

(1997) 12 KAR CK 0009

In the Karnataka High Court

Case No : Writ Appeal No's. 5042 and 5728 of 1997

Devakumarshetty and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 12-12-1997

Acts Referred:

Constitution of India, 1950 — Article 300A

Karnataka Land Revenue Act, 1964 — Section 195, 195, 49, 79 (2)

Citation : (1998) 4 KarLJ 459

Hon'ble Judges : G.C. Bharuka, J;Chidananda Ullal, J

Bench : Division Bench

Advocate : Sri K. Raghavendra Rao, for the Appellant; Sri Aswathanarayan, A.G.A. and Smt. M. Jyoti for Sri S.A. Nazeer, for the Respondent

Judgement

G.C. Bharuka, J.—The only legal issue involved in the present appeal is as to whether the Deputy Commissioner can pass an order u/s 79(2) of the Karnataka Land Revenue Act, 1964 (in short the ACT), withdrawing or extinguishing the privileges which are being enjoyed either by custom or under any order such as privileges in respect of Kumki lands etc.

2. As it appears from the order of the Karnataka Appellate Tribunal (Annexure-E) the appellants seems to be agriculturists owning lands comprised in S. Nos. 51/2 and 41/2 situated in Naricombu village of Bantwal taluk. According to them S. Nos. 54/2 and 52/1A1 of the same village form part of Kumki lands over which they hold privileges as recognised by law.

3. The said Kumki privileges had been extinguished by the Deputy Commissioner, D.K by his order dated 8-5-1989 after giving due notices to all the Kumkidars and anubhogadars and on due consideration of the objections filed pursuant to the said notice, the Kumki privileges over the aforesaid extent of lands were extinguished so as to provide house sites to the landless persons. This was done pursuant to the general guidelines issued by the State Government under its Notification No. RD 28 LGW 71 dated 29-1-1971 and 10-12-1971.

4. The appellants being aggrieved by the said order preferred an appeal u/s 49 of the Act before the Karnataka Appellate Tribunal and by its order dated 24-5-1994 (Annexure-E to the writ petition) it set aside the Deputy Commissioner's order on the ground that he had no power under the Act to pass an order extinguishing the Kumki privileges. The said order of the Tribunal was challenged by the respondents 4 and 5 by filing the writ petition before this Court in which the impugned order came to be passed. The learned Single Judge has held that the Deputy Commissioner has passed the order extinguishing the Kumki privileges pursuant to the powers delegated in his favour by the State Government u/s 195 of the Act and as such there was no infirmity in the said order.

5. As noticed by the Supreme Court in the case of State of Mysore and Others Vs. K. Chandrasekhara Adiga and Another, , the rights or privileges known as Kumki are governed by the order of the Madras Board of Revenue. These privileges in the land include the right of grazing their catties, cutting and collecting leaves, timber and other forest produces for the agricultural and domestic purposes of the Kumkidars.

6. In the above referred judgment it has been held that although the said Kumki rights has been styled as privileges in the statutory rules and standing orders but nonetheless those have been recognised under the statutory provisions. It has further been held that the said rights are in the nature of property rights notwithstanding the fact that their scope is restricted and they are subject to statutory provisions. After so holding it was further declared that the said rights could be curtailed, abridged or taken away only by law and not by an executive order.

7. Admittedly in the case before the Supreme Court the State of Karnataka had failed to produce any statutory provision or rules pursuant to which the Kumki rights would have been curtailed, abridged or taken away and therefore it was held that the executive order by which the rights were sought to be abridged or curtailed was invalid and void in law.

8. Coming to the facts of the present case it cannot be disputed that u/s 79(2) of the Act provisions have been made with regard to preservation and curtailment/ extinction of various rights granted over certain lands. It may be beneficial to quote Section 79 of the Act, which reads thus:

"79. Regulation of supply of firewood and timber for domestic or other purposes.--(1) In any village or land in which the rights of the State Government to the trees have been reserved u/s 75 subject to certain privilege of the villagers or of certain classes of persons to cut firewood or timber for domestic or other purposes and in any land which has been set apart u/s 71 for forest reserve subject to such privileges, and in all other cases in which such privileges exist in respect of any alienated land the exercise of the said privileges shall be regulated by such rules as may be prescribed, or by orders to be made either generally or in any particular instance by the Deputy Commissioner or by such

other officer as the State Government may direct. In any case of dispute as to the mode or time of exercising such privileges, the decision of the Deputy Commissioner or of such officer, shall be final.

(2) Notwithstanding anything contained in sub-section (1) but subject to such general or special orders that may be issued by the State Government from time to time, the privileges that are being enjoyed either by custom or under any order such as privileges in respect of Kumki lands, Bane lands and Kane lands in South Kanara District, Betta lands and Hadi lands in North Kanara District, Ran and Sopping Betta lands in Mysore Area, Jamma and Bane in Coorg District and Motashal wet lands in Hyderabad area shall continue".

A reading of sub-section (2) of Section 79 clearly shows that privileges or rights in respect of Kumki lands can be exercised by any person only subject to such general or special orders that may be issued by the State Government from time to time.

8. It is further to note here that by engrafting Section 195 in the Act the Legislature has empowered the State Government to delegate any of the powers conferred on it to any officer or authority subordinate to it in respect of powers under any of the sections under the Act except those mentioned in sub-section (2) of the said section. The said Section 195 of the Act reads as under:

"195. Delegation of powers.--(1) The State Government may, by notification, delegate to any officer or authority subordinate to it, any of the powers conferred on the State Government or any officer subordinate to it under this Act, to be exercised by such officer or authority subject to such restrictions and conditions, if any, as may be specified in the said notification.

(2) Notwithstanding anything contained in sub-section (1), the State Government shall not delegate any of its powers under Sections 3, 4, 6, 7, 8, 9, 10, 18, 20, 21, 40, 43, 48, 114, 115, 121 or 125 or the power to make rules u/s 197 or the power to remove difficulties u/s 201".

The above provision, relating to delegation of powers, it clearly shows that the State Government was competent to delegate its powers envisaged under sub-section (2) of Section 79 of the Act in favour of any of its subordinate officers who on such delegation of power would have passed appropriate orders.

9. As we find from the order of the learned Single Judge, as a matter of fact, the State Government had issued a notification delegating its powers u/s 79(2) of the Act in favour of the Deputy Commissioners. The said notification, which is dated 29-11-1971, reads as under:

"GOVERNMENT OF MYSORE

No. RD 28 LCW 71

Mysore Government Secretariat, Vidhana Soudha, Bangalore, dated 29th November, 1971.

NOTIFICATION

In exercise of the powers conferred by sub-section (1) of Section 195 of the Mysore Land Revenue Act, 1964 (Mysore Act 12 of 1964), the Government of Mysore hereby delegate the powers conferred on the State Government u/s 79(2) of the said Act to the Deputy Commissioners of the Districts who shall exercise the said powers within their respective Districts.

By order and in the name of the President of India. (J.T. Borker) Under Secretary to Government, Revenue Department".

In view the said delegating notification, the impugned order dated 5-8-1989 was passed by the Deputy Commissioner, Dakshina Kannada. As noticed above the said order was admittedly passed after giving a reasonable opportunity of hearing to all the tenants and persons who were likely to be affected by the extinction of Kumki rights/privileges over the said lands. Therefore in our considered opinion the Deputy Commissioner had passed the order pursuant to a statutory provision and as a competent authority and that too after compliance with principles of natural justice. In that view of the matter no infirmity whatsoever can be found with the order of the Deputy Commissioner.

10. Faced with the said situation a faint argument has been advanced on behalf of the appellants that since in the case of the K. Chandrasekhara Adiga, *supra*, the -Supreme Court has held that the Kumki rights are in the nature of property rights, therefore those cannot be taken away or extinguished except under a statutory provision which ensures payment of compensation. Possibly the idea behind raising the said contention is to rely on Article 300-A of the Constitution of India which provides that no person can be deprived of his property except by the authority of law and that the law contemplated therein has to necessarily provide for compensation keeping in view the doctrine of Eminent Domain. In our opinion the argument is wholly misplaced for the simple reason that the Kumki rights are not absolute in the sense because the nature of rights envisaged under the rules are in fact the rights of the Government, as the owner of the land which has been permitted to be shared by the tenants and agriculturists for convenience of their agricultural and domestic operations. The so called rights are more in the nature of licence and it is only for this reason that the Supreme Court had in so many words declared that the said rights can be restricted and their exercise is subject to any statutory provisions made in that regard. Their Lordships have also clearly said that the rights may be abridged by a law made by a competent Legislative authority. Keeping in view the said Constitutional and legal aspect, in our opinion, the learned Single Judge was right in upholding the order of the learned Deputy Commissioner.

11. Appeals are accordingly dismissed.