Adi Dravida Adi Andhra Welfare Association Vs Thangavelu Udayar, Tata Iron and Steel Company and The State of Tamil Nadu

Court: Madras High Court

Date of Decision: Nov. 12, 2002

Acts Referred: Constitution of India, 1950 â€" Article 226

Citation: (2003) WritLR 166

Hon'ble Judges: B. Subhashan Reddy, C.J; K. Govindarajan, J

Bench: Division Bench

Advocate: V.K. Vijayaraghavan, for the Appellant; T.R. Rajagopalan for Maruthi Vasan, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. In all these cases, the Aadi Dravidar Aadhi Andhra Welfare Association have challenged the proceedings of the Government and the order

passed by the learned single Judge in favour of the first respondent/M/s. Tata Iron and Steel Company with respect to their land.

2. The first respondent had purchased 129 grounds and 563 square feet in R.S. No. 1848 of Tondairpet Village. The Government of Tamil Nadu

enacted Tamil Nadu Urban Land (Ceiling and Regulation Act) 1978 (hereinafter referred to as "the Act"). After the Act came into force, it is the

case of the first respondent, due to inadvertence, they filed their statement u/s 7(1) of the Act based on which the competent authority proposed to

acquire an extent of 28315 sq.mts out of the total holdings as if the 1st respondent was holding excess land over and above the ceiling limit

prescribed under the Act. The first respondent filed objection for the proposed acquisition. Overruling the said objection, the Competent Authority

and the Assistant Commissioner of Urban Land Tax, Tondairpet in the order dated 21.9.1982 declared that the particulars already furnished in the

draft statement u/s 9(1) of the Act are correct and do not require any modification and consequently ordered that the final statement u/s 10(1) of

the Act be issued treating the land as urban land and the extent of 28315 sq.mts as excess vacant land in excess of the ceiling limit prescribed

under the Act. The first respondent preferred an appeal to the Commissioner for Land Reforms, Chepauk, Chennai u/s 33(1) of the Act. The

Appellate Authority in the order dated 6.12.1983 set aside the order of the Competent Authority and remitted back the matter for fresh disposal

u/s 10(2) of the Act. Subsequently, in the order dated 16.8.84, the Competent Authority declared that the said property was not the land in excess

of the ceiling limit reported and recommended that the excess land may be declared as such. In the meanwhile, the Government of Tamil Nadu in

G.O.Ms. No. 1538 dated 18.8.1988 ordered exemption, but on certain conditions. Challenging the said conditions imposed in the order dated

18.8.1988, the first respondent filed writ petition in W.P. No. 16134 of 1988. The learned Judge in the order dated 14.7.1998 set aside the

Government Order and remitted the matter back to the Government for fresh disposal. Against the order of the learned Judge dated 14.7.1998,

the Association has filed a writ appeal in W.A.SR. No. 16589 of 2002, which is yet to be numbered with a petition to grant leave to file such a

writ appeal.

3. The Association filed writ petition in W.P. No. 23026 of 2001 seeking to issue a Writ of Mandamus forbearing respondents 1 and 2 from

dealing with the land comprised in R.S. No. 1848 of Tondairpet Village without obtaining necessary permission from the Government of Tamil

Nadu and issue suitable directions to the Government to initiate action against respondents 1 and 2 for having failed to comply with the terms and

conditions imposed in the grant of exemption for the use of the land comprised in R.S. No. 1848 either in whole or at any rate to the extent of

excess land exempted for use by the first respondent for its industrial purpose only.

4. Subsequently, the Government of Tamil Nadu had decided to repeal Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978 on the basis of

the fact that the Central Government had repealed the Urban Land (Ceiling and Regulation) Act, 1976. Pursuant to the said decision, Act 20 of 99

was enacted. u/s 4 of the Act 20 of 99 all proceedings relating to any order made or purported to be made under the principal Act, pending

immediately before the commencement of the Act (Act 20 of 99) before any Court, Tribunal or any authority, shall abate. On the basis of the said

provisions, the Government in the proceedings dated 20.1.2000 informed the first respondent that in view of the repealing Act, the proceedings

pending with reference to the land belonging to the first respondent under the provisions of the Act, 1978 was terminated. Challenging the said

proceedings as illegal, arbitrary and unenforceable, the Association filed writ petition in W.P. No. 6042 of 2002

5. We heard Mr. V.K. Vijayaraghavan, learned counsel for the petitioner and Mr. T.R. Rajagopalan, Senior Counsel appearing for the 1st

respondent and Mr. V. Raghupathy, the learned Government Pleader.

6. The Association filed writ petitions stating that the said land was lying vacant and it was almost abandoned and many poor families had put up

their huts for shelter in the said land. As the Aadi Dravida people had put up huts in the said land, they have formed an association under the name

and style of Aadi Dravidar Aadhi Andhra Welfare Association to protect their rights. From the above averments, it is clear that the writ petition

filed by the Association, under the guise of public interest litigation, cannot be sustained, as the said writ petition was filed only to protect the

interest of its members.

7. Though originally the Assistant Commissioner came to the conclusion that the land in question was a surplus land, pursuant to the remand order

of the Commissioner dated 6.12.83, the Assistant Commissioner in the proceedings dated 16.8.84 came to the conclusion that the land in question

cannot be treated as a vacant land u/s 10(2) of the Act and recommended not to treat the same as surplus land under the said Act. Though the

Government granted exemption in G.O.Ms. No. 1538 dated 18.8.1988, they imposed certain conditions to retain the land. Even the said

Government Order has been set aside by the learned single Judge in W.P. No. 16134 of 1998 dated 14.7.98 on the ground that the Government

has passed order without even taking into consideration the proceedings of the Assistant Commissioner dated 16.8.1984, who is the Competent

Authority under the Act. The learned single Judge has remitted back the matter to the Government for passing fresh orders and so the matter

relating to the land in question was pending before the Government on the date of coming into force of Act 20 of 1999.

8. On that basis, the Government informed the first respondent in the proceedings dated 20.1.2000 that no issue is pending before the Government

with reference to their land as all the proceedings are terminated in view of Section 4 of the Act 20 of 99.

9. Learned counsel for the petitioner/association has submitted that Section 4 of Act 20 of 99 will not apply to the present case, as no proceeding

is pending before the Government. Such a stand of the petitioner cannot be countenanced in view of the fact that pursuant to the order of the

learned single Judge dated 14.7.1998, the matter had been sent back to the Government and it was pending before the Government to decide

about the applicability of the Act of 1978 itself to the land of the first respondent. No material is placed before us by the learned counsel for the

petitioner to show that the possession of the same was taken by the Government from the first respondent pursuant to the order under Act 1978.

As a matter of fact, in this case, the order of the Competent Authority declaring the surplus land from out of the land of the first respondent was set

aside by the Commissioner and the matter was remitted back to the Competent Authority, as no other order in this regard by the Competent

Authority is in force, except his proceedings sent to the Government stating that the land in question cannot be treated as a Urban Land under the

Act 1978.

10. While considering a similar case in W.A. No. 1133 of 2002 (THE SPECIAL COMMISSIONER AND TWO OTHERS ..VS.. V.

KANNAN) the Division Bench of this Court, to which one of us was a party (Chief Justice) has held as follows:-

This writ appeal is directed against the order of the learned single Judge arising out of Urban Land (Ceiling and Regulation) Act 1978. The said

act has been repealed later and there is no saving clause as is contained in some legislative statutes. In fact, Section 4 saves only such action by

which the excess land holder has been deprived of his possession and vested the property with the Government. But in so far as the proceedings

before any Authority/Tribunal etc., arising under the Act, the legislative policy expressly states that such proceedings shall abate. Such abatement

will enure to the benefit of the party, who has filed a declaration and as such, the question of the Appellate Authority hearing the appeal does not

arise at all, as the order holding the first respondent as excess land holder under the Urban Land (Ceiling and Regulation) Act had become non-est

in law. In the circumstances, this writ appeal is dismissed"".

11. In view of the above fact, the proceedings pending with the Government with reference to the applicability of the provisions of Act 1978 to the

first respondent''s land is abated in view of Section 4 of the repealing Act 20 of 1999 and so the Government is correct in informing the 1st

respondent in proceedings dated 20.1.2000 that all the proceedings relating to their land had been terminated and no proceedings under the Act

was pending.

12. The learned single Judge has remitted the matter to the Government by setting aside the Government order dated 18.8.1988 on the ground that

the same was passed without taking into consideration of the recommendation of the Competent Authority. When the party is having a valid right in

the land, which is sought to be deprived by imposing certain conditions without even appreciating the necessary proceedings, the learned Judge is

justified in remanding the matter to the Government to look into the said proceedings. So we do not find any infirmity in the said order of the

learned single Judge passed in W.P. No. 16134 of 1988 dated 14.7.1998. Further, the association has no locus standi to maintain the writ appeal

challenging the said order as the Association cannot be construed as an aggrieved party to challenge the order of the learned Judge.

13. The petitioner/association has no legal right to seek a mandamus as sought for in W.P. No. 23026 of 2001 that too against the owner of the

property. Merely because, they have put up huts in the land by encroachment, they cannot sustain the writ petition, as if their fundamental rights

have been infringed. A complaint regarding the infringement of fundamental right can be entertained, only if such a right is accrued legally and not to

sustain the illegal rights as they are trying to sustain their encroachment in the land in question.

14. Moreover, they cannot sustain the writ petition to forbear the land owners from dealing with the land, as the petitioner / Association cannot

even enforce even through the Civil Court. Hence, the prayer sought for in W.P. No. 23026 of 2001 cannot also be sustained.