



W.A.(MD) No.659 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2022

CORAM

THE HONOURABLE Mr.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE Mr.JUSTICE KUMARESH BABU

W.A.(MD) No.659 of 2009

- 1.Sampath Kumar (Died)
- 2.Renukadevi
- 3.Lakshi Narayanan
- 4.Viswanathan
- 5.Muthala Alamely Mangammal
- 6.S.Sivasankari ... Appellants

[Appellants 5 & 6 are represented through their Power of Agent
R.Varatharajar]

[A1 died. A5 & A6 are brought on record as LRs
of deceased first appellant viz., R.Sampathkumar,
Vide order of Court dated 14.11.2022 made in
CMP.No.11767 of 2022 in W.A.(MD) No.659 of 2009]

Vs

- 1.The State of Tamil Nadu
Rep. by Secretary to Government
Social Welfare Department
Fort St.George, Chennai - 600 009.

- 2.The Special Tahsildar (ADW)
Virudhunagar.

...Respondents



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Prayer : Writ Appeal filed under Clause 15 of Letter Patent against the order dated 08.09.2008 passed in W.P.No.6532 of 2007 on the file of this Court.

For Appellants : Mr.A.Sivaji

For Respondents : No Appearance

ORDER

[Order of the Court was made by R.SUBRAMANIAN.J]

Aggrieved by the dismissal of the writ petition in which the appellants challenged the provisions of Section 7(2) and 12 of Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 [hereinafter referred to as 'Act 31/1978'] they are before us.

2. The petitioners whose lands were acquired under the provisions of Act 31/1978, challenged the above two provisions on the ground that they are discriminatory. The discrimination was derived from the fact that while the Land Acquisition Act, 1894 [Central Act 1 of 1894] provided for solatium of 30% and interest at the rate of 9% for the first one year from the date of taking possession and 15% thereafter, Act 31/1978 provided for 15% solatium and 6% interest. Reliance was also placed, to justify the challenge, on the judgment of the Hon'ble



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Supreme Court in *Nagpur Improvement Trust Vs. Vithal Rao* reported in *[(1973) 1 SCC 500]* and *Union of India and Another Vs. Tarsem Singh & Others* reported in *[(2019) 9 SCC 304]*.

3. The writ Court dismissed the writ petition on the conclusion that the issue is squarely covered by the judgement of the Hon'ble Supreme Court in *State of T.N. and others Vs. Ananthi Ammal and Others* reported in *[(1995) 1 SCC 519]* wherein the Hon'ble Supreme Court has upheld the provisions of Act 31/1978.

4. Mr.A.Sivaji, learned counsel appearing for the appellants would vehemently contend that the Hon'ble Supreme Court did not go into the question of difference in compensation payable while deciding *Ananthi Ammal case* and the said issue was not specifically raised inasmuch as the provisions of Act 1 of 1894 and Act 31/1978 were similar at the time when the challenge was made in 1981. The enhanced solatium and enhanced interest under the Land Acquisition Act 1894 was introduced by Amending Act 68/1984. Therefore, according to Mr.A.Sivaji, the judgment of Hon'ble Supreme Court in *State of T.N. and others Vs. Ananthi Ammal and Others* reported in *[(1995) 1 SCC 519]* cannot be taken



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as approving the provisions of Section 7(2) and 12 of Act 13/1978. He would also invite our attention to the Seven Judge Bench judgment of Hon'ble Supreme Court in *Nagpur Improvement Trust Vs. Vithal Rao* reported in *[(1973) 1 SCC 500]*, wherein the Hon'ble Supreme Court had pointed out that the compensation cannot be the different based on the purpose for which the land is acquired. Directing us to the judgment in *Union of India and Another Vs. Tarsem Singh & Others* reported in *[(2019) 9 SCC 304]*, Mr.A.Sivaji, learned counsel appearing for the appellants would submit that once the Hon'ble Supreme Court has struck down Section 3J of the National Highways Act as unconstitutional on the very same ground that it is discriminatory, the provisions of Act 31/78 should also be held to be discriminatory and thus *ultra vires* the Constitution.

5. We have considered the contention of the learned counsel for the appellants. We are unable to subscribe to the said submissions of the learned counsel. Our reasons are as follows :

Act 31/1978 was subject matter of challenge before this Court soon after its enactment. This Court held that the Act is *ultra vires* and struck it down. The State preferred an appeal and on appeal, the Hon'ble Supreme Court considered each and every provision of the Act



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and concluded that they are not discriminatory. The Hon'ble Supreme Court however faulted the State for having provided for payment of compensation in instalments and to that extent, the provisions of Section 11(1) were held to be *ultra vires*. We therefore, have the judgment of the Hon'ble Supreme Court which deals with this particular enactment namely Act.31/78 and upholds the same. No doubt, in *Union of India and Another Vs. Tarsem Singh & Others* reported in *[(2019) 9 SCC 304]*, the Hon'ble Supreme Court has held that the provisions of Section 3J which provides that the Land Acquisition Act, 1894 will not apply to acquisition under the National Highways Act, is *ultra vires* to Constitution and it also lays down that the compensation paid should be equal immaterial of the public purpose. But that by itself will not arm us with the power to declare a provision of Act 31/78 as unconstitutional or *ultra vires* more so when the same have been affirmed by the Hon'ble Supreme Court on an earlier occasion.

6. We do not think that the enactment, constitutional validity of which was upheld, could become *ultra vires* because of subsequent pronouncements of



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Hon'ble Supreme Court declaring a similar or related provisions, *ultra vires* to the Constitution. We are therefore unable to fault the writ Court for having dismissed the writ petition on the ground that it is squarely covered by the decision of the Hon'ble Supreme Court in ***State of T.N. and others Vs. Ananthi Ammal and Others*** reported in ***[(1995) 1 SCC 519]***. The writ appeal therefore fails and it is dismissed accordingly. No costs.

[RSMJ] [KBJ]
30.11.2022

Index : No
Speaking order
ds

To:

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