

Abdul Hameed and ors. Vs. the State of Karnataka and ors.

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Court : Karnataka

Decided On : Sep-02-1998

Reported in : ILR1999KAR1626

Judge : M.F. Saldanha, J.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 48A

Appeal No. : Writ Petition Nos. 13064-65/98 and 12505-506/98

Appellant : Abdul Hameed and ors.

Respondent : The State of Karnataka and ors.

Advocate for Def. : Shetty and Reddy, Adv. for P-1 and 2 and ;M.R. Shanthamani, HGCP for R-1 and 2 and 5

Advocate for Pet/Ap. : M.V. Hiremath, Adv. for P-3 and 4

Judgement :

ORDER

M.F. Saldanha, J.

1. I have heard the learned Counsel who represent the petitioners in all these four writ petitions, as also the learned Government Advocate who represent the respondents. All the learned advocates have been heard on merits.

2. The earlier orders passed by this Court indicate that there are almost one hundred persons who are similarly situated to the petitioners and I had afforded the petitioners' learned Advocate the facility of presenting a single petition on their behalf, if they so desire, for two reasons. First, because these are very poor persons. Secondly, because the cause of action is identical, but more importantly because the Government Authorities have passed orders against all these persons and only those who have obtained reliefs from the Court would get the benefit of the Court orders. The learned Counsel conveyed the position to some of the remaining persons but for a variety of reasons, none of them are before this court. This order is therefore confined to the petitioners before me.

3. The problem in this case raises a peculiar and interesting position in law. The occupancy rights were granted to respondents 3 and 4 in the year 1981. The present petitioners and others who were looking for small bits of land to construct houses to live in approached respondents 3 and 4 who in turn entered into agreements to sell with the petitioners. What is material is that all these transactions took place very shortly after 1991. Pursuant to the agreements to sell, the petitioners and others incurred expenditure in putting up houses and they have been residing in that area. Obviously, since the Karnataka Land Reforms Act, prescribes a 15 years bar the land could not have been sold during this period and that was the reason why the vendors entered into the agreement to sell. Obviously, some bright person from our own profession must have advised respondents 3 and 4 that an agreement to sell is not a sale, which is true, and that therefore, they are safe in entering into such a transaction. What was obviously overlooked was that there is a maxim in law that prescribes that you cannot do something indirectly if the law prohibits it being done directly'. To this extent therefore the transaction itself is vulnerable. The situation gets compounded because of the fact that the possession was handed over to the parties who entered into the agreement to sell and it is therefore very clear that the whole of the consideration must have been paid as otherwise the possession would not have been given. It is further evident from the fact that the purchasers were allowed to build on the land and to occupy the houses. I refer to all these stages because these particulars are required in order to pass a rather unusual order in the circumstances of the case and I shall set out the justification for it.

4. As late as in the year 1996, the Government Authorities served notices on the parties pointing out that the transactions were in breach of Section 61 of the Act which prohibits the sale or alienation of the land for a period of 15 years. That the transactions have taken place within the prohibited period was very clear and the only point that was contested was the question as to whether the agreement to sell was to be construed as a sale. The authority held against the purchasers and an appeal was preferred to the Karnataka Appellate Tribunal which has also dismissed the appeal on the ground that this is a case in which a clear breach of the law has been taken place and that therefore no relief can be granted. The present writ petition have been preferred against those orders.

5. The only point raised by the petitioners' learned Counsel is that the petitioners belong to the weaker sections of society and what they are pointing out to me is that even assuming that the law is given effect to, what it would mean is that the land has to be taken away by the State and distributed to other landless persons whereas the petitioners themselves are landless persons and the learned advocates contend that even assuming that the petitioners have committed some breach, having regard to the consequences of permitting the confiscation in so far as the petitioners would lose what they have invested and apart from being landless they would also be homeless. In this view of the matter, an interesting argument was put forth namely that this court must direct the State to re-allot the land to the petitioners.

6. The Learned Government Advocate vehemently opposed any relief being granted particularly on the ground that the benefit conferred on occupants under the Land Reforms Act is intended to be for purposes of giving land to the tiller so that the tenant can be benefited to the full extent of cultivating the land. She submits that the legislative intent totally prohibits any trading in such lands as it would amount to profiteering and that is not the intention of the Land Reforms Act. She has also submitted that the agreements to sell must be treated as void transactions because they are in breach of the provisions of law and further that since those transactions did not have any legal sanctity, the land must vest in the State as per the order that has been passed. She has also submitted that this Court should not interfere in the order because it would mean that the Court has

either condoned those transactions or that it may be construed as licence to trade in such lands.

7. There is one rather unusual angle that emerges in this case which I need to record. The lands are relatively extensive in so far as , as many as 14 acres of land have been occupied by approximately 100 families and virtually there is a colony that has come up there. It cannot now be argued before this Court that the Government Authorities did not notice this. I refer to this aspect of the case because elementary vigilance on the part of the local authorities would have them. If they have intervened at the initial stage the transaction could have been reversed and the poor landless people who have spent their hard earned money in buying these lands would not have been punished. Secondly had the intervention come at the right point of time the remaining persons would not have entered into transactions and thirdly, none of the persons would have invested their money in constructing houses on those lands. The direct result of the non-action on the part of the Government Authorities has had the result of considerable amount of investment going into the lands and the unusual question arises as to whether the Court should permit the wronged party to be punished, in a situation such as this. The respondents 3 and 4 are the people who have sold the lands, and the law does not provide for any action against them, by virtue of recovery of sale proceeds, whereas, on the other hand, what is sought to be done is that the parties who have already incurred heavy investment are sought to be evicted for the breaches committed by respondents 3 and 4. I refer to this aspect of the case because the equities are also required to be examined, in so far as the short question before me is as to whether the belated action on the part of the Government should be upheld or should be struck down.

8. Even so far as other fields of law are concerned, there is the law of limitation which prescribes a period of time within which action is required to be taken. In the present case, the notice has come in the year 1996 which is approximately 24 years after the transactions. To my mind, even though there may be no bar of limitation, having regard to the circumstances of the case, the State can be estopped in law from acting at this late point of time having regard to the over all complexion of the case. I do not propose to lay down that this proposition is to be

construed as a licence to trade in such lands, but I have elaborately set out the facts and circumstances that are before the Court in the present writ petitions and to my mind the essence of doing justice would require that complete justice is done to the party who is entitled to it. The State by virtue of its non-action is totally precluded from initiating steps at such a belated time long after rights have accrued to the opposite parties. Having regard to the aforesaid position in law the impugned orders are quashed.

The petitions accordingly succeed. In the facts and circumstances of the case there would be no order as to costs.

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