The State Of Tamil Nadu & Ors vs A. Gurusamy on 17 February, 1997

Equivalent citations: AIR 1997 SUPREME COURT 1199, 1997 AIR SCW 1230, (1997) 3 JT 346 (SC), 1997 (3) JT 346, 1997 (2) SCALE 344, 1997 (3) SCC 542, 1997 (3) ADSC 6, (1997) 2 SCR 104 (SC), 1997 (1) UJ (SC) 668, 1997 ADSC 3 6, (1997) 1 CTC 564 (SC), 1997 UJ(SC) 1 668, 1998 (1) SERVLJ 179 SC, (1997) 1 ICC 787, (1997) 2 MAD LJ 49, (1997) 3 SCJ 1, (1997) 2 SCALE 344, (1997) 1 LJR 573, (1997) 1 MAD LW 686, (1997) 2 CURCC 26, (1997) 2 SUPREME 758

Bench: K. Ramaswamy, G.T. Nanavati

PETITIONER:
THE STATE OF TAMIL NADU & ORS.

Vs.

RESPONDENT:
A. GURUSAMY.

DATE OF JUDGMENT: 17/02/1997

BENCH:
K. RAMASWAMY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted. We have heard learned counsel for both the parties.

This appeal by special leave arises from the judgment of the single Judge of the Madras High Court, made on 23.3.1996 dismissing S.A. No. 228/96 on the ground that the declaration granted by the Courts below was concurrent finding of fact. Admittedly, when the respondent was studying in the school, he was described as a member of 'Thotti' community. The Presidential notification issued under Article 341(1) of the Constitution read with Article 366(24) of the Constitution notifies 'Thotti' to be a Scheduled Caste as Item No.67 of the Presidential notification.

Subsequently, in 1970, the respondent had obtained a certificate from the Revenue Divisional Officer indicating him to be 'Kattunaicken' as Item No.9 of the list of the Scheduled Tribes in the State of Tamil Nadu issued by the President under Article 342(1) read with Article 366(25) of the Constitution. Subsequently, he had applied for permanent certificate. On that basis, an enquiry was conducted and it was found that the respondent was not a Scheduled Tribe but is a Scheduled Caste. Accordingly, the certificate came to be cancelled. Impugning the said cancellation, the respondent filed a civil suit for declaration that he is 'Kattunaicken', a Scheduled Tribe. That declaration was granted by the trial Court dismissed the second appeal. Thus, this appeal by special leave.

The only question is: whether the suit is maintainable? By operation of Section 9 of CPC, a suit of civil nature cognisance of which is expressly or by implication excluded, cannot be tries by any civil Court. The declaration of the President of India, under Article 341 and 342 of the Constitution, with respect of lists of the Scheduled and Scheduled Tribes in relation to a State, that a particular caste or tribe is defined in Article 366(24) or (25) respectively, is conclusive subject to an amendment by the Parliament under Article 341(2) and 342(2) of the Constitution. By necessary implication, the jurisdiction of the civil Court to take cognizance of and give a declaration stands prohibited. The question then is: whether the respondent has been given an opportunity to establish has case before the authorities cancelled his community certificate obtained by him? The order of the District Collector dated 2.12.1991 clearly mentions that an opportunity was given to the respondent and he himself had examined him. The District Collector does not decide it like a suit. What he does is an enquiry complying with the principles of rational justice. He considered his stand, namely, one of the sale deed of 1962 in which his status was declared as Kattunaicken but the same was disbelieved by the District Collector before cancellation. It is self-serving document. The authority had, therefore, given an opportunity to the respondent to establish his status and found that the certificate previously obtained was wrong and illegal. Accordingly, he cancelled the certificate given to the respondent on January 23, 1971. It is then contended by learned counsel for the respondent that the guidelines had been given by the Collector in the manner in which the enquiry is to be conducted and the synonyms are to be taken and in pursuance thereof, the Revenue Division Officer granted him the certificate. We find that the stand taken is not correct. The guidelines are only to identify the persons and not to give a declaration as to which community comes under particular entry of the Presidential notification. It is then contended that the respondent has been given the right to enjoy the status right from 1971 and, therefore, the principle of estoppel applies to him. We find that it has no force. It is a fraud played on the Constitution. A person who plays fraud and obtains a false certificate cannot plead estoppel. The principle of estoppel arises only when a lawful promise was made and acted upon to his detriment: the party making promise is estopped to resile from the promise. In this case, the principle of estoppel is inapplicable because there is no promise made by the State that the State would protect perpetration of fraud defeating the Constitutional objective; no promise was made that his false certificate will be respected and accepted by the State. On the other hand, he is liable for prosecution. The courts would not lend assistance to perpetrate fraud on the Constitution and he cannot be allowed to get the benefit of the fraudulent certificate obtained from the authorities. The declaration issued by the courts below is unconstitutional and without jurisdiction.

The appeal is accordingly allowed. The suit stands dismissed. No costs.