
(2010) 07 MAD CK 0262
In the Madras High Court
Case No : Writ Petition No. 326 of 1998

Theerthagiri

APPELLANT

Vs

The District Collector and The Special Tahsildar, Adi Dravida Welfare

RESPONDENT

Date of Decision : 29-07-2010

Acts Referred:

Constitution of India, 1950 — Article 142, 226, 32
Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 — Section 4(1), 4(2), 4(3)

Citation : (2010) WritLR 907

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : V.R. Anna Gandhi, for the Appellant; B. Vijay, Government Advocate for RR 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

S. Nagamuthu, J.—The land comprised in S. No. 100/2 at Keelkuppam Village, Uthankarai Taluk, Dharmapuri District belongs to the petitioner. With a view to acquire the said land for a Harijan Welfare Scheme, a Notification u/s 4(2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 [hereinafter referred to as "the Act"] was issued. For holding enquiry the first respondent - District Collector authorised the 2nd respondent - Special Tahsildar. Accordingly, the 2nd respondent held enquiry as required u/s 4(3)(b) of the Act. The petitioner participated in the enquiry and raised his objections. The 2nd respondent, however, overruled the objections and submitted a report to the 1st respondent. The 1st respondent, thereafter, straightway issued a Notification u/s 4(1) of the Act and published the same in the Dharmapuri District Gazette on 03.10.1997. Challenging the same, the petitioner has come forward with this writ petition.

2. The main ground to assail the impugned order is that the Notification u/s 4(1)

of the Act impugned in this writ petition has been issued by the District Collector without furnishing a copy of the report of the 2nd respondent to the petitioner and without affording yet another opportunity to submit his objections. This argument is based on the judgment of the Full Bench of this Court in *R. Pari v. The Special Tahsildar, adi Dravidar Welfare, Devakkottai Pasumpon Muthuramalinga Thevar District and Anr.* 2006 (4) CTC 609 wherein it has been held as follows:

37. The desirability of furnishing a copy of the report to enable the landowner to make a further representation to the District Collector does not mean that in every case, where such report has not been furnished, the ultimate order passed by the District Collector deciding to acquire the land is automatically vitiated. The scope for judicial interference in the matter relating to acquisition of land obviously being very limited, the Court in each case is required to find out whether non-furnishing of the report in any way has prejudiced the person concerned. The object of furnishing the report and affording further opportunity to the landowner to make a further representation is obviously to pinpoint any deficiency in the report of the Authorised Officer. If any particular aspect has been highlighted by the landowner and has not been considered by the Authorised Officer, the landowner would get a further opportunity to highlight such aspect before the District Collector. In other words, if the Authorised Officer has considered the relevant aspects indicated by the objector and made his recommendation, merely because a copy of such report is not furnished and no further opportunity is given to the landowner, may not be a ground to quash the land acquisition proceedings. On the other hand, if important aspects, which have been highlighted by the landowner, have been ignored by the Authorised Officer, it may be reasonable to infer non-furnishing of such report and non-offering of opportunity to make further representation might have vitiated the ultimate decision of the District Collector. These are matters to be considered on the basis of the facts and circumstances in each acquisition and it should not be construed that as a matter of law in every case where copy of the report has not been furnished and opportunity of making further representation had been denied, it is sufficient to quash such acquisition. Ultimately the Court has to judge the prejudice caused to such person by keeping in view the facts and circumstances in particular case.

....

43. In view of the aforesaid discussion, our conclusions are as follows:

The owner should be furnished with a copy of the report/recommendation of the Authorised Officer. Thereafter, he should be given two weeks" time to make further representation, if any, before the District Collector. It is not necessary for the District Collector to give a further personal hearing or make any further enquiry. However, mere non-furnishing of the report would not have the ipso facto effect of vitiating the proceedings and the question of prejudice to the landowner is required to be considered in each case depending upon the facts

and circumstances. The District Collector is expected to reflect the reasons, but merely because the communication to the landowner does not contain the reasons, the decision of the Collector is not ipso facto vitiated and it would always open to the concerned authority to prove before the Court, if such action of the Collector is challenged, that there has been application of mind and the reasons are available in the relevant records relating to such acquisition. The necessity to record the reasons is applicable where the Collector himself makes the enquiry and also where the Collector takes an appropriate decision on the basis of the report/recommendation made by the Authorised Officer.

3. The learned Counsel appearing for the petitioner would submit that because the copy of the 2nd respondent's report was not furnished and because the petitioner was not afforded sufficient opportunity, he was not able to raise his objections to the 1st respondent so as to convince him to drop the acquisition proceedings. Thus, according to the learned Counsel for the petitioner, the petitioner has been very seriously prejudiced in his defence. It is on this ground, the learned Counsel would pray for setting aside the Notification made u/s 4(1) of the Act.

4. The learned Government Advocate would also submit that a copy of the report of the 2nd respondent was not furnished to the petitioner and no more opportunity was given to him to submit his objections before issuing the impugned declaration u/s 4(1) of the Act. He would, however, submit that the judgment in R. Pari's case cited supra could be made applicable only in respect of those acquisition proceedings which were initiated subsequent to the date of the said judgment. Precisely the argument of the learned Government Advocate, is that the said judgment is only prospective in operation. According to him, the judgment in R. Pari's case has laid down a new rule to be followed by the 1st respondent before making a declaration u/s 4(1) of the Act thereby necessitating the issuance of a copy of the report of the Tahsildar and to afford yet another opportunity to the land owner to submit his objections. Further, according to him, such a rule was not in vogue before the date of judgment in R. Pari's case and, therefore, the officials in no case could have furnished copies of report the Special Tahsildar concerned. He would further submit that applying the procedure laid down in R. Pari's case retrospectively, if the acquisition proceedings under the Act are invariably interfered with, it would not only set at naught the already concluded proceedings but, also it would create confusion and great hardship to the Government. He would further submit that in the case on hand, subsequent to the impugned declaration appropriate enquiry was held and award determining compensation has also been passed. He would also add that possession has also been taken. In those circumstances, in the instant case, if the declaration u/s 4(1) of the Act is interfered with applying the principles stated in R. Pari's case cited supra, that too at this length of time, surely, it would only result in hardship to the Government, he contended. He would , therefore, pray for dismissal of the writ petition.

5. I have considered the rival submissions.

6. A cursory reading of the judgment of the Full Bench of this Court in R. Pari's case cited supra would go a long way to show that non-furnishing a copy of the report of the Special Tahsildar to the land owner before passing the order u/s 4(3) (b) of the Act by the District Collector would vitiate the entire proceedings provided it has caused prejudice to the land owner. Indisputably, in the case on hand, a copy of the report of the 2nd respondent - Special Tahsildar was not furnished to the petitioner and the same has also caused prejudice to the petitioner and, therefore, the proceedings, if the principles stated in R. Pari's case are applied, should stand vitiated. Thus, the only question is as to whether the principles stated in R. Pari's case can be held applicable to the instant acquisition proceedings, which according to the learned Government Advocate, concluded long prior to the date of judgement in R. Pari's case.

7. The learned Government Advocate would contend that the principles stated in R. Pari's case cannot have retrospective application and instead it will have only prospective operation. Precisely, according to him, the judgment in R. Pari's case is only a prospective overruling. To substantiate the said contention, the learned Government Advocate would rely on para 44 of the judgment of the Hon'ble Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., wherein the Hon'ble Supreme Court has held as follows:

44. ...To reopen all the disciplinary proceedings now would result in grave prejudice to administration which will far outweigh the benefit to the employees concerned. Both administrative reality and public interests do not, therefore, require that the orders of punishment passed prior to the decision in Union of India and others Vs. Mohd. Ramzan Khan, without furnishing the report of the enquiry officer should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened on that account. Hence, we hold as above.

8. Relying on the above, the learned Government Advocate would submit that the principles stated in R. Pari's case should also be made applicable only prospectively. In this regard, I may refer to the judgment of the Hon'ble Supreme Court in I.C. Golak Nath and Others Vs. State of Punjab and Another, , about which reference has been made in Karunakar's case, wherein the Hon'ble Supreme Court in para 51 has held as follows:

51. As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, it would like to move warily in the beginning. We would lay down the following propositions :- (1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest court of the country, i.e. the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the Courts in India; (3) the scope of the retrospective operation of the law declared by the supreme Court superseding its earlier

decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it.

9. Referring to the above, again the Hon''ble Supreme Court in Sarwan Kumar and Another Vs. Madan Lal Aggarwal, has held as follows:

15. ...The doctrine of "prospective overruling" was initially made applicable to the matters arising under the Constitution but we understand the same has since been made applicable to the matters arising under the statutes as well. Under the doctrine of "prospective overruling" the law declared by the Court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship on those who had trusted to its existence. Invocation of doctrine of "prospective overruling" is left to the discretion of the court to mould with the justice of the cause or the matter before the court. This Court while deciding Gian Devi Anand Vs. Jeevan Kumar and Others, did not hold that the law declared by it would be prospective in operation. It was not for the High Court to say that the law laid down by this Court in Gian Devi Anand's case would be prospective in operation. If this is to be accepted then conflicting rules can supposedly be laid down by different High Courts regarding the applicability of the law laid down by this Court in Gian Devi Anand's case or any other case. Such a situation cannot be permitted to arise. In the absence of any direction by this Court that the rule laid down by this Court would be prospective in operation the finding recorded by the High Court that the rule laid down in Gian Devi Anand's case by this Court would be applicable to the cases arising from the date of the judgement of this Court cannot be accepted being erroneous.

10. The Hon''ble Supreme Court in the very same judgment further proceeds to say as follows:

20. ...This Court in Gian Devi Anand Vs. Jeevan Kumar and Others, did not lay down any new law but only interpreted the existing law which was in force. As was observed by this Court in Lily Thomas, Vs. Union of India and Others, the interpretation of a provision relates back to the date of the law itself and cannot be prospective of the judgment. When the court decides that the interpretation given to a particular provision earlier was not legal, it declares the law as it stood right from the beginning as per its decision....

11. Even in Karunakar's case, cited supra, after referring to Golak Nath's AIR 1967 SC 1463; Sri Sankari Prasad Sing Deo v. Union of India and State of Bihar AIR 1951 SC 458; and Sajjan Singh Vs. State of Rajasthan, , the Hon''ble Supreme Court has ultimately held as follows:

It was a pragmatic solution reconciling the two doctrines. The Court found law but restricted its operation to the future thus enabling it to bring about a smooth transition by correcting its errors without disturbing the impact of those errors on the past transactions. It was left to the discretion of the Court to prescribe the limits of the retroactivity. Thereby, it enabled the Court to mould the reliefs to

meet the ends of justice.

12. Very recently, the Hon''ble Supreme Court in P.V. George and Others Vs. State of Kerala and Others, has held as follows:

14. For the views we propose to take, it is not necessary for us to consider all the decisions relied upon by Mr. Rajan. The legal position as regards the applicability of doctrine of prospective overruling is no longer *res integra*. This Court in exercise of its jurisdiction under Article 32 or Article 142 of the Constitution of India may declare a law to have a prospective effect. The Division Bench of the High Court may be correct in opining that having regard to the decision of this Court in I.C. Golak Nath and Others Vs. State of Punjab and Another, the power of overruling is vested only in this Court and that too in constitutional matters, but the High Courts in exercise of their jurisdiction under Article 226 of the Constitution of India, even without applying the doctrine of prospective overruling, indisputably may grant a limited relief in exercise of their equity jurisdiction.

13. A close reading of the above judgments would make one to understand that the power of overruling is vested only with the Hon''ble Supreme Court, but the High Courts in exercise of their jurisdiction under Article 226 of the Constitution of India, may grant a limited relief in exercise of their equity jurisdiction without applying the doctrine of prospective overruling. It is also understandable from the above judgments that an interpretation made in respect of an existing law cannot be made applicable only prospectively. In R. Pari's case, the Full Bench of this Court has only interpreted Section 4(3)(b) of the Act and, therefore, such interpretation shall have retrospective effect from the day one of the coming into force of the Act. Had it been the real intention of the Full Bench, which decided R. Pari's case, to make the procedure laid down in the said case only prospective, surely, in its equity jurisdiction, the Full Bench would have in express terms limited the relief to the parties to the said *lis* or in respect of the land acquisition proceedings under the Act, which would commence in future. But, the Full Bench has not done so. This means that the Full Bench has intended to make the interpretation applicable retrospectively from the date of coming into force of the said Act.

14. In view of the above, the contention of the learned Government Advocate that the principles stated in R. Pari's case are not applicable in respect of the acquisition proceedings which had already been completed even prior to the judgment of R. Pari's case cannot be countenanced. As a matter of fact, in Loganathan v. State of Tamil Nadu and two Ors. 2007 Writ L.R. 432, a Division Bench of this Court presided over by his Lordship Hon''ble Mr. Justice P. Sathasivam [as his Lordship then was] has applied the principles stated in R. Pari's case to the acquisition proceedings which had concluded long before the judgment in R. Pari's case. Therefore, I have no hesitation to hold that the procedure laid down in R. Pari's case is applicable to the facts of the present case also.

15. Now, turning to the facts of the instant case, there is no dispute in this case that the report of the 2nd respondent - Special Tahsildar was not furnished to the petitioner. As stated in R. Pari's case, this has surely caused prejudice to the petitioner. Applying the law laid down in R. Pari's case, I have no hesitation to hold that the impugned Notification issued u/s 4(1) of the Act is liable to be quashed.

16. In the result, the writ petition is allowed; the impugned Notification made u/s 4(1) of the Act is set aside and the matter is remitted back to the 1st respondent, who shall furnish a copy of the report of the 2nd respondent to the petitioner, afford sufficient opportunity to the petitioner and then pass appropriate orders u/s 4(3)(b) of the Act and thereafter, to proceed further in accordance with law. No costs.

17. Before parting with the case, this Court would like to place on record the excellent arguments advanced by Mr. B. Vijay, learned Government Advocate for the respondents as well as Mr. V.R. Anna Gandhi, learned Counsel for the petitioner by taking this Court through various judgments of the Hon''ble Supreme Court as well as this Court regarding the doctrine of prospective overruling.