Vijay Narayan Thatte and Others Vs State of Maharashtra and Others

Court: Supreme Court of India

Date of Decision: Aug. 18, 2009

Acts Referred: Constitution of India, 1950 â€" Article 141
Land Acquisition Act, 1894 â€" Section 4, 5A, 6

Citation: (2009) 6 ALD 59 : (2010) 1 AWC 121 Supp : (2009) 15 JT 92 : (2009) 11 SCALE 525 : (2009) 9 SCC 92 : (2009) 15 SCR 891

Hon'ble Judges: Markandey Katju, J; Asok Kumar Ganguly, J

Bench: Division Bench

Advocate: G.E. Vahanvati, Attorney General for India, Harish N. Salve, Shyam Divan, Shekhar Naphade and D.A. Dae, Shyel Trehan, Divya Kapur, Paromita Mukherjee, Hitesh Jain, Vikas Mehta, Rahul Joshi, Brij Kishor Sah, Lenin H. Hijam, M.P. Parthiban, Shivaji M. Jadhav, Sanjay V. Kharde, Asha G. Nair, Mohit D. Ram and Meenakshi Arora, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. Heard Shri Harish Salve and Shri Shyam Divan, learned senior counsel for the appellants and learned Attorney General of India and Shri

Shekhar Naphade, learned learned senior counsel for the respondents.

2. Leave granted.

3. This appeal has been filed against the impugned judgment and order dated 21.01.2008 passed by a Division Bench of the High Court of

Bombay whereby the writ petition filed by the appellants herein has been rejected.

4. The facts in brief are that a Notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter for short "the Act") was issued in respect of the

land in question on 29.8.2002. Thereafter a Notification u/s 6 of the Act was issued on 18.6.2003. The said Notification u/s 6 was challenged and

the writ petition filed by the appellants was allowed on 20.1.2004 and the Notification u/s 6 of the Act dated 18.06.2003 was quashed.

Subsequently a second Notification u/s 6 dated 30.10.2006 was issued by the State Government.

5. The short question that arises for consideration is whether the Notification u/s 6 dated 30.10.2006 is valid. In our opinion, the said Notification

was clearly barred by Clause (ii) of the proviso to Section 6 of the Act which reads as under:

[Provided that no declaration in respect of any particular land covered by a notification u/s 4, Sub-section (1),-

(i) ...

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date

of the publication of the notification;

It can be seen from the aforesaid proviso to Section 6 that it is couched in negative language. It is well settled that when a Statute is couched in

negative language it is ordinarily regarded as peremptory and mandatory in nature.

[See Principles of Statutory Interpretation by Justice G.P. Singh 11th Edition, 2008 pages 390 to 392]. As stated by Crawford ""Prohibitive or

negative words can rarely, if ever, be directory. And this is so even though the statute provides no penalty for disobedience."" [See Crawford :

Statutory Construction P. 523; See also in this connection Haridwar Singh Vs. Begum Sumbra, AIR 1972 SC 1242 (1247) , Lachmi Narain Vs.

Union of India AIR 1976 SC 714 (726), , Mannalal Khetan Vs. Kedarnath Khetan AIR 1977 SC 536 etc.]

6. In this connection we may also refer to the Mimansa Rules of Interpretation, which were our traditional principles of interpretation for over 2500

years, but which are unfortunately ignored in our Courts of law today.

7. It is deeply regrettable that in our Courts of law lawyers quote Maxwell and Craies but nobody refers to the Mimansa Principles of

Interpretation. Most lawyers would not have even heard of their existence. Today our so-called educated people are largely ignorant about the

great intellectual achievements of our ancestors and the intellectual treasury which they have bequeathed us. The Mimansa Principles of

Interpretation is part of that great intellectual treasury, but it is distressing to note that apart from the reference to these principles in the judgment of

Sir John Edge, the then Chief Justice of Allahabad High Court in Beni Prasad v. Hardai Bibi ILR 1892 All 67 (FB), a hundred years ago and in

some judgments of one of us (M. Katju, J.) there has been almost no utilization of these principles even in our own country. Most of the Mimansa

Principles are rational and scientific and can be utilized in the legal field (see in this connection K.L. Sarkar''s `Mimansa Rules of Interpretation''

which is a collection of Tagore Law Lectures delivered in 1905 and which contains the best exposition of these principles).

8. The Mimansa Principles of Interpretation, as laid down by Jaimini in his sutras around 6th Century B.C. and as explained by Sabar, Kumarila

Bhatta, Prabhakar, Mandan Mishra, etc, were regularly used by our renowned jurists like Vijnaneshwara (author of Mitakshara), Jimutvahana

(author of Dayabhaga), Nanda Pandit (author of Dattaka Mimansa), etc. Whenever there was any conflict between two Smritis, e.g., Manusmriti

and Yajnavalkya Smriti, or ambiguity or absurdity in any Smriti these principles were utilized. Thus, the Mimansa Principles were our traditional

system of interpretation of legal texts. Although originally they were created for interpreting religious texts pertaining to the Yagya (sacrifice),

gradually they came to be utilized for interpreting legal texts also (see in this connection P.V. Kane''s `History of the Dharmashastra'', Vol.V, Pt.II,

Ch.XXIX and Ch.XXX, pp. 1282-1351), and also for interpreting texts on philosophy, grammar, etc. i.e. they became of universal application.

Thus, Shankaracharya has used the Mimansa adhikaranas in his bhashya on the Vedanta sutras.

9. While the first edition of Maxwell''s book was published in 1875, in India we have been doing interpretation for over 2500 years, as already

stated above. There were hundreds of books (all in Sanskrit) written on the subject, though only a few dozens have survived the ravages of time,

but even these show how deep our ancestors went into the subject of interpretation.

10. To give an example the Mimansakas examine the subject of negative Vidhis (negative injunctions such as the one in the proviso to Section 6)

very searchingly and exhaustively. First of all, they distinguish between what may be called prohibitions against the whole world, and those against

particular persons only. This distinction resembles that between judgments or rights in rem and judgments or rights in personam. The former

prohibitions are called Pratishedha and the latter Paryudasa. For example, the prohibitory clause `Do not eat fermented (stale) food (na kalanjam

bhakshayet) is a Pratishedha; while the prohibition `those who have taken the Prajapati vow must not see the rising sun'' is a Paryudasa. In the

second place, Pratishedhas are divided practically into two sub-clauses viz. those which prohibit a thing without any reference to the manner in

which it may be used, and those which prohibit it only as regards a particular mode of using. For instance, `Do not eat fermented food'' prohibits

the use of it under all circumstances, while `Do not use the Sorasi vessel at dead of night'' forbids the use of the vessel only at the dead of night.

11. Then Paryudasa is also of two kinds. In one case, it relates to a person performing some special act which is not enjoined by a Vidhi, as in the

case of the Prajapati vow. In the other, it relates to a person engaged in performing a Vidhi; as for instance, when one is to do Shradh during the

full moon by virtue of a Vidhi but not in the night of the full moon. In this case, the prohibition of doing Shradh in the night is a Paryudasa, which is

the same as an exception or proviso as we understand these terms. For, the clause `not in the night'' is an exception to the rule `Perform the Shradh

during the full moon''. These are the four classes of negative clauses. The first class, of which the Kalanja (fermented food) clause is an example,

may well be called a condemnatory prohibition. The second class consists also of absolute prohibitions of things under certain circumstances, as in

the case of the Sorasi vessel. The third class consists of prohibitions in relation to persons in a given situation, as in the case of the Prajapati vow.

The fourth class restricts the scope of action of persons engaged in fulfilling an injunction, as regards the time, place or manner of carrying out the

substantive element of the injunction.

12. Thus we see that in the Mimansa system as regards negative injunctions (such as the one contained in the proviso to Section 6 of Land

Acquisition Act) there is a much deeper discussion on the subject than that done by Western Jurists. The Western writers on the subject of

interpretation (like Maxwell, Craies, etc.) only say that ordinarily negative words are mandatory, but there is no deeper discussion on the subject,

no classification of the kinds of negative injunctions and their effects.

13. In the Mimansa system illustrations of many principles of interpretation are given in the form of maxims (nyayas). The negative injunction is

illustrated by the Kalanja nyaya or Kalanja maxim.

14. The Kalanja maxim (na kalanjam bhakshayet) states that `a general condemnatory text is to be understood not only as prohibiting an act, but

also the tendency, including the intention and attempt to do it.'' It is thus mandatory.

15. A plain reading of the proviso to Section 6 of the Land Acquisition Act shows that it is a general prohibition against the whole world and not

against a particular person. Hence the Kalanja maxim of the Mimansa system will in our opinion apply to the proviso to Section 6.

16. Laughakshi Bhaskara, one of the great Mimansa writers, taking the prohibitory text ''one is not to eat Kalanja or fermented/stale food'' (na

kalanjam bhakshayet), explains the idiomatic force of the phrase (na bhakshayet). He explains that the suffix ''yat'' means ''shall'', and that the

negative particle ''not'' is to be taken as attached to the suffix ''yat'' (shall), and not to the idea of Kalanja eating. For if it be taken as attached to the

latter idea, then the sentence might mean ''you shall eat but not Kalanja''. In this case strictly there would be no prohibition. So he labours to

demonstrate that the gist of the sentence is ''shall not'' and therefore the object of it is to turn off from eating Kalanja (fermented/stale food). This

may appear to be making a hair splitting distinction, but it is of great importance from the Mimansa point of view because it indicates the mandatory

nature of the negative injunction (nishedha). The explanation of a Nishedha Vidhi appears more clearly from Jaimini''s Sutras on the Kalanja

maxim.

The objector says:

In a case of prohibition, mentally you entertain the idea of the action prohibited; for you have to discriminate between the prohibited act and the

negation of that act.

The objector means to say "what is the good of a prohibition when it invites the imagination to gloat on the action prohibited". The author answers:

When an act is enjoined by the Shastra, it is for the purpose of the good of a person; if the good object be divorced from the meaning of the

Shastra, then it becomes a case of transgressing it.

The meaning of this is:

In a case of prohibition you must take it that not only is the particular external act prohibited, but the very intention of it is also prohibited." Roughly

speaking, the principle laid down is this:

In a case of prohibition one should abstain from the very idea of the act prohibited, and there ought to be no evasion of the Vidhi in any way."

Thus, this class of Nishedha Vidhis is to be interpreted most comprehensively and as mandatory.

17. In view of the above discussion, it is evident that the proviso to Section 6 of the Land Acquisition Act is totally mandatory and bears no

exceptions.

18. In fact, a Constitution bench decision of this Court in Padma Sundara Rao (Dead) and Others Vs. State of T.N. And Others (2002) 3 SCC

533 is clearly in support of the submission of the learned Counsel for the appellants that the proviso to Section 6 is mandatory, and hence the

Notification u/s 6 dated 30.10.2006 is time barred. In our opinion, when the language of the Statute is plain and clear then the literal rule of

interpretation has to be applied and there is ordinarily no scope for consideration of equity, public interest or seeking the intention of the legislature.

It is only when the language of the Statute is not clear or ambiguous or there is some conflict etc. or the plain language leads to some absurdity that

one can depart from the literal rule of interpretation.

19. A perusal of the proviso to Section 6 shows that the language of the proviso is clear. Hence the literal rule of interpretation must be applied to

it. When there is a conflict between the law and equity it is the law which must prevail. As stated in the Latin Maxim "Dura Lex Sed Lex" which

means ""the law is hard but it is the law"".

20. Learned Attorney General appearing for the respondents submitted that the judgment of the High Court dated 20.1.2004 permitted the

authorities to issue a second Section 6 Notification even beyond the time provided by the proviso to Section 6 of the Act. He has invited our

intention to paragraphs 2 and 3 of the said judgment which reads:

2. Having gone through the record of the petition and the file which is made available to us by Mr. Patil, with respect to the acquisition of lands of

the Petitioners, we are of the view that the Petitioners did not appear to have been afforded reasonable opportunity as is required u/s 5A of the

Land Acquisition Act, 1894. No reasons are insisted upon injustification of this conclusion which we have arrived at as declaration u/s 6 issued

concerning the lands of the Petitioner dated 29.8.2002 will have to be set aside and the same is hereby quashed and set aside. The Petitioner need

inspection of the record from the office of the Land Acquisition Officer, Mr. Patil, A.G.P. Assures that within one week from today, inspection will

be offered to the Petitioners. Dr. Tulzapurkar states that the Petitioner will file their objections within two weeks thereafter.

3. All parties agree that hearing contemplated u/s 5A by the Special Land Acquisition Officer should be completed within two months thereafter as

far as possible. Dr. Tulzapurkar makes a statement on instructions from the Petitioner that the objections with respect to the period within which

Section 6 notification has to be issued from the date of Section 4 notification, will not be raised by the Petitioner if the Petitioners are finally

aggrieved by the 5A report and subsequent declaration u/s 6. Needless to say that the Special Land Acquisition Officer should pass a reasoned

Order when he considers the objections from the Petitioners. The entire proceeding will be based on Section 4 notice which has led to the present

proceedings and that notice will continue to govern the acquisition of these lands.

21. In our opinion, there can be no estoppel against a Statute. Since the Statute is very clear, the period of limitation provided in Clause (ii) of the

proviso to Section 6 of the Act has to be followed, and concessions of the counsel can have no effect. As already stated above, the proviso is

mandatory in nature, and must operate with its full rigour vide Ashok Kumar Vs. State of Haryana (2007) 3SCC 470 (para 17).

22. Mr. Shekhar Naphade, learned senior counsel appearing for the State of Maharashtra then submitted that the judgment dated 20.1.2004 in the

earlier writ petition No. 9248/2003 is res judicata and since the said judgment was not challenged before this Court, it had become final. He

submitted that in the aforesaid judgment it had been clearly stated by the learned Counsel for the petitioners on instructions from the petitioners that

the objection with respect to the limitation period within which the second Section 6 Notification will be issued will not be raised by the petitioners

if the petitioners are finally aggrieved by the Section 5A report and subsequent declaration u/s 6 of the Act. Accordingly, he submitted that now no

objection can be taken in the present proceedings urging the bar of limitation provided in Clause (ii) to the proviso to Section 6 of the Act.

23. In this connection, we wish to state that no statement or concession of a learned Counsel can override a mandatory statutory provision.

24. Moreover, the observations in para 3 of the judgment dated 20.1.2004 have to be regarded as per incuriam. In this connection we may refer

to the decision of a three Judge Bench of this Court in the case of Babu Parasu Kaikadi (Dead) by Lrs. Vs. Babu (Dead) through Lrs. (2004) 1

SCC 681 wherein in paras 15 to 17 it has been observed as under:

15. In Halsbury''s Laws of Englad, 4th Edn., Vol. 26 it is stated:

A decision is given per incuriam when the Court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction

which covered the case before it, in which case it must decide which case to follow; or when it has acted in ignorance of a House of Lords

decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory

force.

16. In State of U.P. v. Synthetics and Chemicals Ltd. This Court observed : (SCC pp. 162-63, para 40)

40. ''Incuria'' literally means ''carelessness''. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle

in relaxation of the rule of stare decisis. The ''quotable in law'' is avoided and ignored if it is rendered, ''in ignoratium of a statute or other binding

authority''. (Young v. Bristol Aeroplane Co. Ltd.) Same has been accepted, approved and adopted by this Court while interpreting Article 141 of

the Constitution which embodies the doctrine of precedents as a matter of law.

17. In Govt. of A.P. v. B. Satyanarayana Rao it has been held as follows :(SCC p. 264, para 8)

The rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on

the same issue or where a court omits to consider any statute while deciding that issue.

It may be seen from the judgment dated 20.1.2004 of the High Court that in the aforesaid judgment no specific reference has been made to the

limitation period prescribed in Clause (ii) to proviso to Section 6 of the Act, though no doubt Section 6 has been generally referred to. Hence, in

our opinion, the observations in paragraph 3 of the aforesaid judgment dated 20.1.2004 have to be construed as per incuriam.

25. In view of the aforesaid discussion, we allow this appeal and set aside the impugned judgment and order dated 21.01.2008. However, it is

open to the respondent-State of Maharashtra to issue a fresh Notification u/s 4 of the Act and take proceedings in accordance with law thereafter.

Appeal allowed. No order as to the costs.