(1996) 06 KAR CK 0070

In the Karnataka High Court

Case No : Writ Petition No. 18445 of 1989

B.K. Kollappa APPELLANT

Vs

State of Karnataka and Another RESPONDENT

Date of Decision : 12-06-1996

Acts Referred:

Karnataka Treasure Trove Act, 1962 — Section 10, 11, 12, 13, 15

Citation : (1996) ILR (Kar) 2800 : (1996) 6 KarLJ 301

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : Anand, for T.S. Ramachandra, for the Appellant; N.K. Ramesh, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Tirath S. Thakur, J.—This Writ Petition calls in question an order dated 3rd of May 1988, passed by the Government of Karnataka and that passed by the Deputy Commissioner -- Respondent No. 2 herein dated 27th February, 1989, forfeiting in favour of the State a treasure trove comprising Gold Coins found in the land belonging to the petitioner. A few facts in the background where of the controversy has arisen may be stated first.

2. The petitioner owns some landed property in village Solur, Shikaripur Taluk of Shimoga District. Certain labourers engaged by the petitioner for digging pits for planting coconut seedlings, found 31 Gold Coins, which were produced by the petitioner before the Circle Inspector, Police Station, Shikaripur. The Circle Inspector mounted a further investigation in the course whereof it was discovered that a total of 90 Gold coins and 3 Gold ingots valued at Rs. 60,000/- had been found by the labourers. He accordingly submitted a report to the Deputy Commissioner and Solicited further action in the matter.

3. On receipt of the report, the Deputy Commissioner issued a Notification u/s 4(b) of the Karnataka Treasure Trove Act, 1962 requiring alt persons claiming the

treasure, or any part thereof, to appear before him.

4. In response, the petitioner filed an Application on the 7th February, 1984 in his capacity as the owner of the land where the treasure in question was found. He also claimed to be the finder of the treasure and entitled to the delivery of the same or the notified value thereof. Besides the petitioner seven other persons who had been engaged as Labourers by him for digging of the pits also laid a claim to the treasure as finders thereof. It was stated that the treasure had been found by them on account of their hard labour and that they were entitled to share the same in accordance with law.

5. In order to determine the importance and the age of the Coins, the Deputy Commissioner referred the matter to the Director of Archaeology and Museums in Karnataka, Bangalore. The Director opined that the coins belonged to the period of ''Gangas'', an important ruling dynasty in ancient Karnataka and therefore use of historical importance and archaeological antiquities. By his order dated 12th August, 1995, the Deputy Commissioner declared the treasure to have been hidden for more than 100 years and therefore ownerless and submitted a report to the Government as required by Section 8(2) of the Act. On receipt of the Report, the Government by its order dated 3rd May 1988 directed the forfeiture of the treasure in its favour without costs and ordered the same to be handed over to the Director of Archaeology and Museums Mysore for preservation. On receipt of the said direction from the Government, the Deputy Commissioner, by his order dated 27th February, 1989 forfeited the treasure to the Government free of cost and directed the same to be handed over to the Director of Archaeology and Museum Mysore. Aggrieved by the aforesaid two orders the petitioner has come up with the present petition as already indicated earlier.

6. Learned Counsel appearing for the petitioner strenuously argued that the forfeiture of the treasure in question was totally illegal and arbitrary, besides being in violation of the procedure prescribed for the disposal of such treasures by Chapter-ill of the Act aforesaid. He urged that in terms of Section 9 of the Act, after a declaration that the treasure is ownerless has been made u/s 8 the disposal thereof has to be made in accordance with the procedure prescribed by Chapter-Ill. The said procedure, it was contended, was not followed by the Deputy Commissioner nor was the forfeiture of the treasure, even otherwise envisaged by the provisions of the Act rendering the impugned orders wholly illegal and unsustainable in law.

7. I have given my anxious consideration to the submissions made and find considerable merit in the same. Section 9 of the Act, provides that after a declaration that a treasure is ownerless has been made the disposal thereof has to be made in accordance with the provisions of Chapter-Ill. The said Chapter inter alia provides for the delivery of the treasure to the finder as per Section 10 or its division in terms of Section 11, Section, 14, however envisages division only when the value of the treasure exceeds Rs. 1 lakh and provides that in case

the value of the treasure exceeds the said amount the Deputy Commissioner shall deliver so much of the treasure or value of Rs. 1 lakh to the finder and shall declare the excess to be at the disposal of the Government. In the instant case it is not disputed that the treasure has been valued at Rs. 60,000/-only. The question of division of the treasure in terms of Section 14 would not therefore arise. Consequently, the treasure shall have to be dealt with in accordance with the provisions of Sections 10 to 13 or Section 15 which provides for the acquisition of the treasure on behalf of the Government. In other words, except in a case where the Government may propose to acquire the treasure u/s 15, the same shall have to be delivered to the finder of the treasure or to the owner of the property where the same was found in accordance with the provisions of Sections 10, 11, 12 and 13 of the Act.

8. Seen in the light of the above, the order dated 3rd of May 1988 issued by the Government, directing the forfeiture of the treasure in favour of the State Government shall have to be read down to mean only a proposal to acquire the treasure for the Government in accordance with Section 15 of the Act. This is so because there is no provision in the Act, authorising the Government to forfeit the treasure in its favour either with or without costs. Mr. N.K. Ramesh, learned Counsel for the Respondent did not dispute this position and fairly conceded that the forfeiture purported to have been brought about under the impugned Government Order was totally outside the purview of the Act and therefore unsustainable. He however urged that the Deputy Commissioner could at any time after making the declaration u/s 8 and before delivering or dividing the treasure as provided by Chapter-Ill declare in writing his intention to acquire the same on behalf of the Government either wholly or in part in accordance with the terms of Section 15 which may at this stage be extracted in extenso.

"The Deputy Commissioner may, at any time after making a declaration u/s 8 and before delivering or dividing the treasure as hereinbefore provided, declare, by writing under his hand, his intention to acquire on behalf of the Government the treasure or any specified portion thereof by payment to the persons entitled thereto of a sum equal to the value of the materials of such treasure or portion, together with one-fifth of such value, and may place such sum in deposit in a Government treasury to the credit of such person, and thereupon such treasure or portion shall be deemed to be the property of Government and the money so deposited shall be dealt with, as far as may be, as if it were such treasure or portion.

In determining the value of the materials of a treasure or portion for purposes of Sub-section (1), any increase in the value of such materials or portion by reason of their being of historical or archaeological importance shall not be taken into consideration."

9. Assuming therefore that the Government actually intended to acquire the treasure in accordance with Section 15 (supra), it is not in dispute that the procedure prescribed by the said provision was never followed. The Respondents

have not filed any counter-affidavit not has any material been produced by them to show that any steps were taken for the acquisition of the treasure in accordance with Section 15. The purported forfeiture under the impugned orders in these circumstances is wholly unsustainable and in excess of the powers vested in the Government and the Deputy Commissioner under the provisions of the Act.

10. In the result, this petition succeeds, and is accordingly allowed. Government Order No. RD 29 TRT 81 (P) dated 3rd of May 1988, and that passed by the Deputy Commissioner, dated 27th February, 1989, ANNEXURE-A and B to the Writ Petition are hereby quashed, reserving liberty for the Respondents to pass fresh orders in accordance with the provisions of Chapter-Ill of the Act including orders by way of acquisition of treasure either in whole or part, as contemplated by Section 15 thereof. Necessary proceedings in this connection shall be initiated by the 2nd Respondent within a period of three months from the date a copy of this order is produced before him by the petitioner to be concluded within six months thereafter.

11. The parties are left to bear their own costs.

