

Kanthimathy Plantation Pvt. Ltd.

Vs

State of Kerala and Others

Civil Appeal No. 3999 of 1989

(G. L. Oza, Ranganath Misra JJ)

19.09.1989

JUDGMENT

RANGANATH MISHRA, J. –

1. Special leave granted.

2. The short point for consideration in this appeal directed against the judgment of the Kerala High Court dated December 8, 1988 in a writ petition under Article 226 of the Constitution is whether in the absence of a specific provision in Central Act 68 of 1984 amending the Land Acquisition Act, 1 of 1894, the acquisition proceedings taken under the Kerala Land Acquisition Act of 1961, Act 21 of 1962, can be continued under the Land Acquisition Act of 1894.

3. The preliminary notification of acquisition had been made on May 6, 1980 under Section 3(1) of the Kerala Act, corresponding to Section 4(1) of the Act of 1894. Declaration under Section 6 was published on June 2, 1981. Further proceeding in the acquisition matter was held up on account of a challenge before the High Court by way of a writ petition to the declaration. On August 14, 1984, the writ petition was dismissed. The petitioner has conceded that the Land Acquisition Act of 1894 was extended to the State when the Amending Act of 1984 was brought into force. On April 10, 1985, the Land Acquisition Officer issued notice for making of the award. The High Court was again approached for quashing the said notice and the continuance of the proceedings on the footing that in the absence of fresh steps under Section 4(1) and the subsequent procedural steps envisaged under Act 1 of 1894, the award could not be made. On December 6, 1988 by the impugned order the High Court dismissed the writ petition.

4. The legislative entry for acquisition and requisitioning of property is 42 in List III of the Seventh Schedule. Previously, Entry 33 in List I and Entry 36 in List II of the Seventh Schedule dealt with acquisition and requisitioning in the respective fields. But by the Seventh Amendment of the Constitution in 1956 those two entries from Lists I and II were omitted and Entry 42 in the Concurrent List was inserted. The Amending Act of 1984 has been made in exercise of legislative power vested in the Centre by Entry 42 in the Concurrent List. There was a State Act in Kerala known as the Kerala Land Acquisition Act of 1961 which dealt with acquisition and that had been legislated on the basis of the same Entry 42. Under the Amending Act of 1984, the Land Acquisition Act of 1894 was substantially amended. Five new provisions were inserted; twenty-one sections were substantially altered; one section was substituted and another was omitted. The Act of 1984 extended the Land Acquisition Act 1894 to the whole of India excepting the State of Jammu and Kashmir. The provisions were substantially different from the provisions in the Kerala Act. In view of the fact that the Land Acquisition Act of 1894 was extended to the whole of India excepting

one State, the Land Acquisition Act of 1894 became applicable to the State of Kerala and in view of the repugnant provisions, in terms of Article 254 of the Constitution the Kerala Act stood repealed. There is no provision made in the Amending Act to indicate repeal of the State law but application Article 254 automatic to situations where it is applicable and by the operation of the Article the State Act stood repealed and the Central Act became applicable. That such is the actual position is not challenged by counsel for the appellant. In fact, in the notes submitted to this Court that position appears to have been accepted.

5. The only contention which has been advanced before us is that in the absence of a specific provision in the Amending Act of 1984 pending proceedings could not be taken over from the stage they were at the time when the Central Act came into operation to be continued under the Central Act of 1894 to their final stage. This contention has to be squarely rejected and the conclusion of the High Court must stand affirmed. We may refer to the Constitution Bench decision in the case of *Deep Chand v. State of Uttar Pradesh* (1959 Supp 2 SCR 8 : AIR 1959 SC 648). At p. 51 of the report, Subba Rao, J., as he then was, spoke thus :

"It is not disputed that under the proviso to Article 254 (2), the Parliament can repeal the law made by the legislature of the State and that Parliament can repeal the repugnant State law whether directly or by necessary implication. Assuming that Parliament in the present case by enacting the Amending Act repugnant to the State law with respect to the same subject matter i.e., nationalisation of road transport, impliedly repealed the State law, would it have the effect of effacing the scheme already made? If there was a repeal, the provisions of Section 6 of the General Clauses Act of 1897 are directly attracted. The relevant part of Section 6 of the General Clauses Act reads :

"Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not -

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder."

The express words used in clause (b) certainly take in the scheme framed under the repealed Act. It was a thing duly done under the repealed Act."

6. Steps taken under the Kerala Act up to declaration under Section 6 which had been upheld by the High Court were valid steps and there was no effacing thereof on account of the deemed repeal of the State Act by the Amending Act of 1984. It was therefore, open to the Land Acquisition Officer to continue the pending proceeding from the stage where it was at the time of coming into force of the Central Act. There are several precedents of this Court which support this view but it is unnecessary to multiply authorities to support the obvious proposition.

7. The appeal fails and is dismissed. There would be no order for costs.

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