

Calcutta High Court

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Pijush Kanti Chowdhury vs State Of West Bengal And Ors. on 14 May, 2007

Equivalent citations: (2007) 2 CALLT 577 HC, 2007 (3) CHN 178

Author: B Bhattacharya

Bench: B Bhattacharya, K K Prasad

JUDGMENT

Bhaskar Bhattacharya, J.

1. This application under Article 226/227 of the Constitution of India is at the instance of an unsuccessful applicant before the West Bengal Land Reforms and Tenancy Tribunal and is directed against order dated 19th May, 2006 passed by the Tribunal thereby dismissing the application filed by the writ petitioner challenging the order of vesting under Section 14T(3) of the West Bengal Land Reforms Act in a writ application under Article 226 of the Constitution of India which had been transferred to the Tribunal after constitution of the same under the provisions of the West Bengal Land Reforms and Tenancy Tribunal Act.

2. Being dissatisfied, the writ petitioner has come up with the present writ application under Article 226/227 of the Constitution of India.

3. Dr. Mondal, the learned Advocate appearing on behalf of the writ petitioner has raised a pure question of law in support of this application.

4. According to Dr. Mondal, a Division Bench of this Court in the case of Paschim Banga Rajya Bhumijibi Sangha v. State of West Bengal reported in 1996(2) CLJ 285 having specifically declared the provision contained in Section 14V vis-a-vis the definition of land as contained in Section 2(7) and Section 3A(3) of the West Bengal Land Reforms Act as ultra vires Article 300A of the Constitution as the amount payable for acquisition of land was without and just principle and also illusory, the State cannot continue with the process of vesting in terms of Section 14T of the said Act. Dr. Mondal further relies upon a subsequent decision of this Court in the case of Harisadhan Bandyopadhyaya and Ors. v. State of West Bengal and Ors. reported in 1998(1) CHN 61 whereby relying upon the aforesaid decision in the case Paschim Banga Rajya Bhumijibi Sangha (supra), another Division Bench set aside the order of vesting.

5. By relying upon the said two decisions, Dr. Mondal contended that the order of vesting should be set aside.

6. Mr. Banerjee, the learned Advocate appearing on behalf of the State of West Bengal has, however, opposed the aforesaid contention advanced by Dr. Mondal and has contended that against those two decisions, the State of West Bengal has filed applications for special leave to appeal and in those proceedings, the Supreme Court has passed an interim order staying the operation of the orders passed therein. According to Mr. Banerjee, in view of such interim order, those two decisions are not binding upon the State.

7. Therefore, the only question that arises for determination in this application is simply because in an application for grant of special leave, the Supreme Court has stayed the operation of an order passed by the Division Bench of this Court declaring a statutory provision as ultra vires the Constitution of India as an interim measure imposing further conditions in those cases, whether a citizen who is not a party to the previous litigation can be deprived of the benefit of the doctrine of precedent in resisting the action of the State on the ground that it could not invoke the ultra vires provision of the Statute against him.

8. Before entering into such question, we propose to take notice of the actual orders of stay passed by the Apex Court.

9. It appears from the order dated March 20, 1998 that the order of the Division Bench of the High Court was stayed subject to the order of status quo regarding possession on spot should be maintained by both the parties it further appears from a subsequent order dated December 16, 1999 that another Bench in a different matter being special leave to Appeal (Civil) No. 1416 of 1997 passed an interim order directing that status quo regarding possession on the spot should be maintained by both sides in connection with the members of the petitioner-Sangha who were before the High Court in the writ petition out of which the said proceeding arose. By further order dated April 17, 2004 on various applications filed by about 13000 persons, the Supreme Court further ordered that if any order of vesting had been passed in respect of the lands of persons who were parties before the High Court out of which the proceedings arose, those order of vesting would not be implemented until further order. On November 24, 2003, the Supreme Court further ordered that the State should ensure that notwithstanding the order of vesting that might have been passed and mutation that might be effected in the Revenue Records, no third parties would be inducted or allowed to enter upon or squat on such properties till the disposal of the appeals.

10. After hearing the learned Counsel for the parties and after going through the aforesaid provision we find that the Supreme Court by those interim orders has no doubt stayed the operation of the order of the Division Bench of this Court by directing the parties to maintain status quo and at the same time, even restrained the State from inducting third parties on the lands which were the subject-matters before the Apex Court. Such interim order is binding upon the parties to the proceedings but the law is equally settled that by mere passing of an interim order staying the operation of a judgment with certain further conditions, the existence of the said judgment is not wiped out and at the same time, for such interim orders inter parties, the authority of a decision as a precedent is never undermined. Unless a decision is set aside by the Superior Court, the said decision remains binding as a precedent though may not be binding upon the parties to the proceedings where the Superior Court has granted interim order. Moreover, once a provision has been declared ultra vires the Constitution of India, the State cannot invoke the said ultra vires proceeding against the citizens of the country simply because an interim order of stay of operation order declaring the provision as ultra vires has been passed in an appeal against such order. The object of granting interim order is to see that the relief claimed in the appeal may not become inappropriate or the appeal does not become infructuous for not granting such interim order; but by mere grant of interim stay, the effect of a binding precedent is not destabilized. Over and above, the interim orders of the stay granted by the Supreme Court clearly indicate that the said Court never intended that notwithstanding the decision of the High Court declaring a part of the provisions of vesting as ultra vires the State would nevertheless be free to proceed with the process of vesting during the pendency of the proceedings before the Supreme Court and that is why status quo as regards possession has been maintained and even, the State has been restrained from creating any "third party interest" in the lands in question.

11. At this stage it will be profitable to refer to the following observations of the Supreme Court in the case of Narcotics Control Bureau v. Dilip Prahlad Namade reported in AIR 2004 SC 2950 where the Court pointed out that there was no scope of laying down a law at the interlocutory stage:

Coming to the plea regarding long passage of time it is to be noted that the two orders passed by this Court in SLP (Crl.) Nos. 1136/2002 and 434/2003 referred to above do not lay down any principle of law of invariable nature to be universally applied. Furthermore, disposal of SLP against a judgment of the High Court does not mean that the said judgment is affirmed by such dismissal. The order passed in any SLP at threshold without detailed reasons does not constitute any declaration of law or constitute a binding precedent. [See Union of India and Ors. v. Jaipal Singh 2003(7) Supreme 676]. This Court cannot and does not reverse or modify the decree or order appealed against while deciding the petition for special leave to appeal and that too when the SLP was being dismissed. What is impugned before this Court can be reversed or modified only after granting leave and then assuming appellate jurisdiction over it. If the order impugned before this Court cannot be reversed or modified at the SLP stage obviously that order cannot also be affirmed at the SLP stage [See Kunhayammed and Ors. v. State of Kerala and Anr. and Sri Ramnik Vallabhdas

Madvane and Ors. v. Taraben Pravinlal Madhavani 2004(8) Supreme 208].

(Emphasis supplied)

12. At this juncture, it will not be inappropriate to refer to the following observations of the Supreme Court in the case of Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, Madras while pointing out the difference between

an order of stay of operation of the order impugned and an order quashing the order itself:

While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the appellate authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the appellate authority would be restored and it can be said to be pending before the appellate authority after the quashing of the order of the appellate authority. The same cannot be said with regard to an order staying the operation of the order of the appellate authority because in spite of the said order, the order of the appellate authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the appellate authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the appellate authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the appellate authority.

13. Therefore, the effect of the order of stay in a pending appeal before the Apex Court does not amount to 'any declaration of law' but is only binding upon the parties to the said proceedings and at the same time, such interim order does not destroy the binding effect of the judgment of the High Court as a precedent because while granting the interim order, the Apex Court had no occasion to lay down any proposition of law inconsistent with the one declared by the High Court which is impugned.

14. We, therefore, find substance in the contention of Dr. Mondal that a Division Bench of this Court having declared the provision contained in the West Bengal Land Reforms Act regarding vesting without making any lawful provision for compensation for such vesting in the Act as ultra vires the Constitution of India, the State cannot be permitted to proceed with the said provision of vesting against the petitioners as long adequate provision is not made in the Statute for compensation.

15. We, thus, respectfully follow the decision of the Division Bench of this Court in the case of Paschim Banga Rajya Bhumiijibi Sangha (supra), which is still binding upon us as a valid precedent and consequently, set aside the order passed by the Tribunal on the ground that without making lawful provisions of compensation for vesting in the West Bengal Land Reforms Act, the State cannot go on with the process of vesting against the writ petitioners. The order impugned thus, is, set aside. The writ application is allowed to the extent indicated above. This order, however, will not stand in the way of the State in continuing with the process of vesting if adequate lawful provision is incorporated in the Act for compensation for the vested land.

16. In the facts and circumstances, there will be, however, no order as to costs.

Kishore Kumar Prasad, J.

17. I agree.