

Thimmakka Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Jul-15-1998

Reported in : ILR1999KAR793; 1998(6)KarLJ562

Judge : Chandrashekaraiyah, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 11; [Land Acquisition Act, 1894](#) - Sections 6(1), 11 and 18

Appeal No. : Writ Petition No. 5558 of 1991

Appellant : Thimmakka

Respondent : State of Karnataka and Others

Advocate for Def. : Sri K. Nagaraja, High Court Government Pleader, ;Sri T.S. Ramachandra Rao and ;Sri N.S. Srinivasan, Advs.

Advocate for Pet/Ap. : Sri N.D.R. Ramachandra Rao, Adv.

Judgement :

ORDER

1. The petitioner claims to be the owner of the land measuring 4 acres 16 guntas in Sy. No. 30 of Nagarbhavi Village, having purchased the same under a registered sale deed dated 8-2-1943. The said land was proposed for acquisition under preliminary notification dated 16-1-1985 issued under Section 4(1) of the

Land Acquisition Act (hereinafter called the 'Act'), This was followed by a final notification dated 5-3-1986 issued under Section 6 of the Act. These two notifications were challenged by the petitioner in Writ Petition No. 12566 of 1986 before this Court. This Court dismissed the writ petition holding the notifications referred to above are valid in its order dated 20th February, 1991. Eight days after the disposal of the above said writ petition, the petitioner again filed the present writ petition on 28-2-1991 seeking for quashing of the award passed, determining the market value in respect of the land referred to above pursuant to the notifications which were impugned in the earlier writ petition. Subsequently, the petitioner made an application for amendment of the writ petition seeking for quashing of the notifications referred to above which were held valid in writ petition filed earlier.

2. Sri N.D.R. Ramachandra Rao, learned Counsel for the petitioner contended that though the notifications were held to be valid on an earlier occasion by this Court, it is still open for the petitioner to seek for quashing of the said notifications as invalid on the ground that it is not for a public purpose as this ground was neither raised nor considered in the earlier writ petition. In support of this contention, he relied upon several decisions such as S.P. Gupta and Others v President of India and Others , Narayana Raju v State of Karnataka , Narayana Raju v State of Karnataka, Narayana Reddy v State of Karnataka , H.M.T. House Building Co-operative Society Limited v Syed Khader, Devendra Pratap Narain Rai Sharma v State of Uttar Pradesh and Others , Sidramappa v Rajashetty, Arjun Lal v Mriganka Mohan, Deva Ram and Another v Ishwar Chand and Another. The decisions referred to above does not in any way help the petitioner.

3. The question that arise for consideration in this writ petition is, when once an order is passed upholding the notifications impugned in this writ petition as valid by this Court, can the said notifications be challenged in a subsequent writ petition filed by the same party.

4. Sri Sanjaya Gowda, learned Counsel for the 3rd respondent submitted that when once an issue between the parties has been considered in an earlier writ petition and the said order having allowed to be final it is not open for the party or

parties to challenge on the same issue or on a different issue in a subsequent writ petition.

5. The contention of the learned Counsel for the petitioner, that the acquisition of the land is for a public purpose or not was neither raised nor considered, in the earlier writ petition. In order to examine the said contention, I looked into the order passed in the earlier writ petition. In the said order the contentions of the petitioner are stated as follows:

"It is contended on behalf of the petitioners that no notice was issued to the petitioner and no enquiry was held and that the acquisition for house building co-operative society is bad in law as it cannot be held to be for public purpose'.

These contentions were ultimately negated by this Court and held the notification referred to above are valid. Therefore, there is no substance in the contention of the petitioner that the acquisition whether it is for a public purpose or not has not been considered in the earlier writ petition. The petitioner now in this petition once again sought to contend that the acquisition of land for a society is not for a public purpose relying on the decision of the Supreme Court in H.M.T. House Building Co-operative Society, *supra*. When once an issue whether the acquisition is for a public purpose or not has been considered and negated on an earlier occasion, it is not open for the petitioner to again raise the same issue in a subsequent writ petition. Further, the Supreme Court in a decision reported in Deva Ram's case, *supra*, has held as follows:

'21. Rule of res judicata is contained in Section 11 of the Civil Procedure Code. Benefit of all its Explanations, namely, Explanations I to VIII. Section 11 is quoted below:

'11. Res Judicata.--No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim litigating under the same title, in a Court competent to try any such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

'Res judicata Pro Veritate Accipitur' is the full maxim which has, over the years, shrunk to mere 'Res judicata' .

22. Section 11 contains the rule of conclusiveness of the judgment which is based partly on the maxim of Roman Jurisprudence 'Interest Republic abut sit finish litium' (It concerns the State that there be an end to law suits) and partly on the maxim 'Nemo debet bis vexari pro una at eadem cause' (no man should be vexed twice over for the same cause). The section does not affect the jurisdiction of the Court but operates as a bar to the trial of the suit or issue, if the matter in the suit was directly and substantially in issue (and finally decided) in the previous suit between the same parties litigating under the same title in a Court, competent to try the subsequent suit in which such issue has been raised'.

Section 11 of the CPC is to prevent a litigant from abusing the process of the Court by instituting suits again and again on the same cause of action. This principle is founded on public policy. Therefore, this principle is to be extended, in the interest of justice to the writ proceedings also. In view of that judgment of the Supreme Court, the petitioner has no right to urge the contention which was earlier canvassed and considered by this Court.

6. No doubt if a person is not a party in the earlier proceedings and the order passed in the said proceedings ultimately affect his interest, it is open for him to challenge the said order by way of filing a writ petition to review the earlier order. But, in the case on hand, the petitioner is a party in the earlier writ petition. The contentions raised in these writ petitions were considered and negatived in the earlier writ petition. The order passed in the said writ petition is allowed to be final. Therefore, it is not open for the petitioner to challenge the notifications which were held valid, in subsequent proceedings.

7. The petitioner has further contended that the award passed pursuant to the notification issued under Section 6(1) of the Land Acquisition Act is invalid on the ground that the said notification is not valid notification in view of the judgment of the Supreme Court in H.M.T. House Building Co-operative Society Limited's case, *supra*. The notifications which are impugned in this writ petition were not the subject-matter before the Supreme Court in the case referred to above. As stated

earlier, the notifications are already held to be valid in an earlier proceedings. If that is so, the award passed pursuant to the said notification determining the market value is also valid. The award that has been passed is only an offer made by the Land Acquisition Officer towards the market value of the land. If the petitioner is not satisfied with the said award, it is open for the petitioner to make an application for reference under Section 18 of the Act. Therefore, I find no reason to interfere with the award impugned in the writ petition.

8. The petitioner having suffered the order passed earlier in the writ petition filed by him ought not to have filed this writ petition again for the same or similar relief. Therefore, it is a fit case to impose cost. In the result, I pass the following order:

Writ petition is dismissed. The petitioner to pay a sum of Rs. 2,000/- as cost to the 3rd respondent.

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