SUPREME COURT OF INDIA

M.Sankaranarayanan

Vs.

The Deputy Commissioner, Bangalore

C.A.No.4937 of 2017

(Madan B.Lokur and Deepak Gupta,JJ.,)

10.04.2017

JUDGMENT

Deepak Gupta, J.,

SLP(Civil)No.20459 of 2014

1. Leave granted.

2. As common questions of law and facts are involved in these civil appeals, they are being disposed of by this common Judgment.

3. The relevant facts are that, by a Conveyance Deed dated 25.08.1900, one Lancelot Ricketts sold his property known as Beaulieu measuring 24 acres and 12 gunthas situated in Bengaluru. This conveyance deed was executed in favour of the Dewan of Mysore. It is not disputed that thereafter, on various occasions, portions of this Estate were acquired by the erstwhile State of Mysore, both before and after independence.

4. This "Beaulieu" Estate is apparently located in the heart of Bengaluru city. It appears that the Office of the Karnataka Public Service Commission had a boundary adjoining "Beaulieu" estate in which a hotel under the name of Atria was being run. There were a number of other commercial buildings and residences, including the residence of appellant M. Shankaranarayanan in this estate.

5. A complaint was sent by the Secretary of the Karnataka Public Service Commission on 14.05.2004 that, in the year 1900, the property had been transferred by the original owner Lancelot Ricketts in favour of the Dewan of Mysore. However, it was fraudulently shown that the property had actually been purchased for the First Princess of Mysore out of her personal funds. It was alleged that the original conveyance deed dated 25.08.1900 had been executed only in favour of the Dewan of Mysore. Furthermore, no stamp duty was paid on the sale deed and, therefore, it was complained that the sale was either totally illegal or that

the sale was in favour of the State of Mysore and "Beaulieu" estate was not the personal property of the First Princess. In the same complaint, it was also mentioned that, in the year 1956, the Government of Mysore acquired 6 acres of "Beaulieu" estate and, in those proceedings, Rajkumari Leelavathi Devi was notified as the owner of the estate. In the year 1959, some other portions of the estate were acquired and this time K. Basavaraj Urs was shown as the owner. It was complained that the acquisition of 20 acres and 9 gunthas of land, out of the 24 acres and 12 gunthas, was a fraudulent acquisition and would not confer any rights upon the owners.

6. As a result of this complaint, summary proceedings under Section 67 of the Karnataka Land Revenue Act, 1964 (for short 'the KLR Act') were initiated against the occupants of the land. Aggrieved by this action, one of the parties - Smt. Asha Chakko, who is appellant in Civil Appeal No. 4939 of 2017 [arising out of SLP (C) No. 12595 of 2014] filed a writ petition before the Karnataka High Court, whereas the other parties filed appeals before the Appellate Tribunal. The learned Single Judge quashed the order passed by the State of Karnataka on the ground that the State had no jurisdiction to pass the same.

7. The State of Karnataka preferred an appeal against the judgment of the learned Single Judge before the Division Bench of the High Court. The appellant M. Sankaranarayanan applied for transfer of his appeal, which had been filed before the Appellate Tribunal, to the High Court. This prayer was rejected by the Karnataka High Court. Thereafter, the appellant approached this Court in SLP (C) No. 25034 of 2011 for transfer of his case. This petition was allowed and the operative portion of the order reads as follows:

> "3. The appellant applied to the High Court for transfer of Appeal No. 690 of 2005, titled as M. Sankaranarayanan vs. Deputy Commissioner and others: filed by him before the Karnataka Appellate Tribunal (KAT) to the High Court for hearing the same along with Writ Appeal No. 643 of 2009. The High Court dismissed the application. While dismissing the application, the High Court observed that the appeal pending before the KAT has to be heard and decided by the Tribunal itself and it cannot be clubbed with the writ appeal.
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> 4. Having regard to the fact that the controversy in Writ Appeal No. 643 of 2009, which is pending before the High Court, is broadly identical to the appeal which has been preferred by the appellant before KAT, we are of the view that the High Court failed to exercise the jurisdiction vested in it by transferring the appeal pending before the KAT to itself to avoid multiplicity of arguments as well as the conflict of judgments.
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> 5. We, accordingly, allow the appeal and direct that the Appeal No. 690 of 2005, titled as "M. Sankaranarayanan vs. Dy. Commissioner, Bangalore and others" pending before the KAT be transferred to the High Court for its hearing and disposal along with Writ Appeal No. 643 of 2009, titled as "State of Karnataka and another vs. Asha Chakko and others". The Registrar, KAT shall transfer the record and

proceedings of Appeal No. 690 of 2005 to the High Court as expeditiously as may be possible and not later than four weeks from the date of receipt of copy of this order. No costs."

The writ appeal filed by the State of Karnataka in the case of Smt. Asha Chakko was allowed mainly on the ground that the writ petition was not maintainable, since the petitioner had an efficacious alternative remedy of approaching the Tribunal. As far as transferred appeal of appellant M. Sankaranarayanan is concerned, the High Court held that since the appeal had been filed before the Tribunal, it would be proper to remit it back to the Tribunal for decision. Aggrieved by the judgment of the learned Division Bench, these two appeals have been filed.

8. We have heard Shri K. K. Venugopal, learned Senior Counsel for the appellants and Shri J. N. Raghupathy, learned Counsel for the State of Karnataka, at length. The main contention of Shri Venugopal is that this is a case where the action of the State Government is hopelessly time-barred. The acquisition took place in 1900 and the State Government could not have issued notices after more than 100 years claiming that the property belonged to the State of Karnataka. It is further submitted that the very basis of the complaint is false because a careful consideration of the sale deed of 1900 clearly shows that this was a sale deed which is executed in favour of the First Princess. The second contention is that the State had no jurisdiction to initiate proceeding under Section 67 of the KLR Act.

9. At this stage, it would be appropriate to refer to the original conveyance deed itself. No doubt, the conveyance deed shows that it had been executed to the Dewan of Mysore by Lancelot Ricketts, however, at the bottom of the conveyance deed, there is a note that the same has been registered and a fee of Rs.128.50 had been paid. There is a memo on record which has been produced from the Archives of the State and this shows that the Dewan of Mysore put up a memo before the Maharaja of Mysore. In this memo, it is stated that, as desired by His Highness, the Dewan of Mysore had arranged to purchase Mr. Lancelot Ricketts' s house for the First Princess Jayalakshammanni Avaru. There are details of the account of the First Princess, cash balance and pension due to her and how the money for purchase of this house was to be appropriated out of the funds of the First Princess. This memo was put up on 03.08.1990 and approved on 04.08.1990. It would be apposite to mention that, on the side of this memo, there is a note that His Highness before conveying approval may explain the matter to and secure the clearance of the First Princess. This was done and approval given on 04.08.1990, where-after the conveyance deed was executed on 25.08.1900.

10. The matter does not end here. As mentioned hereinabove, the total area was 24 acres and 12 gunthas. In the year 1918-19, correspondence was exchanged between the Government of Mysore and the Controller of Palace of Mysore with regard to some encroachment upon the land of the First Princess. Finally, the Government agreed to pay compensation of Rs.2,300/- for the same to the First Princess. Again in 1948 it appears that the State wanted to acquire some portion of the estate. On 11.12.1948, a letter was written by the Huzur Secretary to the

Government of Mysore that since the land was part of "Beaulieu" estate which belonged to the First Princess, all correspondence for acquisition of the same be addressed to her. On 06.08.1949, 12680 square yards, out of 'Beaulieu' estate were acquired for a sum of Rs.1,95,000/- and the compensation was paid to the First Princess.

11. It would be pertinent to mention that the First Princess married one Sri Kantharaje Urs in the year 1918 and they had a daughter Smt. Leelavathi Devi. Smt. Leelavathi Devi became the owner of "Beaulieu" estate after the death of her parents and, after her death, her husband K. Basavaraj Urs succeeded to the property.

12. On 02.08.1956, the Government of Mysore acquired another piece of land and, again, the compensation was paid to Rajkumari Leelavathi Devi, the daughter of the First Princess. Another portion of "Beaulieu" estate was acquired in the year 1959 and compensation was paid to K. Basavaraj Urs.

13. As Rajkumari Leelavathi Devi and K. Basavaraj Urs had no children of their own, they had adopted one K.B. Ramachandraraj Urs, who became the owner of the property after the death of his parents. He executed a sale deed in favour of the appellant M. Sankaranarayanan on 12.12.1973. The entry in the Revenue Record was also made in 1973.

14. As far as the case of Smt. Asha Chakko is concerned, K.B. Ramachandraraj Urs sold a portion of the property to Smt. M. Meenakshi Amma vide sale deed dated 15.04.1971. M. Meenakshi Amma, thereafter, executed a will in favour of Dr. Ammu Nair, who was recorded as owner of that portion of the property. Dr. Ammu Nair willed the property in favour of Asha Chakko, Nikhilanand Nair and Nityanand N. Nair.

15. After the complaint dated 14.05.2004, the Government of Karnataka issued a notice under Section 67(2) of the KLR Act. Asha Chakko, Nikhilanand Nair and Nityanand N. Nair filed a writ petition before the High Court challenging the notice and the learned Single Judge of the High Court vide order dated 05.02.2009 passed in W.P. No. 16974 of 2005 allowed the writ petition in the following terms:

> "24. Having regard to the admitted circumstances in the present case, where the properties originally sold in the year 1900 by Shri. Lancelot Ricketts has been divided and sub divided and sold to several parties over the years by various individual and a portion of which has been acquired by the petitioners, under registered documents, apart from compulsory acquisition proceedings in respect of other portions of the property whereby the government itself has consistently acknowledged the ownership of individual, they cannot be ousted by recourse to section 67. This would be so even on the principal, that fraud would vitiate all.
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> 25. Reliance sought to be placed on the judgment of the Division Bench of this court in respect of land granted by the Government for temporary cultivation and subsequent alienation by the grantees in favour of the appellants, in that case, had

only resulted in enquiries having been conducted and entries made in the revenue records in favour of the appellants having been rounded off and the name of the Government having been substituted. The dispute as regards title, was not adjudicated and any observations as regards title were held to be inconsequential. The said judgment would not be relevant to the facts of the present case.

26. Further, Section 67(2) does not provide for an order of eviction being passed. In the light of section 67(3) providing for time, to a claimant in respect of any Government property, of one year, the impugned order directing that the respondents be evicted and that they hand over the property in their possession to the Government within 21 days of service of the order is also without jurisdiction."

It was held that the authority could not have come to the conclusion that the deed of conveyance executed on 25.08.1900 was fraudulently claimed by Lancelot Ricketts in favour of the First Princess. It was also held that no presumption could be raised that the erstwhile royal family had sought to play fraud and, therefore, the learned Single Judge quashed the entire proceedings. As we have already mentioned above, the State of Karnataka filed an appeal and that appeal has been allowed only on the ground that the proper remedy for the writ petitioner(s) was to approach the Appellate Tribunal.

16. Section 67 of the KLR Act reads as follows:

"67. Public roads, etc., and all lands which are not the property of others belong to the Government.−

(1) All public roads, streets, lanes and paths, bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water mark and of rivers, streams, nallas, lakes and tanks and all canals and water-courses and all standing and flowing waters, and all lands wherever situated which are not the property of individuals or of aggregate of persons legally capable of holding property, and except in so far as any rights of such persons may be established, in or over the same, and except as may be otherwise provided in any law for the time being in force, are and are hereby declared to be with all rights in or over the same or appertaining thereto, the property of the State Government. Explanation.− In this section, "high water mark" means the highest point reached by ordinary spring tides at any season of the year.

(2) Where any property or any right in or over any property is claimed by or on behalf of the State Government or by any person as against the State Government, it shall be lawful for the Deputy Commissioner or a Survey Officer not lower in rank than a Deputy Commissioner, after formal inquiry to pass an order deciding the claim.

(3) Any person aggrieved by an order made under sub-section (2) or in appeal or revision therefrom may institute a civil suit contesting the order within a period of one

year from the date of such order and the final decision in the civil suit shall be binding on the parties."

A bare reading of the section shows that public roads, streets, lanes etc., and all lands which are not the properties of others, belong to the Government. Where the property is recorded in the ownership of any other person or persons who are legally capable of holding property, the provisions of Section 67 will not apply. Section 67 cannot be used to dispute the title of persons who have been holding property for more than 100 years. Prior to the conveyance deed being executed on 25.08.1900, the Dewan of Mysore had put up a note to His Highness the Maharaja of Mysore that the estate property is being bought for the First Princess and the payment was to be made out of her personal funds. He had also requested the Maharaja to apprise the First Princess about the facts and then obtain her approval. It is not believable that, in the year 1900, the Maharaja of Mysore and his Dewan colluded to commit fraud on the State of Mysore with a view to favour the First Princess.

17. As is clear from the facts narrated above, various acquisitions took place out of "Beaulieu" estate. More than 20 acres of the total 24 acres and 12 gunthas were acquired by the Government of Mysore both prior to and after the independence of the country. Nobody raised any objection. If the land belonged to the State, why would the State acquire its own property? This question has not been answered. Various transactions have taken place after the year 1971 and portions of this estate have been sold/transferred from one person to another. Entries in the Revenue Record were made, but the State never raised any objection. The sale deeds were registered without demur. It was only in the year 2004 that some official of the Karnataka Public Service Commission filed a complaint in this regard. In the meantime, hotels, commercial buildings and residences had come up on various portions of the estate.

18. After 104 years of the execution of the original conveyance deed, and after acquiring various lands out of this very estate, we cannot permit the State to urge that the original conveyance deed is fraudulent or that the subsequent transfers are all collusive and, as such, void. There are many bona fide purchasers and, even otherwise, we are not inclined to hold that the original transaction was invalid.

19. Furthermore, a bare perusal of Section 67 clearly indicates that it only applies to public roads, streets, lanes etc. or to such lands which are not the property of individuals, or an aggregate of persons legally capable of holding property. A dispute of title of property between the State and individuals cannot be decided in terms of Section 67. Merely because the Secretary of the Karnataka Public Service Commission had, in his complaint, opined that the deed of conveyance executed more than 100 years back was fraudulently claimed to be in favour of the First Princess, was not sufficient ground to proceed under Section 67. It could not be held that all subsequent transactions relating to the estate property were fraudulent. Fraud must be pleaded and proved; it cannot be presumed. Therefore, we are of the view that the learned Single Judge was justified in holding that the proceedings under Section 67 were

without jurisdiction. We are also of the view that the proceedings are beyond the period of limitation.

20. The Division Bench of the High Court held that, in terms of Section 67, the aggrieved parties can file either a civil suit or an appeal against the order before the Karnataka Appellate Tribunal under Section 49 of the KLR Act. It did not decide the claim on merits. In the peculiar facts and circumstances of the present case, where the dispute regarding title has been raised after more than 100 years and when there is evidence to show that the land was bought for the benefit of First Princess, the allegation of fraud cannot be believed, especially in view of the contemporaneous evidence and the subsequent acquisitions out of this very estate, both by the Maharaja of Mysore before independence and by the State of Mysore after independence. The notice being without jurisdiction could be quashed in proceedings under Article 227 of the Constitution of India.

21. In view of the above discussion, we are clearly of the view that the Division Bench of the High Court erred in setting aside the judgment of the learned Single Judge. It is held that the "Beaulieu" estate was purchased by the Dewan of Mysore on behalf of the First Princess and the consideration was paid from the personal funds of First Princess. Therefore, the State of Karnataka has no right over the property. Consequently, the appeals are allowed and the judgment of the Division Bench of the High Court is set aside and that of the learned Single Judge is restored and the appeal filed by the appellant M. Sankaranarayanan which was transferred to the High Court is decided in terms of the judgments passed by the learned Single Judge and this Court.