

State of Karnataka and Others

Vs

Mrs. Elizabeth Mayne and Others

Civil Appeal Nos. 1867-1924 and 1952 of 1975 and 9 to 66 of 1976

(CJI A.N. Ray, M.H. Beg, Jaswant Singh JJ)

08.04.1976

JUDGMENT

RAY, C.J. -

1. These appeals are by certificate from the judgment dated April 8, 1975 of the High Court of Karnataka.
2. The respondents were the petitioners in the High Court. The respondents are either holders of 'bane' lands in the district of Coorg or holders of such lands who purchased timber standing on them from such holders.
3. The respondents in the High Court asked for writ directing the Divisional Forest Officer of the State to issued permits to the respondents to remove trees standing on 'bane' lands as particularized in the petition.
4. The Divisional Forest Officer refused permits to the respondents to cut trees and remove timber. The two grounds on which the respondents challenged the order of refusal are these. First, the respondents claimed a vested right to redeem the trees on 'bane' lands on payment of 50 per cent of the value of timber under Coorg Land and Revenue Regulation of 1899 and the rules framed thereunder. Second, the respondents claimed that, by Section 75 of the Karnataka Land Revenue Act, 1964, an absolute right was conferred on them in respect of trees on 'bane' lands and the Government have no right even to demand 50 per cent of the value.
5. The learned Singly Judge referred to the provisions of Coorg Land and Revenue Regulation 1899 and in particular Rule 97 thereof. The learned Singly Judge came to the conclusion that rules conferred a right learned Single Judge came to the conclusion that rules conferred a right of the holders of 'bane' land to redeem the trees standing on such 'bane' lands. He also held that under the rules, the respondents were required to pay 50 per cent of the value of the timber to the State along with other incidental charges.
6. The contention of the State that the Coorg, Land and Revenue Regulation, 1899 was replaced and, therefore, the respondents had no right under those regulations to remove timber was repelled by the learned Single Judge. The learned Judge held that Section 202 of the Karnataka Land Revenue Act of 1964 did not affect the right acquired by the holders of 'bane' lands in the spite of repeal of the Coorg Land and Revenue Regulation of 1899. In this view of the matter, the learned Single Judge did not consider it necessary to express any opinion on the second contention of the respondents whether under Section 75 of the Karnataka Land Revenue Act of 1964, the State had

not right to demand 50 per cent of the value.

7. The Division Bench on appeal held that the respondents could be divided into two categories. As to the first category, the Division Bench in sub-paragraph (1) of paragraph 59 of the judgment said that those who deposited before January 15, 1974, 50 per cent of the value of timber as determined by the Divisional Forest Officer, could be granted permits to cut and remove timber. If there was any difference between the 50 per cent of the actual value of timber and the amount paid on the basis of determination by the Divisional Forest Officer, the Divisional Forest Officer would recover the difference as mentioned in the said paragraph 59(1).

8. In sub-paragraph (2) of paragraph 59, the Division Bench dealt with respondents who did not fall within category 1, but made applications before January 15, 1974.

9. The Solicitor General appearing for the State with his usual fairness said that he did not want to take up time of the Court in going into the merits of the appeals. He accepted the conclusions of the High Court in paragraph 59 of the judgment. The result is that the conclusions of the High Court in paragraph 59 are affirmed.

10. The matter, however, does not end there because Counsel for the respondents submitted that the Division Bench went into the nature and tenure of 'bane' lands and expressed views which are not correct and which in any event were not necessary for the purpose of the present case.

11. The learned Single Judge rightly did not express any view on the second question as to whether the 'bane' landholders could ask for removal of trees without payment of full value. The Division Bench, however, in paragraphs 16 and 20 dealt with the legal position of 'bane' lands prior to November 1, 1899, in paragraph 30 on the legal position between November 1, 1899 and April 1, 1964, and in paragraphs 36 and 43 on the legal position after April 1, 1964. The Division Bench of the High Court in paragraphs 17 and 19 of the judgment dealt with 'bane' and 'kumki' lands and equated the same.

12. It may be stated here that one of the respondents - Consolidated Coffee Ltd., also filed an appeal from the judgment of the High Court. The Solicitor General contended that the Consolidated Coffee D, was not competent to file an appeal because the company had obtained relief and could not therefore, attack the judgment.

13. Having heard the Solicitor General and Counsel for the respondents, we are of opinion that the course adopted by the learned Single Judge was correct. The Division Bench of the High Court need not have gone into the question on the nature and ensure of 'bane' lands and expressed opinion on rights of the parties. These observations were not necessary.

14. We, therefore, hold that we affirm the conclusions of he Division Bench of High Court as stated in paragraph 59 of the judgment and make it clear that the observations and opinions expressed by the Division Bench on the nature and tenure of 'bane' lands and rights of the parties will not bind the parties on these questions in future. It will be open to both parties, namely, the appellants and respondents to urge their rival contentions on these questions if in future there will be any dispute between the parties.

15. The directions given by the Division Bench in paragraph 59 of the judgment will be followed by the parties. The directions are explicable because of January 15, 1974 being taken as the dividing line with regard to persons who made payment and persons who did not make payment consequent

upon the repeal of Rule 137 of the Karnataka Forest Rules, 1969.

16. The appeals are dismissed. Parties will pay and bear their own costs.

</html