State of Karnataka and others

Vs

Shankara Textiles Mills Ltd.

Civil Appeal No. 5061 of 1994

(P. B. Sawant, S. C. Agarwal JJ)

18.10.1994

JUDGEMENT

SAWANT, J.:-

1. The respondent is a public limited company and owned a total land of 49 acres and 38.25 guntas in Davanagere village. At the relevant time, it had its factory in an area of 13 acres and 32.25 guntas which was converted into non-agricultural land under S. 95(2) of the Karnataka Land Revenue Act (hereinafter referred to as the 'Revenue Act). The remaining land, viz., 36 acres and 6.5 guntas was not converted into non-agricultural land (hereinafter referred to as the 'disputed land') with the result that for the purposes of the Revenue Act, it continued to be considered as agricultural land. Improvement Board, Davanagere, sought to acquire land to the extent of 28 acres and 14 guntas from the disputed land for the purpose of 'Devraj Urs Lay-out'. The acquisition proceedings were started under the provisions of Karnataka Improvement Boards Act, 1976. In pursuance of the final notification issued in the year 1977, the possession of the land was taken by the Improvement Board on 9th August, 1978. Since the Land Acquisition Officer did not make the award in respect of the acquired land, the respondent-company approached the High Court for relief by a writ petition in which an order was passed on 4th February, 1983 directing the Land Acquisition Officer to pass the award. The appeal filed by the Improvement Board against the said order was dismissed on 13th November, 1983. Thereafter the Land Acquisition Officer made his award. Since, however, the amount payable under the Award exceeded Rs. one lakh, the award was referred to the Divisional Commissioner, Bangalore for approval as provided under the rules on the subject. The Divisional Commissioner did not approve of the award. Hence the company filed another writ petition seeking a direction to the Divisional Commissioner to deal with the award in accordance with law. That writ petition was allowed on 19th July, 1984 and the Divisional Commissioner was directed to dispose of the proceedings arising out of the award within a period of two months from the date of receipt of the order of the Court. In spite of this direction, the Divisional Commissioner did not pass any order in the said proceedings. During the pendency of these proceedings, the respondent-company filed a declaration under S. 79-B(2)(a) of the Karnataka Land Reforms Act, 1961 (for short 'the Act') stating therein that it held the entire disputed land as agricultural land. It further appears that the respondent-company claimed exemption from the provisions of the said S. 79-B, under S.81(b)(ii) of the Act on the ground that the disputed land was mortgaged to the Mysore State Financial Corporation on 3rd June, 1982.The Special Deputy Commissioner passed an order exempting the disputed land from the provisions of S. 79-B. Against the said order, the State preferred an appeal before the Appellate Tribunal which was allowed with the direction to take action under S. 79-B of the Act. Against the said order of the Appellate Tribunal, the respondent-company approached the High Court by way of a writ petition. The High Court by the impugned decision allowed the writ petition by holding that the Improvement Board as an agency of the Government having taken

possession of the land under S. 16 of the Land Acquisition Act, in the acquisition proceedings, the land had vested in the Government free from all encumbrances. Hence the question of the Government exercising its power to withdraw from acquisition of the land did not arise. The Court further held that there was no automatic vesting of the disputed land in the State under S. 79-B of the Act, since the vesting under the said provision could take place only upon a declaration by notification under S. 79-B(3) of the Act. For this purpose, the Court relied upon its earlier decision in Mysore Feeds Ltd. v. State of Karnataka, (1988) 1 Kant LJ 310. The Court held, relying upon the said decision, that the land which is agricultural may cease to be agricultural by its usage for a non-agricultural purpose although there is no order under the Revenue Act permitting the conversion of the agricultural land into non-agricultural land. The Court, therefore, held that looking to the usage of the entire land which was in the possession of the respondent-company, even the disputed land had no longer remained agricultural within the meaning of S. 2(18) of the Act and hence the direction given by the Appellate Tribunal to the Special Deputy Commissioner to take action under S. 79-B of the Act could not be sustained. It is aggrieved by the said decision that the State has preferred the present appeal.

2. Two questions arise in this appeal. The first is whether the land can be deemed to have been permitted to be converted for non-agricultural use merely because it was used for non-agricultural purposes although, admittedly, no permission under S. 95(2) of the Revenue Act was taken to do so. The second question is whether under S. 79-B of the Act, the land vests in the State Government prospectively from the date of the notification or retrospectively from the date of the coming into operation of the Act. The first question has been answered by the High Court in the affirmative while on the second question, the High Court has taken the view that the land vests in the Government from the date of the notification. According to us, both the answers are wrong in law.

3. Section 95(2) of the Revenue Act at the relevant time read as follows:

> "95: Use of agricultural land and the procedure for use of agricultural land for the purposes. -
>
> (1) X X X X X
>
> (2) If any occupant of land assessed or held for the purpose of agriculture wishes to divert such land or any part thereof to any other purpose, he shall apply for permission to the Deputy Commissioner who may, subject to the provisions of this section and the rules made under this Act, refuse permission or grant it on such conditions as he may think fit;
>
> The obvious purpose of this section is to prevent indiscriminate conversion of agricultural land for non-agricultural use and to regulate and control the conversion of agricultural land into non-agricultural land. Section 83 of that Act provides for different rates of assessment for agricultural and non agricultural land. That provision strengthens the presumption that agricultural land is not to be used, as per the holder's sweet will, for non-agricultural purposes. This is also clear from the absence of any provision under that Act requiring permission to convert non-agricultural land into agricultural land. In a country like ours, where the source of livelihood of more than 70 per cent of the population is agriculture, the restriction placed by the Revenue Act is quite understandable. Such provision and restriction are found in the Revenue Acts of all the States in the country. The provision has, therefore, to be

construed as mandatory and given effect to as such.

The High Court has obviously ignored the mandatory nature of the said provision. On this point, after referring to an earlier decision of the same Court in Mysore Feeds Ltd. case (1988 (1) Kant LJ 310)) (supra) the Court has held as follows: "As held in the above case, land which is agricultural may cease to be agricultural for various reasons. Theoretically such land may fall within the definition of 'Land' in S. 2(18) of the Act. However, in the absence of any specific finding regarding the nature or usage of the land as agricultural, the Special Deputy Commissioner cannot treat it to be an agricultural land merely on account of the fact that permission for conversion of the land under Sec. 95(2) of the Karnataka Land Revenue Act was sought. Even otherwise, admittedly, the land in question does not satisfy any of the characteristics as required under aforesaid definition investing respondent-2 with the jurisdiction to take proceedings under Section 79-B of the Act. Further more, since vesting could take place only on a declaration being made as provided under sub-sec. (3) of S. 79-B of the Act, a declaration by the holder at some earlier point of time in respect of the land cannot vest the authority with the jurisdiction to pass an order of vesting notwithstanding the fact that the land by then had ceased to be an agricultural land and treated as such since long. This view is also in conformity with the scheme of the Act, inter alia, regarding disposal of surplus land vesting in the Sate as provided under S. 77 of the Act."

4. Thus the High Court has proceeded on the basis that there is no specific finding regarding the nature and usage of the land as agricultural and hence, the Special Deputy Commissioner could not treat it to be an agricultural land merely on account of the fact that permission for conversion of the land under Sec. 95(2) of the Revenue Act was sought (but admittedly not given). Secondly, it has proceeded on the footing that the land in question does not satisfy any of the characteristics as required under the definition of the 'land' in Sec. 2(18) of the Act, i.e., Karnataka Land Reforms Act investing the authorities with the jurisdiction to take proceedings under Section 79-B of the Act. We are afraid that the High Court has misread the facts on record. The consistent stand taken by the authorities is that the land was never converted for non-agricultural use as required by the provisions of S. 95(2) of the Revenue Act. The mere fact that at the relevant time, the land was not used for agricultural purpose or purposes subservient thereto as mentioned in S. 2(18) of the Act or that it was used for non-agricultural purpose, assuming it to be so, would not convert the agricultural land into a non-agricultural land for the purposes either of the Revenue Act or of the Act, viz., Karnataka Land Reforms Act. To hold otherwise would defeat the object of both the Acts and would in particular, render the provisions of Sec. 95(2) of the Revenue Act, nugatory. Such, an interpretation is not permissible by any rule of the interpretation of statutes. What is further, the respondent-company had itself filed a declaration under S .79B(2)(a) of the Act stating therein that the entire disputed land was agricultural land and had claimed exemption from the provisions of the said S. 79-B under S.109 of the Act on the ground that the land was mortgaged to the Mysore State Financial Corporation. We are, therefore, unable to agree with the view taken by the High Court on the point.

It is for those reasons that we do not approve of the decision in Mysore Feeds Ltd. case (1988 (1) Kant LJ 310) (supra) which stands expressly overruled.

5. Coming now to the second question, here again, the High Court has missed the wood for the tree. The object of the Act, viz., the Karnataka Land Reforms Act which came into force on 2nd October.

1965 is, among other things, to confer ownership on tenants, to place ceiling on land holdings and to distribute the surplus land among the members to the Schedule Castes and Scheduled Tribes, dispossessed tenants unregistered as occupants, displaced tenants having no land, landless agricultural labourers, landless persons whose gross annual income does not exceed Rs. 4800/- and ex-military personnel whose gross annual income does not exceed Rs. 12,000/- and among the released bounded labourers and other persons residing in villages, whose gross annual income does not exceed Rs. 2,000/-

Chapter V relating to "Restrictions on Holding or Transfer of Agricultural Lands" was inserted in the Act 1 of 1974 and came into effect from 1st March, 1974. It contains Sections 79-A, 79-B and 79-C, among others. Section 79-A, inter alia, prohibits acquisition of land by certain persons. It states that on and from the commencement of the Amendment Act, i.e., Act 1 of 1974, no person who, or a family or a joint family which has an assured annual income of not less than Rs. 50,000/- (earlier Rs. 12000), from sources other than agricultural lands, shall be entitled to acquire any land whether as land owner, land-lord, tenant or mortgagee with possession or otherwise or partly in one capacity and partly in another.

Sub-section (3) of S.79-A states that every acquisition of land otherwise than by way of inheritance or bequest in contravention of the section shall be null and void.

Section 79-B which falls for consideration in the present case reads as follows:

> "79-B. Prohibition of holding agricultural land by certain persons:- (1) With effect on and from the date of commencement of the Amendment Act, except as otherwise provided in this Act,-
>
> (a) no person other than a person cultivating land personally shall be entitled to hold land; and
>
> (b) it shall not be lawful for,
>
> (i) an educational religious or charitable institution or society or trust, other than an institution or society or trust referred to in sub-sec. (7) of S.63, capable of holding property;
>
> (ii) a company;
>
> (iii) an association or other body of individuals not being a joint family, whether incorporated or not; or
>
> (iv) a co-operative society other than a co-operative farm,
>
> to hold land.
>
> (2) Every such institution, society, trust, company, association, body or co-operative society,-
>
> (a) Which holds lands on the date of commencement of the Amendment Act and which is disentitled to hold lands under sub-sec. (1) shall, within ninety days from said date furnish to the Tahsildar within whose jurisdiction the greater part of such

land is situated a declaration containing the particulars of such land and such other particulars as may be prescribed; and

(b) which acquires such land after the said date shall also furnish a similar declaration within the prescribed period.

(3) The Tahasildar shall, on receipt of the declaration under sub-sec. (2) and after such enquiry as may be prescribed, send a statement containing the prescribed particulars relating to such land to the Deputy Commi-ssioner who shall, by notification, declare that such land shall vest in the State Government free from all encumbrances and take possession thereof in the prescribed manner.

(4) In respect of the land vesting in the State Government under this Section an amount as specified in S. 72 shall be paid.

Explanation. - For purposes of this section it shall be presumed that a land is held by an institution, trust, company, association or body where it is held by an individual on its behalf.

Section 79-C provides for penalty for failure to furnish a declaration under S. 79-A or S. 79-B and for furnishing a false declaration. Section 80 bars transfer of agricultural land to non-agriculturists. Section 81 states that the provisions of Ss. 79-A, 79-B and 80 shall not apply to (a) the sale, gift, or mortgage of any land or interest therein in favour of the Government (b) the mortgage of any land or interest therein in favour of (i) a co-operative society and (ii) a financial institution, among others. It is not necessary to refer to the other provisions of the said Chapter.

6. It will thus be clear from these provisions that no person is permitted to acquire or hold agricultural land except as provided in the Act with effect from 1st March, 1974. There is no dispute in the present case that the respondent-company filed a declaration, as required under S. 79-B(2)(a), stating therein that the disputed land which was an agricultural land was in its possession.

A reading of the provision of sub-sec. (3) of S. 79-B shows that after a declaration is received by the Tahsildar, he has to make an enquiry and send a statement containing the prescribed particulars relating to the land in question, to the Deputy Commissioner, and it is the Deputy Commissioner who thereupon issues a notification declaring that the land shall vest in the State Government and takes possession thereafter of such land. The enquiry to be held by the Tahsildar, the act of sending of the statement pertaining to the land to the Deputy Commissioner and the issuance of notification by the Deputy Commissioner thereafter, are all acts consequent upon the filing of the declaration by the land holder. Where no declaration is made by the holder of the land or the declaration made by him is false, the Tahsildar has to issue under S.79-C a notice to him to show cause as to why the penalty specified in the notice should not be imposed upon him. If the Tahsildar, after considering the reply, if any, comes to the conclusion that the failure to furnish the declaration was without any reasonable cause, or that the false declaration was made knowingly, he is empowered to impose a penalty and also to require such person to furnish the declaration within a period of one month from the date of his order. If the person fails to comply with the said order of the Tahsildar, his right, title and interest in the land concerned is liable to be forfeited to the State Government as and by way of penalty. A combined reading of Ss. 79-B and 79-C, therefore, shows that the crucial date of vesting of the land in the State Government is the date on which Ss. 79-B and 79-C came into operation, i.e., 1st March, 1974. Otherwise, the date of vesting in the Government would vary according to the acts and omissions of the holder of the land in making the declaration and the consequent acts and

omissions of the Tahsildar and the Deputy Commissioner. In cases where the holder of the land files a declaration within the initially stipulated time and where the Tahisildar and the Deputy Commissioner act promptly, the land would vest in the State Government on a date earlier than in cases where either the holder of the land or the Tahsildar or the Deputy Commissioner commit defaults or delays in their obligations and duties at the relevant stages. It is against the scheme of the Act to hold that the date of the vesting of the land in the State Government should be variable according to the acts or omissions of the individuals concerned. That would make non-sense of the relevant provisions of the Act. It is, therefore, both in conformity with the object of the Act as well as the true intent of the provisions of S. 79-B(3) to hold that whatever the date of notification of the Deputy Commissioner, the date of vesting of the land will be the date on which the said provision came into operation, viz., 1st March, 1974. It is necessary in this connection to remember that the relevant expression in sub-sec. (3) of S. 79-B reads as ". . . . the Deputy Commissioner . . . . shall, by notification, declare that such land shall vest in the State Government....". The section does not leave it to the Deputy Commissioner to mention the date from which the land shall vest in the State Government. That is as it should be. If the intention was otherwise, nothing prevented the legislature from providing that the Deputy Commissioner would by notification declare that the land shall vest in the State Government "from such date as may be stated in the notification". There is no such provision in the said sub-section(3).

7. Shri Javali, the learned counsel for the respondent-company invited our attention to certain provisions in the Act to contrast the language of the said provisions with that of S. 79-B(3). We find that far from helping his contention, the language of the said provisions militate against it.

Section 15(6) of the Act provides for resumption of land by soldier or seaman. Sub-section (6) thereof states : "where the Tahsildar on application by the tenant or otherwise and after such enquiry . . . is satisfied . . . he shall, by notification declare that with effect from such date as may be specified in the notification, the land leased

shall stand transferred to and vest in the State Government . . .".

Section 44 provides for vesting of land of the tenants in the State Government for conferment of ownership on them. Sub-section (1) thereof provides that "all lands held by or in the possession of tenants . . . immediately prior to the date of commencement of the Amendment Act,. . . with effect on and from the said date, stand transferred to and vest in the State Government".

Section 67 provides for surrender of lands in certain cases. Sub-section (3) thereof states that "if the person concerned files declaration . . . the Tribunal may . . . pass an order approving the surrender and the said land shall, thereupon be deemed to have been surrendered by such person".

Section 68 provides for vesting of land surrendered by limited owner. It reads as follows : "Where the land surrendered under S. 67 is by an owner (other than a limited owner), the State Government may take over such land on the service of the order under S. 67 and such land shall thereupon vest in the State Government. . .".

Section 71 provides for vesting of land surrendered by tenant. Sub-section (3) thereof reads as follows: "In cases where possession of the land surrendered by a tenant does not revert to the owner . . . the State Government may take over the land on the publication of the notification under S. 73 and the land shall thereupon vest in the State Government . . . ".

Section 79A, as stated earlier, provides for prohibition of acquisition of land by certain persons. Sub-section (5) thereof reads as follows : "The Tahsildar shall . . . . send a statement containing . . . to the Deputy Comm-issioner who shall by notification declare that with effect from such date as may be specified in the notification, such land shall stand transferred to and vest in the State Government . . . From the date specified in such notification the Deputy Commissioner may take possession of such land in such manner as may be prescribed".

It will thus be noticed that the Legislature had taken pains to mention in the other provisions the specific dates from which then consequences in question will follow. There is a reason for doing so. Unless the land to be vested in the State Government is first ascertained, no date of vesting of such land could be fore-determined. That is not the case under S. 79-B, since it provides for the vesting in the Government of all agricultural lands held by certain persons like the respondent-company. This is apart from the fact that the provisions of the other sections cannot help the interpretation of S. 79-B(3) the language of which is self-evident and is in conformity with the intent of S. 79-B and the Act.

8. It is for this reason that we are unable to agree with the decision of the High Court in Mysore Feeds Ltd. case (1988 (1) Kant LJ 310) (supra) on which the impugned decision of the High Court has also kept reliance and the said decision stands overruled on this point as well.

9. In the result, we set aside the impugned decision of the High Court, restore that of the Appellate Tribunal and allow the appeal. In the circumstances, there will be no order as to costs. Appeal allowed.

</html