(1994) 01 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No. 6702 of 1986

Dr. Tammanna Gowda APPELLANT

Vs

The Deputy Commissioner, Gulbarga and another RESPONDENT

Date of Decision : 05-01-1994

Acts Referred:
Treasure Trove Act, 1878 — Section 8, 8 (1) (a)

Citation : AIR 1994 Kar 188 : (1994) ILR (Kar) 944 : (1994) 1 KarLJ 315

Hon'ble Judges : S. Rajendra Babu, J

Bench : Single Bench

Advocate : B.S. Raikote, for the Appellant; B.V. Murlidhar, Govt. Pleader, for the Respondent

Judgement

1. This petition has been filed by a person who is the owner of a land bearing No.1-29-36 and 36A situate at Gulbara.When the petitioner wanted to construct a garage in November, 1980 in the northeastern portion of the said property when excavation was going on, a box containing gold coins and ornaments was found. The petitioner claims to have brought to the notice of the authorities and also gave a notice as contemplated u/s 3 of the Karnataka Treasure Trove Act,claiming the treasure trove before the Deputy Commissioner. Four persons by name Mirza Javid Ali Baig, Khaiser Ali Baig, Mirza Imam Ali Baig and the petitioner file claims a owner of the treasure trove.The Deputy Commissioner made an order u/s 8 of the Treasure Trove Act on 3rd May,1982,rejecting the claim of the said persons and also the petitioner and held other basis of the report of the Director of the Director of Archaeology made on 1st August, 1981 that the coins were of Bahamani Kingdom and some of them were of Roman period and these coins had been burried for more than 100 years and therefore held that the property in question is a ownerless property and ordered for further steps in terms of the Act.Again another order was made by the Deputy Commissioner on 21-10-1983 noticing that there was discovery and seizure of Gold Coins weighing about 7.302 Kgs.found in the residential compound of the petitioner located in Sangameshwar Colony in Gulbarga and refers to the

notification issued u/s 4 of the Act on 19th June, 1981, pursuant to which three persons had made claim apart from the petitioner. The Deputy Commissioner notice the order made by his predecessor on 3-5-1982 declaring the treasure trove in question to be the ownerless property and thereafter referred the matter u/s 12 of the Act,on the basis there was a dispute amongst 2 or more persons,to the Civil Court. As the matter had to await the determination in a Civil Court as to the ownership thereof,he stayed the further proceedings until the Civil Court gave a finding.A Civil Suit instituted by the petitioner in which the said four persons were impleaded as defendants and those four persons remained ex parte and a decree was passed in favour of the petitioner stating that he is the owner of the place where the treasure was found and plaintiff is also entitled for the above treasure as notified in the notification.Thereafter on 2-12-1985 another order was made holding that the petitioner is only a finder of the treasure and he is entitled to Rs.1.00 lakh since the approximate metal value of the treasure found is worth more than Rs.11,000-00. The amount or value of the treasure found in excess of Rs.1,00 lakh is at the disposal of the Government.The petitioner is calling in question this order made by the Deputy Commissioner and claims that the property should be entirely given to the petitioner relying upon several decisions namely,Manager of Hampi Sri Virupaksha Swami Temple v.Lambani Golya ILR (1908) Mad 397 S. Iqbal Singh Chadha Vs. Collector, Hoshiarpur and Another, etc.In the Hampi Virupaksha Swami Temple''s case it was noticed that Section 3 of the Indian Treasure Trove Act defines treasure trove as anything of value hidden in the soil or in anything affixed thereto.Property not hidden is not treasure trove and is not governed by the provision of the Act.Unclaimed articles not found hidden are the property of the person on whose land they are found unless they are found in a public place in which case they belong to the finder.Under the English law the possession of land carries with it possession of everything which is attached to or under the ground and in the absence a better title the right to possess it also, except in the case of articles found in a public place, which is also the law in India. In England where the articles is hidden,the fact of being so hidden is taken to show that the owner did not intend to abandon it,and when it was subsequently found hidden,and the owner is not forthcoming,the law gives it as bonum vaccum to the Grown.

2. In spite of this enunciation of law, the learned Counsel for the petitioner relied upon a decision of the Punjab High Court in the case of S. Iqbal Singh Chadha Vs. Collector, Hoshiarpur and Another, In that decision scope of Section 11 and 12 of the Treasure scope of Section 11 and 12 of the Treasure Trove Act, 1878 is explained. It is stated therein that the said provisions should come into operation only when the property is declared to be ownerless u/s 9 of the Act.Section 15 thereof would become operative when the claimant other than the finder files a suit in a Civil Court and obtains a decision from a Civil Court.Where claimants did not obtain a decision from the Civil Court it should be held that the order of the Collector holding that the treasure belongs to a certain person or that it is found in the land belonging to certain person is vitiated,is apparent on the fact of the

record.It is therefore necessary to examine the scheme of the Act.

3.Under Section 3 whenever any treasure exceeding in amount or value of Rs.10/- is found, the finder has to give notice in writing to the Deputy Commissioner containing the details as to the nature and amount or approximate value of the treasure the place in which and the circumstances under which it was found and the date of the finding and thereafter the same will have to be deposited in the treasury or give it to the Deputy Commissioner for being deposited at an appropriate place. Thereafter the Deputy Commissioner would notify u/s 4 of the Act giving particulars of the finder''s name and other particulars of the owner or the occupier of the land in which the treasure was found,the nature and details of the treasure,the approximate value of the treasure,the place in which and the date on which the treasure was not found, the origin and surroundings of the treasure.The notification will also include the particulars referred to in the notice issued u/s 3 of the Act and requiring all persons claiming the Treasure or any part thereof to appear before the Deputy Commissioner within the specified time in person or through an agent.In the even the Deputy Commissioner finds that the treasure was in possession of or belonged to some person other than the finder,the Deputy Commissioner will also serve on such person and the finder a copy of the notification. u/s 5,it is provided,any person having any right to the treasure notified u/s 4 or any part thereof, as owner of the place in which it was found or otherwise, and not appearing as required by the notification issued u/s 4,shall forfeit such rights.The Deputy Commissioner will have to make an enquiry u/s 6 of the Act, hearing the parties concerned who intend to appear before him and after such enquiry as he may deem necessary,determine (1)the person by whom, the place in which, and the circumstances under which,such treasure was found and (2) as far as is possible,the person by whom, and the circumstances under which,such treasure was hidden.If upon enquiry made under Sec.6, the Deputy Commissioner considers that there are reason to believe that the treasure was hidden within one hundred years by the date of finding and claiming such treasure or by some other person under whom such person claims, the Deputy Commissioner shall adjourn the case for such period for being allowed to suit being filed in the Civil Court and on the establishment of such right the Deputy Commissioner may award the finder a reward not exceeding none-fourth of the value of the treasure which shall be paid to the clamant establishing his rights.This provision of Section 7 will not be attracted, but the treasure will have to be declared ownerless in certain cases as provided u/s 8 of the Act.Under Section 8 it is provided if upon enquiry, the deputy Commissioner considers that the treasure was hidden beyond one hundred years before the date of finding by a person referred to in Section 7(1) of the Act or where a period is fixed u/s 7(1) of the Act to institute a suit and no suit is instituted within such period or if such suit is instituted within such period, and the plaintiff''s claim is finally rejected,the Deputy Commissioner may declare the treasure to be ownerless.When a declaration is made under sub-section(1) thereof, report will have to be sent to the Government and an aggrieved party will have to file an appeal against the declaration made by the Deputy Commissioner within 60 days thereafter to the Mysore Revenue Appellate Tribunal and subject to such appeal every such declaration should be final and conclusive.Chapter III pertains to disposal of treasure declared as ownerless.Section 9 provides that the property declared to be ownerless shall be disposed of a s provided under Chapter III.When a declaration has been made u/s 8 in respect of any treasure and no person other than the finder of such treasure has appeared in an enquiry u/s 6 and claimed the treasure or a part thereof as owner of the place in which it has been found or otherwise,the Deputy Commissioner shall subject to the provisions of Section 14 deliver such treasure to the finder thereof.When only one such person claims and his claim is not disputed the treasure to be divided between the owner of the place and the finder.Under Section 12 it is provided that when two or more persons appear in an enquiry u/s 8 and each of them claimed as owner of the place where such treasure was found or otherwise or the right of any person so appeared and claimed is disputed by the finder of such treasure,the Deputy Commissioner shall retain such treasure and shall make an order staying his proceeding with a view to the matter being enquired into and determined by a Civil Court.Within thirty days from the date of the order u/s 12,a person claiming right may institute a suit in a Civil Court to obtain a decree declaring his right and if any such suit is instituted and the plaintiff''s claim is finally established,the Deputy Commissioner subject to the provisions of Section 11 divide the treasure between him and the finder.If in cases referred to in Section 10 or Section 13(13),the amount or value of the treasure found exceeds one lakh of rupees,the Deputy Commissioner delivers so much of the treasure as is of the amount or value of one lakh of rupees to the finder and declare the excess to be at disposal of the Government.The Government has also power to acquire on behalf of the Government the treasure u/s 15 of the Act by paying compensation in a sum equal to the value of the treasure or portion,together with one fifth of such value.

4.Relying upon the decision in AIR 1949 33 (P & H.) the learned Counsel for the petitioner contended that in suits arising u/s 8 of the Treasure Trove Act, 1878,the scope of the suit is to determine the person''s right to the treasure and in the present case the Civil Court having already decided in favour of the petitioner the Deputy Commissioner ought to have held that the petitioner is entitled to the entire treasure. The decision in Munawar Ali Khan''s case merely explains the scope of the suit filed u/s 8 and not the Act.Therefore that decision also does not come to the aid of the petitioner.On the other hand, the decision in Hampi Sri Virupaksha Swami Temple''s case ILR1908 Mad 397 referred to earlier it is clearly laid down that a property which had been hidden and not merely abandoned and discovered later on should be treated a property bona vacantia.

5. Learned Counsel for the petitioner also referred to another decision in Shyam Bahadur Koeri and Others Vs. The State, That decision only refers to what is meant by treasure-trove and no more.It is to the effect that concealment of valuable property in soil and non-availability of particulars of ownership are the

requisites of treasure.In that case what the Court was concerned with was the duty of the discoverer of such treasure to give notice to the Collector and not the question of deciding the rights of the parties concerned.Therefore,that decision cannot be of much help to the petitioner.

6. The scheme of the provisions of the Act made it clear that the owner in respect of any land or thing affixed to land would include a person who is entitled to under any law or instrument, to treasure is such land or thing. In the present case the petitioner can safely be said to be a person who is the owner of the land where the treasure in question was found and that aspect is not in dispute at all.But the question now to be considered is when the Deputy Commissioner made an order u/s 8 of the Act to the effect that he had no reason to believe that the treasure was hidden within one hundred years before the date of finding, the Deputy Commissioner can declare such treasure to be ownerless.That is exactly what has been done in the present case by annexure-`A'' dated 3rd May,1982.When the Deputy Commissioner gave a finding that the treasure in question was of a very old origin and must have been hidden at least more than 100 years from the date of the finding and therefore declared as ownerless in terms of Section 8(1)(a) of the Act.On that order the petitioner ought to have preferred,if aggrieved,an appeal to the Revenue Appellate Tribunal.The petitioner has not availed of that remedy at all.Thereafter whatever action has been taken is only to treat the petitioner only as a finder of the good thereof and petitioner has been given Rs.1.00 lakh in terms of Section 14 to which reference has already been made under that provision when the treasure found is valued more than Rs.1.00 lakh so much of the treasure as is of the amount or value of one lakh will go to the finder and the rest will be placed at the disposal of the Government Therefore I do not think the petitioner is justified in contending that he is entitled to make a claim to the said property.Whatever may be the common law or the law available in England or other countries when there are specific provisions in the enactment which states that when the authority concerned has no reasons to believe that the treasure had been burried within a period of one hundred years from the date of finding,the treasure shall be declared to be ownerless.By law it is made clear when such treasure has been burried for a long time as over a centaury the owner of the land or the property cannot make any claim and the property is treated as bona vacantia and will vest in the State as was held in the decision of the Madras High Court to which I made a reference earlier.Hence,I do not think any interference is called for with the orders made by the authorities concerned and this petition is therefore liable to be dismissed. Rule discharged.

7. Order accordingly.

