A. Bhaskar and Another Etc. Vs. State of Karnataka and Others, Etc.

A. Bhaskar and Another Etc. Vs. State of Karnataka and Others, Etc.

SooperKanoon Citation : sooperkanoon.com/371764

Court : Karnataka

Decided On : Oct-18-1993

Reported in : AIR1994Kant209; ILR1993KAR3103; 1993(4)KarLJ275

Judge : G. P. Shivaprakash, J.

Acts : Registration Act, 1908 - Sections 21, 22, 22A; Karnataka Amendment Act, 1976 - Sections 15 and 22A; Karnataka Land Revenue Act, 1964 - Sections 95; Karnataka Regularisation of Unauthorised Constructions in Urban Areas Act, 1991 - Sections 3; Karnataka Village Panchayats and Local Boards Act, 1959 - Sections 42 and 210, Rule 35; Karnataka Town and Country Planning Act, 1961; The Urban Land (Ceiling and Regulation) Act, 1976 - Sections 20(1), 26, 28 and 72; Land Reforms Act, 1974; Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, 1966; Karnataka Land Grant Rules, 1969; Land Acquisition Act, 1894 - Sections 4; Bangalore Development Authority Act, 1976 - Sections 17 and 36; Bangalore Development Authority (Allotment of Sites Rules), 1984

Appeal No. : Writ Petn. Nos. 29028 to 29031 with 27737 to 27740 etc. etc. of 1993

Appellant : A. Bhaskar and Another Etc.

Respondent : State of Karnataka and Others, Etc.

Advocate for Def. : H.H. Kaladgi, Govt. Pleader

Advocate for Pet/Ap. : V.G. Hegde, ;T.V. Vijay Raghavan ;(M.R. Narayana & Co.), ;R. Bhaskara, ;S. M. Hegde, ;S.B. Mukkannappa ;(M/s. Jaypee Associates), ;S. Chennaraya, ;T.S. Ramachandra, ;G. Raikar and ;S. Shankaranar

Judgement :
ORDER

1. In these writ petitions, the petitioners question the legality and validity of two Circulars dated 9-2-1993 and 24-5-1993 issued by the Revenue Department of the State Government. In most of the petitions only the Circular dated 24-5-1993 is under challenge, which as a matter of fact is based on the Circular dated 9-2-1993.

2. The petitioners complain that in view of the aforesaid circulars, the jurisdictional Sub-Registrars are refusing to accept the deeds of conveyance for registration.

3. The Circular dated 9-2-1993 reads as hereunder:

'Government of Karnataka

Karnataka Government Secretariat,

M.S. Building,

No: RD 16 LGP 93 Bangalore, dated 9th Feb., 1993

Circular :

Sub : Discussions held by the Hon'ble Minister for Revenue with the officers on serveral aspects of Government lands and conversions with particular reference to Bangalore District -- Ban on issue of Kaneshumari numbers in Form 10 of Gramthanas land and ban on registration -- reg.

It has come to the notice of Government that large extents of Gramthanas lands have been allowed to be sold on the ground that such land has been given a Kaneshumari number. Those irregularities and illegal activities are reportedly going on in Bangalore District with the connivance of the local Revenue Officials, in particular the Village Accountants with a view to avoid sanction of conversion of such lands. Such activities have been noted with grave concern by the Government since it not only involves loss of revenue to Government but also grave illegalities on the part of officials. The Form No. 10 being issued by the Village Accountants under the Village Panchayat and Local Boards Act which is still in force in Bangalore Urban District, is hereby totally banned. Similarly, the registration of sites which have been given Kaneshumari number in Form No. 10 is hereby totally banned until further orders. Further, the Gramthanas vesting with the Village Panchayat should be in dentifi-ed, measured and listed and such lands shall be barred from registration, unless such lands have been duly converted by the appropriate authority under the provisions of Karnataka Land Revenue Act. Even the ITI Notified Area Committee and HAL Sanitary Boards are hereby prohibited from issuing Form No. 10 in the lands under their jurisdiction. Such lands shall also not be registered.'

Sd/-

(Jeethendra Singh)

Under Secretary to Government,

Revenue Department.'

4. The second Circular dated 24-5-1993 is in Kannada language. Its contents disclose that when the Revenue Minister made an inspection on 1-2-1993 of certain revenue records of Kodigehalli village, Bangalore South Taluk, he noticed that in respect of agricultural lands several 'illegal transactions' had been effected by the Village Accountants issuing 'Form No. 10' indicating that certain lands are within the 'Grama-tana', thereby enabling registration of documents by the Sub-Registrars concerned in 'violation' of the provisions of (1) The Urban Land (Ceiling and Regulation) Act, 1976; (2) The Land Reforms Act, 1974, and (3) The Karnataka Village Panchayats and Local Boards Act, 1959.

5. In that context on the instructions issued by the Minister, with a view to preventing such 'illegal transactions', the impugned Circular dated 24-5-1993 is said to have been issued following the Circular No. RD 16 LGP 93, dated 9-2-1993 forbidding registration of documents on the basis of 'Form No. 10' under which 'Kaneshumari' number is given to the properties by the Village Panchayats concerned. The impugned Circular dated 24-5-1993 further directs that till proper identification of 'Gramatana' numbers included within the jurisdiction of concerned Village Panchayats in Bangalore District, I.T.I. Notified Area and H.A.L. Sanitary Board are verified, 'Form No. 10' shall not be issued by the aforesaid authorities for preventing registration of documents relating to agricultural lands diverted for non-agricultural purposes without following the procedure prescribed under the provisions of the Karnataka Land Revenue Act, 1964.

6. The impugned Circular highlights certain provisions contained in the Karnataka Panchayats Budget and Account Rules, I960 framed under S. 210 of the Karnataka VillagePanchayats and Local Boards Act, 1959. Chapter VI of the said Rules provides for imposition of 'Taxes on lands and buildings and other taxes having a fixed periodical demand.' The Circular emphasises the said provisions regarding assessment and directs that 'Form No. 10' to which reference is made in the Circular shall be issued demanding tax in respect of the properties after the assessment is determined in 'Form No. 9', and if property has been assessed without following the procedure prescribed, such assessment is not legally acceptable since the aforesaid provisions are not applicable to agricultural land and structures thereon. Therefore, any change of ownership of such lands by effecting change of 'Khatta' in the mutation register by entering names in 'Form No. 10' is illegal. It is stated in the Circular that in many cases it has been noticed that in respect of properties already registered, the entries in 'Form No. 9' and 'Form No. 10' do not tally; and that relying on the entries in 'Form No. 10', in 75% of the cases registration of documents have been effected, and at first view, it appears to the revenue authorities, that it has been done in violation of the aforesaid laws.

7. The Circular therefore directs that the officials concerned shall verify the assessment list (Form No. 9) to ascertain whether the property is within the Village

Gramatana boundary and whether the land in question has been diverted for non-agricultural purposes either under the provisions of Karnataka Land Revenue Act or under the provisions of Land Acquisition Act and if so only in respect of such lands if mutated in 'Form No. 11' and entered in assessment register (Form No. 9), copies of the same shall be sent to the concerned Sub-Registrars duly certified by the concerned Assistant Commissioners. Under the Circular, directions are issued to the Sub-Registrars that they should register only such documents in respect of properties which have been subjected to the aforesaid scrutiny and where entries in Form Nos. 9, 10 and 11 tally; otherwise they are directed not to effect registration. Besides, the Sub-Registrars are reminded about the instructions issued under Circular dated 30-10-1990 published in the State Gazette dated 10-12-1990 and are enjoined to strictly abide by the same.

8. For the purpose of appreciating thecontents of the impugned Circulars, I set forthbelow the relevant parts of R. 35 of theKarnataka Panchayats Budget and AccountsRules, 1960.

'35. Taxes on lands and buildings.--(i) The Panchayat shall prepare annually or at the end of such periods as may be prescribed in the relevant rules, assessment lists in Form No. 9. The entries in these lists shall be first according to wards and thereafter according to streets and serial number of buildings and lands. After giving an opportunity to be heard to the persons concerned and after obtaining the decision of the Commissioner under S. 74 of the Act in cases of appeal, the final assessment shall be entered in a Demand Register in Form No. 10. Every entry in the Demand Register shall be attested by the Secretary. Where any tax or cess is levied as a rate on lands and buildings, the same shall also be entered in the Demand Register and recovered along with the primary tax. The entries in this register shall be in the same order as that in the assessment lists.

(ii) Properties exempted from the levy of tax shall be entered in the assessment lists, but no assessment of tax need be made in such cases. The grounds on which or the provisions under which, such exemption is granted shall be recorded in the assessment lists. The properties exempted from tax need not be shown in the Demand Registers.

(iii) Every change made in the Demand Register in between the periodical general revisions shall be entered in the Mutation . Register in Form No. 11, and the total new demand under these taxes duly reconciled with the old demand after taking into account all the mutations effected during the intervening period.

(iv) to (viii) xx xx xx xx'

9. Sri T. S. Ramchandra, learned counsel appearing for some of the petitioners who addressed arguments in the first instance,and other learned counsel who followed him, submitted that the impugned Circulars dated 9-2-1993 and 24-5-1993 cannot override the statutory provisions of the Registration Act, 1908, and the Rules framed thereunder which regulate registration of documents.

10. Sections 21 and 22 of the said Act require description of the properties to be given for purposes of proper identification and mention the documents to be produced in that behalf; S. 23 provides, inter alia, that no document other than a Will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution; S. 28 provides, inter alia, that the document shall be presented for registration in the office of a Sub-Registrar within whose Sub-District the whole or some portion of the property to which such document relates is situate; Ss. 32 and 33 specify the persons who are entitled to present the document for registration; S. 35 provides for the procedure on admission of execution or denial of execution of document as the case may be.

11. In J. D. Pathak v. V. B. Barot, : AIR1982 Guj317 , on the question whether the Sub-Registrar acting under the provisions of the Indian Registration Act, 1908 can refuse to accept for registration a document which, according to the Sub-Registrar, was governed by the provisions of Ss. 26 and 28 of the Urban Land (Ceiling and Regulation) Act, 1976, it is held after detailed consideration of the various provisions of the Act, that the provisions of the Registration Act provides that it was only under two contingencies that a registering officer had power to refuse to accept a document presented before him for registration and can legitimately return the same to the person presenting it for 'putting his house in order'. The said provisions are contained in S. 20(1) whereunder the registering officer can refuse

to accept for registration defective documents and S. 71(2) under which a document whose registration is refused and which bears such endorsement from competent Sub-Registrar unless the 'said impediment is removed after following the procedure laid down' under S. 72 onwards.

12. In Krishna Gopal Kataria v. State of Punjab, it is held that Registration Act is a complete Code by itself and nothing in the Act authorised either the State Government or the Registrar to instruct the Sub-Registrars not to register a document.

13. Similarly in Kishni Devi v. State of Rajasthan, , it is ruled that the Sub-Registrar and the Registrar are authorities under the statute and they draw their authority therefrom and therefore their statutory functions cannot be curtailed by Government by any executive instructions issued by the State Government or any authority.

14. Relying on the aforesaid rulings the learned counsel for the petitioners assailed the two impugned Circulars dated 9-2-1993 and 24-5-1993 which practically debars registration of documents in respect of properties bearing 'Kaneshumari' numbers identified by 'Form No. 10', situated within the jurisdiction of the concerned Village Panchayats, I.T.I. Notified area and H.A.L. Sanitary Board within Bangalore District. The learned counsel submitted that the impugned Circulars are issued without the authority of law.

15. The learned counsel urged that if any property is registered in violation of the enactments mentioned in the Circular dated 24-5-1993 i.e., (1) The Urban Land (Ceiling and Regulation) Act, 1976, (2) The Land Reforms Act, 1974, (3) The Karnataka Village Panchayats and Local Boards Act, 1959, and (4) The Karnataka Land Revenue Act, 1964, the legal consequences of such violation are provided in the respective enactments itself, and therefore the directions contained in the impugned circulars, which are more in the nature of a preventive measure in anticipated violation of certain provisions of the aforesaid enactments are legally unsustainable. They submitted that by executive orders, registration of documents on suspicion of violation of certain statutory provisions cannot be barred. They further submitted that the properties for purposes of registration need not

necessarily bear'Kaneshumari' numbers in 'Form No. 10' and that there is no such provision in the Registration Act that 'Kaneshumari' number is an essential requirement for registration and that properties could be clearly identified by other description for satisfying the requirements of S. 21 of the Registration Act.

16. Sri H. H. Kaladgi, learned Government Pleader sought to justify the impugned Circulars by asserting that with a view to strictly enforce the provisions of the Land Reforms Act, 1974, the Urban Land (Ceiling and Regulation) Act, 1976 and the Land Revenue Act, 1964 the impugned Circulars have been issued. He vehemently contended that in and around Bangalore, agricultural lands are being diverted for formation of layouts without following the procedure prescribed under S. 95 of the Land Revenue Act.

17. In addition the learned Government Pleader contended that layouts are being formed qn the strength of the layout plans sanctioned by the Village Panchayats in purported exercise of its power under S. 42 of the Karnataka Village Panchayats and Local Boards Act. He urged that it is the Local Planning Authority i.e., the Bangalore Development Authority which could sanction layouts under the provisions of the Karnataka Town and Country Planning Act, 1961, and therefore unless the petitioners satisfy the registering authority that the layouts in which the sites in question are situated have been sanctioned by the Bangalore Development Authority, such documents cannot be registered. This submission of the learned Government Pleader is beyond the scope of the impugned Circulars. Nowhere in the impugned Circulars any reference is made to such transactions. It is, therefore, not necessary for me to consider this aspect of the matter. However, I may notice an unreported decision of this Court in W.P. No. 19223 of 1982 (D.D.15-9-1982) wherein such a contention has been rejected on the ground that such objections for registration are 'not germane to the Act and is manifestly illegal'.

18. The learned Government Pleader next contended that in view of the Registration (Karnataka Amendment) Act, 1976, to the Registration Act, inserting S. 22A, after S. 22 of the Principal Act, the impugned Circulars could be sustained on the ground that they are issued in public interest. S; 22A reads as hereunder:

'22A. Documents registration of which isopposed to public policy: (1) The. StateGovernment may, by notification in theofficial Gazette, declare that the registrationof any document or class of documents isopposed to public policy.

(2) Notwithstanding anything contained in this Act, the registering officer shall refuse to register any document to which a notification issued under sub-sec. (1) is applicable.'

19. The impugned Circulars are not notified in the official Gazette and therefore it is futile to contend that the Circulars are issued in purported exercise of power under S. 22A of the Amendment Act.

20. The learned Government Pleader next contended that the Circular dated 30-10-1990 notified in the official Gazette dated 10-12-1990 enumerates the several notifications issued by the Government from time to time and the spirit of the impugned Circulars could be traced to one such notification. The relevant parts of the said Circular dated 30-10-1990 are reproduced below:

'CIRCULAR

No.RD 10 ESR 90, Bangalore, Dated

30th October, 1990.

The registration of the following documents are declared as opposed to public policy by Government in exercise of powers conferred under S. 22 A(1) of the Registration (Karnataka Amendment) Act, 1976 issued in Government Notifications (1) RD 132 ERG 76, dated 14th March, 1979; (2) RD 44 ERG 81 dated 30th March, 1981, (3) RD 132 ERG 76, dated 14th October, 1983, (4) RD 132 ERG 76 (P), dated 3rd July, 1985; (5) RD 132 ERG 76, dated 29th June, 1988.

1. Documents effecting transfer or partition of lands in contravention of Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, 1966 as amended by Karnataka Act No. 18/79;

2. Documents effecting transfer of land in contravention of the restriction imposed under Section 61 of the Karnataka Land Reforms Act and Rules framed thereunder;

3. Documents effecting alienation of land in contravention of Section 74 of the Karnataka Land Reforms Act, 1961;

4. Documents effecting transfer of lands in contravention of the provisions of the Karnataka Land Grant Rules, 1969;

5. Documents effecting transfer of lands incontravention of the provisions of the Karnataka Village Offices Abolition Act, 1961;

6. Documents relating to termination of tenancy rights in contravention of the Karnataka Land Reforms Act, 1961;

7. Documents effecting transfer of land in contravention of the provisions of Urban Land (Ceiling and Regulation) Act, 1976 (Central Act 13 of 1976) dated 14th October,1988);

8. Documents contravening the provisions of Section 79-B of the Karnataka Land Reforms Act, 1961, (imposing prohibition of holding Agricultural land by certain persons) (No. RD 132 ERG 76(P) dated 3rd July 1985);

9. Documents effecting transfer of land during the period in which a notification published under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) is in force in respect of such land;

10. Documents effecting transfer of land in respect of which a notification published under Sec. 17 of the Bangalore Development Authority Act, 1976 (Karnataka Act 12 of 1976) is in force;

11. Documents effecting transfer of land during the subsistence of an agreement entered into by the Authority for the purchase of land under Section 36 of the Bangalore Development Authority Act, 1976 (Karnataka Act 12 of 1976);

12. Documents effecting transfer of site during the subsistence of the lease cum sale agreement entered into by the allottee with the Bangalore Development Authority under the provisions of the Bangalore Development Authority (Allotment of Sites Rules) 1984 (Sl. Nos. 9, 10, 11 and 12 issued as per Notification No. RD 132 ERG 76, dated 20th June, 1988).'

21. The impugned Circulars totally prohibiting registration of properties bearing 'Khaneshumari' numbers cannot be related to any one of the aforementioned Notification. Therefore, the submission of the learned Government Pleader that the impugned Circulars are issued in public interest holds no water.

22. On the other hand the submission of the learned Counsel for the petitioners that the impugned Circulars are issued without the authority of law causing lot of hardship and inconvenience to the members of the public inasmuch as there has been total ban of all registration of properties bearing 'Khaneshumari' numbers situated within the areas mentioned in the Circular dated 24-5-1993, for over six months now (the first impugned Circular is dated 9-2-1993) deserves to be accepted. There are many number of properties bearing 'Khaneshumari' numbers since many years vacant sites and buildings within the jurisdiction of Village Panchayats, I.T.I. Notified Area and H.A.L. Sanitary Board area within the Bangalore District.

23. The authors of the impugned Circulars appear to have completely lost sight of the fact that diversion of agricultural lands to non-agricultural purposes need not be necessarily under the provisions of Section 95 of the Land Revenue Act. There could be statutory conversion of agricultural land to non-agricultural purposes, without any volition on the part of the owners of the lands, in view of such lands being shown in the Outline Development Plan later superseded by the Comprehensive Development Plan, prepared under the provisions of the Karnataka Townand Country Planning Act, 1961, for other purposes i.e., Residential, Industrial, Public and semi-public etc., See Special Deputy Commr. v. Narayanappa, : ILR 1988 KAR1398 , Venkataramaiah v. State, (1988) 1 Kant LJ 188. A Division Bench of this Court has also ruled in Writ Appeal No. 1662 of 1989 that if exemption is granted by the Government under Section 20 of the Urban

Land (Ceiling and Regulation) Act, 1976, it is not possible for any other authority to require the exempted to obtain an order of conversion of that land into non-agricultural purposes. Therefore, the submission made on behalf of the petitioners that the impugned Circulars are issued in ignorance of the law cannot be said to be wholly without any justification.

24. In this context I may also refer to the amendment of Section 95 of the Land Revenue Act, 1964, with effect from 20-3-1991, under the Karnataka Land Revenue Act (Amendment Act), 1990 (Act No. 2 of 1991). After the amendment the relevant parts of Section 95 read as hereunder:

'95. Uses of agricultural land and the procedure for use of agricultural land for other purposes:--

(1)..... (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, notwithstanding anything contained in any law for the time being in force, 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:

Provided that the Deputy Commissioner shall not refuse permission for diversion of such land included in the Outline Development Plan or the Comprehensive Development Plan published under the Karnataka Town and Country Planning Act. 1961 (Karnataka Act 11 of 1963), if such diversion is in accordance with the purpose of land use specified in respect of the land in such plan. Provided .....

(Underlining mine to indicate the amendedparts)

25. The learned Government Pleader, inview of the amendment, submitted thatdespite statutory change of land use by virtueof the Outline Development Plan/Comprehensive Development Plan prepared underthe provisions of the Karnataka Town andCountry Planning Act, or under the provisions of the Urban Land (Ceiling and Regulation) Act, as held by this Court in thedecisions referred above, an applicationunder the amended provisions of Section 95of the Land

Revenue Act has to be madebefore diverting the agricultural land forother purposes.

26. It is not necessary to consider theimplications of the amendment to Section 95 of the Land Revenue Act in these petitions; but I may state here that the Outline Development and Comprehensive Development for the Bangalore Local Planning area were approved by the State Government under relevant Government orders on 22-5-1972 and 12-10-1984 respectively, and consequently target areas of agricultural lands within Bangalore Local Planning Area got diverted for non-agricultural purposes as indicated in the aforesaid plans by force of statute as held by this Court, long before the amendment to Section 95 of the Land Revenue Act. Similarly under Section 20 of the Urban Land (Ceiling and Regulation) Act, the Government has granted exemption in innumerable cases after the commencement of the said Act, for use of agricultural lands for other purposes long before Section 95 of the Land Revenue Act was amended.

27. In the light of the above discussion on various legal aspects submitted by the learned Counsel, and for the foregoing reasons, I hold that 'Khaneshumari' number ('Khaneshumari' literally means census) is not essential for registration of documents pertaining to properties, which do not bear such numbers and the impugned Circulars dated 9-2-1993 and 24-5-1993 to the extent they forbidregistration of documents pertaining to properties bearing 'Khaneshumari' numbers are quashed. Consequently the jurisdictional Sub-Registrars are directed to accept the documents to be presented by the petitioners, and consider them for registration in accordance with law.

28. Before I part with these petitions, I may notice certain provisions of Karnataka Regularisation of Unauthorised Constructions in Urban Areas Act, 1991. Section 3 of the said Act provides for regularisation of unauthorised constructions made in any urban area, except those specified in Section 4, made prior to the 31st day of March, 1990 by any person on land (i) belonging to the State Government; or (ii) which is a revenue site owned by him; or (iii) belonging to him which is proposed to be acquired in connection with any development scheme of an authority, in relation to which a notification under the Bangalore Development Authority Act,

1976, or under Section 17 of the Karnataka Urban Development Authorities Act, 1987, or under Section 15 of the Karnataka Improvement Boards Act, 1976, is published and which has not vested in favour of any Authority for which the acquisition is proposed. The Act provides that in the above cases on the application of such person made within sixty days of the commencement of the Act be regularised in accordance with the provisions of the Act.

29. It is impossible to reconcile the impugned Circulars with the provisions of the aforesaid statute. Whereas unauthorised constructions on revenue land belonging to the Government are sought to be regularised under the aforesaid Act, the impugned Circulars frown upon mere registration of documents pertaining to properties bearing 'Khaneshumari' numbers, owned by the petitioners, on suspicion that they are constructedon revenue land. These are matters to be borne in mind by the concerned authorities while issuing Circulars which often times create more problems by compounding theissues.

30. Writ Petitions allowed. No costs.

31. Petitions allowed.