

(1968) 11 KL CK 0001

In the High Court Of Kerala

Case No : CMP No. 7270 of 1968 in OP No. 3542 of 1967

State of Kerala and Others

APPELLANT

Vs

Kesavan Vadhyan Namboodiri

RESPONDENT

Date of Decision : 06-11-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 151
Constitution of India, 1950 — Article 14, 226, 31(2)

Citation : (1969) KLJ 450

Hon'ble Judges : V.P. Gopalan Nambiyar, J

Bench : Single Bench

Advocate : T.S. Venkiteswara Iyer, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Gopalan Nambiyar, J.—This is an application preferred by the State of Kerala to review my judgment dated 8-2-1968. The said judgment was rendered on a batch of 720 writ petitions, including O.P. 3542 of 1967, in which the present application has been preferred. The writ petitions raised the question of the constitutional validity of the Kerala Rice and Paddy (Procurement by Levy) Order 1966, the Kerala Rice and Paddy (Declaration and Requisition of Stocks) Order 1966, the Kerala Paddy (Maximum Prices) Order 1965 and the Kerala Rice (Maximum Prices) Order 1965. The orders themselves would be referred to, for short, as the Levy Order, the Declaration Order, and the Maximum Prices Orders respectively. Arguments on the constitutional validity were heard as a preliminary point and by my judgment dated 8-2-1968, I held that the entire Levy Order is liable to be struck down under Article 14 of the Constitution, and that in any event the proviso to clause 7 of the said Order, in so far as it places a ceiling on the market value of the price to be paid for the paddy acquired is violative of Article 31 (2) of the Constitution. I declared clause 4 of the Declaration Order alone, to the extent to which it directs a sale to the Government at the controlled price as unconstitutional and invalid. I held that nothing was made out to show

that the Maximum Prices Orders were unconstitutional or invalid. In the light of these conclusions, I directed that the batch of writ petitions on which preliminary arguments were heard by me would be posted for further hearing and for appropriate orders. The State appealed against this judgment of mine in one or more of the writ petitions concerned, the details and particulars of which are not material. It is enough to notice that against the judgment in this writ petition, (O.P. No. 3542 of 1967) no appeal was preferred. In the appeal, a Full Bench of this Court held that the Levy Order and the Declaration Order were constitutional and valid. In certain appeals filed by some of the petitioners - of whom again the writ petitioner in O.P. No. 3542 of 1967 was not one - the Full Bench repelled the attack against the constitutionality of the Maximum Prices Orders and affirmed my finding. The Full Bench repelled the preliminary objection raised by one of the counsel that an appeal against my judgment was incompetent as the judgment was not a final judgment. It held that it was a preliminary judgment within the meaning of the C.P.C. and is appealable, u/s 5(1) of the High Court Act. In view of the reversal by the Full Bench of my conclusions regarding the constitutionality of the Levy Order and the Declaration Order, the State has sought review of my preliminary judgment in the present writ petition. The application for review, as originally filed invoked the provisions of Order 47, Rule 1 of the C.P.C., and as amended by C.M.P. No. 754 of 1968 it has also invoked the provisions of section 151 thereof. The extreme position that there is no power at all to review an order passed under Article 226 of the Constitution, whether under Order 47, Rule (1) of the C.P.C. or under the inherent powers of the Court was not taken up by the counsel for the Respondent in this writ petition, on whom the notice of the petition was served by the State. It is therefore strictly unnecessary to pronounce as to whether the power of review should be traced to Order 47, Rule 1 of the C.P.C. or to inherent powers of the Court, or to both. The grounds envisaged by order 47, Rule 1 of the C.P.C hardly exist, and, at the hearing, the learned Advocate-General pressed for a review under the inherent powers. I shall proceed on the assumption that in a fit and proper case, there is inherent power in the Court to review an order passed under Article 226 of the Constitution. There is undoubted authority for that position. In *Shivdeo Singh and Others Vs. State of Punjab and Others*, , the Supreme Court observed:

8. The other contention of Mr. Gopal Singh pertains to the second order of Khosla J., which, in effect reviews his prior order. Learned counsel contends that Article 226 of the Constitution does not confer any power on the High Court to review its own order and, therefore, the second order of Khosla J. was without jurisdiction. It is sufficient to say that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power to review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Here the previous order of Khosla J., affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla J. entertained the second petition. In doing so, he merely did what

the principles of natural justice required him to do. It is said that the respondent before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla J.

2. The question then is, are there sufficient grounds to exercise the power of review in the instant case ? It is not disputed that against my preliminary judgment in this writ petition, no appeal has so far been preferred. It is stated that applications for copies of the said judgment in this and in many other of the Writ petitions, have been made, and are pending. It is submitted that the delay and expense involved in preferring appeals in these individual cases is considerable and that in view of these, and in view of the change of law as declared by the Full Bench, I should entertain and allow this application for review. I am not persuaded by these considerations. As noticed in my judgment dated 8-7-1968 arguments on the question of the constitutional validity of the three orders were heard as agreed to, that after settling the question of constitutional validity, the writ petitions themselves may, if necessary, be posted for further hearing on their merits, or for appropriate orders. Having agreed to this course and persuaded me to adopt it, it is now idle for the State to point out considerations of hardship and inconvenience resulting from the course followed. Surely, such agreement could not have been with any cock-sureness on the part of the State, that the issue of the constitutional validity was bound to be in its favour and the mere circumstances that it was not, does not appear to me to be ground enough to invoke the inherent power of review. Nor am I satisfied that in view of the different view taken by the Full Bench on the question, this is a fit case for review. The decision in *Assistant Settlement Officer, Pudukkottai v. K. Karunagiri Muthiah Naicker* (A.I.R. 1960 Mad. 177) on which reliance was placed by the learned Advocate-General turned on essentially different facts. I here, in the first instance, by order dated 10-1-1956, on writ petition No. 490 of 1954 it was directed that, as a civil suit was pending in the Sub Court, Thiruchirappilly for determining whether D. Edayapotty Estate was an Estate as defined by the Estates Land, Act by the Madras Act 26 of 1948, it would be a proper exercise of discretion on the part of the Assistant Settlement Officer, to stay the proceedings u/s 9 of Act 26 of 1948, till the disposal of the civil suit. To that effect the issue of writ of mandamus was directed. Subsequently, Madras Act 30 of 1956 was passed, which amended Act 26 of 1948, and specifically vested the exclusive jurisdiction of deciding, whether a territorial area constituted an estate on the Tribunal constituted under the Act, and excluded the jurisdiction of the Civil Courts to decide the said question. The amending Act was published in the gazette on 19-12-1956, and brought into effect from 3-8-1957. Subsequent to the amending Act, the Assistant Settlement Officer, Pudukkottai, who was the Respondent in Writ Petition No. 490 of 1954 preferred a petition for review under Order 47, Rule (1) and under Article 226 of the Constitution. The learned Judge

(Rajagopalan J.) who dealt with the matter observed that what State desired in effect was that the writ of mandamus issued to the Assistant Settlement Officer on 10-1-1956, should be recalled in the changed circumstances, and expressed himself thus:

It may not, however, be necessary for me to express any concluded opinion of mine on the questions (1) whether the application for review lies at all and (2) if it does whether a review can be granted on the basis of a change in law subsequent to the date of the order sought to be reviewed. The question at issue before me, whether the writ of mandamus directed to be issued in W.P. 490/1954 on 10-1-1956 should be recalled or set aside, can be disposed of in the circumstances of this case on other grounds. It would not strictly be a case of a review at all falling within the scope of Order 47, Rule 1, C.P.C.

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I am not to be understood as saying that order passed in the exercise of the jurisdiction vested in this Court under Article 226 of the Constitution can be set aside in exercise of the inherent powers of this Court. All I am saying is that the nature of the order that was passed on 10-1-1956 and the special circumstances of the case, principally the subsequent change in legislation require of this Court to provide for the change that has been brought about by subsequent legislation and to see that the real questions at issue between the State and the Respondent are disposed of as expeditiously as possible by the authorities competent to dispose of these questions.

The petition is allowed.

3. From the facts disclosed and the observations made, the above decision cannot support the contention of the learned Advocate General that the circumstances present and disclosed here afford a sufficient foundation for review. The fact that the Full Bench took a view of the law different from mine, on appeal in one or more of the writ petitions does not appear to me to be a sufficient ground for review.

4. It is unnecessary to consider the other decisions cited by the learned Advocate-General to show that an order under Article 226 of the Constitution, is capable of being reviewed. Proceeding on that assumption. I am unable to find any ground for review. I dismiss this petition but without costs.