

(2014) 01 KAR CK 0020

In the Karnataka High Court

Case No : Writ Petition No. 11830 of 2011 (KVOA)

B.V. Thammaiah

APPELLANT

Vs

Padmamma

RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Karnataka Village Offices Abolition Act, 1961 — Section 1, 3, 3(2), 5, 5(3)

Citation : (2014) 6 KarLJ 89

Hon'ble Judges : Dr. Jawad Rahim, J

Bench : Single Bench

Advocate : T. Seshagiri Rao, Advocate for the Appellant; H. Venkatesh Dodderi, Additional Government Advocate and K. Vishwanath, Advocate for the Respondent

Judgement

Dr. Jawad Rahim, J.—The petitioners in joint action seek to quash the order dated 28-2-2011 on the file of the Fast Track Court, Bangalore in M.A. No. 52 of 2009 at Annexure-E by which the 6th respondent-Tahsildar is directed to hold enquiry into the application of respondents 1 to 3. Heard the learned Counsel. Perused the records in supplementation thereto which reveals that the petitioners claim to be the owners in possession of land in Sy. No. 77 measuring 34? guntas of land situate at Kalathammanahalli Village, Hesaraghatta Hobli, Bangalore North Taluk having acquired it in a private sale transaction from its owners under valid sale deed dated 31-7-1996. More specifically, they have averred that the first petitioner purchased the land on 31-7-1996 as evidenced by the deed of sale Annexure-A and after purchasing it, he executed a deed of gift on 7-7-2007 in favour of 2nd petitioner transferring onto her, his right, title and interest therein. A copy of which is at Annexure-A-1. According to them, the predecessor in title viz., respondents 1 to 3, grantees of thotinama land and by virtue of such holdings, had enjoyed the possession and ownership. Pursuant to the Karnataka Village Offices Abolition Act, 1961 (for short, "the Act") coming into force, the lands were vested with the Government and the holders applied for regrant in the year 1968 which application was favourably considered and regrant was made.

2. In the manner aforesaid, they enjoyed ownership and markable title of property in question. In exercise of that right, they sold the property to the first petitioner on 31-7-1996 and relinquished all right, title and interest they had therein. Since then, the first petitioner and second petitioner continued to enjoy the property continuously and uninterruptedly.

3. It is alleged that respondents 1 to 3 mischievously applied to the 6th respondent to cancel the sale in favour of the first petitioner dated 31-7-1996 on the plea that the transaction was in contravention of the provisions of the Act and the regrant made therein. The Tahsildar-6th respondent received the application and had found that the application but declined to entertain it as untenable and called for no action, but issued an endorsement vide Annexure-C informing respondents 1 to 3 to have recourse to other remedies in law and not under the provisions of the Karnataka Village Offices Abolition Act. Assailing it, they preferred an appeal before the Principal District Judge in M.A. No. 52 of 2009 which was assigned to the Judge, Fast Track Court. Admittedly, an appeal was preferred under Section 3(2) of the Act. The appeal was entertained by the learned District Judge, Fast Track Court. Despite, the petitioners raising the question of maintainability of miscellaneous appeal, under Section 3(2) of the Act, the learned Judge has proceeded to adjudicate on the dispute and has passed the impugned order on 28-2-2011 setting aside the endorsement dated 8-6-2009 issued by the 6th respondent and remanded the application back to him for consideration on merit, after notice to both sides.

4. Questioning the said order, the petitioners have assailed the said order on the following grounds:

(i) Respondents 1 to 3 admittedly were holders of their village office and were granted the land in question by virtue of thoti office they held. After abolition of the Inams Act, the land vested in the Government. On the request of respondents 1 to 3, regrant was made on 11-7-1977 vide Annexure-B. Pursuant to Annexure-B, they acquired right, title and interest and sold the property to the first petitioner on 31-7-1996.

(ii) However, respondents 1 to 3 had filed an application before the 5th respondent to cancel the sale transaction which application was not adjudicated but an endorsement was issued directing them to approach the appropriate forum. Against the endorsement they filed appeal under Section 3(2) of the Act before the Deputy Commissioner.

(iii) The last ground is that, even assuming but not conceding that the application was maintainable, the sale in favour of petitioners could not be brought in question as it was beyond the unalienable period under the Act.

5. In this regard, Sri Seshagiri Rao, learned Counsel has referred to the chronology of dates from which it was evident that regrant was made in favour of respondents 1 to 3 on 11-7-1977.

6. The sale transaction in favour of petitioners is dated 31-7-1996, undoubtedly beyond the period of 15 years (unalienable period). The application for cancellation of sale deed was filed in the year 2009 belatedly, and thirdly, the Tahsildar did not adjudicate or decide the issue but issued an endorsement. The endorsement issued by the Tahsildar vide Annexure-C do not come within the mischief of Section 3(2) of the Act and hence, the appeal was not maintainable.

7. The contesting respondents 1 to 3 are duly represented by Sri K. Vishwanath, learned Counsel but he has remained out of contest and thus, I had the benefit of only hearing Sri T. Seshagiri Rao, learned Counsel for petitioners and Sri H. Venkatesh Dodderi, learned Government Advocate.

8. From the relevant dates and the factual matrix, it is clear that regrant was made on 11-7-1977 and the sale transaction was on 31-7-1996. To question such a transaction, the only provision available is Sections 5(3) and 7(a) of the Act:

"Section 5(3) envisages the occupancy or the ryotwari patta of the land, as the case may be, regranted under sub-section (1) shall not be transferable otherwise than by partition among members of Hindu Joint Family for a period of fifteen years from the date of commencement of Section 1 of the Karnataka Village Offices Abolition (Amendment) Act, 1978".

Therefore, the period of fifteen years has to be reckoned in terms of the grant made from 1978 i.e., the date from which the Act came into force.

9. In the instant case, the transaction of sale is dated 31-7-1996, undoubtedly beyond the period of fifteen years and hence the transaction did not come within the mischief of Section 5(3) of the Act. It must now be noticed as to whether any order passed on an application is amenable to appeal?

10. Section 3(2) of the Act deals with the right of appeal. It reads:

"3. Powers of Deputy Commissioner to decide certain questions and appeals.--(1) If any question arises.--

(a) whether any land was granted or continued in respect of or annexed to a village office by the State; or

(b) whether any person is a holder of a village office; or

(c) whether any person is an authorised holder; or

(d) whether any person is an unauthorised holder, the Deputy Commissioner shall, after giving the party affected an opportunity to be heard and after holding an enquiry in the prescribed manner decide the question.

(2) Any person aggrieved by such decision may file an appeal to the District Judge of the District within ninety days of such decision and the decision of the District Judge on such appeal shall be final".

This is to be noticed that the impugned endorsement has not decided any question covered by clauses (a) to (d) of sub-section (1) of Section 3 of the Act. The endorsement merely directs the applicant to approach the competent forum. The language of sub-section (1) is very clear that the powers of Deputy Commissioner to decide certain questions and the appeal and the questions to be decided are enumerated in clauses (a) to (d) of sub-section (1) of Section 3. It therefore implies that in exercise of powers conferred by sub-section (1) of Section 3, the Deputy Commissioner had the competence to decide the questions covered by clauses (a) to (d) of the Act and such a decision is amenable to appeal under sub-section (2) of Section 3.

In the absence of any decision under sub-section (1) of Section 3, there is no question of an order being questioned in an appeal. Being of this view, I am satisfied that the 6th respondent-Tahsildar by virtue of deliberate powers conferred under Section 3 has not decided the question covered by sub-section (1) of Section 3. The appeal filed by respondents 1 to 3 before the District Judge under sub-section (2) in M.A. No. 52 of 2011 was incompetent and was not maintainable. Besides, even on merits we find that the sale in question being on 31-7-1996, it was not hit by the conditions imposed by sub-section (3) of Section 5 and thus viewed from any angle, it could not have been a subject-matter for adjudication by the Tahsildar. Therefore, I am satisfied that the petitioners must succeed in their legal pursuit to the impugned order and the impugned order passed by the Principal District Judge in M.A. No. 52 of 2009, dated 28-2-2011 is hereby quashed. Rule is made absolute. In the circumstances, no order as to costs.

Sri H. Venkatesh Dodderi, learned Additional Government Advocate is directed to file his memo. of appearance within a period of four weeks.