
(2002) 08 KAR CK 0032
In the Karnataka High Court
Case No : Writ Petition No. 27079 of 2002

G.R. Changalaraya Naidu and Others	APPELLANT
Vs	
The Assistant Commissioner and Another	RESPONDENT

Date of Decision : 16-08-2002

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 79 B, 81
Limitation Act, 1963 — Section 12, 14, 4, 5

Citation : (2002) ILR (Kar) 4467 : (2002) 6 KarLJ 208 : (2003) 1 KCCR 342

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : B.S. Hadimani, for the Appellant; V. Bychappa, High Court Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—The petitioners are before this Court challenging the order of the Karnataka Revenue Appellate Tribunal, dated 28-2-2002 passed in Appeal No. 112 of 1991. The facts in brief are as under:

2. The petitioners are close friends and they come from agricultural family. They purchased jointly the lands in Sy. No. 14/1B measuring 3.05 acres of Raghavanahalli Village, Uttarahalli Hobli, Bangalore South Taluk, on 13-5-1987 under a registered sale deed from Sri Rama Rao. They are in possession and cultivation of the same. The Deputy Commissioner, Bangalore, issued preliminary notification on 23-3-1989 for acquiring these lands for the purpose of providing the same to Kammavari Sangham, an educational institution. Proceedings were already pending before the Assistant Commissioner. The Assistant Commissioner has initiated proceedings for contravention of Sections 79-B and 81 of the Land Reforms Act. In the light of a report from the Tahsildar, the Assistant Commissioner passed an order on 27-5-1989. The petitioner filed an appeal before the Appellate Tribunal in Appeal No. 112 of 1991. The Appellate Tribunal confirmed the order of the Assistant Commissioner in the impugned order. This

order is challenged in this petition by the petitioners by raising several grounds.

3. Sri B.S. Hadimani, learned Counsel appears for the petitioners and contends that the impugned order of the Tribunal requires my interference. He states that the Tribunal has committed an error in dismissing the appeal on the ground of limitations. He further says that the Tribunal is wrong in passing an adverse order against the petitioner. On merits, he states that there is no violation of any provisions of the Act. Learned Counsel for the petitioners says that the missing file cannot be attributed to the petitioners. In the light of the grounds and the arguments made in this Court, I have perused the order of the Appellate Tribunal.

4. The Appellate Tribunal has noticed various facts in the case on hand. The Appellate Tribunal framed two questions for its consideration. There is an enormous delay in filing this appeal. The Tribunal noticed various facts including the material facts. Admittedly, the petitioners have purchased 3 acres 1 guntas in the year 1987. Proceedings were initiated by the Assistant Commissioner against the petitioners for violating the statutory provisions in terms of Section 79-B of the Act. An order was passed on 27-5-1989. Appeal was admittedly filed on 28-2-1991. In the appeal filed at Annexure-E, the petitioners state that they came to know of the order only on 31-1-1991. Therefore, according to the petitioners, the appeal was in time. The Tribunal noticing the relevant facts has held against the petitioners. The Tribunal noticed that the appeal was dismissed for default twice on 5-3-1992 and 18-3-1993. Records were earlier called for and later they were sent to the Assistant Commissioner on 28-5-1991. After the second dismissal for non-prosecution, no efforts were made to pursue the appeal till 18-10-2000. Miscellaneous appeal was allowed to recall the second dismissal order and the appeal was restored on 29-12-2000. During the proceedings, the Assistant Commissioner reported that the original case records are missing from his office. It is of interest to note that the lands in question at present houses huge blocks of four storeyed buildings. The Kammavari Sangham is running technical college buildings and is currently running regular colleges. The construction was started during 1999 itself. The Assistant Commissioner has ruled in his order that the lands are to be forfeited. This order as mentioned earlier is dated 27-5-1989. An appeal was filed only on 28-2-1991. According to the petitioner, there is no delay at all. The petitioner relies on Section 122 of the Act. Section 122 of the Land Reforms Act reads as under:

"Every appeal under this Act shall be filed within a period of sixty days from the date of the order of the Deputy Commissioner (or an officer authorised under Sub-section (1) of Section 77) or the Assistant Commissioner (or the prescribed authority or the Tahsildar) when the party or the legal practitioner appearing on his behalf is present at the time the order is pronounced, and in other cases within a period of sixty days from the date on which the order is communicated to the party by post. The provisions of Sections 4, 5, 12 and 14 of the (Limitation Act, 1963) shall be applicable to such appeal".

5. A reading of the said section shows that an appeal is required to be filed

within a period of sixty days from the date of the order of the Deputy Commissioner or an officer authorised under Sub-section (1) of Section 77 or the Assistant Commissioner when the party or the legal practitioner appearing on his behalf is present at the time of the order is pronounced, and in other cases within a period of sixty days from the date on which the order is communicated to the party by post.

6. In the case on hand, the petitioners have filed an appeal on 28-2-1991 as against the order dated 27-5-1989. The petitioners contend that the order was not communicated and therefore, the delay, if any, has to be condoned. It is seen from the material on record that the entire file is missing and the records were not available. The records would reveal as to whether any communication has been served on the petitioner or not. In the absence of records, it is not possible for this Court to say as to whether the communication has been served on the petitioners or not. Therefore, the Tribunal to this extent has committed an error in dismissing the appeal filed by the petitioners. In the normal circumstances, a remand of the case to the Tribunal would be the answer in such cases. But in the case on hand, the material facts are so clear that the petitioners are guilty of violation of the provisions of the Act. The admitted facts reveal that the petitioners claiming to be friends have purchased 3 acres 1 guntas of land in Sy. No. 14/1B of Raghavanahalli Village, Uttarahalli Hobli. They are the members of Kammavari Sangham. The Tahsildar has sent a report after enquiry that there is violation of Sections 79 and 80 of the Act. The Assistant Commissioner initiated proceedings in this regard. He has passed an order on 27-5-1989. From the material available on record, admittedly the petitioners have purchased these lands. Chapter V provides for restrictions on transfer of agricultural lands. Section 79-A provides for prohibition for acquisition of lands by certain persons. Section 79-B provides for prohibition of holding agricultural land by certain persons. According to the Assistant Commissioner the impugned transaction is in violation of Section 79-B(3) of the Act. Section 79-B(a) states that no person other than a person cultivating land personally shall be entitled for a land. Section 79-B(b) states that it shall not be lawful for an educational, religious or charitable institution, a company, an association or a body of individuals not being a joint family whether incorporated or not or a co-operative society to hold any land. Lands have been purchased by a body of individuals in the case on hand. It is not their case that they belong to a joint family. In these circumstances, the very admitted facts reveal even to a naked eye that the transaction is in violation of Section 79-B(b)(iii) of the Act. In these circumstances, it cannot be said that the Assistant Commissioner has committed any error in passing an adverse order against the petitioners. Since the facts are clear, it is unnecessary for this Court either to remand or to reconsider and instead, this Court can put a full stop to the entire litigation in the light of admitted facts in the light of Section 79-B(b)(iii) of the Act.

7. It is also clear from the records that the petitioners moved the Government to acquire these lands for its activities. A notification in terms of Section 4(1) is also

issued at the instance of the Sangham. The petitioners have given their "no objection" to the acquisition and have also deposited Rs. 44,406.50/-. Later, the Government dropped the proceedings in the light of forfeiture for violation of the provisions of the Act. The act on the part of the petitioners in seeking for acquisition and depositing the amount would also be a factor which would show that the petitioners were aware that their purchase may not stand the test of law. This is also an additional factor that compels me to confirm the order of the Assistant Commissioner instead of remanding it for redecision.

8. It is also seen that this is a case of purchase of lands in the year 1987. 16 years are already over. An appeal of the year 1991 was dismissed twice before the Tribunal and it was restored on 29-12-2000. To my shock, I see that the original case records are also missing in the case on hand. An impression is given to the Court that some mischief is played somewhere probably to help the petitioners. In these circumstances, I deem it proper to direct the Revenue Secretary to get hold of the entire file and proceed against those for causing the file missing, in accordance with law.

9. Taking an overall admitted facts and Section 79-B of the Act, I deem it proper to dismiss the petition though not for the same reasons but for the reasons mentioned in the order with a view to avoid unnecessary remand resulting in wastage of everybody's time.

10. Petition stands dismissed.