Damodar Haribaksha Agrawal Vs Ramratidevi and Others, etc. etc.

Letters Patent Appeal No''s. 63, 64, 65 and 66 to 68 of 1987

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Nov. 15, 1988

Citation: AIR 1989 Bom 257 : (1989) 2 BomCR 26 : (1989) MhLj 425

Hon'ble Judges: Dhabe, J; Desai, J

Bench: Division Bench

Advocate: A.M. Tayde, Asstt. Govt. Pleader, V.R. Manohar, for the Appellant; M.S. Deshpande and B.N. Mohta, for the Respondent

Judgement

Dhabe, J.

These appeals by letters patent can be conveniently disposed of by this common judgment. Briefly the facts are that the appellant landlord filed applications in these cases

against the respondents/tenants under several clauses of clause 13 of the C.P. and Berar Letting of Houses and Rent Control Order, 1949 (for short the Rent Control Order). Originally the Rent

Controller rejected the applications filed by the landlord. However, in appeal the Resident Deputy Collector, allowed the appeals and granted permission to the landlord under Cl. 13(3) (v) (iv)

and (vii) of the Rent Control Order. Feeling aggrieved, the tenants preferred writ petitions in this Court. The question raised in the writ petitions was whether the learned appellate authority, who

decided the appeals, had jurisdiction to decide the same. The said question was answered in favour of the tenants by the learned single Judge of this Court in these petitions by his judgment which

is now reported in Madhavrao v. Damodar, 1988 Mh LJ 403. Having held that the learned appellate authority who decided the instant appeals had no jurisdiction to decide the same, the learned

single Judge remanded the matters for a fresh decision according to law by the competent appellate authority. Feeling aggrieved, the landlord has preferred the instant Letters Patent Appeals in

this Court.

2. The only question which arises for consideration In the instant appeals is whether the learned appellate authority, who had decided the instant appeals under Cl. 21 of the Rent Control Order,

had jurisdiction to decide the same. To appreciate the said question, it is necessary to consider the scheme of Cls. 21 and 21-A of the Rent Control Order and the notifications issued by the State

Government under Cl. 21-A of the said Order. Clause 21(I) of the Rent Control Order provides for an appeal against the order of the Rent Controller to the Collector. It is clear from sub-cl (2)

of Cl. 21 of the Rent Control Order that the Collector has power and jurisdiction to decide the appeal. However, cl. 21-A(I) of the Rent Control Order empowers the State Government to invest

the powers of the Collector under Cl. 20 upon any officer by issuing a notification is issued by the State Government under cl. 21 A(I) of the Rent Control Order, the Collector in empowered

under sub-cl. (2) of cl. 21-A to transfer any appeal to any such officer for disposal, and the decision of such officer for disposal, and the decision of such officer has then the effect as if the appeal

is decided by the Collector.

3. IN exercise of the powers conferred by Cl. 21-A of the Rent Control Order, the State Government had issued a notification dated 13-6-1966 investing all the Resident Deputy Collectors with

powers of the Collector and also the Additional District Magistrate Nagpur, for Nagpur district. The said notification is as follows;

Notification under clause 21-A(I) Officers mentioned in column (I) of the Schedule below have been invested with powers of a Collector under clause 2 of the ''C. P. and Berar .....Order,

49",within the areas mentioned against them a column (2) of the Said schedule.

SCHEDULE

Officers Areas

1 2

2

(I) Addl. Dist. Magistrate, Nagpur. Within the limits of Nagpur district.

(2) Resident Dy. Collectors Nagpur, Within the limits their respective districts.

Akola Amravati Bhandara, Buldana

Chanda, Wardha and Yeotmal.

(No. BRA-1164-44054 E. Sachivalaya, Fom. D/- 13 June 1966)"".

4. It is not in dispute that by virtue of the aforesaid notification, the Resident Deputy Collector, akola, was empowered to hear the appeals in the instant cases. However, there was a difficulty

experienced in regard to the orders passed as a Rent Controller by Shri K.G. Bijwal, Dy. Collector, Akola, who was invested with the powers of the Rent Controller under the Rent Control

Order because he was posted as Resident Deputy collector, Akola, who, therefore, by virtue of the aforesaid notification dated 13-6-1966 had power to decide appeals filed under Cl. 21 of the

Rent Control Order. Since as per the aforesaid notification dated 13-6-1966, Shri K.G. Bijwal could technically decide the appeals against his own orders passed a the Rent Controller, a

notification was issued on 7-5-1984 by the State Government in exercise of its powers under clause 21-A of the Rent Control Order, by which it invested the deputy Collector and Special Land

Acquisition Officer (General), Akola with powers of Collector Under cl. 21 of the said Order for hearing appeals against the orders passed by Shri K.G. Bijwal, Dy. Collector, Akola.

4-A. For the sake of convenience of above notification of the State Government dated 7-5-1984 is reproduced below;

Notification

Housing and Special Assistance Department Mantralaya Bombay 400 032. Dated 7th May 1984 Central Provinces and Berar Letting of Houses and Rent Control Order, 1949.

No. BRA-1983/(4199) 11 - In exercise of the powers conferred by sub-clause (I) of Clause 21-A of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949, the

Government of Maharashtra hereby invests the Deputy Collector and Special Land Acquisition Officer (General), Akola, with the powers of a Collector under Clause 21 of the said Order for

hearing appeals made under the said clause 21 against orders passed by shri K.G. Bijwal, Deputy Collector.

By order and in the name of the Government of Maharashtra.

Ss/- N. D. Dandawate.

Under Secretary to Government"".

5. It is relevant to see that when the present appeals were heard by the Resident Deputy Collector, Akola, Shri K.G. Bijwal was not the Resident Deputy Collector, Akola, because he was

already transferred elsewhere. Still the contention raised on behalf of the respondent-tenants in these Letters Patent Appeals before the learned single Judge in the writ petitions was that unless and

until the notification of the State Government dated 7-5-1984 empowering the Dy. Collector and Special Land Acquisition Officer (General) Akola, to hear the appeals against the orders of Shri

K.G. Bijwal, Dy. Collector, was withdrawn or cancelled, the appeals against his order could only be heard by the aforesaid authority, although in the meanwhile it might have been that Shri K.G.

Bijwal was transferred and in his place some other person was posted as Resident Deputy Collector, Akola. The above contention raised on behalf of the respondents found favour with the

learned single Judge, who held that there was no indication in the subsequent notification dated 7-5-1984 that it would operate only till Shri K.G. Bijwal continued or continues as Resident Deputy

Collector, akola. In the absence of such words, the learned single Judge held that unless and until the said notification dated 7-5-1984 was withdrawn or cancelled, the appeals against the orders

of Shri K.G. Bijwal, Deputy Collector, Akola, could only be heard by the Deputy Collector and Special Land Acquisition Officer (General) Akola, as per the said notification.

6. It is not in dispute that after the judgment of the learned single Judge, the aforesaid notification was withdrawn by the State Government with the result that now the matters would be heard by

the Resident Deputy Collector, Akola, as per general notification dated 13-6-1966 investing him with the appellate powers under Cl. 21 of the Rent Control Order. However, the instant Letters

Patent Appeals still need to be decided because according to the learned counsel for the appellants. If the Resident Deputy Collector, Akola, who decided the appeals had then the jurisdiction to

decide the same his order granting permission to the appellants are goods and valid orders with jurisdiction.

7. The learned counsel for the appellants as urged before us that there is a concurrent jurisdiction created to hear the appeals by virtue of the notification dated 13-6-1966 and 7-5-1984. In

support of his submission that there is presumption against implied repeal, the learned counsel for the appellants has relied upon a decision of the Supreme Court in the case of Shambhu Dayal Vs.

State of Uttar Pradesh, of G.P. Singh''s Principles of Statutory Interpretation, 4th Edn. He has thus urged that in the absence of the use of the appropriate phraseology in the notification dated 7-

5-1984 such as ""in supersession of the notification dated 13-6 1966"" or in the absence of the use of the word ""only"" after the expression ""the Deputy Collector and Special Land Acquisition

Officer (General) Akola, ""it should be inferred that there is no implied repeal by the notification dated 7-5-1984 of the earlier notification dated 13-6-1966 to the extent of its subject matter and

thus in regard to the common area under the said notification a concurrent jurisdiction to hear the appeals under Cl. 21 is created.

8. As regards the question of cannot of construction, which should be invoked in interpreting the notifications in question in our view, what is to be primarily looked into is the language of the

statute or the rule or the notification in question. It is well settled that the intention of the authority which issues the notification or which frames the rule has to be gathered from the language used in

the notification or the rule as the case may be. It is these principles of construction which are referred to by the Supreme Court in Shambhu Dayal Vs. State of Uttar Pradesh, cited supra when it

observed in para 5 of its decision in the said case that for determining the effect of the amendment the language of the amending sections ahs to be examined to find out whether the original

sections were intended to be repealed by the amending sections. The intention of the authority, which issues a notification or which frames a rule does not thus depend upon the use of any

appropriate phraseology or words though their use may clearly show the intention of the authority to repeal the earlier notification or rule.

9. similarly, it is difficult to see how the principles of the repeal by implication discussed at page 345 of G.P. Singh''s Interpretation of Statutes, 4th Edn. Would help the petitioner. The tests for

repeal by implication discussed therein are the well known tests of repugnancy evolved under Art. 254 of the Constitution of India. They are-

(1) Whether there is direct conflict between the two provisions;

(2) Whether the legislature intended to lay down an exhaustive Code in respect of the subject matter replacing the earlier law;

(3) Whether the two laws occupy the same field"".

It is however, pertinent to see that if the expression ""in supersession of or any such identical expression is used, it would be a case of not implied but express repeal of the earlier notification.

10. It is clear from the notification dated 13-6-1966 that it is a general notification in the sense that generally it has conferred appellate jurisdiction under Cl. 21 of the Rent Control Order upon the

Resident Dy. Collectors in all districts and upon Additional District Magistrate, Nagpur in Nagpur District. As we have already pointed out, the difficulty experienced by the State Government

was in regard to the orders passed by Shri K.G. Bijwal, Dy, Collector, Akola, in his capacity as Rent Controller, because he was then transferred as Resident Deputy Collector. Akola, in which

capacity by virtue of the above notification dated 13-601966, technically he was empowered to hear the appeals against his own orders. It is for this purpose that by the notification dated 7-5-

1984, a special jurisdiction was created in the Dy. Collector and Special Land Acquisition Officer (General), Akola, to hear appeals under Cl. 21 of the Rent Control Order against the orders

passed by Shri K.G. Bijway. Dy. Collector, Akola, as the Rent Controller. Although the two notification thus occupy a common area in regard to the appellate authority against the order of Shri

K.G. Bijwal as Rent Controller, they cannot be construed to have created consurrent jurisdiction but to prevent the mischief of the possibility of hearing of the appeals by Shri K.G. Bijwal himself

against his own orders as per the general notification dated 13-6-1966. The later notification dated 7-5-1984 conferring special jurisdiction upon the Deputy Collector and the Special Land

Acquisition Officer (General), Akola, must be deemed to have excluded the jurisdiction of the Resident Deputy Collector, Akola, as per the said general notification dated 13-61966 till the

notification dated 7-5-1984 is in force on the basis of the doctrine of occupied filed referred to above.

10-A. When such a special jurisdiction is created, the canon of construction which can usefully be invoked is that a special provision would exclude the general one viz, generalia specialibus non

derogant and generalibus specialia derogant and, therefore, to the extent that the special jurisdiction is created under the notification dated 7-5-1984 against the orders passed by Shri K.G.

Bijwal, the said jurisdiction s excluded from the general notification is excluded from the general notification dated 13-6-1966, previously issued. However into service in the present case is one

discussed in regard to the doctrine of implied repeal at page 348 of G.P. Singh''s Interpretation of Statutes, 4th Edn, under the head ""prior General Law and later Particular Law"" on the basis of

the judgment of the Supreme Court in the case of Harishankar Bagla and Another Vs. The State of Madhya Pradesh, . It is held in the above case that when there is a later particular law on a

particular subject which is inconsistent with the previous general law on the same subject, the previous general law should be by-passed and it is not necessary that the said general law must stand

repealed by the later particular law. The view taken by the Supreme Court is that by-passing a general law does not necessarily amount to repeal or abrogation of that law which remains

unrepealed but during the continuance of the later particular law, it does not operate for the time being in that field. The said principle is similar to the ""Doctrine of Eclipse"" or the ""Doctrine of

Casting a Shadow"". Which is invoked in constitutional law and in particular is interpreting Art. 13 and Art. 254(2) of the Constitution. (See in Deep Chand Vs. The State of Uttar Pradesh and

Others, ; Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others, AND The State of Gujarat and Another Vs. Shri Ambica Mills Ltd., Ahmedabad and Another, . It is thus clear that till

the notification dated 7-5-1984 continued or continues in operation, the general notification dated 13-6-1966 covering the same field would not be operative.

10. The nest question which needs consideration is whether when Shri .K.G. Bijwal is transferred elsewhere from the post of Resident Deputy collector, Akola, it is open to the next incumbent of

the post of Resident Deputy Collector, Akola, to hear the appeals so long as the notification dated7-5-1984 is in operation. As already observed by the learned single Judge, there is no indication

in the notification dated 7-5-1984 that it will operate only till shri K.G. Bijwal continues to occupy the post of Resident Deputy Collector, Akola. He has further rightly observed that unless and

until the said notification is withdrawm or cancelled which in fact the State Government has done, after the impugned judgment was rendered by the learned singel Judge, the notification has to be

given effect to. Since the Resident Deputy Collector in question who had decided the instant appeals had thus no jurisdiction to decide the same in view of the subsequent notification dated 7-5-

1984, which had during its continuance taken away the jurisdiction of the Resident Deputy Collector, Akola to decide the appeals under Cl. 21 of the Rent Control Order by virue of the

notification dated 13-6-1966 in respect of the orders passed by Shri K.G. Bijwal as the Rent Controller and by conferring the said jurisdiction upon the Deputy Collector and Special Land

Acquisition Officer (General), Akola, the orders were rightly held by the learned single Judge as illegal and without jurisdiction.

In the result, the instant appeals filed by the appellants dismissed. However, in the circumstances, there would be no order as to costs in these appeals. Since there is an inordinate delay caused

because of the decision upon the technical question about jurisdiction of the appellate authority, we direct that the competent Rent Control Appellate Authority should decide these appeals within

a period of 3 months from the date of receipt of this judgment. R. and P. be sent immediately.

11. Appeals dismissed.