

CASE NO.:
Appeal (civil) 5684-5686 of 1999

PETITIONER:
M.B.RAMACHANDRAN

RESPONDENT:
GOWRAMMA & ORS.

DATE OF JUDGMENT: 28/04/2005

BENCH:
B.P. SINGH & ARUN KUMAR

JUDGMENT:
J U D G M E N T

WITH

CIVIL APPEAL No.5687/1999

B.P.SINGH, J.

Civil Appeal Nos.5684-5686 of 1999 by special leave are directed against the judgment and order of the High Court of Karnataka at Bangalore dated 4.11.1998 in Writ Appeal Nos.5678, 5580 and 5622 of 1996. By the impugned judgment and order, the High Court quashed the order of the Tribunal and the learned Single Judge and remitted the matters to the Special Deputy Commissioner on a finding that the Land Tribunal ceased to have jurisdiction after the Amending Act, 1979 was declared ultra vires by the High Court by its judgment dated 24.4.1992. The order in the instant case was passed by the Tribunal on 8.6.1994, much after the Amending Act of 1979, was declared to be ultra vires.

Civil Appeal No.5687 of 1999 is directed against the judgment and order of the High Court dated 24.4.1992 in which Petition No.7230 of 1979, whereby the Amending Act of 1979 was declared ultra vires in its entirety.

The relevant facts may be briefly noticed. There were two Acts in the State of Karnataka namely Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 (Act 1 of 1955) which related to abolition of personal Inams and Mysore (Religious and Charitable) Inams Abolition Act., 1955 (Act No.18 of 1955) which related to the abolition of religious and charitable Inams.. The Karnataka Inams Abolition (Amendment) Act, 1979 (Act 26 of 1979) was enacted by the Karnataka Legislature, Section 2 whereof amended some provisions of the Mysore Act 1 of 1955 relating to personal Inams. Section 3 thereof amended some of the provisions of the Mysore Act 18 of 1955 which related to abolition of religious and charitable Inams. It is not in dispute before us that in view of the amendments brought about, inter-alia, the jurisdiction to determine occupancy rights was conferred on the "Tribunal" which was earlier conferred on the "Deputy Commissioner" under the unamended Acts.

Before advertng to the facts of this case, we may notice that Writ Petitions were filed by Sri Kudil Sringeri Maha Samsthanam being Writ Petition Nos.7230 and 2590/1979 challenging the validity of the Amending Act. The High Court disposed of the said Writ Petitions by its judgment and order of 24.4.1992. The judgment is reported in ILR 1992 Karnataka 1827. The High Court declared the entire Amendment Act of 1979 as ultra vires for the reasons given in the judgment. The State preferred appeals before this Court being Civil Appeal Nos.10229-30/1996 arising out of SLP Nos.3246-47/1993. The State appeals were dismissed by the judgment and order of 8.8.1996 of this Court without expressing any opinion on the validity of the Amendment Act of 1979. The Civil Appeals were disposed of only considering the compensation payable to the Kudil Sringeri Maha Samsthanam, and the question as to the validity of the Amendment Act was left open to be considered in an appropriate case. Thus, the Amendment Act

of 1979 which was declared to be ultra vires by the High Court of Karnataka continued to be so since this Court did not set aside the said declaration of the Karnataka High Court.

The appellant before us in both the appeals claimed occupancy right in respect of lands situated in village K.G.Byaderahalli. It is not necessary to narrate the detailed facts relating to the various disputes that arose, and we may only notice that ultimately when the matter came up before the Land Tribunal, the Tribunal by its order of June 8, 1994 granted occupancy right in favour of the appellant and his brother.

The order of the Land Tribunal was challenged by way of writ petitions filed by persons aggrieved thereby, namely, Writ Petition Nos. 26681, 24831 and 25501 of 1994. The aforesaid Writ Petitions were dismissed by a Single Judge of the High Court by judgment and order dated 19.4.1996. The said judgment and order of the Single Judge was challenged in Writ Appeals filed by the contesting respondent which were allowed by the Division Bench which quashed the order of the Single Judge as well as that of the Land Tribunal and remitted the matter to the Spl. Deputy Commissioner for adjudication. The Appellate Bench of the High Court held that in view of the earlier judgment dated 24.4.1992 invalidating the Amendment Act of 1979, the Land Tribunal was denuded of the jurisdiction conferred upon it by the said Amendment Act. However, applying the de facto doctrine, it was directed that the orders passed by the Tribunal till the date the Amending Act was declared ultra vires, were saved. In the instant case, since the Tribunal passed the order on 8.6.1994, i.e., much after the Amendment Act was declared ultra vires on 24.4.1992, the order passed by it was held to be without jurisdiction. On this finding, the High Court set aside the order of the learned Single Judge and the Land Tribunal and remitted the matters to the Deputy Commissioner to be heard and decided in accordance with law.

Shri M.S.Ganesh, learned senior counsel appearing on behalf of the appellant submitted before us that the dispute before the High Court in the Writ Petitions preferred by the Kudil Sringeri Maha Samsthanam, related to religious and charitable Inams and, therefore, in that context, the provisions of the Amendment Act of 1979 relating to the amendment of Mysore Act 18 of 1955, relating to abolition of religious and charitable Inams were challenged. In the Writ Petitions filed by the aforesaid Kudil Sringeri Maha Samsthanam, the validity of Mysore Act 1 of 1955 which was amended by Section 2 of the Amendment Act of 1979 was not in question. Yet, the High Court declared the entire Amendment Act to be ultra vires which was wholly unnecessary. In this context, he relied upon the decisions of this Court to the effect that in exercise of writ jurisdiction, while dealing with the vires of statutory provisions the Court must not decide issues which are merely academic. He has drawn our attention to the Judgment of this Court in State of Bihar vs. Rai Bahadur Hurdut Roy Moti Lall Jute Mills and Another, 1960 (2) SCR 331 wherein this Court observed :-

"In cases, where the vires of the statutory provisions are challenged on constitutional grounds, it is essential that the material facts should first be clarified and ascertained with a view to determine whether the impugned statutory provisions are attracted; if they are, the constitutional challenge to their validity must be examined and decided. If, however, the facts admitted or proved do not attract the impugned provisions there is no occasion to decide the issue about the vires of the said provisions. Any decision on the said question would in such a case be purely academic. Courts are and should be reluctant to decide constitutional points merely as matters of academic importance."

It is not disputed before us by the respondents that in the aforesaid Writ Petitions preferred by the Kudil Sringeri Maha Samsthanam, the issues involved related only to the amendments to Mysore Act 18 of 1955 which dealt with religious and charitable Inams and not with Mysore Act 1 of 1955 which dealt with abolition of personal Inams. There was, therefore, really no justification for the High Court to quash the entire Amendment Act. It was further submitted by Shri Ganesh that even though the State came up in appeal before this Court, the appeal was disposed of

without going into the question of the validity of the Amendment Act of 1979. That was left open to be considered in an appropriate case. He further submits that in these appeals that question may be gone into and decided. He, however, submitted that the appellant is not interested in challenging the validity of the Amendment Act in so far as it amends the Mysore Act 18 of 1955 because his appeals do not relate to religious or charitable Inams. His case being one relating to personal Inam, is governed by Mysore Act 1 of 1955 as amended by the Amendment Act of 1979. Since the validity of Mysore Act of 1 of 1955 was not in issue in the Writ Petitions filed by the Kudil Sringeri Maha Samsthanam, the High Court really exceeded its jurisdiction in quashing the entire Amendment Act of 1979. The High Court ought to have confined its declaration to the amendment of the Mysore Act 18 of 1955 which was amended by Section 3 of the Amendment Act.

Counsel for the respondents do not dispute the factual position that the aforesaid Writ Petitions filed by Kudil Sringeri Maha Samsthanam did not concern personal Inams and related only to religious and charitable Inams. In this view of the matter, we must hold that the High Court was in error in granting relief in such wide terms declaring the entire Karnataka Inams Abolition (Amendment) Act, 1979 to be invalid. We therefore set aside that part of the judgment and confine the declaration to the provisions of the amendment Act of 1979 only to the extent it amended Mysore Act 18 of 1955.

It was contended before us by counsel for the respondents that the Amendment Act was struck down as invalid as early as in the year 1992. In view of the Amendment Act being struck down by the High Court and not interfered with by the Supreme Court, many matters must have in the meantime come up for consideration before the Deputy Commissioner. Under the Amendment Act of 1979, the jurisdiction had been vested in the Land Tribunal. In view of the Act being struck down as ultra vires, the jurisdiction of the Deputy Commissioner was restored as from the date on which the said Act was invalidated. While the orders passed by the Tribunal, after the Amending Act of 1979 came into force and till the same was struck down by the High Court, were saved by applying the de facto doctrine, if the judgment and order of the High Court is set aside today, it may unsettle the settled position. Many claimants may have acted on the basis that the Amendment Act was invalid and, therefore, the jurisdiction was retained by the Deputy Commissioner. We are aware of the consequences that may follow, but we feel that in a case of this nature the doctrine of stare decisis be invoked to avoid unsettling the settled position. This principle has been invoked by this Court in several decisions including *Mishra Lal (Dead) by Lrs. vs. Dharendra Nath (Dead) by Lrts. and others*, (1999) 4 SCC 11 and *Raj Narain Pandey and Others vs. Sant Prasad Tewari and Others*, (1973) 2 SCC 35.

In these appeals, the only question which fell for consideration of the High Court was whether the application filed by the appellant before the Deputy Commissioner for grant of occupancy rights could be dealt with by the Land Tribunal in view of the provisions of the Amendment Act of 1979. In other words, whether the Land Tribunal had jurisdiction to dispose of the said application. We therefore wish to say nothing in this judgment which may be construed as our considered opinion on any other question relating to the provisions of the Amendment Act. In the facts and circumstances of these cases, we dispose of these appeals in the following terms :-

We hold that the judgment of the High Court in *Sri Kudil Sringeri Maha Samsthanam* in so far as it declared the Karnataka Inams Abolition (Amendment) Act, 1979 (Act 26 of 1979) void in its entirety is not correct. At best, the High Court could have declared the amendments brought about by Section 3 of the aforesaid Act to the Mysore Act 18 of 1955 as ultra vires, since the question of validity of the amendments to the Mysore Act 1 of 1955 was not in issue. We order accordingly. Civil Appeal No.5687/99 is allowed to the extent indicated above.

However, notwithstanding the fact that the said judgment is modified, we direct that if after 24.4.1992 the Deputy Commissioner has disposed of matters under the Mysore Act 1 of 1955 which fell within his jurisdiction, the said orders will not be affected by this judgment and are

saved. But from today onwards, the jurisdiction shall be exercised by the Land Tribunal, including the matters pending before the Deputy Commissioner. This, however, will not prevent the parties from challenging the vires of the Amendment Act of 1979 in so far as it relates to Mysore Act 1 of 1955. However, we should not be understood to have expressed any opinion on the merit of the cases, nor on the validity or invalidity of the other provisions of the Amendment Act 1979 (Act 26 of 1979) or Mysore Act 1 of 1955.

The appeals are accordingly allowed and the impugned judgment and order in Writ Appeal Nos.5678, 5580 and 5622 of 1996 is set aside and the matters remitted to the High Court for disposal on merit in accordance with law.

Since these matters have remained pending before us for quite some time, we request the High Court to dispose of the aforesaid appeals as expeditiously as possible.

JUDIS