
(2009) 04 MAD CK 0288
In the Madras High Court
Case No : W.A. No. 1041 of 2008

The State of Tamil Nadu

APPELLANT

Vs

P. Sivalingam

RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Constitution of India, 1950 — Article 141
Evidence Act, 1872 — Section 41, 42, 43, 4A(2), 4A(3)
Tamil Nadu Minor Mineral Concession Rules, 1959 — Rule 38A

Citation : (2009) 6 MLJ 275

Hon'ble Judges : P. Jyothimani, J;Aruna Jagadeesan, J

Bench : Division Bench

Advocate : R. Thirugnanam, Special Government Pleader, for the Appellant; No appearance, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—The respondents in the writ petition have filed the present writ appeal against the order of the learned Judge dated 9.4.2007, by which the learned Judge has directed the appellants to confer the benefits given to the parties before the Supreme Court in State of Tamil Nadu and Another Vs. P. Krishnamurthy and Others, to the respondent, by granting him lease.

2. It is the admitted case of the parties that in respect of the lands measuring an extent of 11.36.5 Hectares comprised in S.F.Nos.26, 32 and 33 situated in Ottampatti Village, and 5.50.0 Hectares and 6.85.5 Hectares comprised in Survey Nos. 134/Part-1 and 134/Part-2 respectively, situated in Tiruvanapatti Village, in Uthangiri Taluk, Krishnagiri District, the respondent was granted lease and the lease came to be terminated due to the advent of G.O.Ms. No. 95, Industries Department, dated 1.10.2003, by which the leasing operations in the Government lands have been taken over by the Government.

3. When the above said Government Order was challenged, the validity of the same was upheld by the Division Bench of this Court and ultimately, when the

Government filed an appeal before the Supreme Court, the Hon''ble Supreme Court in State of Tamil Nadu and Anr. v. P. Krishnamurthy and Ors., referred supra, while upholding the validity of the Government Order, read down a portion of Rule 38A of the Tamil Nadu Minor Mineral Concession Rules, 1959, which was incorporated by amendment, which came into force from 2.10.2003. The Hon''ble Supreme Court in the judgement in State of Tamil Nadu and Anr. v. P. Krishnamurthy and Ors., referred supra, has held as follows:

36. In regard to mining leases subsisting as on 2-10-2003, we have read down Rule 38A as terminating such leases in terms of the contract (lease deeds) by six months, without assigning cause and without any liability to pay compensation. Such of those writ petitioners (the respondents herein) whose leases were subsisting on 2-10-2003 (and whose activities were stopped with effect from that day) will be entitled to carry on the quarrying activities for a period of six months or for the actual unexpired period of the lease (as on 2-10-2003), whichever is less. This benefit will be available to even those who have orders of the court for grant of mining leases, but where mining leases were not executed for one reason or the other. It is, however, made clear that the State Government is at liberty to prematurely terminate the leases for any of the causes mentioned in Section 4A(2), by giving a notice and hearing u/s 4A(3), if they want to terminate any lease within the said period of six months.

37. We, accordingly, allow these appeals in part. In place of the conditions stipulated by the Division Bench while upholding the validity of Rule 38A, we hold and direct as follows:

(i) That part of Rule 38-A which vests the exclusive right to quarry sand, in the State Government, is upheld.

(ii) That part of Rule 38-A which purports to terminate quarrying leases/permissions forthwith (from 2-10-2003) is read down in terms of para 26 above.

(iii) The provision in Rule 38-A for refund of proportionate lease amount for the unexpired period of lease and unadjusted seigniorage fee, shall remain undisturbed.

(iv) It is made clear that except to the limited relief as a consequence of reading down as per para 26 above, the respondents will not be entitled to any other reliefs which have been granted by the High Court.

(v) Parties to bear their respective costs.

4. It is by virtue of the above said direction of the Hon''ble Supreme Court stating that, in cases where the lease was subsisting as on 2.10.2003, namely the date on which the above Government Order has come into force, the parties therein will be entitled to carry on quarry operations for a period of six months or for the actual unexpired period of lease, whichever is less, the learned Single Judge, while concluding that the said judgment operates as a judgment in rem, directed the appellants to execute lease deed in favour of the respondent, if

there are no other legal impediments. It is as against the said order, the appellants have filed the present writ appeal.

5. The contention of the learned Special Government Pleader for the appellants is that the judgment of the Supreme Court, referred supra, especially paragraph 36, cannot be treated as a judgment in rem and therefore, the finding given by the learned Judge, taking the same as a judgement in rem and giving the benefit to the respondent is not valid in law. He would also rely upon the judgment of the Supreme Court in *Satrucharla Vijaya Rama Raju Vs. Nimmaka Jaya Raju and Others*, to substantiate his contention that the judgment of the Supreme Court in *State of Tamil Nadu and Anr. v. P. Krishnamurthy and Ors.*, referred supra, cannot be treated as a judgment in rem at all.

6. A reading of the judgment of the Hon''ble Supreme Court in *State of Tamil Nadu and Anr. v. P. Krishnamurthy and Ors.*, referred supra, especially paragraph 36, makes it clear that the parties before the Supreme Court, who were having subsisting lease as on 2.10.2003, will be entitled to carry on quarry operations for a period of six months or for the actual unexpired period of lease, whichever is less. As submitted by the learned Special Government Pleader, it may not be correct to hold, by technically construing the wordings of the judgment, that the judgment is not a judgment in rem, but the fact remains that persons like the respondent herein, who have been similarly situated and who were before the Supreme Court, were given such benefits.

7. In such view of the matter, even if it is taken that the judgment of the Supreme Court, especially paragraph 36, is not a judgment in rem, as held by the learned Single Judge, certainly, the respondent herein, who is similarly situated as that of the parties before the Supreme Court, to whom benefits have been given, is entitled to claim such benefits to him. Moreover, by virtue of the Constitutional mandate under Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India.

8. The judgment relied upon by the learned Special Government Pleader in *Satrucharla Vijaya Rama Raju v. Nimmaka Jaya Raju and Ors.*, referred supra, relates to an election dispute, wherein, while declaring the election in respect of a party based on Scheduled Tribe character, the Supreme Court has held that such a declaration effected in E.P. No. 13 of 1983 would not amount to a declaration of status of the respondent in the election petition and it cannot be said that such a finding on status would operate as a judgment in rem so as to bind the whole world, in the following operative portion:

No doubt in EP No. 13 of 1983, the question was whether the election petitioner therein who alleged that the appellant before us was not qualified to contest as a candidate belonging to a Scheduled Tribe, in a constituency reserved for that tribe and to that extent, having relationship to the status of the appellant. In such an action under the Representation of the People Act, 1951 what is decided

is whether the election petitioner had succeeded in establishing that the successful candidate belonged to a caste or community, that was not included in the Scheduled Tribes Order. In a case where the election petitioner failed to establish his claim, it could not be said that it amounted to a declaration of the status of the respondent in that election petition, the successful candidate, and that such a finding on status would operate as a judgment in rem so as to bind the whole world. It is also not one of the judgments specifically recognised by Section 41 of the Evidence Act. It has been held that the challenge to an election is only a statutory right. An election petition is not a suit of a general nature or a representative action for adjudication of the status of a person. Even if we take it that the earlier judgment is admissible in the evidence, on that, no objection was raised even at the trial, it could be brought in u/s 42 of the Evidence Act on the basis that it relates to a matter of a public nature or u/s 43 of the Evidence Act. In either case, not being inter partes, the best status that can be assigned to it is to say that it is of high evidentiary value, while considering the case of the parties in the present election petition.

On the facts and circumstances of the present case, the judgment, referred to by the learned Special Government Pleader has no application.

9. In any event, as we have stated earlier, inasmuch as the respondent is undoubtedly situated similarly to that of the parties before the Supreme Court, to whom benefits have been given in similar circumstances, we find no reason to interfere with the impugned order of the learned Single Judge. In view of the same, this appeal stands dismissed. No costs.