**SUPREME COURT OF INDIA**

S.Palani Velayutham

Vs.

Dist.Collector,Tirunvelveli,T.Nadu

(R.V.Raveendharan and P.Sathasivam JJ.)

07.08.2009

**JUDGEMENT**

**R.V. Raveendran, J**.

1. Leave granted. Heard the learned counsel.

2. Certain lands in Pazhavoor village were acquired under the Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Act.

> "Notice regarding acquisition was served on respondents 3 to 6 who were shown as the owners of the land in the revenue records.
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> Respondents 3 to 6 informed the Collector (first respondent) that they were only life estate holders and that the vested remaindermen should be served with notice. But notice was not issued to them. On the other hand, second respondent passed an award on 3.6.1997. Thereafter, possession of the acquired lands was taken and made into plots and distributed to intended beneficiaries."

3. Appellants 1 to 4 filed a writ petition alleging that the acquired lands originally belonged to one S. Kanthimathinatha Pillai; that under a registered will, he bequeathed the said lands to his grandchildren (appellants and respondents 7 to 18) subject to a life interest in favour of his sons (respondents 3 to 6); and that thus the appellants and respondents 7 to 18, who were the children of respondents 3 to 6, were the vested remaindermen in regard to the said lands. They contended that the acquisition proceedings were illegal and liable to be quashed for want of notice of acquisition to the vested remaindermen who were persons interested. The said contention raised in the writ petition was purely a legal contention.

> "A learned Single Judge of the Madras High Court accepted the said legal contention and held that the acquisition without issue of notice to them was illegal. He therefore allowed the writ petition by order dated 13.11.2001 and set aside the acquisition, reserving liberty to respondents 1 and 2 to initiate fresh acquisition proceedings after appropriate notice to the writ petitioners. The order of the learned Single Judge was challenged by respondents 1 and 2 in a writ appeal."

4. A division bench of the High Court, by the impugned order dated 17.3.2008, allowed the appeal, set aside the order of the learned Single Judge, and dismissed the writ petition. The division bench held that the Collector was not obliged to serve the notice of acquisition on anyone other than the persons whose names were entered in the revenue records as owners; and that as the vested remaindermen, had not got their names entered as holders/owners in the revenue records, they were not entitled to any separate notice. The division bench also issued a direction to respondents 1 and 2 herein to initiate criminal action against the appellants and private respondents 7 to 18 herein "for playing fraud on the Government and the Court, for making wrongful gains by filing a writ petition which was not maintainable." The appellants have challenged the said judgment.

5. The first question is whether the vested remaindermen of acquired lands were entitled to notice of acquisition, even if their names were not entered in the revenue records. The Collector (or others exercising the functions of Collector) is required to issue, in addition to the public notice to all persons interested, individual notices to persons known or believed to be interested in the acquired land. There is a significant difference between `persons known or believed to be interested' and `persons interested'. A `person interested' no doubt would include all persons claiming an interest in the compensation on account of the acquisition of land, including the vested remaindermen.

6. On the other hand, `a person known to be interested' refers to persons whose names are recorded in the revenue records, as persons having an interest in the acquired lands, as the owner, sharer, occupier or holder of any interest. They are entitled to notice. There is no obligation on the part of the Collector to hold an enquiry to find out whether there are any other persons interested in the land or whether there are any vested remaindermen, in addition to those whose names are entered as the owners/holders/occupiers of the acquired land. Nor does the Collector have any obligation to issue notices to persons whose names are not entered in the revenue records. This does not mean that the persons whose names are not entered in the revenue records do not have any right in the acquired land or that they lose their claim to compensation. Their interests and rights in regard to compensation are protected by the provision relating to apportionment of compensation and provision for referring the disputes to a civil court for apportionment of compensation.

7. Persons are "believed " to be interested in the acquired land, if their names are disclosed to the Collector as persons having an interest in the acquired land (though their names are not entered in the revenue records) either in correspondence or otherwise and whom the Collector believes as having an interest in the acquired lands. The question whether a person is believed to be interested in the acquired land, would depend upon the subjective satisfaction of the Collector. The Collector is not expected to hold mini enquiries to find out whether the persons whose names are disclosed, (other than those whose names are entered in the revenue records) are persons interested in the acquired land or not. Therefore no person has any right to assert that the Collector should recognise him to be a person interested in the acquired land, and issue notice to him, merely because someone informs the Collector that such person is also having an interest, if his name is not entered in the revenue

records. Of course, if the Collector is prima facie satisfied from his records that someone other than those whose names are entered in the revenue records, are also interested in the land, he may at his discretion, issue notice to them. If he is not satisfied, he need not issue notice to them. Who is to be `believed to have an interest' is purely subjective administrative decision. Such persons have no right to claim that notice of acquisition should be issued to them.

7. Therefore we agree with the division bench that notice of acquisition has to be issued only to those whose names are entered or recorded as owners/ holders/occupiers in the revenue records and not to others.

8. The next question is whether the High Court could have directed prosecution of writ petitioners and the private respondents. Let us recall the facts relevant once again in this context. Respondents 3 to 6 are the life interest holders whose names are entered in the revenue records. Appellants and respondents 7 to 18 are their children, who are the vested remaindermen in regard to the acquired lands. Notices were served in the acquisition proceeding on respondents 3 to 6. They stated that they were only life-interest holders and notice should be served on the vested remaindermen also. But that was not accepted and the acquisition was completed. A writ petition was filed by the appellants challenging the acquisition on the ground that the vested remaindermen in regard to the acquired lands were not issued notice of acquisition. It is relevant to note that they did not allege or contend that they did not have knowledge of the acquisition. The learned Single Judge accepted the contention and set aside the acquisition proceedings. In the writ appeal, respondents 1 and 2 contended that the persons other than those whose names were entered in the revenue records were not entitled to notice and therefore the learned Single Judge had erred in quashing the acquisition, that too after possession of the acquired lands was taken and they were distributed as plots to landless weaker sections. It was not the case of respondents 1 and 2 that the persons claiming to be vested remaindermen were served any notice. The Division Bench allowed the writ appeal filed by respondents 1 and 2 herein.

9. The Division Bench reversed the decision of the learned Single Judge purely on a legal ground, that the persons whose names are entered in the revenue records as owners, are alone entitled to notice, and others though may have an interest, will not be entitled to notice of acquisition. It did not record any finding that the claim of the writ petitioners (appellants herein) that they and respondents 7 to 18 were the vested remaindermen, was false.

> "The division bench however drew an inference that the persons claiming to be the vested remaindermen, being close relatives of the persons who were served notices, should be imputed with the knowledge of the acquisition proceedings and therefore their writ petition contending that they did not have notice of the acquisition, was misconceived. But what was missed was the fact that the specific contention of appellants was that they were entitled to notice of acquisition from the Collector and that such notice was not given, and that they did not contend that they did not have knowledge of acquisition. There was also no material to show that the writ petitioners and the private respondents, who are ordered to be prosecuted, had furnished any

false information or made any false claim. There was no evidence of any fraud. When a writ petition is filed seeking to enforce or protect the interests or rights of the writ petitioners, purely based on legal contentions, it cannot be termed that filing of the writ petition was "playing of a fraud by the writ petitioners against the Government or court."

10. Courts should avoid the temptation to become authoritarian. We have been coming across several instances, where in their anxiety to do justice, courts have gone overboard, which results in injustice, rather than justice. It is said that all power is trust and with greater power comes greater responsibility.

> "The power to order a prosecution has to be used sparingly and in exceptional circumstances, either to maintain the majesty of law or to ensure that clearly established offences relating to fraud/forgery with reference to court proceedings do not go unprosecuted or unpunished. Ordering prosecutions in a casual manner while reversing the decision of a learned Single Judge in a writ petition, without any investigation or enquiry either by itself or by any independent investigation agency, is to be deprecated. Criminal law cannot be set into motion against a litigant, as a matter of course."

11. On several occasions, this Court has deprecated certain authoritarian practices which result in hardship and prejudice to litigants and even non-parties. The well-known instances are : (1) passing adverse remarks against government officers or others who are not parties to the lis, without giving an opportunity to them to show-cause or justify their action; (2) directing the state to recover any losses or damages or costs from a particular officer (who is not a party) by holding him personally liable for some alleged act or omission, without giving him any opportunity to explain his position, conduct or action; (3) directing prosecution of parties and/or non-parties, in cases which merely warrant levy of costs or admonition.

12. Under the Indian Penal Code, offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any court, the offences enumerated are : giving false evidence or fabricating false evidence (Sec. 191 to 193); giving or fabricating false evidence with intent to procure conviction (Sec. 194 and 195); threatening any person to give false evidence (Sec. 195A); using evidence known to be false (Sec. 196); using as true a certificate known to be false (Sec. 198); making a false statement in a declaration which is by law receivable as evidence (Sec. 199); using as true any declaration receivable as evidence, knowing it to be false (sec. 200) causing disappearance of evidence of offence, or giving false information to screen offender (Sec. 201); intentional omission to give information of offence by person bound to inform (Sec. 202); giving false information in respect of an offence (Sec. 203); destruction of document or electronic record to prevent its production as evidence (Sec 204); false personation (sec. 205); fraudulent removal/concealment of property (sec. 206); fraudulent claim to property (sec. 207); fraudulently suffering or obtaining decree for sum not due (sec. 208 and 210); dishonestly making a false claim in Court (Section 209); and intentional insult or interruption

to public servant sitting in judicial proceedings (sec 228). Section 195 of Code of Criminal Procedure provides that no court shall take cognizance of any offence punishable under sections 172 to 188 (dealing with the contempt of the lawful authority of public servants) or sections 193 to 196, 199, 200, 205 to 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, except on the complaint in writing of that court by such officer of the court as that court may authorise in writing in this behalf, or of some other court to which that court is sub-ordinate.

13. The Division Bench has directed that the respondents in the writ appeal before it (appellants and respondents 3 to 18 herein) should be prosecuted "under the relevant provisions of law, including IPC, for playing a fraud on the Court with wrong particulars". The Division Bench has not specified the provision under which they should be prosecuted nor the offence of which they are accused. The only provision of relevance is section 209 of the Penal Code, which provides that whoever, fraudulently or dishonestly, or with intent to injure or annoy any persons, makes in a court any claim which he knows to be false, is liable to punishment as provided under law. But four things stand out in this case. The first is that raising a purely legal contention in a writ petition cannot give rise to an inference that the writ petitioners had fraudulently or dishonestly or with intent to injure or annoy anyone, made any claim knowing it to be false. The second is that there was also no material before the division bench to show that any person having an interest in the acquired lands had played fraud upon the government or the court. The third is that respondents 7 to 18 who had neither initiated any legal proceedings, nor took any action in the matter, could not have been ordered to be prosecuted, thereby showing non-application of mind in issuing the direction for prosecution. The fourth is that if a fraud had been played on the court, the High Court ought to have made a complaint in writing through an authorised officer of the court, instead of directing respondents 1 and 2 to prosecute the parties.

14. On the facts and circumstances, the direction to initiate criminal prosecution against the appellants and the respondents 3 to 18 was wholly unwarranted. We therefore allow this appeal in part and set aside the direction to initiate criminal proceedings against the appellants and respondents 3 to 18.