SUPREME COURT OF INDIA

V. Krishnamurthy

Vs.

State of Tamil Nadu

C.A.No.7703-7704 of 2009

(Abhay Manohar Sapre and Dinesh Maheshwari,JJ.,)

26.03.2019

JUDGMENT

Abhay Manohar Sapre,J.,

1. These appeals are directed against the final judgment and order dated 11.04.2008 passed by the High Court of Judicature at Madras in W.A. Nos.1030 & 1031 of 1998 whereby the Division Bench of the High Court allowed the appeals filed by the respondent-State and set aside the order dated 19.06.1998 of the Single Judge in W.P. Nos.11058 & 11059/1989.

2. In order to appreciate the controversy involved in these appeals, it is necessary to set out a few relevant facts infra.

3. The appellants herein are the writ petitioners and the respondents herein are the respondents in the writ petitions out of which these appeals arise.

4. The Agricultural Horticultural Society(Society) is the appellant in C.A. No.7704/2009 which is registered under the Tamil Nadu Societies Registration Act, 1975 whereas the appellant in C.A. No.7703 of 2009 is its Secretary. The State of Tamil Nadu- respondent No.1 herein had allotted the land in question to the appellant-Society on certain terms and conditions by agreement dated 28.04.1980.

5. By order dated 05.08.1989 (GO Ms. No.1259), the respondent-State resumed the land in question in terms of clause 4 of the allotment order for public purpose, namely, development of sports facilities without affecting the environment and development of horticulture and horticulture research.

6. The appellant-Society felt aggrieved by the said order and filed two Writ Petitions (Nos.11058 and 11059 of 1989) in the Madras High Court. The challenge to the order was essentially based on the plea of mala fides. The Single Judge of the High Court, by order dated 19.06.1998, allowed the writ petitions and quashed the resumption order dated 05.08.1989.

7. The respondent-State felt aggrieved and filed two writ appeals (Nos.1030 & 1031/1998) before the Division Bench of the High Court. Earlier, the writ appeals were withdrawn but later on they were restored to their files on an application made by the State in that behalf for their disposal according to law.

8. By impugned order, the Division Bench allowed the writ appeals and while setting aside the order passed by the Single Judge dismissed the writ petitions giving rise to filing of these appeals by the writ petitioners in this Court.

9. So, the short question, which arises for consideration in these appeals, is whether the Division Bench was justified in allowing the appeals and, in consequence, was justified in upholding the resumption order dated 05.08.1989 of the respondent- State in relation to the land in question.

10. Heard Mr. Sanjay R. Hegde, learned senior counsel for the appellants and Mr. Balaji Srinivasa, learned AAG for the respondent-State.

11. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in these appeals.

12. As mentioned above, the appellants (writ petitioners) had impugned the resumption order dated 05.08.1989 essentially on the plea based on mala fides. This plea of mala fides was based on political rivalry. According to the appellants, since they were the members of the opposition party, the party in power at that time issued the impugned resumption order.

13. This plea found favour to the writ court (Single Judge) but the Division Bench reversed the view of the Single Judge and dismissed the writ petitions. In the other words, the Division Bench held that a plea of mala fides raised by the appellants (writ petitioners) to impugn the action was not factually and legally sustainable.

14. In this Court also, the learned counsel for the appellants (writ petitioners) reiterated the same plea of mala fides for assailing the resumption notice dated 05.08.1989 but we find no merit therein for the following reasons:

15. First, admittedly the land in question belongs to the State; Second, clause 4 of the allotment order empowers the State to resume the land either in the event of violation of any of the terms and conditions of the allotment order by the appellant or if it is required for public purpose, the State is entitled to exercise their right of resumption of the land; and Third, the State admittedly exercised the right of resumption of the land for a public purpose.

16. A plea of mala fides, in our view, has no factual and legal foundation to sustain because we find that it is only based on the averment that since the appellant happened to be a member of the opposition party, the party in power at that time had taken the impugned action to resume the land against them. Such averments by itself do not constitute a plea of mala fides without there being any substantial material in its support. In

our view, the appellants having failed to point out any legal infirmity in the resumption order except to take the plea based on mala fides, the Division Bench was right in upholding the resumption order as being legal and in conformity with clause 4 of the allotment order. We concur with the view taken by the Division Bench calling for no interference. Needless to observe, the State will ensure that the land in question would only be used for the public purpose and not for other purposes.

17. Learned counsel for the appellants further pointed out from the impugned order that the Division Bench has made some disparaging remarks against them at some places in the impugned order. In our view, those remarks were irrelevant for deciding the short controversy involved in the case.

18. In view of the foregoing discussion, the appeals fail and are accordingly dismissed.