ANDHRA PRADESH HIGH COURT

Bapatla Venkata Subba Rao

Vs.

Sikharam Ramakrishna Rao

Appeal No. 1006 of 1952 ,Bapatla, in O S. No 30 of 1951

(Chandra Reddy, J.)

17.10.1957

JUDGMENT

Chandra Reddy, J.

1. This appeal is by the 1st defendant against the judgment of the Subordinate Judge, Bapatla. The 1st respondent laid an action in the Court of the Subordinate Judge of Bapatla or a declaration that the order of the Collector in proceedings under the Madras Hereditary Village Offices Act dated 5-8-1950 made in appeal from the order of the Sub-Collector appointing the 1st defendant as the karnam of Bapatla was illegal. The facts giving rise to this appeal may be briefly set out:

2. Originally there was one karnam for the whole of the village of Bapatla. The plaintiff belonged to the family which held that post hereditarily from time immemorial, his father Venkatachalpathi Rao being the last. There was also an assistant karnam of the village and 1st defendant's father was appointed to the post on 10-8-1929. In 1948, there was a bifurcation of Bapatla into two villages, east and west. The plaintiff's father was appointed karnam of Bapatla West and the 1st defendant who then happened to be the assistant karnam was appointed as the karnam of Bapatla East, the post of assistant having been abolished. At the time of the proposals for the appointment of karnam for Bapatla, cast, the 1st respondent applied to be considered for the post on the ground that the selection for both the posts should be made from the members of his family. The Tahsildar sent up proposals to the Sub-Collector suggesting that the 1st defendant who was acting as the assistant karnam should be appointed in preference to the 1st respondent and this was accepted by the Sub-Collector. On appeal, the order of the Sub-Collector was confirmed. It is to set aside this order that the present suit was instituted by the 1st respondent.

3. The defence to the suit was that a Civil Court had no jurisdiction to entertain a claim to any of the offices specified in Section 3 of Madras Hereditary Village Offices Act (hereinafter called the Act) and that the Collector could choose the best qualified person to fill the office from among the families of last holders of the office under Section 6(1) of the Act and B. S. O. 148, Clause (2) and the choice need not be confined to the members of the family which had hereditary right to the office extinct.

4. The lower Court overruling the objections decreed the suit. It held that the Civil Court's jurisdiction was not excluded, that the provisions of Section 6 (1) were mandatory and that persons belonging to a family which had hereditary right in the office should be selected for the post newly created under Section 6(1). Aggrieved by that judgment, the 1st defendant has brought this appeal.

5. In support of the appeal, Mr. Kupptiswamy advanced three contentions :

> (1) that the view regarding the competency of the Civil Court to take cognisance of suits of the above description is erroneous;
> (2) that the selection should be made from amongst members of both the appellants and 1st respondent's families as the office of assistant karnam which was abolished was also hereditary; and
> (3) that the relevant provisions of the Hereditary Village Offices Act. should be struck down as they offend against Chapter III of the Constitution of India.

6. The answer to be given on the first point bearing on jurisdiction depends upon the interpretation of Sections 13 and 21 of the Act. Section 13 recites :

> 'Any person may sue before the Collector for any of the village offices specified in Section 3 or for recovery of the emoluments of any such office, on the ground that he is entitled under Sub-Section (2) or (3) of Section 10 of the Madras Proprietary Estates' Village Service Act, 1894, or under Sub-Section (2) or (3) or Section 10 or Sub-Section (2) or (3) of section II or Section 12 of this Act, as the case may be to hold such office and enjoy such emoluments; or, being a minor, may sue before the Collector to be registered as heir of the last holder of any such office.".

Section 21 excludes the jurisdiction of Civil Courts to decide any claim to succeed to any of the offices specified in Section 3 or any question as to the rate of the emoluments of any such office or except as provided in proviso (II) to Sub-Section (1) of Section 13, any claim to recover the emoluments of any such office. The result of a combined reading of these two sections is that matters which fall within the purview of Section 13 cannot be agitated in a Civil Court. In order to attract Section 13, the claim should be made on the ground that he is entitled under Sub-Section (2) or (3) of Section 10 etc. Here, we are not concerned with Section 11 or 12 of the Act.
It was contended for the appellant that it comes within the scope of Sub-Section (2) which provides that the succession shall devolve on a single heir according to the general custom and the rule of primogeniture governing succession to impartible zamindaris in Southern India. It is difficult to accede to this contention. An appointment made for the first time under Section 6 on the bifurcation of a village cannot amount to a devolution of succession. It is only when a person succeeds to another that Sub-Section (2) of Section 10 would apply; and an appointment made under Section 6 cannot come within the ambit of Sub-Section (2) of Section 10. Sections 12 and 13 of the Act deal only with a claim to succeed to office. This view of mine is reinforced by decided cases of the Madras High Court. In *Ramakrishnayya v. Venkata Ranga Rao*[1]. it was decided that Section 21 of the Act did not exclude the

[1] ILR 56 Mad 134

jurisdiction of Civil Courts to entertain a suit brought by a person whose hereditary right was overlooked by the Revenue Officials and that a claim of that nature fell outside the scope of Sections 13 and 21. This was approved of by the Full Bench of the same Court in *Rangareddy v. Maramreddy*[2], Mr. Kuppuswamy relied on *Rama Rao v. Gopalakrishnamurthy*[3], I do not think I can derive any assistance from that judgment. All that was laid down there was that if a Tribunal while acting within its jurisdiction reached an erroneous decision in law or fact as to the right of a rival claimant to the karnam's office, Section 21 bars a suit in a Civil Court. There are no observations which can lend any support to the contention that an order to be made under Section 6 (1) of the Act is ruled by Section 13 and that the Civil Court's jurisdiction is ousted to entertain suits of any nature arising under the Act. It follows that the right conferred on the plaintiff by Section 6 (1) of the Act could be enforced by a suit. This contention, therefore fails and is rejected.

7. The second point also seems to be devoid of any substance. The position taken by the 1st defendant in the lower Court was that there was an absolute discretion in the Sub-Collector to make the selection, that Section 6 (1) of the Act did not impose an obligation on the appointing authority to confine the selection to the family which had hereditary right to the office abolished and that the 1st defendant was as much entitled to be considered for the appointment as the 1st respondent, as he came from the family of the last holders, though non-hereditary. This argument was negatived and rightly in my opinion. The ground of appeal raised also the same point. Seeing the futility of the contention as put forward in the trial Court, the appellant wants to change the front and adopt a totally different attitude. He wants to urge that the position of the assistant karnam of Bapatla held by his father and afterwards by himself was also hereditary and therefore would fall under Section 6 (1). It is to support this plea that an application for admission of additional evidence was also filed. The submission now made is utterly opposed to the defence raised in the written statement. It was repeatedly stated there that the office of the assistant karnam was non-hereditary. That being the case, I am not inclined to permit him to raise a plea inconsistent with that taken in the trial Court. It is not necessary to indulge in citation for the position that a party would not be permitted to put forward a new plea contrary to the one taken by him in the trial Court. That apart, there is no material in support of his contention. The application cannot come under Order 41, Rule 27, C.P.C. Consequently, this point has to be decided against the appellant.

8. There remains the argument that the provisions of the Madras Hereditary Village Offices Act are ultra vires the Constitution in that they are hit at by Chapter III of the Constitution in dealing with fundamental rights. In dealing with this, it has to be remembered that this contention was not advanced in the lower Court and for the first time was raised in the memorandum of grounds. In this context, it is pertinent to remember that the appellant was appointed as a hereditary karnam under the Act. But for the Act, he would not have had any claim to be appointed to the office of the karnam. That he put forward a claim to the office under the Act is plain from his written statement. In such a situation, should he be permitted to advance this argument for the first time, i.e., to question the validity of the very provisions under

[2]ILR (1938) Mad 841

[3]1956 Andh LT 305 : AIR 1957 And Pra 894

which he sought the post and was appointed to it? In my considered judgment, there would be bo justification to allow him to raise this objection for the first time here. But for the Act, the 1st defendant would not have been chosen to fill up the post. He owes his position only to the Act.

9. It is now fairly well settled that a person who had derived an advantage under a statute could not be permitted to assert its invalidity when ultimately it has been decided against him under the statute. In Rottschaefer's Constitutional Law at page 29 the position is stated thus :

> "A person who would otherwise be entitled to raise a constitutional issue is sometimes denied that right because he is estopped to do so. The factor usually present in these cases is conduct inconsistent with the present assertion of that right, or conduct of such character that it would be unjust to others to permit him to avoid liability on constitutional grounds. A person may not question the constitutionality of the very provision on which he bases the right claimed to be infringed .. . . and a person who has received the benefits of a statute, may not thereafter assert its invalidity to defeat the claims of those against whom it has been enforced in his own favor."

A' passage from Halsbury's Laws of England (3rd edition) Vol. II page 150 (Simond's edition) is also of some assistance :

> "The qualification of a person to act as a relator could be successfully impeached if it could be shown that, at the time, he acquiesced in the election to which he objected; or that he had concurred in other election of like kind with that to which he objected, and which was subject to the same objection or that he stood in the same situation as the defendant, so that he would have no title to his own office if his objection to the defendant's election were successful; or that he was raising an objection which might have been put forward against himself at a previous election;....."

10. In *Queen v. Lofthouse*[4], it was remarked by Blackburn, J. that a relator who kept his objection until after he was defeated was not a fit person to be entrusted with the prerogative process of the Crown. Much to the same effect are the observations of Justice Shee at page 444 :

> "On the other point, I agree that we ought not to assist this relator. Cases have been brought to our notice which shew that where a man with the knowledge of the irregularity of a particular course, nevertheless concurs in it, he cannot afterwards take advantage of the irregularity. In the present case, Mr. Maw voted on a voting paper which he knew or believed to be irregular, He therefore comes precisely within the rule enunciated by Lord Kenyon C.J. in *Rex v. Clarke*[5]. 'The Court have on several occasions said., and said wisely, that they would not listen even to a corporator who has acquiesced or perhaps concurred in the very act which he afterwards comes to complain of when it

[4](1866) 1 QB 433

[5](1800) 1 East 38 at pp. 46-47

> suits his purpose; and so far I think we have determined rightly.' And there are other cases to the same effect. The present relator has concurred in the very act he now complains of, for he has used voting papers in blank in this very election and in others. Therefore, in the exercise of our discretion, we ought not to assist him."

11. In *A. R. V. Achar v. Madras State*[6], reservation of seats to particular communities under the Madras City Municipalities Act (Act IV of 1919) was questioned as unconstitutional, being opposed to the provisions of Articles 14 and 15 of the Constitution. One of the grounds upon which the Bench consisting of Rajamannar, C.J., and Justice Venkatrama Ayyar refused to issue a writ for information in the nature of quo warranto was that the petitioner

> "has acquiesced in the election to which he objects or that he is raising an objection which might have been put forward against himself at a previous election or that while cognisant of the objection he voluntarily so acted to enable the respondent to exercise the office." In The Panchayat, *Pandarapadu v. State of Andhra*[7], Justice Bhimasankaram concurred in the principle enunciated by the Bench in 1954-1 Mad LJ 102 . In *Madhao Gopal v. Secretary of State*[8], Justice Niyogi and Justice Gruer stated the rule thus :
> "It is true that an ultra vires statute cannot be validated by acquiescence but it is equally true an acquiescing party, may be estopped from questioning it : See The Doctrine of Ultra Vires, Street, page 436, Edition 1930."

In W. P. No. 375 of 1954 (Andhra), Satyanarayana Raju, J. held that a person who was himself appointed under the Madras Hereditary Village Offices Act could not question the validity of the Act. This is ad idem with the instant case. In these circumstances, I do not think there is any ground to permit the appellant to contend for the first time that the very Act but for which he would not have had any right to the office, was unconstitutional.

12. Mr. Kuppuswamy, the learned counsel for the appellant, lastly wanted to urge that it is Section 6 (1) of the Act that infringes the fundamental rights enshrined in Chapter III of the Constitution. For one thing, this point was developed at the last stages of the argument and this was not referred to even in the memo of grounds and in fact in ground No. 7 it is specifically mentioned that the claim of the appellant is not hit at by the terms of Section 6. He cannot be permitted to raise this ground in the course of the arguments. That apart, in regard to this contention, the appellant does not stand on a better footing. It is clear from paragraph 5 of the written statement that it is by virtue of Section 6 that the appellant came to be appointed. Both parties claimed under Section 6 (1) but the difference between them was as regards the interpretation to be placed on that section. Be that as it may, there are no justifiable grounds to allow him to make this submission for the first time at the fag end of the arguments, a point which was not even taken in the memorandum of grounds of appeal.

13. In the result, the judgment under consideration is confirmed and the appeal

[6] 1954-1 Mad LJ 102
[7] 1956 Andh LT 781 : AIR 1957 And Pra 355
[8] AIR 1939 Nag 44

dismissed with costs of the first respondent.

Appeal dismissed.