

(1988) 01 KAR CK 0033

In the Karnataka High Court

Case No : Writ Petition No"s. 16469 to 16471 of 1985

Flavian Aloysius Pinto

APPELLANT

Vs

Special Deputy Commissioner

RESPONDENT

Date of Decision : 07-01-1988

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 26 (1), 26 (2)

Citation : (1988) ILR (Kar) 685 : (1988) 2 KarLJ 278

Hon'ble Judges : Balakrishna, J

Bench : Single Bench

Advocate : Radesh Prabhu, for the Appellant; S.V. Jagannath, Govt., for the Respondent

Final Decision : Allowed

Judgement

Balakrishna, J.—Though these matters were in "B" group, by consent of both the Counsel they were heard finally and were disposed of.

2. These Writ Petitions are directed against the orders passed by respondent-1, vide Annexures-A, B, C and the order passed by respondent-2 vide Annexure-D declining permission to the petitioners to transfer their landed properties by sale to purchasers.

3. The facts, in all the cases are common and the only question for consideration is, whether respondents 1 and 2 were justified in declining permission to the petitioners to transfer their property by sale.

4. The facts, briefly stated are as follows:

The petitioners are the children of late Raymond Pinto who died in the year 1969 leaving behind him his widow and children as the legal representatives. The widow who is the mother of the petitioners was acting as an executrix since the children were minors at the time of the death of Raymond Pinto. It is not disputed that the petitioners besides others succeeded to the estate of late

Raymond Pinto.

5. After the promulgation of the Urban Land Ceiling and Regulation Act 1976 (for short "the Act") the petitioner's mother filed a declaration u/s 6(1) of the Act in the capacity of an executrix before the Competent Authority. Later on, after attaining majority, the first petitioner and another filed a suit for partition by metes and bounds. The said suit was decreed in Original Suit No. 168 of 1983 on the file of the Munsiff's Court, Mangalore and the final decree for partition was also passed. A true copy of the final decree in the said suit is Annexure-E.

6. According to the decree passed by the Court, the first petitioner got 21 cents of property in S.No. 150/1 and petitioners 2 and 3 got 49 cents each in the same survey number besides others. Subsequent to partition, the concerned parties have been in undisputed possession of their respective shares of properties allotted to them. However, on account of financial commitments the petitioners entered into agreement with third parties to sell the properties. In accordance with Section 26(1) of the Act all the petitioners notified respondent-1 of the intended sale of their property which were within the ceiling limit. The true copies of the notices are Annexures-F, G and H respectively.

7. Thereafter, respondent-1 without granting a personal hearing to the petitioners passed orders vide Annexures-A, B and C refusing permission for sale. The petitioners being aggrieved by the orders vide Annexures-

A, B and C preferred appeals to respondent-2 u/s 33 of the Act, against the impugned orders of respondent-1. A common order was passed by respondent-2 who is the Divisional Commissioner, Mysore Division, Mysore on 10-12-1984 vide Annexure-D after hearing the Counsel for the appellants confirming the impugned orders of respondent-1. The petitioners are aggrieved by the said order dated 10-12-1984 of respondent-2.

8. Sri K. Radhesh Prabhu, learned Counsel for the petitioners contended that there is a violation of the provisions of Section 26(2) of the Act. According to him, the only option open to the Competent Authority on receipt of the notices issued u/s 26(1) of the Act is, either to exercise the right of first purchase of the properties referred to in the notices or to permit the holders of the land (petitioners) to transfer their properties to any person of their choice. The learned Counsel further contended that it was brought to the notice of respondent-2 that the property of late Raymond Pinto who was the father of the petitioners was partitioned by virtue of a Court decree passed in Original Suit No. 168 of 1983 on the file of the Munsiff, Mangalore and that the following persons including the three petitioners came to be the owners in possession of the extent of lands indicated below, in S.No. 150/1 of Padavu village of Mangalore Taluk.

1. Sri Flavian Aloysius Pinto 21 Cents 2. Sri Donald Pinto 49 cents 3. Ronald Pinto 49 cents 4. Valerine Theodore Stony Pinto 21 cents

Thereafter the petitioners issued notices u/s 26(1) of the Act to the Competent

Authority communicating their intention to sell their property. He further urged that the ground for rejection that a declaration had been filed u/s 6(1) of the Act, by the mother of the petitioners was not relevant in the circumstances already stated for grant of permission.

9. Section 26(1) of the Act reads as follows :

"Notice to be given before transfer of vacant lands-

(1) Notwithstanding anything contained in any other law for the time being in force, no person holding vacant land within the ceiling limit shall transfer such land by way of sale, mortgage, gift, lease or otherwise except after giving notice in writing of the intended transfer to the Competent Authority.

(2) Where a notice given under Sub-section (1) is for the transfer of the land by way of sale, the Competent Authority shall have the first option to purchase such land on behalf of the State Government at a price calculated in accordance with the provisions of the Land Acquisition Act, 1894 (1 of 1894) or of any other corresponding law for the time being in force and if such option is not exercised within a period of sixty days from the date of receipt of notice, it shall be presumed that the Competent Authority has no intention to purchase such land on behalf of the State Government and it shall be lawful for such person to transfer the land to whomsoever he may like:

Provided that where the Competent Authority exercises within the period aforesaid the option to purchase such land the execution of the sale-deed shall be completed and the payment of the purchase price thereof shall be made within a period of three months from the date on which such option is exercised."

10. Section 26(1) of the Act contemplates that a holder of a vacant land (if the land is within ceiling limit) shall not transfer by way of sale, mortgage, gift, lease or otherwise, except after giving notice in writing to the Competent Authority of the intended transfer. Section 26(2) of the Act provides that if such a notice regarding the intended sale is received by the Competent Authority, priority is given to the authority to exercise its option of purchase on behalf of the State Government at a price calculated in accordance with the provisions of the Land Acquisition Act 1894 or of any other correspondent law for the time being in force within a period of sixty days from the date of receipt of the notice issued u/s 26(1) of the Act. It also envisages that if the Competent Authority does not take advantage of the option of purchase within the statutory time limit of sixty days from the date of receipt of the notice aforesaid, it is lawful for the holder of the land to transfer by sale or otherwise to any person of his choice.

11. In the instant case, it is manifestly clear that the Competent Authority not only by its conduct but also by the tenor of the order passed by it disclosed no intention of purchasing the land belonging to the petitioners. In short, the first option to purchase the lands of the petitioners was not exercised by the Competent Authority after receipt of notices u/s 26(1) of the Act. In the

circumstances, the question to be considered is whether the Competent Authority has forfeited its right to exercise the first option after the expiry of sixty days from the date of receipt of the notices. The other question is, whether meanwhile an un-fettered right to transfer is created in favour of the petitioners who are the holders of the lands on the expiry of sixty days from the date of issue of notices u/s 26(1) of the Act consequent to the failure of the Competent Authority to exercise the first option of purchase. From the materials on record, there is nothing to indicate that the petitioners are holding the lands beyond the ceiling limits. In any case that is not the finding of either respondent-1 or respondent-2. I have carefully examined the impugned orders of respondent-1. All the orders are identical. No reasons are assigned for declining permission to the petitioners except stating that a declaration filed by the mother of the petitioners filed u/s 6(1) of the Act is being examined. The orders are devoid of substance. They fall short of the requirements of speaking orders.

12. The language of Section 26(2) of the Act is plain, simple and unambiguous. The provisions of Section 26(2) of the Act are not intended to deprive the holders of lands within ceiling limits of their right to transfer their lands to persons other than the State which no doubt enjoys the paramount title, but the provisions are intended only to afford first priority of purchase to the State and nothing beyond, should the State elect to purchase for any reason or purpose. It has to be borne in mind that the "right to transfer" remains intact with the holders of lands subject only to the priority of the State to purchase within the statutory time limit at a price regulated by the provisions of the Act. Both the Competent Authority and the Appellate Authority (respondents 1 and 2) have glossed over the object of the Act and respondent-2 has totally ignored the fact that the State did not opt to purchase the lands of the petitioners. On irrelevant and dubious assumptions, the notices of transfer issued by the petitioners have been summarily rejected by respondent-1 without hearing the petitioners.

When the executive authorities purport to act in quasi judicial capacity, they are expected to act fairly, reasonably and judiciously. Tangential reasoning cannot prevail over legislative intent. Neither a quasi-judicial authority nor even a judicial authority has a will of its own opposed to legislative will. Efflux of time which has wiped out the right of priority of the State simultaneously allowing liberty to the petitioners to sell their lands to whomsoever they desire, should entitle the petitioners to a free exercise of the right to sell or transfer.

13. For the above reasons and in the absence of a counter by the State, I am of the opinion that in the facts and circumstances of these cases, the impugned orders are not in consonance with either the "litera legis" or the "sententia legis" of the provisions of Section 26(2) of the Act. In my view, the impugned orders are extra-statutory in character and unmistakably smack of jurisdictional misfeasance and therefore unsustainable.

14. My attention is drawn by Mr. Radhesh Prabhu learned Counsel for petitioners, to a Division Bench ruling of the Delhi High Court in Shanti Devi Vs. Delhi

Administration and Others, The facts of the said case are similar to those of the cases on hand. The decision is on all fours with the instant cases. It was held -

"If there is refusal of permission to sell the property, it has to be accompanied by an option to purchase at a price to be calculated in accordance with the provisions of the Act. If the option to purchase is not exercised by the Competent Authority within sixty days, then the ambit of sale stands removed."

I am in respectful agreement with the view taken by the Delhi High Court in the aforesaid decision.

15. In the result, I allow these Writ Petitions and quash the impugned orders of respondents 1 and 2. Respondent-1 is directed to issue orders granting permission to all the petitioners to transfer the lands as already notified by them u/s 26(1) of the Act. In the circumstances of the case, there shall be no order as to costs.