

(1968) 07 KL CK 0040

In the High Court Of Kerala

Case No : Writ Appeal No's. 191, 193, and 194 of 1967

State of Kerala and another

APPELLANT

Vs

Padmanabhan Asari Kunju Panicker Asari and another

RESPONDENT

Date of Decision : 02-07-1968

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 51

Travancore-Cochin Payment of Salaries and Allowances Act, 1951 — Section 4, 6, 9

Citation : (1969) KLJ 389

Hon'ble Judges : M.S. Menon, C.J;P. Govindan Nair, J

Bench : Division Bench

Advocate : K.S. Sebastian, for the Respondent

Judgement

P. Govindan Nair, J.—These are appeals by the State of Kerala and the Executive First Class Magistrate and Revenue Divisional Officer, Alleppey against the decisions in original petitions 820, 844 and 2019 of 1966 which were disposed of by a common judgment. By the judgment "notices issued to the petitioners by the Executive First Class Magistrate and the Revenue Divisional Officer u/s 51 of the Kerala Land Acquisition Act, 1961 (hereinafter referred to as the Kerala Act) as well as the Land Acquisition Proceedings on the basis of which the said notices were issued were quashed. These notices have been produced as Exs. P-1 and P-1 (a) in the writ applications referred to. We may add here that before these notices were issued, an award had been passed pertaining to the lands which are the subject matter of the original petitions and which were the subject matter of the Land Acquisition Proceedings, u/s II of the Kerala Act on 31-8-1965. This award too was set aside by the judgment under appeal. There are very ambitious prayers in these writ applications such as for a declaration that the Travancore Land Acquisition Act be declared ultra vires of the Constitution and also that all proceedings taken under that Act be declared to be ineffective. Counsel for the respondent in these writ appeals, that is the petitioners in the original petitions, has stated that he does not press these reliefs in these proceedings and so questions arising from such reliefs do not fall for our consideration in these

proceedings.

2. The question mooted before us is whether proceedings commenced under the Travancore Land Acquisition Act, Act II of 1089 (hereinafter called The Travancore Act) can be continued under the Kerala Act. This latter Act came into operation on 1-4-1963 and it repealed The Travancore Act. The argument on behalf of the appellants in these writ appeals is that by virtue of Section 4 of the Interpretation and General Clauses Act, 1125 (Kerala), the proceedings commenced under the Travancore Act notwithstanding its repeal, can be continued under the provisions of the same Act and brought to a close. The petitioners in the original petitions have challenged this position and the learned Judge has expressed the view that the proceedings cannot be so continued under the Travancore Act after its repeal.

3. Before we deal with this question, we wish to state certain facts.

4. A notification was issued u/s 4 of the Travancore Act and this has been produced along with the original petition 820 of 1966 as Ex. P-2. This was followed by a declaration u/s 6 of that Act and the copy of that declaration is Ex. P-3 in that O.P. A notice was also issued u/s 9 of that Act. The proceedings thereafter has been continued under the Kerala Act and an award was passed on 31-8-1965 and thereafter the notices impugned in the original petition Ex. P-1 and P-1(a) were also issued under the Kerala Act.

5. The appellants have not been able to satisfy us by reference to any provisions in the Kerala Act or the provisions of the Interpretation and General Clauses Act, 1125 as to how the proceedings commenced under the Travancore Act can be continued under the Kerala Act. If therefore follows that the award passed under the Kerala Act, on 31-8-1965 and the notices Exs. P-1 and P-1(a) issued u/s 51 of that Act cannot stand. These too have been set aside by the judgment under appeal and we confirm the judgment in that respect.

6. The question as to whether the proceedings commenced under the Travancore Act can be continued under the same Act even after its repeal by the Kerala Act has to be determined on the interpretation to be placed on Section 4 of the Interpretation and General Clauses Act, 1125. We shall read that Section:

4. Where any Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not--

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any

offence committed against any enactment so repealed; or

(e) effect any investigation legal proceeding or remedy in respect or any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed.

7. The learned Judge in the judgment under appeal has referred to the decision in *Abbott v. The Minister for lands* reported in (1895) A.C. 425 decided by the Judicial Committee and relied on the following passage from that judgment.

It has been very common in the case of repealing statutes to save all rights accrued. If it were held that the effect of this was to leave it open to any one who could have taken advantage of any of the repealed enactments still to take advantage of them, the result would be very far-reaching.

It may be, as Windeyer J. observes, that the power to take advantage of an enactment may without impropriety be termed a "right". But the question is whether it is a "right accrued" within the meaning of the enactment which has to be construed.

Their Lordships think not, and they are confirmed in this opinion by the fact that the words relied on are found in conjunction with the words "obligations incurred or imposed." They think that the mere right (assuming it to be properly so called) existing in the members of the community or any class of them to take advantage of an enactment, without any act done by an individual towards availing himself of that right, cannot properly be deemed a "right accrued" within the meaning of the enactment.

It was contended before the Judicial Committee in a later case that *Abbott's* case was distinguishable because it was a case where no action had been taken under the repealed Act whereas in the case then before the Judicial Committee some action had been taken and that therefore the proceedings commenced under the repealed Act could be continued under the same Act even after its repeal. This was in *Director of Public Works and another v. Ho Po Sang and others* reported in 1961 (2) A.E.L.R. 721. The contention was negatived. It was ruled that *Abbott's* case does not purport to lay down any such wide proposition as was contended. We shall read a passage from the judgment in *Director of Public Works and another v. Ho Po Sang and others* reported in 1961 (2) A.E.L.R. 721.

Reliance was placed on behalf of the lessee in the present case on the words "without any act done by an individual towards availing himself of that right", and it was argued that, in the present case steps had been taken by the lessee which could be regarded as acts done towards availing himself of a right to have a re-building certificate. In *Abbott v. Minister for Lands* (4), the point now being discussed in the present case did not arise, and their Lordships cannot ascribe to the words quoted above the wide significance suggested on behalf of the lessee.

In the present case, the lessee had taken procedural steps in the hopes of being able to obtain a rebuilding certificate, but at the date of the repeal he had no accrued right.

On behalf of the appellants it is urged that by the steps taken by the State Government, i.e. issuing notices u/s 4 and the publication of declaration u/s 6 of The Travancore Act rights have accrued to the State Government and therefore the proceedings commenced under the Travancore Act can be continued under the same Act. We do not think that we are called upon to decide this question finally in these proceedings. All that is necessary to state is that it should not be taken that the matter is concluded by the judgment under appeal for the question has to be investigated further. We therefore set aside the judgment under appeal to the extent to which it precludes the State from proceeding under the Travancore Act. And in view of the statement of counsel for the petitioners in the original petition, the respondents herein, that he is not pressing the relief for a declaration that the Travancore Act is void and that the proceedings under that Act are ineffective the judgment under appeal in so far as it sets aside Exs. P-2 and P-3 the notice and declaration issued under the Travancore Act, and the further proceedings taken under the same Act, has to be set aside. We do so.

8. It will be open to the State Government if it is in accordance with law to continue the proceedings commenced under the Travancore Act under the provision of the same Act. We dispose of the appeals on the above terms. The parties will bear their costs throughout.