

(2008) 08 MAD CK 0019

In the Madras High Court

Case No : W.A. No. 4150 of 2004 and W.A.M.P. No's. 7820 and 7821 of 2004

The State of Tamil Nadu

APPELLANT

Vs

K. Selvaraj

RESPONDENT

Date of Decision : 19-08-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 14
Displaced Persons (Verification of Claims) Supplementary Rules, 1954 — Rule 18
Land Acquisition Act, 1894 — Section 40(1)
Partnership Act, 1932 — Section 69(3)
Tamil Nadu Land Acquisition for Harijan Welfare Schemes Act, 1978 — Section 4(3)

Citation : (2008) 08 MAD CK 0019

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : S. Veeraraghavan, A.A.G, assisted by, K. Balasubramanian, Spl. G.P, for the Appellant; T. Murugamanickam, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—These appeals are filed against the common order of the learned single Judge dated 17.2.2003 made in W.P.

Nos. 5881 and 5882 of 2000, wherein and whereby the writ petitions filed by the Respondents herein challenging the notification issued by the

Appellant and published in the Tiruchirappalli District Gazette No. 6 dated 8.3.2000 u/s 4(1) of the Tamil Nadu Land Acquisition for Harijan

Welfare Schemes Act, 31 of 1978, (hereinafter referred to as "the Act"), has been allowed by quashing the said notification on the ground that the

public purpose for which the land was sought to be acquired i.e., for construction of additional building to the Adi Dravidar Welfare Middle

School, Devimangalam village is not coming under the purview of the definition

of ""Harijan welfare scheme"" u/s 3(g) of the above said Act.

2. The lands in an extent of 0.79.0 hectares and 0.91.5 hectares owned by Respondents in writ appeal Nos. 4150 and 4151 of 2004 respectively,

was sought to be acquired under the Act. The Appellant after considering the objections from the persons interested in the land u/s 4(2) and (3) of

the Act, caused a publication in Tiruchirappalli District Gazette a notification u/s 4(1) of the said Act for acquiring the lands for construction of

additional building to the Government (Adi Dravida Welfare) Middle School, Devimanealam village. The Respondents after unsuccessfully moving

the Civil Court against the acquisition proceedings filed the writ petitions challenging the acquisition proceedings on several grounds as to the

suitability and adaptability of the land for the purpose for which it is sought to be acquired.

3. Before the writ Court, the Respondents have taken a new point to the effect that the purpose for which the lands are sought to be acquired

would not come within the definition of ""Harijan Welfare Scheme"" contained in Section 3(g) of the Act if the same is construed by applying the

principle of ejusdem generis.

4. The writ Court accepted the contention of the Respondents that the phraseology ""for providing any other amenity to the benefit of Harijans

appearing in the definition clause should be read in ejusdem generis to the other purposes stated therein and if so construed, the purpose of

construction of additional building to the Adi-Dravidar middle school cannot be regarded as ""Harijan welfare scheme"" in terms of the definition

clause and set aside the 4(1) notification. The correctness of the said order is now put in issue in these appeals.

5. We are not able to concur with the reasoning given by the Writ Court for setting aside the notification. The principle of interpretation of the

statute or a provision of a statute has been the subject matter for decision before the Apex Court in a plethora of cases. In all those cases, the

Apex Court ruled that the elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the

legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed,

there is no scope for the court to take upon itself the task of amending or

alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so, what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided. In case of an ordinary word there should be no attempt to substitute or paraphrase of general application. Attention should be confined to what is necessary for deciding the particular case.

6. The Apex Court further ruled that no words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. See: *Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. Vs. Custodian of Vested Forests*, *Palghat and another, ; Union of India and another Vs. Deoki Nandan Aggarwal, ; Institute of Chartered Accountants of India Vs. Price Waterhouse and Another, , Harbhajan Singh Vs. Press Council of India and Others, and Grasim Industries Ltd. Vs. Collector of Customs, Bombay, .*

7. Part IV of the Constitution of India, the Directive Principles of State Policy contains Articles 36 to 51. Though the principle contained in Part IV of the Constitution is not justiciable, nevertheless, they are fundamental in the governance of the country and it shall be the duty of the State to apply the principles contained in Part IV in making the laws. As per the Constitutional mandate, the Act 31 of 1978 has been enacted to provide for acquisition of land for Harijan welfare scheme. The intention of the statute has been clearly stated in Section 2 of the Act as to give effect to the policy of the State towards securing the purposes laid down in Part IV of the Constitution, and in particular Article 46, so as to provide for acquisition of land for Harijan welfare scheme. The constitutional validity of the Act has been upheld by the Supreme Court in the case of *State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, .*

8. Having in mind the intention of the Legislature and the settled principle of

interpretation of statute, let us consider the provision of Section 3(g) of

Harijan Welfare Schemes Act, 1978, which reads as follows:

"Harijan Welfare Scheme" means any scheme for provision of house sites for Harijans, for constructing, extending or improving any dwelling-house

for Harijans, or for providing any burial or burning grounds for Harijans or for providing any pathway leading to such dwelling house, burial or

burning grounds, or for providing any other amenity for the benefit of Harijans.

9. From the above definition, it is clear that "Harijan Welfare Scheme" means (1) any scheme for provision of house sites for Harijans, (2) for

constructing, extending or improving any dwelling-house for Harijans, (3) for providing any burial or burning grounds for Harijans, (4) for providing

any pathway leading to such dwelling house, burial or burning grounds, and (5) for providing any other amenity for the benefit of Harijans. Apart

from the four proposes, which are extracted above, i.e., the provision of house sites, etc., the definition contains a further limb which provides for

provision of any other amenity for the benefit of Harijan". What is the scope of the fifth limb of the definition and whether any provision for

imparting education to the Harijan would come within the purview of that limb is the question to be decided in this case.

10. While considering the validity of the very same statute, after the amendment to the Land Acquisition Act 1894 by Land Acquisition

(Amendment) Act No. 68 of 1984, a Division Bench of this Court in the case of V. Kuppusamy Reddiar Vs. The Collector and Another, , after

referring to the judgment of the Apex Court in State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, , whereby the validity of the Tamil

Nadu Act has been upheld and with reference to Section 2 and Section 3(g) of the Act, held as follows:

The Constitutional scheme is very clear. It aims at equality (vide Articles 14 to 18 of the Constitution of India). However, the Founder Fathers of

our Constitution in their wisdom realized that there were certain historically disadvantaged communities, which had been oppressed for thousands

of years, and for whom compensatory State action was called for. One of these historically disadvantage communities are Scheduled Castes and

Scheduled Tribes and hence, special provisions were made for them in Articles 15(4), 16(4), 16(4-A) and other provisions in the Constitution.

This was necessary otherwise these historically oppressed classes would not be able to come up to the level of other classes of people, and thus

inequality would continue. The Tamil Nadu Act 1978 was obviously made with this historic situation of mind.

11. In the case of Chameli Singh and others etc. Vs. State of U.P. and another, , which is also arising under the Central Land Acquisition Act, the

Apex Court has held that in any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is

secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are

designed to achieve this object. Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education,

medical care and shelter.

12. The case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , though it has been held as not good law by

larger Bench of the Supreme Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , with reference to the right of the

minority institution, has held that if really Article 21, which is the heart of fundamental rights, has received the extended meaning from time to time,

there is no justification that it cannot be interpreted in the light of Article 45, wherein the State is obliged to provide education upto 14 years of age

within the prescribed time limit.

13. In the present case, the mens or the sententia legis is quite obvious and manifest as declared in Section 2 of the Act i.e., promotion of

educational and economic interest of Scheduled Caste and Scheduled Tribe, the members of which community are defined to mean as Harijan u/s

3(f) of the Act. As the deliberate intention of the Scheme is so manifest, there is no scope for the Court either to tinker or alter the provision or

apply the rule of ejusdem generis to give restrictive meaning to the provision or to give totally different texture to the statute.

14. The expression ""for providing any other amenity for the benefit of Harijan"" is to be interpreted by giving its plain meaning to the words. The

words used in the Act by the Legislature must be considered to have been used correctly and exactly and not loosely. In ascertaining the exact

meaning of words, mere reference to ordinary dictionary meaning will be of no

use and a construction divorced from the context in which the word has been used and the object of the legislation, may often lead to injustice, absurdity, contradiction or stultification of the very statutory objective. The language must be so construed as to give effect to all the provisions of the Act. Further, when the language used is possible of bearing more than one construction, an endeavour to place the correct or true meaning must be made having due regard to the consequences resulting from adopting the alternative constructions and the one which results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or un-certainty or friction in the very system, which the statute purports to regulate, has to be rejected, vide H.P. Tourism Development Corporation Vs. Union of India (UOI) and Others, .

15. If the above principle is applied, having regard to the intention of the Legislature, with particular reference to Article 46 of the Constitution of India, the last limb of the definition u/s 3(g) ""for providing any other amenity for the benefit of Harijans"", would include within its ambit, in our view, the provision for education also. We can take Section 40(1)(a) of the Central Land Acquisition Act, 1894 as an example to this case as the said provision is a comparable provision to the present one, which reads as follows:

40. Previous enquiry.-

(1)...

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith,...

16. If the intention of the Legislature is to give a restricted meaning for the expression ""for providing any other amenity for the benefit of Harijans"" in the impugned Act, they would have clearly stated the same as stated in the Central Act for providing any other amenity for the benefit of Harijans directly connected with the dwelling houses or burning or burial ground or pathway. The expression leaves no room in the context of the Act for any restrictive interpretation. In the absence of any such restriction, the construction of the expression made by the writ Court cannot accord or cannot be regarded as one furthering the intention of the Legislature.

17. The expression contained in the last of the definition clause is, ""any other

amenity". The word "other" indicates the amenities other than or in addition to the amenities stated earlier in the said provision. (The word "other" has been defined to mean in the Webster's Encyclopaedic Unabridged Dictionary of the English Language as "additional or further"). When provision for house site for constructing, extending or improving any dwelling house for Harijans or for providing any burial or burning ground and pathway to the dwelling houses, burial or burning grounds, are all provided for the well-being of the depressed class of people, the any other amenity required for the benefit of Harijans would include amenity for education or other civic amenities. As a matter of fact, Education is held to be a fundamental right, rather it is essential for a human being and comes under the purview of right to life, as stated supra. Education is also for the benefit of the Harijans, who are the hapless oppressed classes and historically disadvantaged community and in whose favour the founding father of our Constitution provided special provisions as affirmative action for improving the standard of living.

18. The writ Court has considered the word "amenity" alone in isolation, that too, with reference to the Tamil Nadu Buildings (Lease and Rent Control) Act, which is a special provision in respect of buildings. The amenities defined in that Act cannot be taken in aid for interpreting the impugned provision.

19. learned Counsel appearing for the Respondents relied on certain dictionary meanings for the word "amenity" as defined in Black's Law Dictionary, Corpus Juris Secundum, Ramanatha Iyer's Law Lexicon and Webster Dictionary. Those dictionary meanings pertaining to the word amenity" as it is, cannot be imported to understand the expression for "providing other amenity for the benefit of Harijans" used in the Act, which goes against the principle of purposive interpretation, see H.P. Tourism Development Corporation Vs. Union of India (UOI) and Others, .

20. The exposition of law as to the applicability of the rule of ejusdem generis is classically expressed by the Apex Court in the case of Siddeshwari Cotton Mills (P) Ltd. Vs. Union of India (UOI) and Another, , as follows:

12. The expression ejus-dem-generis -- "of the same kind or nature" -- signifies a principle of construction whereby words in a statute which are

otherwise wide but are associated in the text with more limited words are, by implication, given a restricted operation and are limited to matters of

the same class or genus as preceding them. If a list or string or family of genus-describing terms are followed by wider or residuary or sweeping-up

words, then the verbal context and the linguistic implications of the preceding words limit the scope of such words.

13. In Statutory Interpretation Rupert Cross (p. 116) says:

The draftsman must be taken to have inserted the general words in case something which ought to have been included among the specifically

enumerated items had been omitted....

14. The principle underlying this approach to statutory construction is that the subsequent general words were only intended to guard against some

accidental omission in the objects of the kind mentioned earlier and were not intended to extend to objects of a wholly different kind. This is a

presumption and operates unless there is some contrary indication. But the preceding words or expressions of restricted meaning must be

susceptible of the import that they represent a class. If no class can be found, ejusdem generis rule is not attracted and such broad construction as

the subsequent words may admit will be favoured. As a learned author puts it:

...if a class can be found, but the specific words exhaust the class, then rejection of the rule may be favoured because its adoption would make the

general words unnecessary; if, however, the specific words do not exhaust the class, then adoption of the rule may be favoured because its

rejection would make the specific words unnecessary. (See Construction of Statutes by E.A. Driedger p.95 quoted by Francis Bennion in his

Statutory Construction page 829 and 830).

15. Francis Bennion in his Statutory Construction (pp. 830-31) observed:

For the ejusdem generis principle to apply there must be a sufficient indication of a category that can properly be described as a class or genus,

even though not specified as such in the enactment. Furthermore the genus must be narrower than the words it is said to regulate. The nature of the

genus is gathered by implication from the express words which suggest it....

It is necessary to be able to formulate the genus; for if it cannot be formulated it does not exist. "Unless you can find a category", said Farwell L.J.,

"there is no room for the application of the ejusdem generis doctrine".

In *S.S. Magnhild v. McIntyre Bros. & Company* 1920 (3) KB 321, McCardie, J. said: (KB p. 330)

So far as I can see the only test seems to be whether the specified things which precede the general words can be placed under some common

category. By this I understand that the specified things must possess some common and dominant feature.

17. In *Tribhuban Parkash Nayyar Vs. The Union of India (UOI)*, the Court said: (SCC p. 106, para 13: SCR p. 740)

...The rule reflects an attempt to reconcile incompatibility between the specific and general words, in view of the other rules of interpretation, that

all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be

superfluous....

18. In *UPSEB v. Hari Shanker* AIR 1979 SC 65 it was observed: (SCC p. 30, para 15: AIR p. 73)

...The true scope of the rule of "ejusdem generis" is that words of a general nature following specific and particular words should be construed as

limited to things which are of the same nature as those specified. But the rule is one which has to be "applied with caution and not pushed too

far"....

19. The preceding words in the statutory provision which, under this particular rule of construction, control and limit the meaning of the subsequent

words must represent a genus or a family which admits of a number of species or members. If there is only one species it cannot supply the idea of

a genus.

21. From the reading of the definition clause of "'Harijan Welfare Scheme'", which has been extracted supra, we are not able to find that there is any

class of words, or category of words or genus of words followed by general words in the Section. Each of the categories in the Section are

independent of each other. The provisions for house sites is independent of provision for construction, extending or improving of the dwelling

house. Likewise, provision for burial or burning grounds is independent of the scheme for house sites and provision for pathway leading to dwelling

house or providing for pathway leading to burning or burial ground are

independent of other three categories stated earlier.

22. This view of us is in accord with the rule laid down by the Supreme Court in *Tribhuban Parkash Nayyar Vs. The Union of India (UOI)*, . In

this said case, it was contended that the grounds within the first three clauses, and the fourth clause in Rule 18 of the Displaced Persons (Claims)

Supplementary Rules, 1954, which conferred the power of special revision on the Chief Settlement Commissioner to call for the record of any

verified claim and pass any further order in revision in respect of such verified claim, if he is satisfied that such order should be passed on one of the

following grounds:

(i) the discovery of any new matter or documentary evidence which after the exercise of due diligence was not within the knowledge of or could

not be produced by the claimant at the time when the claim was verified; or

(ii) correction of any clerical or arithmetical mistake apparent on the face of the record; or

(iii) gross or material irregularity or disparity in the valuation of the claim; or

(iv) any other sufficient reason

has contended to be construed *ejusdem generis*. In the said judgment, the Apex Court after referring the provision contained in Order 47 Rule 1(c)

of Code of Civil Procedure, has held thus:

From a plain reading of these two provisions the difference in their language is quite obvious. Clauses (i) and (ii) of Rule 18 are certainly similar to

Clause (c) of Order 47 Rule 1, but Clause (iii) of Rule 18 is wholly different from Clause (C) of Rule 1 of Order 47. It is difficult to hold these

clauses to be similar in kind or to have a common genus. The former seems not only to take within its fold gross and material irregularity in the

valuation of the claim, which to some extent resembles one of the grounds on which revisional power as contemplated by Section 115 CPC can be

exercised, but also to include cases where there is disparity in the valuation of the claim. Quite clearly this clause is much wider in scope than Order

47 Rule 1(c). The expression "others sufficient cause" occurring in Clause (iv) of Rule 18 has therefore to be construed in this context. When in a

statute there are general words following particular and "specific words, the general words are some times construed as limited to things of the

same kind as those specified. This rule of interpretation generally known as ejusdem generis rule has been pressed into service on behalf of the

Appellant. This rule reflects an attempt to reconcile incompatibility between the specific and general words, in view of the other rules of

interpretation, that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are

presumed to be superfluous. Ejusdem Generis rule being one of the rules of interpretation, only serves, like all such rules, as an aid to discover the

legislative intent; it is neither final nor conclusive and is attracted only when the specific words enumerated, constitute a class, which is not

exhausted and are followed by general terms and when there is no manifestation of intent to give broader meaning to the general word.

The same is the principle laid down by the Apex Court in the case of Raja Bhanupratap Singh Vs. Assistant Custodian Evacuee Property U.P., ,

In yet another judgment in Jagdish Chander Gupta Vs. Kajaria Traders (India) Ltd., , with reference to the provisions contained in Section 69(3)

of the Indian Partnership Act, a similar contention raised was rejected by the Supreme Court by observing as follows:

Interpretation ejusdem generis or noscitur a sociis need not always be made when words showing particular classes are followed by general

words. Before the general words can be so interpreted there must be a genus constituted or a category disclosed with reference to which the

general words can and are intended to be restricted. (1944) 1 KB 361, Rel. on.

The expression ""claim of set off"" in Section 69(3) of the Partnership Act does not disclose a category or a genus. The words "other proceeding"

which follow must, therefore, receive their full meaning untrammelled by the words "a claim of set off". The latter words neither intend nor can be

construed to cut down the generality of the words "other proceeding".

23. In the case of The State of Bombay Vs. Ali Gulshan, , the Apex Court held thus:

Before the ejusdem generis rule of construction can be applied, apart from the fact that the rule must be confined within narrow limits, and general

or comprehensive words should receive their full and natural meaning unless they are clearly restrictive in their intendment, it is requisite that there

must be a distinct genus, which must comprise more than one species.

24. It is also well recognised principle of law that the ejusdem generis principle would apply only when (1) the statute enumerates specific words,

(2) the subjects of enumeration constitute a class or category, (3) that class or category is not exhausted by the enumeration, (4) the general terms

follow the enumeration, and (5) there is no indication of a different legislative intent. If we apply the above principle to Section 3(g), the definition

Clause 3(g) has not enumerated any specific category. The subject of the enumeration is also not constituted a class or category. The class or

category, if any, is exhausted by the enumeration. There is a specific indication about the legislative intent by means of a declaration u/s 2. Hence,

the application of principle of ejusdem generis to understand the meaning of the expression ""for providing any other amenity for the benefit of

Harijans"" cannot be legally sustained.

25. For the foregoing reasons, the order passed by the learned single Judge dated 17.2.2003 made in W.P. Nos. 5881 and 5882 of 2000 is

hereby set aside and the writ appeals are allowed and writ petitions are dismissed. However, there is no order as to costs. Consequently, the

connected W.A.M.Ps are closed.