

Viswanathan Vs. Subramanian and ors.

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Court : Chennai

Decided On : Feb-28-1997

Reported in : (1997)2MLJ134

Appellant : Viswanathan

Respondent : Subramanian and ors.

Judgement :

ORDER

S.S. Subramani, J.

1. First respondent in T.R.T. Appeal No. 28 of 1996, on the file of the Revenue Court, Tamil Nadu Agricultural Lands Record of Tenancy Rights Appellate Authority (Special Deputy Collector), at Thanjavur, is the petitioner herein.

2. Petitioner herein filed an application for registering his name as cultivating tenant. The Registering Authority registered his name. An appeal was taken by respondents therein. Along with the appeal, they also moved an application for stay of operation of the order. By the impugned Order, the Appellate Authority stayed the operation. The same is challenged in this revision under Article 227 of the Constitution of India, on the ground that The Appellate Authority has no power to grant stay.

3. The only point that requires consideration is, whether the Order called for interference, and, whether the Appellate Authority acted beyond his powers.

4. Section 6 of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act provides for a right of appeal by any person aggrieved by the Order. There is no specific provision empowering the Authority to grant stay, nor do the Rules provide for the same. The contention of learned Counsel for the petitioner is that unless specific power is given, the Appellate Authority cannot exercise the power, How far the said contention is correct is to be seen.

5. In *Income-tax Officer, Cannanore v. M.K. Mohammed Kunhi* A.I.R. 1969 S.C. 430, the question that came for consideration was, whether, under the Income-tax Act, the Appellate Tribunal has power to grant stay. That Act also did not confer power to grant stay. While considering the same, their Lordships held that 'an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to take such grant effective. The powers which have been conferred by Section 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective.' Then, their Lordships further went on to say that 'when Section 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceedings as will prevent the appeal if successful from being rendered nugatory.' At page 433, their Lordships further said thus: In *Domat's Civil Law*, Cushing's Edition, Vol. 1 at page 88, it has been stated:

It is the duty of the Judges to apply the laws, not only to what appears to be regulated by their express dispositions but to all the cases where a just application of them may be made, and which appear to be comprehended either within the consequences that may be gathered from it.

Maxwell on Interpretation of Statutes, Eleventh Edition contains a statement at p. 350 that 'where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its

execution. Cui Jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdiction explicari non potuit.' An instance is given based on exparte, Martin (1879) 4 Q.B.D. 212 , that 'where an inferior court is empowered to grant an injunction, the power of punishing disobedience to it by commitment is impliedly conveyed by the enactment, for the power would be useless if it could not be enforced.

6. In a Full Bench decision of the Kerala High Court reported in N.K. Dharmadas v. State Transport Appellate Tribunal of Kerala and Ors. : AIR1963 Ker73 , their Lordships held as follows in paragraph 16:

An appeal is a complaint to a superior body of an injustice done or error committed by an inferior one with a view to its correction or reveal. It is a creature of statute, not a constitutional or inherent right. But, as pointed out by Maxwell, where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution.

Their Lordships further went on and said that 'it is an old maxim of the law that to whomsoever a jurisdiction is given, those things also are supposed to be granted, without which the jurisdiction cannot be exercised, Cui jurisdiction data est, ea quoque concessa esse videntur, sine quibus jurisdiction explicari non protest.

Thereafter, their Lordships quoted what Kent and Sutherland has said. It reads thus:

Kent says that the grant of a jurisdiction implies the grant of all the powers necessary to its exercise (1 kent, Comm. 339). And Sutherland that where a statute confers powers or duties in general terms, all powers and duties incidental and necessary to make such legislation effective are included by implication. 3rd Edition, Vol. 3, page 19.

7. Under the Kerala Forest Act, a right of appeal is provided for any person aggrieved by the Order of the Forest Officer. But there was no specific power given to the Appellate Authority to grant stay. In Dy. Conservator of Forests v. K.S. Sarojini : AIR1981 Ker44 after quoting the relevant passage in Income Tax Officer,

Cannanore v. M.K. Mohammed Kunhi A.I.R. 1969 S.C. 430 the learned Judge of the Kerala High Court has further quoted from the decision of the Supreme Court in regard to the power to grant stay. The relevant portion reads thus:

In regard to the power to grant stay the Supreme Court refers to the decision in *Polini v. Gray* (1879) 12 C.D. 438 where.

It appears to me on principle that the Court ought to possess that jurisdiction, because the principle which underlies all orders for preservation of property pending litigation is this, that the successful party is to reap the fruits of that litigation, and not obtain merely barren success. That principle, as it appears to me, applies as much to the court of first instance before the first trial, and to the court of appeal before the second trial, as to the court of last instance before the hearing of the final appeal.

Justice Grover speaking for the Supreme Court has also quoted Domat's Civil Law, Cushing's Edition, Volume 1 at page 88 where has it has been stated:

It is the duty of the Judges to apply the laws, not only to what appears to be regulated by their express dispositions but to all the cases where a just application them may be made, and which appear to be comprehended either within the consequences that may be gathered from it..

In this case, a general power of appeal is given. There is no provision prohibiting the exercise of any power provided under the Act which is normally exercised by an Appellate Authority. While exercising the appellate power, naturally, the Appellate Authority for the effective implementation of its power, may have to stay the operation of the order. That power is inherent, unless the Statute expressly prohibits that power; it is settled law that every tribunal will have the incidental power while exercising the jurisdiction conferred on it by the Statute.

8. It must be understood that the Appellate Authority constituted under the Act is a quasi-judicial adjudicating authority. Naturally, it has also the trappings of court and certain powers under the Code of Civil Procedure are also given. At the same time, there is no prohibiting clause not to exercise certain powers which are

conferred on courts. If there is no prohibition, merely because certain powers are expressly provided, it should not be interpreted that those powers should not be exercised.

9. In *Cheru Ouseph v. Kunjipathumma* 1981 K.L.T. 495, the question that came for consideration was, whether the Rent Control Court has power to restore an application dismissed for default. The Act does not provide a similar procedure as contemplated by Order 9, Rule 9, C.P.C. While considering the question, the Kerala High Court said that 'in respect of procedural matters, all powers which are not specifically denied by the statute or the statutory rules, should be vouchsafed to a tribunal so that it may effectively exercise its judicial function.' The power of granting stay is only a matter of procedure. That apart, such power of granting stay or refusing to grant stay is only incidental to exercising that power.

10. The civil revision petition is without merits and the same is, therefore, dismissed C.M.P. No. 2445 of 1997 (for suspension of impugned judgment of the authority below) is dismissed consequently.