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Court : Karnataka

Decided On : Jun-11-1990

Reported in : ILR1990KAR3923

Judge : M. Ramakrishma, J.

Acts : Karnataka Villges offices Ambolition Act, 1961 - Sections 5, 6 and 7; Karnataka Villges offices Ambolition (Amendent) Act, 1978

Appeal No. : W.P. Nos. 7659 and 7660 of 1984

Appellant : Muniswamappa

Respondent : State

Advocate for Def. : Patel D. Karigowda, HCGP for R-1 to R-3 and ;T.N. Raghavaiah for R-5 to R-7

Advocate for Pet/Ap. : B.A. Reddappa, Adv.

Disposition : Writ petition dismissed

Judgement :
ORDER

M. Ramakrishna, J.

The petitioners in these Writ Petitions have sought for a Writ of Certiorari to quash the notices (Annexures C and D) issued by the Tahsildars, respondents 2 and 3 respectively. They have also sought for a Declaration that the Karnataka Village Offices Abolition (Amendment) Act, 1978 (Act No. 13 of 1978) is invalid.

2. The facts of the case briefly stated as follows:-

The undisputed facts as disclosed from the pleadings and the impugned orders are that Sy. No. 144 measuring 27 guntas situate in Hebbiri village, Chintamani Taluk and Sy. Nos. 88 and 7 measuring 9 and 13 guntas respectively situate in Kotaballapalli village, Nelavanki Hobli, Srinivasapura Taluk, Kolar District, are endowed upon the Village Offices viz., Shanbogk and Niranti and that therefore these lands are governed under the Karnataka Village Offices Abolition Act, 1961 (hereinafter called the Act).

3. It is also not in dispute that petitioner-1 Muniswamappa purchased land in Sy. No. 144 under a registered sale deed dated 10-5-1975 and similarly petitioner-3 Smt. Lakshmamma purchased lands in Sy. Nos. 88 and 7 under a registered sale deed dated 5-8-1968. However, pahanies are written in the name of Papakka, daughter of Lakshmamma and therefore the impugned orders are passed against petitioner-2 Papakka. It is the case of the petitioners that ever since the date of sale, they are in possession and enjoyment of the said lands.

4. Respondent-4 Jayarao, holder of the village Office, presented an application seeking regrant in his favour under Sections 5 and 6 of the Act as per Annexure-A and it is stated that application is stilt pending before the Competent Authority. So far as respondents 5 to 7 are concerned, by the order Annexure-B dated 9-5-1983, the Tahsildar, respondent-3 herein, regranted them lands including lands in Sy.Nos.88 and 7, incorporating certain conditions.

5. Subsequently, however, action was taken under Section 7 of the Act to evict the unauthorised holders i.e., the petitioners herein, from the lands in question as per Annexure-C and D. Hence, these petitions.

6. Sri Reddappa, learned Counsel for the petitioners urged the following contentions:-

(1) In view of the law laid down in LAXMANA GOWDA v. STATE OF KARNATAKA, ILR (Kar) 1980(2) 892, 1981(1) KLJ 1 regrant made in favour of the holders of the Village Offices would enure to the benefit of their alienees. Therefore, in the instant case, since the regrant had been made in favour of respondents 5 to 7, such regrant would enure to the benefit of their alienees, petitioners herein. (2) Though there are subsequent decisions in HANUMAIAH v. STATE OF KARNATAKA, : ILR 1987 KAR550 and CHIKKANARASAIAH v. STATE OF KARNATAKA, : ILR 1989 KAR1520 it could not be said that the decision in Laxmanagowda's case came to be overruled. (3) Presuming for the sake of arguments that the Division Benches were said to have taken a different view in the last two cases, referred to above, from the one expressed in Laxmanagowda's case, still the view taken in Laxmanagowda's case earlier must prevail over the latter views. To support this contention, Sri Reddappa relied upon a decision of the Supreme Court in SHYAMARAJU HEGDE v. VENKATESHA BHAT AND ORS., : [1988]1SCR340 and DEVARAJU PILLAI v. SELLAYYA PILLAI, : AIR 1987 SC1160 and (4) lastly Sri Reddappa submitted that since the application of Muniswarnappa, petitioner-1 herein, for regrant of the lands in his favour is still pending before the concerned authorities, in view of the law laid down by this Court in ADIVEPPA SHIVAPPA MATTUR v. TAHSILDAR, : ILR 1990 KAR879 petitioner-1 was not liable to be evicted under Section 7 of the Act.

7. Dealing with the first contention of Sri Reddappa, it is true that a Division Bench of this Court while upholding the constitutional validity of the Act and dismissing the batch of Writ Petitions, held in Laxmanagowda's case as follows:-

'108. To sum up, our conclusion on the aforesaid questions, are these:

(i) The alienee of a Service Inam Land from its holder or the authorised holder, did not acquire any title to such land if the alienation had taken place prior to the coming into force of the Principal Act and he did not also acquire any title to such land subsequently by his alienor obtaining its regrant under Sections 5 or 6, as the case may be of the Principal Act;

(ii) The holder or the authorised holder of a Service Inam Land did not get any title to it when the land stood resumed to the Government under Sub-section (3) of Section 4 of the Principal Act, but he got title to it only when it was regranted to him under Section 5 or 6 as the case may be of the Principal Act;

(iii) If the holder or the authorised holder of a Service Inam Land had alienated it after the Principal Act came into force and before it was regranted to him under Section 5 or 6, as the case may, of the Principal' Act, the alienee acquired a title to that land after such regrant to the alienor;

(iv) The alienee, who had entered into an agreement for purchasing a Service Inam Land and was put in possession thereof in pursuance of such agreement prior to the coming into force of the Principal Act did not, under such agreement, get any right to continue in possession of such land by reason of the Principal Act, coming into force. Even by his alienor subsequently obtaining regrant of such land under Section 5 or 6 as the case may be, of the Principal Act, the alienee got neither any title to such land nor the right to protect his possession of such land under Section 53A of the Transfer of Property Act. However, the State cannot evict such alienee or intending alienee, in possession of a Service Inam Land, if such land had been subsequently regranted to the holder or the authorised holder under Section 5 or 6 of the Principal Act;

(v) Unless new Section 7 of the Principal Act and Section 5 of the Amendment Act are held to be unconstitutional an alienee or an intending alienee of a Service Inam Land, who was put in possession of such land pursuant to an agreement to purchase, prior to the coming into force of the Principal Act, did not get any title to such land nor was he entitled to regrant of such land subsequent to 7-8-1978 even though he had made an application for such regrant under the proviso to Sub-section (1) of Section 7 of the Principal Act and he is liable to be evicted from such land;

(vi) The omission to obtain the previous sanction of the Deputy Commissioner under original Sub-section (3) of Section 5 of the Principal Act did not render void a transfer of a land regranted under Section 5 or 6 or 7 of the Principal Act prior to 7-8-1978, but such transfer can be regularised by paying to the Government an

amount equal to 15 times the full assessment of that land;

(vii) Sub-section (4) of Section 5 of the Principal Act should be construed as being applicable only to transfers made subsequent to 7-8-1978 and not to transfers which had taken place prior to that date and that Subsection (3) occurring in that Section has reference to amended Sub-section (3) and not to original Sub-section (3) of that Section;

(viii) Substitution of a new Section 7 for original Section 7 of the Principal Act by Section 4 of the Amending Act, could not be regarded as being void on the ground of violation of Article 19 or 31 of the Constitution.

(ix) Section 5 of the Amendment Act cannot be held to be violative of Article 14 of the Constitution; and

(x) The proviso to Sub-section (1) of substituted Section 7 of the Principal Act, is not void as being violative of principles of natural justice,'

8. In view of ruling in para (vii) above, a distinction was drawn that Sub-section (4) of Section 5 of the Principal Act was applicable only to transfers made subsequent to 7-8-1978 and not to transfers which had taken place prior to that date and that Sub-section (3) occurring in that Section has reference to amended Sub-section (3) and not to original Sub-section (3) of that Section.

9. This question and the consideration of the object of amended Section 7 of the Act came to be reconsidered in Hanumaiah's case wherein para-5 it has been held as follows:-

'The petitioners are treated as unauthorised holders as the sales on which they base their right are null and void. Analysis of Section 7 as it stood before amendment, makes it clear that an unauthorised holder could be regranted the lands, if he had made investment and if the eviction involved undue hardship. This provision enabled the Deputy Commissioner to pass an order of regrant in favour of unauthorised holder on being satisfied about the investment and undue hardship. Under the amended provision, there cannot be a regrant in favour of unauthorised holder. He is liable to be summarily evicted after the issue of notice,

the clear intention of the Legislature being the non-recognition of any right in the unauthorised holder. In other words, on and after 7-8-1978 he is liable- to be evicted; he cannot assert any rights, howsoever long his possession may be or whatever investment he might have made in improving the land. Since this is the intention of the legislature, he cannot plead equity or claim any right on equitable grounds. His position is no better than a rank trespasser. This position is made clear in the following observation in Lakshmana Gowda's case:

'Hence, unless new -Section 7 of the Principal Act and Section 5 of the Amendment Act are held to be unconstitutional, an alienee or an intending alienee of a Service Inam Land, who was, prior to the coming into force of the Principal Act, put in possession of a Service Inam Land under a deed of alienation or pursuant to an agreement to purchase, became disentitled to regrant of such land subsequent to 7-8-1978 even though he had made an application for regrant under the proviso to original Section 7 of the Principal Act and as he did not get any title thereto, he is liable to evicted from such land.'

10. Having regard to the contention taken with reference to the law laid down in Laxmana Gowda's case, Their Lordships observed as follows:-

'Two factors mitigate against this submission. Firstly, on the day the land was sold it had vested in the State Government and the Vendor had no title, and secondly, the amended Section 7 has taken away the right of unauthorised holder to claim regrant in any circumstances . In this situation, it is not possible to confer title on the unauthorised holder by invoking equity or the principle of 'Feeding the grant by estoppel'. What is taken away by the legislature cannot be conferred by the Court. To accede to the petitioners contention would be to extend the benefit under the old provision notwithstanding its decision from the statute. Such a thing is impermissible as is made clear by the following enunciation in Lakshmana Gowda's case:55. From the -ratios of the said decisions of the Madras High Court with which we are in respectful -agreement, it would follow that a prohibited alienation of a Service Inam Land would be null and wholly void and not merely voidable at the option of the Government and the alienee of such land would not get any title to, or interest in it and further such alienee could not claim the benefit

of the doctrine of feeding the estoppel, which was given statutory recognition in Section 43 of the Transfer of Property Act because that Section would not apply to transfer forbidden by law on the ground of public policy.'

11. In para-8 summing up the reconsidered opinion, it has been held as follows:-

'In this view of the matter, it seems to us that the impugned order, which is made under the amended Section 7 of the Act long after its coming into force, does not enure to the benefit of the petitioners and they do not get any title to the lands. The regrant order made under amended Section 7 of the Act does not stand on the same footing as that of a regrant made under Section 5 or 6 of the Act.1

12. This is the answer to the reference made by the learned Single Judge in Hanumaiah's case. Thus, the contentions urged for the petitioners came to be rejected. This view in Hanumaiah's case came to be reiterated in Chikkanarasaiah v. Tirupataiah. In para-14 of the Judgment, it has been held as follows:

'(i) 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 6. If the land is granted under Section 7, it shall not be transferred similarly, as per Section 7A. Therefore, if a land is granted after the Amendment Act became effective, the reading down of Section 5(3) or Section 5(4) in Lakshmana Gowda's case, would in no way benefit the transferees from the grantees. The grant is subject 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.'

13. Having reconsidered the decision in Lakshmana Gowda's case, this Court, following the law laid down in Hanumaiah's case, held in Chikkanarasaiah's case in para-15 that the action taken by the Competent Authority to evict unauthorised holders, who were liable to be evicted summarily, was justified. It was further held

in para-16:

'Consequently, it has to be held that the Writ Petitioner as not entitled to invoke the decision in Lakshmana Gowda's case and his Writ Petition was liable to be dismissed.

14. In the light of the foregoing, I have no alter native but to hold that the first contention of Shri Reddappa is one without force. Therefore, it is rejected.

15. Dealing with the second contention of Sri Reddappa that the view taken by the earlier Bench must prevail over the latter Bench, I must say that the decision of the Supreme Court in Shyamaraju is of no assistance to him for the reason that the facts obtained in that case are entirely different from the facts of the present case. In Devaraju Pillai's case, the question for consideration was that when the learned Single Judge heard and disposed of a second appeal, would it be right on the part of another learned Single Judge to review the said Judgment under Order 47 Rule 1 C.P.C., taking altogether a different view? Their Lordships observed:

'If the party is aggrieved by the Judgment of the Single Judge sitting in Second Appeal, the appropriate remedy for the party is to file an appeal against that Judgment. A remedy by way of an application for review is entirely misconceived and if a single Judge entertains the application for review then he totally exceeds his jurisdiction in allowing the review merely because he takes a different view on construction of the document.'

16. Thus, the view taken by the Madras High Court came to be reversed. Again the facts and the circum- stances obtained in Devaraju's case are entirely different from the facts and the circumstances of the present case. Therefore, this decision of the Supreme Court relied upon by Shri Reddappa is also of no assistance to him.

17. Sri Reddappa also placed reliance on the decision of this Court rendered by Balakrishna, J., in W.Ps. Nos. 740 to 743 of 1986 (DD on 25-1-1989). The facts appearing in the said Writ Petitions make it clear that alienations of certain lands were effected by registered sale deeds dated 5-6-1967, 5-8-1968, 2-7-1960 and 5-

6-1970. Having regard to the distinction made in Lakshmana Gowda's case in respect of the alienations made prior to 7-8-1978 and subsequent thereto, Balakrishna, J., observed that the principles enunciated in Lakshmanagowda's case, would attract to the facts of those cases and that the decision rendered in Hanumaiah's case stood on a different footing. It is submitted that the Writ Appeals filed as against the order made in the above Writ Petitions came to be dismissed on 25-1-1989. Therefore, Sri Reddappa contended that alienations that have taken place prior to the amendment of the Act as found in the instant case must be brought within the purview of the principles laid down in Lakshmana Gowda's easel as they stand on a different footing from the view expressed in Hanumaiah's case. I have already reiterated the observations made by the Division Bench of this Court in Chikkanarasaiah's case. The decision rendered in W.Ps. 740 to 743 of 1986 is earlier to the decision in Chikkanarasaiah's case I.e., on 22-3-1989; Therefore, in the light of the pronouncement in Chikkanarasaiah's case, the ruling in W.Ps. Nos. 740 to 743 of 1986 cannot be supported. To that extent, the submission of Sri Reddappa must fail.

18. The last contention of Sri Reddappa is that when an application seeking regrant Is pending consideration, the authorities should not resort to Section 7 of the Act for evicting unauthorised holders. In support of this contention, Sri Reddappa relied upon a decision of a Division Bench of this Court in Adiveppa Shivappa Mattur v. Tahsildar. No doubt, the Division Bench has taken the view:

'When an application for regrant is filed, there is a statutory obligation on the authority exercising the power under the Act to consider and decide the same. In a case where on granting the application filed for regrant the authority becomes disabled, or disentitled to exercise the power under Section 7 of the Act, it is the duty of the authority exercising the power under the Act to decide the regrant proceedings first.....To permit the authority to keep back the regrant proceedings and proceed with the eviction proceedings would result in permitting the authority to defeat the very object of the Act and further to defeat or render infructuous the application filed for regrant of the land because once the eviction takes place under Section 7 of the Act, the question of regranting the land under Section 5 or 6 of the Act does not arise because in such an event Sub-section (3) of Section 7 of

the Act comes into operation.'

19. By a perusal of the observations made above in Adiveppa's case, it is clear that Their Lordships had no notice of the view taken in Chikkanarasaiah's case. To reiterate, I have already referred to paras 14, 15 and 16 of the Judgment in Chikkanarasaiah's case wherein question of eviction of unauthorised holders under. Sections 5, 6 and 7 with reference to the law laid down in Lakshmana Gowda's case as regards 'feeding the grant by estoppel' was considered and rejected against the alienees. This aspect of the matter has not been considered in Adiveppa's case. Therefore, the ruling in Adiveppa's case is of no assistance to 3hri Reddappa.

In the result, these Writ Petitions fail and are dismissed. No costs.

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