeding further with the matter. Copy of the order is produced and marked ANNEXURE-G. The petitioner informed the I respondent about the passing of the order by this Hon"ble Court on the same day and copy of the communication served on the I respondent on 2-8-1993 in this connection is produced and marked ANNEXURE-H. In spite of this order of this Hon"ble Court, the I respondent has issued a notification u/s 48(1) on 2-8-1993 in RD 177 AQT 91

and got it published in the official Gazette dated 5-8-1993 (Annexure-F). The said notification is therefore illegal and liable to be quashed."

Paragraph-13 reads:

"The petitioner has not filed any suit or petition for the sole purpose of quashing the notification at Annexure-F and no such suit or petition is pending before any Court or Tribunal. But the petitioner has filed application in W.P. No. 27025 of 1993 only as a consequential relief and it is not likely to provide any effective or efficacious remedy and therefore the petitioner is filing this writ petition invoking the writ jurisdiction of this Hon'ble Court independently for an effective and efficacious relief."

11. It is the statement of averments made in paragraph-13 as above that has presumably become the basis for the learned Single Judge to arrive at the conclusion that there has been suppression of fact by the appellant and on which he proceeded to reject the Writ Petition in limine without going into the merits of the case.

12. We have carefully gone through the averments in the above paragraphs to find out to what extent the statement made therein is false to the knowledge of the appellant and whether he has intentionally suppressed any material facts which he ought to have stated to maintain the Petition.

What has been sought to be quashed as illegal and void in W.P. No. 27025/93 is the letter dated 5-7-1993 of the State Government addressed to the Assistant Commissioner, Tumkur, informing him not to handover possession of the land to the appellant until further orders, whereas the challenge in W.P. No. 44142 of 1993 is against the denotification dated 2-8-1993. One thing is clear that as on the date when W.P. No. 27025 of 1993 was filed, the denotification in question was not in existence, inasmuch as it came to be issued on 2-8-1993 subsequent to the filing of the Writ Petition on 9-7-1993. The attempt of the appellant to seek relief against this Notification in his application (I.A.No. III) in W.P. No. 27025 of 1993 having become futile for the reasons stated in the averments of the Memorandum of Appeals, he filed W.P. No. 44142 of 1993 seeking to quash the said Notification. Therefore, his statement in paragraph-13 that he has not filed any suit or petition for the sole purpose of quashing the denotification impugned there at Annexure-F, is correct and it does not amount of either suppression of fact or false statement.

14. Now let us consider the legal implication of the words "mis-statement" or "suppression of fact". "mis-statement" or "misrepresentation" can be made by a mistake or inadvertantly, whereas suppression of truth carries with it the doctrine "suppressio veri and suggestio falsi". This Legal maxim which is the basis for the doctrine of "suppression of fact" must necessarily refer to "suppression of material fact". Secondly, according to Prem's Judicial Dictionary, Vol. IV 1964 Edition, at page 1564, the suppression or concealment of a material fact must be such suppression or concealment as has in it some element of fraud, (Please see

Re Harris (1899) 2 Q.B. 97.

15. Therefore, the Court will have to see whether the appellant has intentionally suppressed any material fact containing some element of fraud resulting in the Court conferring certain benefit on him. Dealing with "Mistake of Fact" in Section 103 at page 398 the learned author Salmond on Jurisprudence has stated as follows:-

".....The sole question which the courts would entertain was whether the defendant did the act complained of. Whether he did it ignorantly or with guilty knowledge was entirely immaterial. This rule, however, was restricted to civil liability. It was early recognised that criminal responsibility was too serious a thing to be imposed upon an innocent man simply for the sake of avoiding a difficult inquiry into his knowledge and intention. In the case of civil liability, on the other hand, the rule was general. The success with which it has maintained itself in modern law is due in part to its undeniable utility in obviating inconvenient or even impracticable inquiries, and in part to the influence of the conception of redress in minimising the importance of fault as a condition of penal liability."

16. Considering the mistaken fact or mis-statement or suppression of fact in particular suppression of material fact that would affect the Decision of the Court in the light of the above doctrine, we are clearly of the opinion that there is nothing either in paragraph-6 or in paragraph-13 of W.P. No. 44142 of 1993 which amounts to suppression of material fact containing an element of fraud and which, if acted upon, would affect the Decision of the Court.

17. We will now proceed to consider the applicability of the Decision relied on by the learned single Judge in G. Narayanaswamy Reddy's case supra to the case on hand. According to Section 11-A of the Land Acquisition (Amendment) Act, 1984, the period during which any action or proceeding to be taken in pursuance of the declaration is stayed by an order of a Court shall be excluded. Further, in view of the first Proviso to Section 11-A that where a declaration u/s 4 of the Land Acquisition Act has been published before the commencement of the said Amendment Act, the award must be made within a period of two years from such commencement, the Supreme Court there held that non-disclosure of fact that interim stay orders were passed in a Writ Petition staying further proceedings of acquisition in respect of lands in question in the SLP filed on the ground that the acquisition of lands in question lapse as award was not made within two years of notification of declaration, would certainly amount to suppression of material facts. On facts, the Supreme Court discovered that the interim order of stay granted by this Court was suppressed before the Supreme Court by the person enjoying the benefits of the said stay order till the opposite party filed the counter. It is for this reason the Supreme Court came down heavily to conclude as follows in para-2 thereof:

"Where a SLP was filed on the ground that the acquisition of lands in question

lapsed as award was not made within two years of notification of declaration, the non-disclosure of fact that interim stay orders were passed in a writ petition staying further proceedings of acquisition in respect of lands in question would amount to suppression of material facts in view of Section 11-A of Land Acquisition Act which provided that the period during which any action or proceeding to be taken in pursuance of the declaration is stayed by an order of a Court shall be excluded, and consequently, the SLP was liable to be dismissed."

18. To reiterate, their Lordships of the Supreme Court having discovered that the petitioner therein intentionally suppressed the fact of stay order granted by this Court which was necessary for the Court to consider the question of limitation, held that he was not entitled to the relief under Article 136 of the Constitution as non-disclosure of the said fact amounted to suppression of material facts. Thus, the facts and circumstances obtained in the aforesaid case, are entirely different from those of the present case. In that view of the matter, the Decision of that case cannot be applied to this Case and the reliance placed on it by the learned Single Judge to reach the conclusion against the appellant cannot be supported.

19. In view of our discussion as above, we hold that the Order under Appeal in so far as it relates to dismissal of W.P. No. 44142 of 1993 cannot be sustained and the same is liable to be set aside. However, we uphold it permitting W.P. No. 27025 of 1993 to be withdrawn.

20. In the result, we make the following

ORDER

Writ Appeal No. 745 of 1994 is allowed and the Order impugned therein in so far as it relates to the dismissal of W.P. No. 44142 of 1993 is set aside. The Writ Petition is restored and it may be heard and disposed of on merits.

Writ Appeal No. 1080 of 1994 is dismissed.