

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I.A. NO. 3 OF 2014
IN
CIVIL APPEAL NO(S). 4283 OF 2011

M/S. RADIANCE FINCAP (P) LTD. & ORS. ... APPELLANT(S)

VERSUS

UNION OF INDIA & ORS.RESPONDENT(S)

WITH

I.A. 1 in C.A. No. 4285/2011

I.A. 2 in C.A. No. 4286/2011

I.A. 2 in C.A. No. 4290/2011

I.A. 2 in C.A. No. 4291/2011

I.A. 1 in C.A. No. 4294/2011

I.A. 3 in C.A. No. 4293/2011

O R D E R

Heard learned counsel for the parties.

Despite granting sufficient and adequate opportunity to the respondents, they did not choose to file objections with regard to the averments made by the applicants/appellants in their applications that they have been in physical and actual possession of the

acquired land and compensation also not paid to them.

Since the above averments of the applicants are not controverted despite granting opportunity, the assertions made by the applicants shall have to be accepted as true and correct. Further, the right of the applicants is accrued under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, for short 'the Act', on the date of filing of the applications as they have asserted that they have been in physical and actual possession of the acquired land and also not paid the compensation by the respondents in respect of their acquired land. Therefore, the contention urged on behalf of the respondents that in view of promulgation of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 on 31.12.2014, by inserting the proviso to sub-section (2) of Section 24 of the Act, the period of stay obtained in the judicial proceedings shall be excluded for computation of five years' period to hold that the acquisition proceedings are lapsed and, therefore, the said provision does not enure to the benefit of the applicants, cannot be legally accepted by us in view of the law laid down by this Court in the case of *Garikapati v. Subbiah Choudhry*, AIR 1957 SC 540. Para

23, which is relevant is reproduced hereunder:

"From the decisions cited above the following principles clearly emerge:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise."

The aforesaid case is further approved by the Constitution Bench of this Court in the case of Shyam Sunder v. Ram Kumar, (2001) 8 SCC 24. Paras 24, 26, 27 and 28 of the judgment, which are relevant are reproduced hereunder:

"24. In Garikapati Veeraya s. N.Subbiah Choudhry, 1957 SCR 488 this Court

observed as thus: (AIR p.533, para 25)

"The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed."

xxx

xxx

xxx

26 In *Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra & Ors.*, (1994) 4 SCC 602, this Court laid down the ambit and scope of an amending act and its retrospective operation as follows: (SCC p.633, para 26)

"(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly-defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities

or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."

27. In *K.S. Paripoornan v. State of Kerala*, (1994) 5 SCC 593 (SCC at p.636), this Court while considering the effect of amendment in the Land Acquisition Act in pending proceedings held thus: (SCC para 67)

"67....In the instant case we are concerned with the application of the provisions of sub-section (1-A) of S.23 as introduced by the Amending Act to acquisition proceedings which were pending on the date of commencement of the Amending Act. In relation pending proceedings, the approach of the courts in England is that the same are unaffected by the changers in the law so far as they relate to the determination of the substantive rights and in the absence of a clear indication of a contrary intention in an amending enactment, the substantive rights of the parties to an action fall to be determined by the law as it existed when the action was commenced and this is so whether the law is changed before the hearing of the case at the first instance or while an appeal is pending (See Halsbury's Laws of England, 4th Edn., Vol.44, para 922)".

28. From the aforesaid decisions the legal position that emerges is that when a repeal of an enactment is followed by a fresh legislation, such

legislation does not affect the substantive rights of the parties on the date of suit or adjudication of suit unless such a legislation is retrospective and a court of appeal cannot take into consideration a new law brought into existence after the judgment appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of suit. However, the position in law would be different in the matters which relate to procedural law but so far as substantive rights of parties are concerned they remain unaffected by the amendment in the enactment. We are, therefore, of the view that where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act such legislation is prospective in operation and does not affect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. We are further of the view that there is a presumption against the retrospective operation of a statute and further a statute is not to be construed to have a greater retrospective operation than its language renders necessary, but an amending Act which affects the procedure is presumed to be retrospective, unless amending Act provides otherwise....."

The right conferred to the landholders/owners of the acquired land under Section 24(2) of the Act is the statutory right and, therefore, the said right cannot be taken away by an Ordinance by inserting proviso to the abovesaid sub-section without giving retrospective effect to the same. Taking into consideration the fact that we have allowed similar matters in C.A. No.

4284/2011 titled M/s. Magnum Promoters P. Ltd. Vs. Union of India & Ors., vide order dated 27.11.2014 and in other appeals also by following the earlier decisions of this Court with regard to taking physical possession of the acquired land by the Land Acquisition Collector, which are extensively referred in the above judgment, promulgation of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 was made on 31.12.2014, which is prospective in nature and, therefore, it cannot be applied to their cases.

For the foregoing reasons, the interlocutory applications are allowed and consequently, the appeals are also allowed by quashing the acquisition proceedings in relation to the applicants/appellants.

.....J.
(V. GOPALA GOWDA)

.....J.
(R. BANUMATHI)

NEW DELHI,
JANUARY 12, 2015

ITEM NO.2+43

COURT NO.12

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

I.A. 3/2014 in Civil Appeal No(s). 4283/2011

M/S RADIANCE FINCAP(P) LTD.& ORS.

Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(for directions and office report)

WITH

I.A. 1 in C.A. No. 4285/2011

(With appln.(s) for directions and Office Report)

I.A. 2 in C.A. No. 4286/2011

(With appln.(s) for directions and Office Report)

I.A. 2 in C.A. No. 4290/2011

(With appln.(s) for directions and Office Report)

I.A. 2 in C.A. No. 4291/2011

(With appln.(s) for directions and Office Report)

I.A. 1 in C.A. No. 4294/2011

(With appln.(s) for directions and Office Report)

I.A. 3 in C.A. No. 4293/2011

(With appln.(s) for directions and Office Report)

Date : 12/01/2015 These applications were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. GOPALA GOWDA

HON'BLE MRS. JUSTICE R. BANUMATHI

For Appellant(s)

Mr. Chander Udai Singh, Sr. Adv.
Ms. Vibha Dutta Makhija, Sr. Adv.
Mr. Arun K. Sinha, Adv.
Mr. Rakesh Singh, Adv.
Mr. Sumit Sinha, Adv.

Mr. Ramesh Singh, Adv.
Mr. A.T. Patra, Adv.
Mr. Nipun Malhotra, Adv.
Ms. Roopa Dayal, Adv.
Mr. Ashis Goyal, Adv.
For M/s. O. P. Khaitan & Co.

Mr. M. A. Chinnasamy, Adv.
Ms. Smita Mann, Adv.
Mr. B.S. Maan, Adv.
Mr. Hitesh Kumar Sharma, Adv.

Mr. Subramonium Prasad
Mr. M.P. Singh, Adv.

For Respondent(s)

Ms. Rachana Srivastava, Adv.
Mr. Utkarsh Sharma, Adv.

Mr. V.B. Saharya, Adv.
For M/s Saharya & Co.

Mr. A.K. Singhvi, Sr. Adv.
Ms. Sunita Sharma, Adv.
Mr. D.S. Mahra, Adv.
Mr. Gaurav Sharma, Adv.
Ms. Sushma Suri, Adv.
Mr. Mohan Prasad Gupta, Adv.

Ms. Aparna Bhatt, Adv.
Mr. Praveen Swarup, Adv.

Mrs. Anil Katiyar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The interlocutory applications are allowed and
consequently, the appeals are also allowed in terms
of the signed order.

(VINOD KR. JHA)
COURT MASTER

(RENU DIWAN)
COURT MASTER

(Signed order is placed on the file)