

Sengali and 20 ors. Vs. the Executive Officer, Mettur Town Committees

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Court : Chennai

Decided On : Apr-18-1995

Reported in : 1995(2)CTC26

Judge : Kanakaraj, J.

Acts : [Tamil Nadu District Municipalities Act, 1920](#); Tamil Nadu Public Premises (Eviction of unauthorised occupants) Act, 1960; Tamil Nadu Public Premises (Eviction of unauthorised occupants) (Amendment) Act, 1976; Tamil Nadu Public Premises Act, 1976

Appeal No. : W.P. No. 8558 of 1992

Appellant : Sengali and 20 ors.

Respondent : The Executive Officer, Mettur Town Committees

Advocate for Def. : M. Liagat Ali, Adv.

Advocate for Pet/Ap. : V. Manohar, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

Kanakaraj, J.

1. The petitioners do not dispute the fact that they had encroached on the Main Road in Mettur Dam years ago. The respondent Town Panchayat had been collecting encroachment fees. In the year 1990, the respondent took steps to evict the petitioners. W.P. Nos. 3892, 4836 and 4837 were filed in 1991 and these Writ Petitions were allowed as follows:

'In case, the petitioners are encroachers, it is open to the Mettur Town Committee, Mettur Dam, Salem District, to take action against the petitioners according to law, after giving notice to the petitioners. It is also well settled that even assuming that the petitioners are encroachers, procedure prescribed for eviction of encroachment had to be followed before dispossessing the encroachers.'

Thereafter notices were issued in June, 1992 Under Section 182(1) of the Madras District Municipalities Act (hereinafter called the Act) giving 15 days to remove the encroachments. Though the Mettur Town is governed by the Mettur Township Act, 1940, Under Section 4(1) of the Township Act the District Municipalities Act have been made applicable to the Mettur Town. The writ petition is to prohibit the respondent from enforcing the notices on the ground that after the passing of the Tamil Nadu Public Premises (Eviction of unauthorised occupants) Act, 1960, the provisions of the District Municipalities Act relating to removal of encroachments stand impliedly repealed. Therefore, it is contended that action, if at all can be taken only under the Tamil Nadu Public Premised (Eviction of unauthorised occupants) Act.

2. In the counter affidavit filed by the respondent it is stated that the Mettur Dam is a Tourist spot and because of the subject encroachments the public and tourists are put to considerable inconvenience. It has become difficult for the tourists to reach the bus-stand from the West Main Road. The respondent denies that the petitioners are in occupation for 15 years. The levy and collection of encroachment fee will not regularise the encroachment. It is stated that on many occasions the encroachers were prosecuted and sentenced to pay fine. So far as the Public Premises Act is concerned, it is stated that the respondent cannot invoke the same because no Estate Officers have been appointed and in any event that Act will not override the Municipalities Act.

3. The only question to be decided is whether the Municipalities Act apply to the case, notwithstanding the enactment of the Public Premises Act. Though the question raised appears to be simple, it involves important principle of statutory interpretation. It has to be remembered that both enactments were passed by the State Legislature. Though there is a possibility of both the enactments applying whenever the respondent decides to remove the encroachments, it cannot be disputed that as on date the Public Premises Act cannot be invoked by the respondent because Estate Officers have not been appointed Under Section 3 of the Act in respect of the area in question.

4. That apart the question of a latter Act repealing an earlier enactment in respect of an area of subject matter to which both enactment equally apply, is beset with very many statutory restrictions and caution. In *Municipal Council, Palai v. T.J. Joseph* : [1964]2SCR87 the court was concerned with a public bus stand constructed by a Municipality. The Municipal Council not only levied charges on the buses using the Bus stand but also prevented the use of other places within a radius of six furlongs, as a halting place. The levy was challenged on the ground that, after the Travancore-Cochin Motor Vehicles Act the power of the Municipalities to provide bus stands stood repealed. The argument was rejected.

Observed the apex Court:

'It is undoubtedly true that the legislature can exercise the power of repeal by implication. But it is an equally well settled principle of law mat there is a presumption against an implied repeal. Upon the assumption mat the legislature enacts laws with a complete knowledge of all existing laws pertaining to the same subject the failure to add a repealing clause indicates that the intent was not to repeal existing legislation. Of course, this presumption will be rebutted if the provisions of the new Act are so inconsistent with the old ones that the two cannot stand together.'

They quoted with approval the observations of Crawford on Statutory Construction which is as follows:

'There must be what is often called 'such a positive repugnancy between the two provisions of the old and the new statutes that they cannot be reconciled and made to stand together'. In other words they must be absolutely repugnant or irreconcilable. Otherwise, there can be no implied repeal.....for the intent of the legislators to repeal the old enactment is utterly lacking.'

N.I. Caterers (Private) Ltd v. State of Punjab : [1967]3SCR399 is closer to the facts of our case. In that case action was taken under the Punjab Public Premises and Land (Eviction and Rept. Recovery) Act, 1959 to evict a lessee, whose term of lease came to an end. The action being challenged, the High Court held that the civil remedy was impliedly repealed by the public premises Act and therefore, there was no discrimination in invoking the Act, to evict a person from the public premises. On appeal the Supreme Court held that there was no implied repeal and there can be two remedies for the Government to evict unauthorised person, provided there are sufficient guidelines to the authority to invoke one or other of the enactment. On the question of repeal they quoted with approval the following passages in Maxwell on Interpretation of Statutes.

'A sufficient Act ought not to be held to be repealed by implication without some strong reason. It is reasonable presumption that the legislature did not intend to keep really contradictory enactments on the Statute Book, or, on the other hand, to effect so important a measure as the repeal of law without expressing an intention to do so. Such an interpretation therefore, is not to be adopted unless it be inevitable. A reasonable construction which offers an escape from it is more likely to be in consonance with the real intention.'

They concluded :

'In our view, the High Court with respect was in error in holding that there was an implied repeal only because the two sets of provisions deal with the subject matter of eviction in respect of public premises.'

On the question of discrimination they observed.:

'There can be no doubt that Section 5 confers an additional remedy over and above the remedy by way of suit and/that by providing two alternative remedies to the Government and in leaving it to the unguided discretion of the Collector to resort to one or the other and to pick and choose some of those in occupation of public properties and premises for the application of the more drastic procedure Under Section 5, that section has lent itself open to the charge of discrimination and as being violative of Article 14. In this view Section 5 must be declared to be void.'

5. In this case it must be remembered that no question of discrimination either arises or is argued. By way of completion, I may refer to a recent judgment of the Supreme Court in *Ashoka Marketing Ltd. and Anr., v. Punjab National Bank and Ors.*, 1990 (4) SCC 407 where the apex court decided the ticklish issue whether the provisions of the Public Premises Act overrides the provisions of the Delhi Rent Control Act. Observed the Apex Court:

'For the reasons, aforesaid, we are unable to accept the contention of the Learned counsel for the petitioners that the provisions contained in the Public Premises act cannot be applied to premises which fall within the ambit of the Rent Control Act. In our opinion, the provisions of the Public Premises Act, to the extent they cover premises falling within the ambit of the Rent Control Act, override the provisions of the Rent Control Act and person in unauthorised occupation of public premises Under Section 2(e) of the Act cannot invoke the protection of the Rent Control Act.'

6. The principles discernible from this latest judgment of the Supreme Court are as follows :

(i) If both the laws are enacted by the same legislative body and if both the laws can be construed as Special laws and apply in the same area and subject matter, the latter will prevail over the former.

(ii) To find out whether the legislature intended an implied repeal of the former Act the Court must look into (i) the object and purpose behind both the Acts, (ii) The Special and specific purposes for which the Special Laws came to be made and; (iii) the policy and intention of the legislature.

7. Keeping in mind these principles and caution administered by Crawford and Maxwell in the passages quoted earlier, let me examine the object and purpose of both the Acts. The Municipalities Act passed in the year 1920 was for the purpose 'of providing a good Government for a town or village constituted as a Municipality. It has its own elected Council, it shall have perpetual succession and a common seal and can acquire and hold property. Section 61 of the Tamil Nadu District Municipalities Act provides for vesting of all public streets and appurtenances in the Municipal Council. It has power to levy and collect taxes. It has duties of providing water supply, lighting, drainage, public conveniences and scavenging. It has duty to Maintain and repair Streets. It is under this chapter that there is a provision for removal of encroachments, namely, Section 182. There are provisions for granting licences to sell in private or public markets. The public premises Act is an Act which provides for the eviction of unauthorised occupants from public premises. The definition of public premises takes in, premises vested with a local authority. The power of passing orders of eviction is vested only in certain estate officers. The power and control of a Municipality with reference to street is coupled with a power to permit sale in stalls and bunks in road margins. In my opinion the two enactments operate in different fields and there is no scope for misuse or discrimination. I hold that the Public Premises Act does not impliedly repeal the Municipalities Act.

8. On the facts of the present case I have already referred to the fact that there is no chance for the respondent to invoke the public premises Act. I have no hesitation in holding that the resort to the District Municipalities Act is perfectly legal and the notices cannot be invalidated. Consequently, the writ Petition fails and is dismissed.

No costs.