

(1991) 07 KAR CK 0036
In the Karnataka High Court
Case No : W.P. No. 23892/1990

Gangappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 02-07-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Village Offices Abolition Act, 1961 — Section 3

Citation : (1991) 2 KarLJ 501

Hon'ble Judges : M. Ramakrishna, J

Judgement

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the correctness and legality of the order passed by the Tahsildar at Annexure-C and he has sought for quashing the same for the reasons set out in the petition.

2. In order to appreciate the contentions advanced by the learned counsel on both sides and also refer the salient features necessary to dispose of the writ petition, following events are required to be noted.

It is undisputed that out of eight survey numbers of land situate in two villages, in the writ petition we are concerned only with Survey Number 62 to the extent of 1 acre 27 guntas situate in the village Doddachinnahalli, Bangarpet Taluk. It is also not in dispute that the said land belongs to the village office-Thoti. When several lands including Survey No. 62 were being enjoyed by the original holders of the Village Offices for a long time, by a registered sale deed dated 10-2-1975 Gangappa-petitioner herein and his mother Smt. Gangamma wife of Venkatappa sold this 1 acre 27 guntas of land in Survey No. 62 in favour of the third respondent Narayana Reddy for a valuable consideration. It is stated that ever since the date of sale the said purchaser has been in possession and enjoyment of the same.

3. On the coming into force of the Karnataka Village Offices Abolition Act, 1961 (hereinafter referred to as "the Act"), petitioner Gangappa and other holders of

village offices who were discharging duties of the village offices and enjoying the lands, approached the Tahsildar, Bangarpet seeking an order of regrant in their favour in respect of the lands endowed upon the village offices including Survey No. 62. Earlier there was an order made by the Tahsildar regranteeing occupancy rights in favour of the petitioner and others in respect of certain lands including Survey No. 62, which was the subject matter of an appeal before the learned District Judge, Kolar. Learned Additional District Judge, Kolar by his order dated 27-7-1990, having set aside the order impugned therein, remitted the matter to the Tahsildar with a direction to reconsider the case afresh providing opportunity to the appellant as well as the claimants and pass appropriate orders in accordance with law.

4. Thus the matter came to be reconsidered by the Tahsildar in the instant case. The Tahsildar having held an enquiry afresh and taking into consideration the material available including the say of the parties, passed the impugned order (Annexure-C) on 16-11-1990. Referring to the salient aspects of the case, he held in the course of the order that 1 acre 27 guntas of land in Survey No. 62 situate in village Doddachinnahalli had been endowed upon the village office and the claimant Gangappa was entitled for regrant of the said land along with other lands. During the course of the order, he has noticed that the land in question i.e. Sy. No. 62 came to be sold in favour of the third respondent Narayana Reddy on 10-2-1975. There are entries in the Pahanies in the name of the third respondent to that extent.

5. However, on merits of the case he considered the rival material evidence with reference to the provision of the Act and concluded that Gangappa was entitled for an order of regrant in his favour, and, accordingly, he regranted three survey numbers including Sy. No. 62 measuring 1 acre 27 guntas in his favour subject to the usual conditions. To this extent there is no complaint by third respondent against the impugned order-Annexure-C. In other words, the order of regrant made in favour of Gangappa conferring occupancy rights in his favour being just and proper, can be sustained.

6. Complaint of the petitioner Gangappa in this petition is against the second para of the operative portion of the order, whereby the Tahsildar observes as follows: Learned counsel for the petitioner submitted that this para of the order directing the name of the third respondent to be entered in the record of rights, holding that the sale of the land in his favour is valid, etc., has to be quashed.

7. Opposing the submission of the petitioner Sri Gopal, learned counsel for the third respondent, contended that there are two aspects required to be considered mainly in this petition.- (1) At the outset the writ petition is not maintainable because if the petitioner is aggrieved by the impugned order (Annexure-C) he can as well take up the matter in appeal as required under Section 3(2) of the Act. To substantiate his argument, learned counsel submitted that without exhausting the remedy of appeal as provided under sub-section (2) of Section 3, the writ petitioner could not have invoked the jurisdiction of this Court under

Articles 226 and 227 of the Constitution of India.

(2) Another aspect which Mr. Gopal argued vehemently is that since the Tahsildar who passed the impugned order (Annexure-C) has followed the law declared by this Court earlier, the same is perfectly justified and that there is no reason for this Court to interfere even in respect of the direction given by the Tahsildar in the operative portion of the order.

8. To deal with the first contention of the learned counsel for the third respondent, it is true that sub-section (2) of Section 3 of the Act provides as follows:

"(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."

It is not the case of the third respondent that there are any laches or delay on the part of the petitioner in approaching this Court. An appeal under Section 3(2) of the Act could be presented within 90 days from the date of the order of the Court below. The order of the Tahsildar came to be passed on 16-11-1990 while the writ petition presented before this Court on 29-11-1990. Therefore, there is no delay or laches on the part of the petitioner. But the legal contention urged by Sri Gopal in support of his case is that when the right of appeal is there where the petitioner could have agitated his grievance before the appellate authority, there is no reason why this Court should entertain this writ petition.

9. On perusal of the order sheet maintained we see that notice regarding rule came to be issued by this Court on 4-12-1990. It is further seen by a perusal of the order made by my learned brother Mr. Justice Shivaprakash that on being satisfied and after hearing the learned counsel on both sides he has issued Rule on 12-6-1991. It appears to me that the learned Judge having been satisfied that it is a fit case for granting Rule, admitted the writ petition and issued Rule. Therefore the case is set down for hearing before me.

10. However, on merits, considering the contentions urged by Mr. Gopal as to the maintainability of the writ petition, it seems to me that the matter came to be reconsidered by the Tahsildar on remand made by the appellate authority, conferring occupancy rights in favour of Gangappa under the impugned order at Annexure-C, and, the second para of the operative portion of the impugned order, which I have extracted above, is inconsistent with the law declared by this Court, inasmuch as the Tahsildar could not have gone to the extent of issuing a direction to enter the name of the purchaser in the record of rights much-less he could declare the sale as valid. The Tahsildar is not called upon to do so and further no such power is conferred upon him under the statute. Be that as it may, since that part of the order ex-facie was improper and could not be sustained, this Court taking into consideration that aspect must have issued Rule. Therefore, at this juncture it is not possible to hold that the writ petition is not maintainable. Ultimately, if this Court were to hold the impugned order ex-

facie illegal and improper, directing the party to go round and file another appeal before the District Judge and making him spend another two years and then come to this Court, ends of justice would not be met. I am afraid, it will not be an equitable approach to do so. In the circumstances, the first contention of Sri Gopal will have to be rejected.

11. Dealing with the second contention Sri Gopal learned counsel for the third respondent drew my attention to the observations made by a Division Bench of this Court in *Lakshmana Gowda and Others v State of Karnataka* by its Secretary to Government, Department of Law and Parliamentary Affairs, Bangalore and Others, ILR 1980(2) Kar. 892 as well as in *Chikkanarasaiah v Tirupataiah*, ILR 1989 Kar. 1520. The submission is that, by virtue of the observations made by the Division Benches in both the cases referred to above, if a person has purchased the land endowed upon a village office before the amended provision of Section 7 came to be introduced on 7-8-1978, any order made by the competent authority conferring occupancy rights by way of regrant in favour of the original holders of the village office would enure to the benefit of his alienee. He drew my attention to the observations made by this Court in paragraph 14 of the Judgment in *Chikkanarasaiah's* case. Again the observations made by this Court in *Hanumaiah's* case is extracted in paragraph 15 of the Judgment in *Chikkanarasaiah's* case.

12. With a view to appreciate the contention advanced by Sri Gopal, paragraphs 14, 15 and 16 of the Judgment in *Chikkanarasaiah's* case are reproduced below:

"14. In the year 1978, principal Act was amended. Section 5(3) as amended came into force with effect from 7-8-1978. Section 5(4) as introduced by the Amendment Act was read down in *Lakshmana Gowda's* case as having only prospective operation from 7-8-1978. Section 7 was substituted with effect from 24-12-1975 and a new Section 7-A was introduced with effect from 7-8-1978. There is a total bar to alienate the granted lands for a period of 15 years from 7-8-1978 if the land is granted either under Section 5 or Section 6. If the land is granted under Section 7, it shall not be transferred similarly, as per Section 7-A. Therefore, if a land is granted after the Amendment Act became effective, the reading down of Section 5(3) or Section 5(4) in *Lakshmana Gowda's* case, would in no way benefit the transferees from the grantees. The grant is subject to the restrictions and these specific statutory restrictions cannot be overridden by an equitable doctrine of estoppel, or by applying Section 43 of the Transfer of Property Act."

15. The decision in *Hanumaiah's* case is also of a Division Bench and has referred to *Lakshmana Gowda's* case. In *Hanumaiah's* case, the unauthorised holders were holding the lands by virtue of the sales in their favour, made in the year 1968, 1969 and 1970, i.e., after the principal Act came into force; thus, they were not in possession of the resumed lands as on 1-2-1963, the date of resumption, when the Act came into force. They were ordered to be evicted and the lands were granted to the office-holders under Section 7 of the Act, by an

order dated 17-4-1982. It was concluded, at para-8 (at page 561):

"In this view of the matter, it seems to us that the impugned order, which is made under the amended Section 7 of the Act long after its coming into force, does not enure to the benefit of the petitioners and they do not get any title to the lands. The regrant order made under amended Section 7 of the Act does not stand on the same footing as that of a regrant made under Section 5 or 6 of the Act."

"16. In the case before us, also sale in favour of the unauthorised holder was after the Act came into force, i.e., in March 1971, and the grant in favour of the office holder was in the year 1983 under the amended Section 7. Consequently, it has to be held that the writ petitioner was not entitled to invoke the decision in Lakshmana Gowda's case and his writ petition was liable to be dismissed."

By a perusal of paragraph-15, it is clear that any alienation of the land endowed upon a village office after the coming into force of the Act i.e. 1-2-1963 and before the regrant of the resumed land, would not entitle the purchaser seeking benefit either under Section 5 or Section 6 much less the benefit that may be conferred on the grantee would enure to the alienee. This is the specific view taken by the Division Benches of this Court in Hanumaiah v State of Karnataka, ILR 1987 Kar. 550 and in Chikkanarasaiah's case. Their Lordships in paragraph-15 in Chikkanarasaiah's case have referred to three instances of the sale in Hanumaiah's case, namely in the years 1968, 1969 and 1970 and observed that these sales are subsequent to 1-2-1963 which is the date of resumption of the lands by virtue of the Act and that there was an order of eviction against the unauthorised holders under Section 7 of the Act and lands were granted to the office holders. This aspect is made clear in paragraph 16 thereof.

13. In the instant case, admittedly the sale has taken place on 10-2-1975 while the order of regrant was made on 4-5-1982 (first order). That being so, the third respondent being the purchaser of the land in question after the Act came into force and before the amended provision of Section 7 came into effect from 7-8-1978, his possession cannot be protected. Indeed, it is clearly seen that their Lordships distinguished the view taken in Lakshmana Gowda's case referring to the equitable doctrine of estoppel and Section 43 of the Transfer of Property Act. It is made clear in para-14 and is again reiterated in paragraph-16. Therefore it is not possible to accede to the contention of Sri Gopal that the impugned order would enure to the benefit of the purchaser and that therefore the second respondent was right in issuing a direction as found in the second paragraph of the operative portion of the impugned order.

14. In the instant case, I have not been called upon to decide the validity of the action under Section 7 of the Act intending to evict the third respondent from the land in question. That is not an issue before me.

15. The last contention of Sri Gopal is that, having regard to the definition

clauses 3(b) and 3(m) defining the "authorised holder" and "unauthorised holder" under the Act, there is a good deal of difference between the sale made by an authorised person and the sale made by an unauthorised holder. The submission is that, in the instant case Gangappa and his mother being persons holding office of the village-Thoti, were the authorised persons; so the sale has taken place by the authorised persons. To that extent the observation made by this Court in two cases referred to above may be distinguished applying to the facts of the present case. This was one of the views taken by the Division Bench of this Court earlier in Lakshmana Gowda's case. But the view expressed by the Division Bench in Lakshmana Gowda's case came to be distinguished clearly in two cases, namely, in Hanumaiah's case and Chikkanarasaiah's case, Chikkanarasaiah's case being the later one, in paragraph 14 thereof the Division Bench clearly distinguished while making the following observations:

"Therefore, if a land is granted after the Amendment Act became effective, the reading down of Section 5(3) or Section 5(4) in Lakshmana Gowda's case, would in no way benefit the transferees from the grantees. The grant is subject to the restrictions and these specific statutory restrictions cannot be overridden by an equitable doctrine of estoppel, or by applying Section 43 of the Transfer of Property Act."

That apart, in paragraph 15 again their Lordships have observed that the unauthorised holders were holding the lands by virtue of the sales in their favour, made in the years 1968, 1969 and 1970 i.e. after the principal Act came into force; thus, they were not in possession of the resumed lands as on 1-2-1963, the date of resumption, when the Act came into force. It is in this context their Lordships directed that "They were ordered to be evicted and the lands were granted to the office holders under Section 7 of the Act."

16. As I have already referred to, the order of regrant was made on 4-5-1982 originally. As on the date when the Act has come into force i.e. 1-2-1963 the third respondent cannot be in possession of the land in question as he has come in possession only on 10-2-1975 by virtue of sale. In other words, as on the date of resumption of the land in question by the State i.e. on 1-2-1963 the third respondent cannot be said to be in possession of the land. Therefore, applying to the principle laid down in Chikkanarasaiah's case, again it is not possible to accept the legal contention urged by Sri Gopal.

17. In the result I make the following order:

Writ Petition is partly allowed. The impugned order (Annexure-C) made by respondent-2 Tahsildar in case No. ISA 253:78-79, dated 16-11-1990 in so far as it relates to the second part of the operative portion of the order relating to direction to make an entry in the Khata book and record of rights in the name of Narayana Reddy, respondent-3 herein is quashed. Best of the impugned order remains unaltered. No costs.