

Guruputrappa Mallappa Harkuni

Vs

The Tahsildar and others

Civil Appeals Nos. 3231 of 1991 AND 4418-19 of 1990

(L. M. Sharma, S. Mohan, N. Venkatachala JJ)

11.08.1992

JUDGEMENT

MOHAN, J.:-

1. In all these appeals the common question of law which arises is the scope of S. 5(3), as amended, of Karnataka Village Offices Abolition Act, 1961 (hereinafter referred to as 'the Act'). Hence the appeals are dealt with under a common judgment.
2. It is enough if we note the facts briefly in Civil Appeal No. 3231 of 1991. The land bearing Survey No. 187/2 measuring an extent of 13.21 acres of Anigol village was Patilki Inam Land. The land was resumed to the Government under S. 4 of the Act with effect from 1st February, 1969. Ningangouda Ramagouda Patil of Anigol was the holder of these watan lands. He filed an application dated 6-2-1968 for regrant of land. He also paid an amount equal to 3 times the assessment and health cess. The Assistant Commissioner Railhongal Division directed the regrant by an order dated 15-1-1968. Thereafter the papers were forwarded to the Tahsildar of Sampagaon for information and necessary action.
3. Ningangouda Ramanagouda Patil sought sanction to alienate land as provided under S. 5(3) of the Act as it stood then. He also deposited an amount equal to 15 times the assessment of land as required. The Assistant Commissioner by his order dated 28-8-1968 granted the sanction.
4. In the year 1978, by Karnataka Act 13 of 1978 -Section 5(3) of the Act was amended. The amended section prohibited the alienation of regranted land for a period of 15 years from the date of commencement of Section 1 of the Amendment Act of 1978.
5. On the strength of the permission dated 28-8-68, N. R. Patil, the holder, sold away the property in parcels to three persons. An extent of 5 acres came to be purchased by the appellant on 4-12-82. The Tahsildar Saihongal issued a notice to the appellant as to why action should not be taken against him for eviction since the land in question had been purchased in contravention of the provisions of the Act. The appellant explained that in view of the order granting sanction to the holder of the land the holder was entitled to alienate the same. Once such a permission was granted the land ceased to be governed by the provisions of the Act. In any event, the order of sanction mentioned that the land in question was transferable.
6. This explanation was rejected by the Tahsildar who, by his order dated 23-6-1984 held that the

appellant was liable to be evicted. Accordingly, he ordered that possession of the land be taken over by the Government free from encumbrances, if any. Thereupon the appellant moved the High Court of Karnataka by way of W. P. No. 11238 of 1984.

7. The learned single Judge held that if the regranted land had not been alienated with prior permission before 7-8-1978, it could not be alienated for a period of 15 years after 7-8-1978. That is the clear intention of the Amendment Act of 1978. On his line of reasoning he dismissed the writ petition. An appeal was preferred to the Division Bench in W. A. No. 2700 of 1985 unsuccessfully. It is under these circumstances, special leave to appeal was preferred. Leave was granted by an order 22-8-91.

8. The only contention urged on behalf of the appellant is that by order dated 28-8-68 the holder of Ex. Patilki watan lands was granted sanction to alienate the lands. Such sanction is complete in every respect. Merely because S. 5(3) of the Act came to be amended in 1978 that will not, in any manner, affect the sanction already granted. It matters very little when the alienation actually took place even within a prohibited period of 15 years from 1978.

9. The learned counsel for the State would submit that it is true by an order dated 28-8-1968 that sanction was granted to alienate the lands. However, if the alienation had not taken place on the strength of that sanction prior to 7-8-1978, the statutory prohibition contained under Section 5(3) will squarely apply. In other words, it could not be alienated for a period of 15 years after 7-8-1978. In this case, the alienation took place on 4-12-1982 long after the amended Section 5(3) had come into force. Therefore, such an alienation is null and void. As a matter of fact, the question is no longer res integra. A Division Bench of the Karnataka High Court in Lakshmana Gowda v. State of Karnataka (1981) 1 Karnataka Law Journal 1, categorically ruled that such alienations are null and void. Several special leave petitions preferred by the State and parties assailing that judgment have been dismissed. The same is the position here.

10. On a careful consideration of the above submissions, we hold that the contention advanced on behalf of the State deserves to be accepted. Section 5(3) of the Amendment Act, 1978 reads as follows:

"5(3) The occupancy or the ryotwari patta .of the land, as the case may be, re-granted under sub-section (1) shall not be transferable otherwise than by partition among members of Hindu joint family for a period of 15 years from the date of commencement of S. 1 of the Karnataka Village Offices Abolition (Amendment) Act, 1978."

11. Though The sanction to alienate was granted on 28-8-1968 yet the alienation took place on 4-12-82. In the meanwhile, the above amendment, namely, section 5(3) had come to be introduced by Karnataka Act 13 of 1978. There is a clear prohibition under the above provision that the regranted land shall not be transferable for a period of 15 years from the date of commencement of S. 1 of the Amendment Act 1978. The effect of which is, for a period of 15 years from 7-8-1978, the statutory bar against alienation would operate. In fact, in Lakshmana Gowda (1981 (1) Kant LJ 1) (supra), in paragraph 87 at page 18 it is stated thus :

"87, In the light of the above principles of statutory construction, we hold that sub-sec. (4) of S. 5 of the Principal Act should be construed as being applicable only to transfers made subsequent to 7-8-1978 and not to transfers which had taken place

prior to that date and that sub-sec. (3) occurring in that section should be construed as having reference to amended sub-sec. (3) and not to original sub-sec. (3) of that Section. "

12. The High Court has laid down the correct legal position. This line of reasoning has been approved in Special Leave Petition (Civil) No. 14627 of 1985 etc. in State of Karnataka v. G. Seenappa which were dismissed by an order of this Court on 27-2-1992: (reported in 1992 AIR SCW 1642). Again in Rehman Khan v. State of Karnataka (C. A. Nos. 3104-13 of 1981) this Court upheld the ruling of Lakshman Gowda's case (1981 (1) Kant LJ 1) (supra). Thus, we conclude that the High Court is right. No interference is called for.

13. In the result, the appeals are dismissed with no order as to costs. Appeals dismissed.

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