Narayanaswamy Vs. State of Karnataka

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Court : Karnataka

Decided On : Feb-16-1994

Reported in : ILR1994KAR817

Judge : Rajendra Babu and ;Venkataraman, JJ.

Acts : Karnataka Land Reforms Act, 1961 - Sections 107, 107(1) and 110; ;Karnataka Land Reforms Rules, 1974 - Rule 38A

Appeal No. : W.P. No. 2933 of 1988

Appellant : Narayanaswamy

Respondent : State of Karnataka

Advocate for Def. : K. Vishwanath, HCGP for R1, ;S.G. Sundaraswamy, Senior Counsel and C.K. Narayana Rao, Adv. for R2

Advocate for Pet/Ap. : K. Channabasappa, Adv.

Disposition : Petition allowed

Judgement :
ORDER

Venkataraman, J.

1. The petitioner is the owner of Survey Nos. 48 to 51, 62, 63 and 67 to 71 of Nimbekayipura village. Some of these lands are leased and some are mortgaged by the petitioner to the second respondent for running a Stud Farm known as 'Clive Stud Farm'. On the advent of the Karnataka Land Reforms Act (hereinafter referred to as the Act) in the present form with effect from 1.3.1974, the second respondent filed Form No. 7 before the Land Tribunal, however, making it clear in the said Form that the said lands are being used as stud farm for breeding, rearing and maintenance of horses and allied purposes referred to in Rule 38-A of the Karnataka Land Reforms Rules (hereinafter referred to as the Rules).

The petitioner applied to the Government to approve the stud farm under the provisions of the Act and the Rules. The Government called for a report from the Special Deputy Commissioner. He stated that the stud farm is in existence since 1967 duly registered with Royal Western, India Turf Club, Bombay. He noted that the stud farm is developed for the purpose for which it stands and 67 adult horses, 22 immature horses and 11 foals are born uptil 1984. He observed that 84 acres of land is less than ceiling limit the stud farm can hold and it does not have excess land. Since the stud farm owner is not seeking exemption, the same may be rejected. Approving his view Commissioner, Revenue department, has passed the impugned order Annexure-D rejecting petitioner's application. Aggrieved by that order the petitioner has filed this Petition.

2. The learned Counsel for the petitioner contended that Section 107 of the Act itself provides for exemption of lands from applicability of the Act and Government has merely to approve the stud farm by finding out whether it fulfills the prescribed conditions in Rule 38-A of the Rules; that when once the Government concluded that the stud farm fulfilled the conditions prescribed under Rule 38-A, it had no option but to grant approval under Section 107(1)(v) of the Act; that the question of who owned the stud farm being irrelevant the Government could not have taken into consideration such material in rejecting the claim of the petitioner.

3. The learned Counsel for the respondents contended that though the Act or the Rules are silent as to who should apply for the grant of approval under Section 107(1)(v) of the Act, the objects and scheme of the Act would make it clear that it

is only in the interest of maintaining a stud farm exemption had been provided and thus the State Government was justified in taking into consideration the fact that the petitioner was not interested in maintaining the stud farm. It was also submitted that there was ample material on record to show that the petitioner intended to utilise the land for purposes other than stud farm by sale for other purposes or otherwise.

4. Section 107 of the Act provides for exclusion of certain lands from applicability of the Act subject to Section 110 and except Section 8 and among others Section 107(1)(v) of the Act provides that lands are excluded which have been used for such stud farms as are in existence on the 24th January, 1971 and approved by the State Government, subject to such Rules as may be prescribed. Rule 38-A of the Rules provides for conditions for applicability of Section 107(1)(v) of the Act. The conditions are that the stud farm should have been in existence as on 24th January 1971 duly registered with any Turf Club in India and the land occupied by the stud farm should be utilised for the purpose of such stud farm like breeding, rearing and maintenance of horses and allied purposes. The Rules also provide in detail extent of land reserved for paddocks, stables and for growing fodder with reference to number of horses/foals. In the event that such land is not utilised for the purpose of stud farm it shall be surrendered to Government subject to the provisions of the Act.

5. Object of Section 107(1)(v) appears to be to preserve and encourage breeding, rearing and maintenance of horses. For the said purpose if land is utilised, the provisions of the Act are made inapplicable except Section 8 of the Act which provides for payment of rent. However, power is reserved under Section 110 of the Act to withdraw the operation of Section 107 of the Act if the basic policy underlying the Act is likely to be defeated and thereby allow the provisions of the Act to apply in full force.

6. In the instant case the State Government has recorded a finding that the land in question is used for a stud farm. The impugned order specifically notes the existence of the stud farm prior to 24 th January 1971 and the fact that it is registered with the Turf Club. The order also notices that the stud farm is being

utilised for the purpose of stud farm for breeding, rearing and maintaining horses. The order does not indicate that any of the four conditions laid down in Rule 38A is not fulfilled by the stud farm. The sole ground upon which the State refuses to accord approval under Section 107 read with Rule 38-A is that the stud farm is owned and run by the second respondent and hence the petitioner who is the owner of the land having no interest in the stud farm has no locus standi to seek benefit of Section 107 of the Act.

7. A perusal of Section 107(1)(v) of the Act will make it clear that the Act will not be applicable to land used as stud farm and approved by Government subject to Rules framed in that regard. The Government must record its satisfaction of the compliance with the Rules framed thereof. The exception carved out in Section 107 is with reference to the land used as a stud farm and not with reference to owner either of land or stud farm. And, the factor of ownership is entirely irrelevant. The conditions to be satisfied under Section 107(1)(v) of the Act are:

(i) land used for stud farm

(ii) such stud farm is in existence as on 24.1.1971

(iii) approved by Government subject to Rule 38-A.

This analysis would show that nature of ownership does not enter into picture at all. In granting the approval under Rule 38-A, it is open to the Government to see whether the land is being used for the stud farm. Even after approval the moment it is discovered that the land is used for any purpose other than stud farm provided under Rule 38-A of the Rules, the exemption is lost and the Government can ask the party concerned to. surrender the land in question, the object of exemption being to promote horse breeding by maintenance of appropriate stud farms. The Government can also exercise its power under Section 110 of the Act, that in any given case, if the underlying purpose of the Act is defeated to take such land out of the purview of Section 107 of the Act and apply all such provisions of the Act as it deems fit.

8. In the impugned order the Government does not refer to Section 110 or indicate any grounds to exercise powers thereto, nor does it say that there is no compliance with Rule 38-A of the Rules. Hence the impugned order of the Government is liable to be and is quashed. The Government has not given a clear finding that there is compliance or otherwise with Rule 38-A of the Rules. If the finding of the Government is that there is compliance with the Rule it must issue approval as contemplated under Section 107(1)(v) of the Act and hence the impugned order shall stand quashed and the Government is directed to examine the matter afresh on the basis of the report made by the Deputy Commissioner and any other material relevant thereto. The Government shall not reject the claim of the petitioner on the ground that he is owner of the land and not of stud farm. Petition allowed. Rule made absolute accordingly.