D.C. Ramesh and ors. Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Aug-01-2003

Reported in : AIR2003Kant480; 2003(5)KarLJ291

Judge : N.K. Jain, C.J., ;V.G. Sabhahit and ;H.G. Ramesh, JJ.

Acts : Mines and Minerals (Regulation and Development) Act, 1957 - Sections 15; Karnataka Minor Mineral Concession Rules, 1994 - Rules 3 and 9; Karnataka Land Revenue Act, 1964 - Sections 71 and 72; Karnataka Land Revenue Rules, 1966 - Rule 97; Constitution of India - Articles 166 and 226; Code of Civil Procedure (CPC), 1908 - Sections 11

Appeal No. : Writ Petition No. 25037 of 1999

Appellant : D.C. Ramesh and ors.

Respondent : State of Karnataka and ors.

Advocate for Def. : Sateesh M. Doddamani, Additional Government Adv. for Respondents-1 and 2, ;D.L.N. Rao, Adv. for Respondents-4 and 12, ;Jagadish Patil, Adv. for Respondent-6 and ;L.M. Chidanandayya, Adv. for Responden

Advocate for Pet/Ap. : G.V. Shantharaju, Adv. for Kesvy and Company

Judgement :
ORDER

N.K. Jain, C.J.

1. This reference has been placed before this Full Bench as per the order of the Chief Justice, dated 7-7-2003, and has come up before us to day.

2. A Division Bench of this Court vide order dated 10-3-2003, while considering the validity of the circular dated 24-2-1999 found that the question is directly covered by the decision in K.V. Vishwanath and Ors. v. State of Karnataka and Ors., W.P. No. 28225 of 1999 (PIL), DD: 29-11-2000 and whether it requires reconsideration for non-consideration of another Division Bench decision of this Court in M. Katappa and Ors. v. State of Karnataka and Ors., ILK 2001 Kar. 2363 (DB) and as such referred the matter to the Full Bench, as stated.

3. The necessary facts are:

The Chairmen of Doddahale Halli Panchayat, Gollahalli Panchayat and Kodihalli Panchayat comprised in Uyamballi Hobli, Kanakapura Taluk, Bangalore Rural District, have filed this public interest litigation writ petition for quashing of Annexure-A, circular bearing No. RD 72 LGP 98, dated 24-2-1999 and to quash all granite quarrying licences granted pursuant to the said circular in favour of respondents 3 to 14 who have been impleaded by order dated 3-4-2001 averring that the said circular is contrary to the provisions of Section 71 of the Land Revenue Act and Rule 97 of the Karnataka Land Revenue Rules and quarrying licences cannot be granted in respect of gomal land, and Annexure-A.

4. The petition is resisted by respondents 1 and 2 by filing statement of objections denying the averment made in the writ petition that the said circular is contrary to Section 71 of the Act and Rule 97(4) of the Rules and contending that quarrying lease is granted only in rocky area after joint inspection by responsible officers of Mines Department as also Revenue Department and that the validity of the circular has been upheld by this Court.

5. Respondents 4, 9, 10, 11, 12 and 14 have also filed statement of objections stating that the averment made regarding the validity of the circular, is not correct. It is also stated that the quarrying lease/licence has been granted after following

due procedure in accordance with law.

6. When the writ petition was posted for final hearing, the Division Bench referred the matter to the Full Bench as stated on 10-3-2003.

7. The only contention of Sri G.V. Shantaraju, learned Counsel appearing for the petitioner, is that the decision in K.V. Vishwanath's case, supra, requires reconsideration as the observation in the said case that the circular dated 24-2-1999 is equivalent to Government Order is not correct. It is stated that the circular cannot be equated to the Government Order. More so, it has been issued by the Under Secretary and not by order and in the name of Government or Governor.

8. The learned High Court Government Pleader Sri Sateesh M. Doddamani submitted that the circular dated 24-2-1999 is in the nature of a Government Order as it has been issued pursuant to the decision of the Government as a guideline for grant of quarrying lease in respect of gomal land covered by large granite and hard rocks and has ceased to be gomal land. Thus, the intention of the Government has been expressed by the circular as contemplated under the Karnataka Land Revenue Act. He further submits that the validity of the circular has been upheld in K.V. Vishwanath's case, supra, wherein petitioners 2 and 3 herein were petitioners 2 and 5 and the Division Bench has held that the circular is equivalent to Government Order for all practical purposes.

9. Sri D.L.N. Rao, the learned Counsel appearing for respondents 4 and 12 submitted that no differentiation can be made between circular and order of Government as both are expressions of intention of the Government. It is also submitted that the validity of the circular dated 24-2-1999 has been considered and upheld earlier and the quarrying lease is granted only after consulting the Deputy Commissioner in accordance with law. It is further submitted that once the circular has been upheld, it was not necessary to refer the matter treating it to be a divergent view in absence of any controversy in that case.

10. Sri L.M. Chidanandayya, learned Counsel appearing for respondents 3, 8, 10 and 14 submitted that the impugned circular has been issued only after the Government has taken a valid decision and pursuant to the said decision, the

impugned circular is issued, the validity of which has already been upheld in K.V. Vishwanath's case, supra and quarrying lease is granted in accordance with law.

11. We have heard the learned Counsels for the parties and have given our anxious consideration to the contention of the respective parties, and also perused the cases cited before us. We have also perused the original record pertaining to the proceedings and the circular, which are placed before us on our direction.

12. First we shall deal with the two cases cited taking divergent views, as per the Division Bench. The Division Bench in M. Katappa's case, supra, was considering a PIL writ petition filed in 1992 challenging the notification dated 10-1-1992 sanctioning the grant of quarry lease under Rule 9 of the Karnataka Minor Mineral Concession Rules, 1969 (KMMC Rules). In that case the lease was granted for quarrying gray granite in a portion of land in Sy. No. 39, which was a gomal land. The same was challenged being contrary to Rules 3(2) and 3-A of the KMMC Rules, on the ground that it was passed without following the procedure prescribed, and that by quarrying operations the ecology of the area would be disturbed. While considering the issue, the Division Bench has also considered Rule 97 of the Rules and held that determination of the extent of land necessary for free pasturage is a condition precedent before the Deputy Commissioner can deviate a gomal land for any other use. It is only where the availability of gomal land exceeds the minimum prescribed in Sub-rule (1) of Rule 97, the Deputy Commissioner would derive jurisdiction to reduce it to the prescribed minimum and non-observance of the procedure prescribed in the matter of grant of gomal land would vitiate the grant made. Under the fact situation, the writ petition was allowed and the notification dated 10-1-1992 was set aside. The case was decided on 20-11-2000, but there was no reference to the circular dated 24-2-1999.

13. In K.V. Vishwanath's case, supra, which was also a PIL Writ Petition No. 28225 of 1999 filed for quashing the circular dated 24-2-1999 and to restrain the respondents from granting lease in Government gomal lands. While considering the issue and the arguments, it was held that the circular is equivalent to the Government Order for all practical purposes as both serve the same purpose. It is to be noted that petitioners 2 and 3 herein were petitioners 5 and 2 respectively in

Writ Petition No. 28225 of 1999 along with petitioner 1, challenging the same circular which was in force on the date of the decision in K.V. Viswanath's case, supra, on 29-11-2000 which was not brought to the notice of the Court.

14. It will be appropriate to refer to Sections 71 and 72 of the Karnataka Land Revenue Act, which read as follows:

'71. Lands may be assigned for special purposes and when assigned, shall not be otherwise used without sanction of the Deputy Commissioner.--Subject to the general orders of the State Government, Survey Officers, whilst survey operations are proceeding under this Act, and at any other time, the Deputy Commissioner, may set apart lands, which are the property of the State Government and not in the lawful occupation of any person or aggregate of persons in any village or portions of a village, for free pasturage for the village cattle, for forest reserves or for any other public purpose; and lands assigned specially for any such purpose shall not be otherwise used without the sanction of the Deputy Commissioner; and in the disposal of lands under Section 69 due regard shall be had to all such special assignments.

72. Regulation of use of pasturage.--The right of grazing on free pasturage lands shall extend only to the cattle of the village or villages to which such lands belong or have been assigned, and shall be regulated by rules or orders made generally or in any particular instance, by the State Government. The decision of the Deputy Commissioner in any case of dispute as to the said right of grazing shall be final'.

15. A reading of Section 71 makes it clear that the Deputy Commissioner has power to set apart the lands belonging to the State Government, which are not in lawful occupation, for free pasturage or for forest reserves or for any other public purpose. The lands set apart shall not be used otherwise without the sanction of the Deputy Commissioner. Section 72 regulates the use of pasturage only by the village or villages to which the lands are assigned by rules or orders made in any particular instance or by the State Government and that in case of any dispute the decision of the Deputy Commissioner is final.

16. It is well-settled that a circular or notification cannot be inconsistent with the main Act or Rules, but at the same time it can supplement. Once the power has been given to the Deputy Commissioner to pass the order, any circular issued by the Government will amount to an order issued in pursuance of the provisions of the Act. In the circumstances, the circular cannot be said to be inconsistent with the main Act as this circular will be equivalent to Government Order as contemplated under Karnataka Land Revenue Act.

17. On a careful scrutiny of the above said two decisions of the Division Bench, we do not find any divergent opinion. Circular dated 24-2-1999 was not in existence when M. Katappa's case, supra, was filed in 1992 and there is no reference to the said circular in the said case decided on 20-11-2000. In K.V. Vishwanath's case, supra, only the validity of the circular was in issue and there is no reference to the decision in M. Katappa's case, supra and in absence of challenge to the circular as violative of Rule 97(4) of Land Revenue Rules, non-reference would not make any difference in decision.

18. The only ground that is now urged by the learned Counsel for the petitioner is that decision in K.V. Vishwanath's case, supra, requires reconsideration as the finding, that the circular is equivalent to Government Order is not correct. It is also to be seen that a point, which was not raised earlier, cannot be permitted to be raised in a subsequent case and the same principle applies in case of PIL also. So also, a second PIL is not maintainable on the same cause of action. As stated, that some of the petitioners were common in the earlier writ petition and the present writ petition, but this fact was not brought to the notice of the Court at point of time is no ground for reconsideration more particularly in the facts of the given case. Be that as it may, we find that there is no merit in the contention of the learned Counsel appearing for the petitioner that the circular cannot be equated with Government Order for the purpose of Karnataka Land Revenue Act. As stated, the expression of decision and intention of the Government may be by circular or Government Order. Both would have the same effect of conveying guideline for consideration of application for grant or renewal of quarrying licence according to the fact situation of each case, in accordance with law. It is clear from the circular dated 24-2-1999 that the same has been issued pursuant to the decision of the

Government to provide opportunity for quarrying in pasture lands covered with large granite and hard rocks, and a guideline is issued by way of circular in modification of earlier circulars dated 14-10-1998 and 22-12-1989 and in 1995.

19. A perusal of the original records reveals that the decision regarding general instructions to be given by way of guidelines for grant of quarrying lease in respect of land with large granite and hard rocks which has ceased to be gomal land was referred to a Cabinet Sub-Committee which recommended guidelines for grant of quarrying licence in its meeting held on 13-11-1998 and the same was accepted by the Cabinet on 23-12-1998 and it ordered issue of necessary order containing instructions to be followed while issuing fresh licence or renewal of existence of licence for quarrying. In order to give effect to the said decision, instructions in the form of circular was issued on 24-2-1999. Therefore, the said circular is traceable to the decision of the Government and it only contains the guidelines to be followed while renewing or issuing fresh licence as mentioned in the circular. We are of the view that it is an order issued pursuant to the decision of the Government by way of circular.

20. No other point was urged. As stated, we are of the opinion that there is no divergent view in the two Division Bench decisions of this Court in K.V. Vishwanath's case and M. Katappa's case, supra. The controversy has already been settled and as discussed above we approve with the reasoning and finding arrived at in K.V. Vishwanath's case, supra.

The writ petition shall be listed for final hearing before the Division Bench.