

Gundu Vs. Assistant Commissioner

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Court : Karnataka

Decided On : Sep-10-1991

Reported in : ILR1992KAR324; 1991(3)KarLJ81

Judge : M. Ramakrishna, J.

Acts : Karnataka Village Offices Abolition Act, 1961 - Sections 7 and 8; Bombay Hereditary Offices (Amendment) Act, 1886 - Sections 8

Appeal No. : W.P. No. 8376 of 1991

Appellant : Gundu

Respondent : Assistant Commissioner

Advocate for Def. : M. Siddagangaiah, HCGP for R-1 and ;S.R. Shinde, Adv. for R-2 and R-3

Advocate for Pet/Ap. : Narendrakumar Gunaki, Adv.

Disposition : Petition allowed

Judgement :

ORDER

M. Ramakrishna, J.

1. In this Writ Petition under Articles 226 and 227 of the Constitution of India, the petitioner has questioned the legality and correctness of the order of the Assistant Commissioner-first respondent herein at Annexure-H. He has sought for quashing the same for the reasons set out in the Writ Petition. He has also sought for a direction to restore the order passed by the Assistant Commissioner on 21 -8-1-972 and that of the Learned District Judge on 6-3-1974. (Annexure-C and D respectively).

2. A few facts that are necessary for the disposal of this Writ Petition are as follows:

3. Sy.No. 17, measuring 10 acre, 3 guntas situated in Allehol Village in Khanapur Taluk, Belgaum District is endowed upon the Village Office, viz., Shet Sanadhi of the said Village. Therefore, the said land is governed by the provisions of the Village Offices Abolition Act of 1961 (hereinafter referred to as the 'Act') and by virtue of Section 4 of the Act; the land stood resumed to the State; subject to the provisions of Sections 5, 6 and 7 relating to regrant.

4. Accordingly, when the petitioner, the original holder of the Village Office, presented an application seeking regrant of the land in question in his favour, the Assistant Commissioner, by his order (Annexure-B) dated 26-5-1969 regranted it in his favour under Sections 5, 6 of the Act, subject to certain conditions. This is not in dispute.

5. It is the case of the respondents-2, 3 and 4 that, before the Act came into force, the land was leased in their favour by the holder of the Village Office that, by virtue of the said lease, they were cultivating the land as lessees by paying rents to the petitioner, that, in terms of Section 8 of the Act, they approached the concerned Land Tribunal for grant of occupancy in their favour, that the Land Tribunal conferred occupancy on them respecting the land in question, that the petitioner, aggrieved by the said order, filed W.P.No. 24466 of 1981 before this Court, that this Court allowed the Writ Petition, quashed the order impugned therein and remitted the matter for fresh disposal in accordance with law, that, though that matter was pending consideration before the concerned Land Tribunal, the Assistant Commissioner by his order, Annexure-C, directed eviction of these

respondents from the land and that the appeal filed as against that order came to be dismissed by the learned District Judge.

6. It is their further case that, aggrieved by the order of the learned District Judge, they filed Writ Petition No. 2219/1974 before this Court and this Court, by an order made on 5th September 1983 as, per Annexure-E allowed the Petition in part, set aside the order impugned therein and remitted the matter to the Assistant Commissioner to decide the validity of the two contentions urged. While doing so, this Court referred to the specific two contentions urged. They are as follows:

1. By virtue of Section 8 of the Karnataka Village Offices Abolition Act, 1961, petitioner has got rights to continue in possession since the provisions of the tenancy laws that were in force in the respective year would apply.

2. The lease is saved under Section 5 of the Bombay Vatan Act and the lease would be valid during the life time of the first respondent. While doing so, the learned Judge followed the principle laid down by this Court in W.P.2185/1974.

This matter went back to the Assistant Commissioner for reconsideration in terms of the direction given by this Court.

7. Before the Assistant Commissioner, the matter was vehemently argued. Indeed written arguments on behalf of both the parties were presented, copies of which are produced at Annexures F and G in this Writ Petition.

8. The Assistant Commissioner, by his order (Annexure-H) dated 25-9-1987, disposed of the matter, without complying with the directions of this Court.

Thus the Assistant Commissioner rejected the application of the petitioner for evicting respondents 2 to 4. Hence this Petition.

9. Sri Gunaki, learned Counsel for the petitioner argued that:

i) the alleged lease created by the authorised holder of the Village Office was not in writing and with the permission of the Competent Authority. Presuming for the sake of arguments that the lease was oral, It would not create any legal rights on the lessee.

ii) However, since the view taken by the Assistant Commissioner under Annexure-H is not in terms of Section 7 of the Act, that order was liable to be quashed.

iii) As to the maintainability of the Writ Petition without exhausting the remedy of appeal under Section 3(2) of the Act, it is contended that the petitioner was prevented by sufficient cause. In that he met with an accident and was under treatment for quite some time, and that therefore he could not file the petition well in time. Secondly, such an appeal was not an efficacious remedy, having regard to the facts of this case. Thirdly, since the Assistant Commissioner failed to comply with the specific directions given by this Court, the petitioner had no alternative but to approach this Court.

10. For these reasons, the learned Counsel for the petitioner submitted that it was a good case for allowing the Writ Petition and granting the relief sought for.

11. Per contra, Sri Shindhe, learned Counsel for respondent argued that respondents 2 to 4 were cultivating the land since a very long time on oral lease which had been saved by Section 8 of the Act and that therefore Section 7 could not be pressed into service in a case like this. He relied upon the Decisions reported in:

1. 1980 MLJ 39, Narayana Rao v. Land Tribunal
2. 1978(1)MLJ 418, Mariyappa v. Land Tribunal
3. 1973(1) MLJ 89, Boregowda v. Ramanaiik
4. 1979(1) MLJ 265, Hanuma Reddy v. Land Tribunal

However, Sri Shindhe vehemently argued that the Writ Petition was not maintainable for two reasons:

1. The petitioner had not exhausted the remedy under Section 3(2) by filing an appeal before the District Judge.
2. The explanation offered was not sufficient to condone the delay in filing the Petition.

12. In view of the rival contentions advanced, the following points arise for consideration in this petition:

i) Whether Section 8 of the Act would come to aid of respondents 2 to 4 to protect their rights as contended?

ii) Whether respondents 2 to 4 are liable to be evicted by invoking Section 7 of the Act?

13. Now I will deal with the first point which would determine the rights and liabilities of the parties in the Writ Petition. At the outset it is undisputed that the plea as put forward by the respondents 2 to 4 throughout is that, to begin with, the entire extent of land referred to above endowed upon the village office was under the lease-hold rights enjoyed by them. According to them, there was an oral lease granted by the petitioner of the entire land. Later, however, 5 acre 4 guntas came to be acquired for public purpose under the Land Acquisition Act and that an Award has been made in that behalf. It is not clear in whose favour the Award was made under the Land Acquisition Act. The remaining portion of the land after the acquisition is 4 acre and 39 guntas. Therefore this is the subject matter of the litigation.

14. In order to appreciate the legal contentions urged by both the parties, Section 8 of the Act is extracted hereunder:

'APPLICATION OF TENANCY LAW:- If any land granted or continued in respect of or annexed to a village office by the State has been lawfully leased and such lease is subsisting on the appointed date, the provisions of the tenancy law for the time being in force in that area in which the land is situate shall apply to the said lease and the rights and liabilities of the person to whom such land is granted under Sections 5, 6 and 7 and his tenant or tenants shall, subject to the provisions of this Act, be governed by the provisions of the said tenancy law.'

This Section deals with the application of tenancy laws, in respect of the Service Inam land. As already pointed out undoubtedly the land in question was endowed upon the village office. It is again not in dispute that as on the date when alleged

lease was granted by the holder of the Village Office in favour of the respondents 2 to 4, the provisions of Bombay Hereditary Offices (Amendment) 1886 were made applicable, which came to be repealed by Section 12 of the Act, Sub-section (3) of Section 12 provides as follows:

'Nothing in Sub-sections (1) and (2) shall be deemed to affect -

a) Any obligation or liability already incurred, by the holder of a Village Office or other person before the appointed date.

b) Any proceedings or remedy in respect of such obligation or liability.'

Therefore the rights and obligations saved under the repealed provisions could be enforced by the parties. But the main question is whether the lease was orally granted by the petitioner in favour of respondents 2 to 4 could be valid?

15. In the instant case, it is nobody's case that the petitioner obtained necessary sanction from the Competent Authority before the said lease was granted. In the absence of such a sanction, any lease that is granted by the watandar could not confer any right upon the person said to be enjoying the lease-hold rights, in respect of the Service Inam Land, Sri Sindhe, learned Counsel for the respondents has not been able to produce any satisfactory material before the Court to say that respondents 2 to 4 were enjoying leasehold rights validly and that they were in lawful possession as lessees. Therefore, the question would be whether a person in cultivation of Service Inam Land not having been lawfully put in possession of the land, could invoke Section 8 of the Act so as to seek the benefit thereof.

16. According to Section 8, which I have extracted above, a person in lawful possession and enjoyment of a land on valid lease recognised by law, can invoke the provisions of Section 8 of the Act, for grant of occupancy rights.

17. This Court had the occasion to deal with this question in KALAGOWDA BABAGOWDA PATH v. MALLU NAIKU, 1968 MLJ S.N.R.D. Item No. 89 wherein it has been held as follows:

'The Collector as well as the Tribunal did not make any distinction between watan lands falling under Section 5 and 7, Bombay Hereditary Offices Act, 1873. There is a clear distinction between the watan property falling under Section 5 and watan property under Section 7 of the Act. While the property falling under Section 5 of the Act can be alienated by the watandar and such alienation will be valid for his life time there is a total prohibition against alienation of watan property falling under Section 7. Section 7 states that watan property assigned under Section 23 as remuneration of an officiator and the profits of watan property so assigned, shall not be alienated or assigned to any person whatever without the sanction of the State Government. Section 12 of the Act states that it shall be lawful for the Collector whenever it may be necessary in carrying out the provisions of Sections 8, 9 and 11 to summarily evict any person wrongfully in possession of land. Where the property assigned under Section 23 as remuneration of an Officiator is eliminated, whatever be the nature of the elimination, whether it be a lease, mortgage, or sale, the alienee is a person wrongfully in possession of the land. If an Officiator alienates the property assigned under Section 23 as remuneration, even if the alienation is by way of lease such alienation being contrary to law the alienee is a person wrongfully in possession of the land and such an alienee cannot be said to be a person lawfully cultivating the land so as to attract the provisions of Section 4 of the Bombay Tenancy Act, and be entitled to its benefits.'

18. Therefore in view of the Ruling of this Court in the above Decision, it is clear that even under the Bombay Act alienation of Service Inam land is prohibited, without the sanction of the Competent Authority.

19. Having regard to the amended provision of Section 7 of the Act which came into force on 7-8-1978, any person other than the authorised holder squatting on the Government lands shall be liable to be summarily evicted.

20. The Division Bench of this Court had the occasion to interpret Section 7 of the Act in *CHIKKANARASIAH v. THIRUPATAIAH*, ILR 1989 KAR 1522. In para 14 of the Judgment, referring to the object sought to be achieved under Section 7 of the Act it held as follows:

'In the year 1978, Principal Act was amended. Section 5(3) as amended came into force with effect from 7-8-1978. Section 5(4) as introduced by the Amendment Act was read down in Lakshmana Gowda's case as having only prospective operation from 7-8-1978. Section 7 was substituted with effect from 24-12-1975, and a new Section 7A was introduced with effect from 7-8-1978. There is a total bar to alienate the granted lands for a period of 15 years from 7-8-1978 if the land is granted either under Section 5 or Section 6. If the land is granted under Section 7, it shall not be transferred, similarly Section 7A. Therefore, if a land is granted after the amendment Act became effective, the reading down of Section 5(3) of Section 5(4) in Lakshmana Gowda's case, would in no way benefit to the restrictions and these specific statutory restrictions cannot be overridden by an equitable doctrine of estoppel, or by applying Section 43 of the Transfer of Property Act.'

21. The Decision relied upon by Sri Shindhe, learned Counsel for respondents 2 to 4 in Narayana Rao v. Land Tribunal, Honnali is of no assistance, because there the holder of the Village Office lawfully created lease which was being enjoyed by the lessee before the Act came into force. In that case, it was held:

'If a person was a lessee lawfully cultivating the land prior to the abolition of the inam and if he had continued, to cultivate the land on 1-3-1974, he would be entitled to claim occupancy rights under the Land Reforms Act, notwithstanding the vesting of the inam and regrant of the land to the inamdar under the Karnataka Village Offices Abolition Act, 1961.'

Again it held that:

'While a permanent lease or creation of a for a long period may amount to a transfer prohibited by Section 5 Karnataka Village Offices Abolition Act, 1961, where the tenant was not inducted for any specified period, merely because the tenant had been cultivating as an yearly tenant, for a number of years will not make the lease one created for a long period at its very inception. Hence the benefit accruing to a lessee under the Land Reforms Act cannot be denied to him.'

22. While considering the provisions of Section 44 of the Karnataka Land Reforms Act, His Lordship has not noticed the scope of the amended Section 7 of the Act

which came into force on 7-8-1978. It seems to me, if the Court had noticed the amended provisions of the Section 7 of the Act, perhaps the object of Section 7 would have been appreciated by this Court, Therefore, this Decision is of no relevance to R-2 and R-3. That apart, in that case the question of application of the Bombay Hereditary Offices Act 1874 did not arise, therefore, this Court in that case had no occasion to apply the prohibition imposed under Section 5 of that Act.

23. Similarly, the Decision rendered by this Court in Mariyappa v. Land Tribunal is also of no use to R-2 to R-4 because in this case also the Lessee had not been lawfully enjoying the leasehold rights in the Service Inam Land as on the date on which the Act came into force and there was no occasion for this Court to apply the prohibition imposed under Section 5 of the Bombay Watan Act.

24. In Boregowda v. Ramanaik though the Division Bench considered the scope of the Section 8 of the Act with reference to Section 14(1) of the Mysore Land Reforms Act, it had no occasion to apply the test of Section 5 of the Bombay Hereditary Offices Act. Therefore, the conclusion reached by this Court on the facts of that case is of little assistance to the respondents. So far as the law laid down by the Division Bench of this Court in Hanumareddy v. Land Tribunal on which Sri Shindhe placed reliance, I am of the view that although Section 8 of the Act came to be interpreted vis a vis Section 5 of the said Act, the Division Bench however has taken the same view as expressed by this Court in Kalagowda Babagowda Patil's case supra, wherein it has been clearly held that a person in unlawful possession is liable to be summarily evicted, whatever may be the nature of the alienation -whether it is lease, mortgage or sale etc. Since in the instant case, we are applying the provisions of the Bombay Act with a view to determining the rights and liabilities of the parties, it seems to me that for the present, the view taken by this Court in Kalagowda Babagowda Patil's case, would prevail. In view of this, I am of the view that the respondents 2 to 4 having failed to make out a case of lease under the provisions of the Bombay Act, as required by law; therefore, their possession must be held illegal and wrongful. If that is so, the action taken by the Assistant Commissioner seeking to evict them from the land in question is justified. I do not see any good ground to interfere with it.

25. Again during the course of my consideration, dealing with the first point, I have referred to the scope and object of Section 7 of the Act, particularly referring, to the Ruling of the Division Bench in Chikkanarasaiah's case and following the said Rule, I have no alternative but to hold that respondents 2 to 4 were found to be squatting on the Government land as unauthorised holders. Since they have failed to establish any case under the Bombay Act as the lawful lessees, they are liable to be evicted under Section 7 of the Act. In other words, the action taken by the Assistant Commissioner under Section 7 of the Act, pursuant to the order of regrant made in favour of the petitioner in 1969, is perfectly justified.

26. So far as the question of maintainability of the Writ Petition and the delay in approaching this Court, I carefully went through the paragraphs 8 and 9 of the Writ Petition and the document produced disclosing the treatment given to the petitioner, after the accident. It seems to me that the explanation offered by the petitioner to condone the delay appears to be bonafide. Secondly, as rightly pointed out by the learned Counsel for the petitioner, the Assistant Commissioner failed to comply with the Decisions of this Court in W.P.2219/1974, on the contrary, he proceeded to reject the application of the petitioner holding that respondents are the tenants of the land in question.

27. In view of what is discussed above, this petition is allowed, the Order (Annexure-H) made by the Assistant Commissioner is quashed and that at Annexure-C and D made by the Assistant Commissioner and Deputy Commissioner respectively are restored. However, in the circumstances above, the parties bear their own costs.