

# SUPREME COURT OF INDIA

Ni. Pra Channabasava D.S. Matadhipathigalu Kannada Mutt

Vs.

C.P. Kaveeramma

C.A.Nos.1040-1053 of 2009

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

13.02.2009

## JUDGMENT

**Dr. Arijit Pasayat, J.**

1. Leave granted.

2. Challenge in these appeals is to the judgment of a Division Bench of the Karnataka High Court dismissing the Writ Appeal Nos. 1936-40/2005 and 1941-48/2005 filed by the appellant while allowing the Writ Appeal No.2202/2005 filed by the respondents.

3. The controversy lies within a very narrow compass. The appellant claims to be the Mathadhipati of the religious institution called Kannada Muth. The dispute relates to certain lands which were granted as Jagir lands by the ruler of Koorg in 1809. The lands were allotted in favour of the predecessor of the respondents. The lands were Inam lands and the Imams stood abolished on the enactment of Karnataka Certain Inams Abolition Act, 1977 (in short the 'Act'). Upon abolition of Inams, the lands stood vested with the State free from encumbrances. Since the Act is one of agrarian reform and the purpose of the Act is to benefit the original holders of the land, the holders i.e. Inamdars or their tenants were given right to claim re-grant of the land. An application was made by the institution for re-grant of the land under the Act. The respondents namely the erstwhile mortgagees also sought for re-grant of the land. Their claim was rejected and the land was granted in favour of the Mathadhipati by the competent authority and the same was affirmed by the Division Bench of the High Court. Since the occupancy certificate was not being granted, the appellant filed a Writ Petition in the nature of writ of mandamus and subsequently occupancy certificate was granted. Appellant claimed that he was put in possession by the competent authority under the Act. The respondents claimed that by virtue of the order of re-grant in favour of the appellant, the earlier mortgage was revived and Tahsildar had no jurisdiction to deliver possession to the appellant. The order of the Tahsildar for delivery of possession was quashed. There was an order of remand passed by a learned Single Judge which was questioned by the respondents. The Writ Appeals were filed by the appellant on the ground that the scope and ambit of Section 4 of the Act has not been considered. Learned Single

Judge found that the Tahsildar had not properly conducted enquiry and set aside the impugned order and remanded the matter to the Tahsildar for fresh enquiry. Learned Single Judge further directed that the respondents 1 to 5 should be re-inducted to possession of the land subject to final result of the enquiry. The present appellant aggrieved by the order of the learned Single Judge filed separate Writ Appeals. Similarly, the respondents also filed Writ Appeal questioning the order of remand. The Division Bench with reference to Section 43 of the *Transfer of Property Act, 1882* (in short the 'TP Act') held that the said provision has application.

4. Learned counsel for the appellant contended that Section 43 does not apply and respondents 1 to 5 cannot canvas the doctrine of feeding the grant by estoppel. According to him, their stand was that Section 43 has no application to the facts of the case because the primary requisite of fraud or erroneous representation which is essential ingredient for invoking Section 43 is absent. The High Court held that Section 4(2)(b) does not expressly or impliedly provide that after re-grant the encumbrance created would not get revived. Under the said provision the land after passing of the Act shall stand vested in the State Government free from all encumbrances and the transferees cannot enforce their contractual rights against the Government. The High Court felt that Section 4(2)(b) is silent with regard to contractual rights of the alienee after re-grant in respect of alienation validly created prior to vesting in favour of the Government. Therefore, with reference to Section 43 of the TP Act it was held that it is clearly applicable to the facts of the case. Accordingly, as noted above Writ Appeals filed by the appellant were dismissed while that filed by the respondents was allowed.

5. Section 4 of the Act and Section 43 of TP Act read as follows:

“Section 4- Abolition, vesting of Imams and the consequences thereof: (1) Notwithstanding anything contained in any contract, grant or other instrument or in any decree or order of Court or in any other law for the time being in force, with effect from and on the appointed date, the inam tenure of all imams and minor imams to which this Act applies under Section 2 shall stand abolished.

(2) Save as otherwise expressly provided, in this Act with effect from and on the appointed date, the following consequences shall ensue, namely:

(a) The provisions of the Act relating to imams of alienated holdings shall be deemed to have been repealed in their application to inam or alienated holding and the provisions of Act and all other enactments applicable to unalienated villages or lands shall apply to the said imams or alienated holding;

(b) all rights, title and interests vesting in the inamdar including those in all communal lands, cultivated lands, uncultivated lands, whether assessed or not waste lands, pasture lands, forests, mines and minerals, quarries, rivers and streams, tanks and irrigation works, fisheries and ferries shall cease and be vested absolutely in the State Government, free from all encumbrances.

(c) the inamdar shall cease to have any interest in the inam other than interests expressly saved by or under the provisions of this Act ;

(d) all land revenue including the cesses and royalties accruing in respect of lands comprised in such inam villages or minor inams on or after the date of vesting shall be paid to the State Government and not to the inamdar and any payment made in contravention of this clause shall not be valid ;

(e) all arrears of land revenue, whether as jodi or quit rent and cesses remaining lawfully due on the date of vesting in respect of any such inam village or minor inam shall, after such date continue to be recovered from the inamdar by whom they were payable and may, without prejudice to any other mode of recovery, be realised by the deduction of the amount of such arrears and cesses from the amount payable to such inamdar under this Act;

(f) no such inam shall be liable to attachment in execution of any decree or other process of any court and any attachment existing, on the date of vesting or any other order for attachment passed before such date in respect of such inam village or minor inam shall cease to be in force ;

(g) the State Government may, after removing any obstruction that may be offered, forthwith take possession of the inam and all accounts, registers, pattas, muchalikas, maps, plans and other documents relating to the inam which the State Government may require for the administration thereof;

(h) the inamdar whose rights have vested in the State Government under clause (b) shall be entitled only to such amount from the State Government as provided in this Act ;

(i) the relationship of a superior holder and inferior holder shall, as between the inamdar and the holder of a minor inam, be extinguished ;

(j) the tenants in the inam and persons holding under them and holders of minor inams shall, as against the State Government, be entitled only to such rights and privileges and be subject to such conditions as are provided for by or under the Karnataka Land Reforms Act, 1961 and any other rights and privileges which may have accrued to them in the inam before the date of vesting against the inamdar shall cease and determine and shall not be enforceable against the State Government or such inamdar.

43. Transfer by unauthorised person who subsequently acquires interest in property transferred- Where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during

which the contract of transfer subsists. Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.”

6. A bare reading of Section 4 makes it clear that notwithstanding any contract the Inam tenure of all imams and minor imams stood abolished and the consequences were the passing of the rights, title and interests as provided in Section 4(2)(b). The High Court referred to Full Bench decision of the High Court in *Syed Bhasheer Ahamed and Ors. V. State of Karnataka*<sup>1</sup>. It is to be noted that the factual scenario of that case was entirely different and it has no application to the facts of the present case. The sine quo non for application of Section 43 is that at the initial stage the person should have fraudulently or erroneously represented that he is authorized to transfer certain immovable property or professes to transfer such property for consideration. Only if this pre-condition is satisfied, the question of option of the transferee arises in case the transferor acquires any interest in the property at any time during which the contract of transfer subsists. Therefore, the High Court was not justified in concluding Section 43 is relevant.

7. Learned counsel for the respondents on the other hand submitted that even if Section 43 has no application, Section 10 of the Act would take care of the situation. We find that Section 10 has really no application to the facts of the case. The same reads as follows:

“10. Saving of right in certain cases.- (1) Where before the appointed date an inamdar has created any right in any land which vests in the State Government, other than land registered under section 5 including rights in any mines or minerals, quarries, fisheries, ferries or forest, the transactions shall be deemed to be valid and all rights and obligations arising thereunder on or after the appointed date be enforceable by or against the State Government :

Provided that the transaction was not void or illegal under any law in force at the time :

Provided further that where such right was created in any land, unless it relates to lands registered under section 5, the State Government may, if in its opinion, it is in the public interest to do so, by notice given to the person concerned, terminate the right with effect from such date as may be specified in the notice, not being earlier than three months from the date thereof.

(2) The person, whose right has been terminated by the State Government under the foregoing proviso, shall be entitled to an amount from the State Government equal to the estimated net income of such person from the land for the unexpired portion of the period for which the right was created, having regard to all the circumstances of the case.

(3) Any right or privilege exercised or enjoyed by any person in respect of uncultivated jamma lands immediately before the appointed date shall,

notwithstanding anything in this Act and until other provision is made in this behalf, continue to be exercised or enjoyed.”

8. It is submitted by learned counsel for the respondents that apart from Section 43 of TP Act and Section 4(2)(b) of the Act, the respondents had made other submissions which were not considered by the High Court, in view of its conclusions about applicability of Section 4(2)(b) and/or Section 43 of the T.P. Act in the instant case. Without expressing any opinion about the acceptability of any such stand we think it proper to set aside the impugned judgment and remand the matter to the High Court for fresh consideration. It is made clear that the issue relating to applicability of Section 43 stands closed by virtue of this judgment.

9. The appeals are allowed.

<sup>1</sup>(ILR 1994 Kar 159)