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SooperKanoon Citation : sooperkanoon.com/382921

Court : Karnataka

Decided On : Jun-25-2002

Reported in : ILR2002KAR3603; 2002(5)KarLJ257

Judge : R. Gururajan, J.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 61 and 61(1); Karnataka Land Reforms (Amendment) Act, 1998

Appeal No. : Writ Petition No. 27077 of 2001

Appellant : Sangappa

Respondent : State of Karnataka and ors.

Advocate for Def. : M.B. Nargund, Adv. for Respondent-5 to 8 and ;Adv. General and ;V. Bychappa, High Court Government Pleader for Respondents-1, 2 and 9

Advocate for Pet/Ap. : V.T. Rayareddy, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

R. Gururajan, J.

1. An interesting question is raised in this petition.

2. The petitioner, an agriculturist, is the owner of lands in question. Respondent 3's father, late Bandeppa filed an application in Form 7. The Land Tribunal granted and Form 10 was issued on 8-6-1981 in favour of late Bandeppa. A condition of prohibitory period of alienation was imposed on him. He died leaving behind respondents 3 and 4. According to the petition averments, notwithstanding the non-alienation clause of 15 years, 4th respondent sold the land in favour of respondents 5 to 8 in terms of the sale deed dated 8-2-1993. This according to the petitioner is unsustainable in law. The matter was reported to the Assistant Commissioner. He passed an order holding that the sale is hit by the prohibitory provision of the [Karnataka Land Reforms Act, 1961](#) ('the Act', for short). He ordered for forfeiture of the land. It was challenged in an appeal before the Karnataka Appellate Tribunal ('Tribunal', for short). The appeal was allowed and the matter was remanded. After remand, the Assistant Commissioner ruled that there is violation of Section 61 of the Act. Petitioner preferred an appeal before the Appellate Tribunal. The Appellate Tribunal dismissed this appeal. Aggrieved by this order, petitioner is before me.

3. Notice was issued and respondents entered appearance. They denied the allegations made in the petition.

4. Heard the learned Counsels for the parties.

5. Mr. Rayareddy, learned Counsel for the petitioner took me through the pleadings. He contends that a clear case of violation of Section 61 of the Act is made out in the case on hand. According to him, the date for the purpose of alienation is to be taken as 8-6-1981 i.e., the date of certificate and not the date of the order of the Tribunal i.e., 24-1-1977. He states that the amendment to Section 61 cannot come to the aid of the petitioner. His second argument is that neither the mutation entries nor the earlier order of the Tribunal would come to the aid of the respondent. He wants the order to be set aside. Per contra, Sri Naragund, learned Counsel for the respondents 5 to 8 would say that on an earlier occasion the Tribunal has observed that the date for the purpose of Section 61 is the date of the order of the Tribunal. He further states that the Amended Act is applicable to the facts of the case. He supports the order.

6. After hearing the learned Counsels for the parties, I carefully perused the material on record.

7. The short question that requires my consideration is with regard to the impact of Section 61 of the [Karnataka Land Reforms Act, 1961](#) in the matter of transfer of lands. Original Section 61(1) of the Act reads as under:

'61. Restriction on transfer of land of which tenant has become occupant.--(1) Notwithstanding anything contained in any law, no land of which occupancy has been granted to any 'person under this chapter shall, within fifteen years from the date the certificate under Section 55 is issued be transferred by sale, gift, exchange, mortgage, lease or assignment; but the land may be partitioned among members of the holder's joint family'.

(emphasis supplied)

The said section has been subsequently amended in terms of the Karnataka Act 34 of 1998. Amendment to Section 61(1) reads as under:

'2. Amendment of Section 61.--In Sub-section (1) of Section 61 of the [Karnataka Land Reforms Act, 1961](#) (Karnataka Act 10 of 1962) (hereinafter referred to as the 'principal Act'), for the words and figures 'from the date the certificate under Section 55 is issued', the words, brackets, figures and letters 'from the date of the final order passed by the Tribunal under Sub-section (4) or Sub-section (5) or Sub-section (5-A) of Section 48A' shall be substituted'.

After the amendment, the words 'from the date the certificate under Section 55 is issued' are substituted by the words 'from the date of the final order passed by the Tribunal under Sub-section (4) or Sub-section (5) or Sub-section (5-A) of Section 48A'.

The statement of objects and reasons in respect of the Karnataka Act 34 of 1998 provides that the amendment to Section 61(1) was necessary for reckoning the period of 15 years for transfer of the land for which occupancy rights have been given under this Act from the date of final order passed by the Tribunal under Section 48A instead of from the date of issue of certificate under Section 55.

8. It is a well-settled principle of the interpretation of statutes that substitution always has to be understood as an existing one in the parent Act. The words 'final order of the Tribunal' is substituted for the words 'from the date of certificate'. This would mean that for the purpose of 15 years the date of the final order of the Tribunal has to be taken and not the date of the certificate. In this connection, it is pertinent to refer to what Crawford has stated in Statutory Constructions. Therein it is stated: 'Where a section or a statute is amended, the original ceases to exist and the new section supersedes it and becomes a part of the law just as if the amendment had always been there'. In the light of this dictum, it cannot be said that the benefit of the said amendment cannot be granted to the petitioner. A reading of the object of the amendment would show that the amendment was necessitated to regularise 15 years period. This also stands to reason. If the certificate date is the criteria, then, there are chances of mischief being played resulting in unnecessary extension of prohibitory period for no fault of the parties. The object of 15 years period is not in any way taken away on account of the amendment. The only object of alienation is that the 15 years period has to be reckoned from the date of the final order of the Tribunal and not the date of the certificate. This would be the correct statutory interpretation in the light of the objects and reasons of the Act in the given set of circumstances. In this connection, it is necessary to refer to the dictum of the Supreme Court in the case of Shamrao v. Parulekar and Ors. v. District Magistrate, Thana, Bombay : 1952 CriLJ1503 The Supreme Court in para (12) its order has ruled as under:

'(12) But we wish to found deeper than this. It is the duty of Courts to give effect to the meaning of an Act when the meaning can be fairly gathered from the words used, that is to say, if one construction will lead to an absurdity while another will give effect to what common sense would show was obviously intended, the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same sentence, have to be construed differently. Indeed, the law goes so far as to require the Courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided. See the speech of Lord Wensleydale in *Grey v. Pearson*, (1857)6 HLC 61 : 10 ER 1216, at page 106 quoted with approval by the Privy Council in *Pakala Narayana Swami v. Emperor*

also *Salmon v. Duncombe*, (1886)11 AC 627 : 55 LJ PC 69, at page 634. The rule is also set-out in the textbooks: See Maxwell on the Interpretation of Statutes, 9th Edition, page 236 and Craies on Statute Law, 5th Edition, pages 89 to 93. The meaning of Section 3 is quite plain and only desperate hair-splitting can reduce it to an absurdity. Courts should not be astute to defeat the provisions of an Act whose meaning is, on the face of it, reasonably plain. Of course, this does not mean that an Act, or any part of it, can be recast. It must be possible to spell the meaning contended for out of the words actually used. We hold that there is no difficulty of construction'.

A Division Bench of this Court noticed this judgment and ruled in *Vijayakumar Shankrayya Sardar v. State of Karnataka and Anr* : ILR 1993 KAR2586 ., in para 11 as under;

'11. In Statutory Constructions by Crawford at Section 78 it is stated.-

'Where a section or a statute is amended, the original ceases to exist and the new Section supersedes it and becomes a part of the law just as if the amendment had always been there'. On the rule of statutory constructions it is useful to refer to Sham-rao's case, *supra*, wherein it is observed.-

'... The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the Amending Act at all'. In the case of *Shri Ram Narain v. The Simla Banking and Industrial Company Limited* : [1956]1SCR603 , it was stated that.-

'Now there is no question about the correctness of this dictum. But it appears to us that it has no application to this case. It is perfectly true as stated therein that whenever an amended Act has to be applied subsequent to the date of the amendment the various unamended provisions of the Act have to be read along with the amended provisions as though they are part of it. This is for the purpose

of determining what the meaning of any particular provision of the Act as amended is, whether it is in the unamended part or in the amended part'. The upshot of this discussion is that whenever an amended Act has to be applied subsequent to the date of amendment, the various unamended provisions of the Act have to be read along with the amended provision 'as though they are part of it...'

9. These two judgments and the objects of the amendment Act support the contention of the respondent. In the circumstances, I am of the view that the date for the purpose of prohibition is to be the date of the order of the Tribunal and not the date of the certificate. If the date of the order of the Tribunal, namely 24-1-1977, is taken into consideration, then the sale in 1993 is beyond the period of 15 years. Therefore, the sale is not hit by Section 61(1). The Tribunal therefore is justified in rejecting the contention of the petitioner.

10. Mr. Rayareddy, however, raised a contention that the Amendment Act of 1998 provides that the said Act shall come into force on such date as the State Government may, by notification appoint. According to Counsel, the notification came to be issued on 5-12-1998. Therefore, Counsel says that this would apply only to the transactions after 1998 and not pre-1998 transactions. This argument, in the light of the interpretation of statutes cannot be accepted. The notification is only referable for the purpose of invoking the Amended Act (Section 61). It does not go any further in the matter of giving effect to the Amendment Act. Moreover, substitution is always to be understood as an existing one in the parent Act, in terms of the accepted principles of interpretation of statutes. In the circumstances, the notification date would not come to the aid of the petitioner and it is an untenable argument in the light of my conclusion on the interpretation of Section 61. In the circumstances, I am not expressing any opinion with regard to the other findings of the Tribunal.

11. In the result, petition dismissed. Parties to bear their own costs.