

(1992) 08 SC CK 0045
In the Supreme Court Of India
Case No : Appeal (civil) 8231 of 1991

Guruputrappa Mallappa Harkuni	Vs	APPELLANT
The Tahsildar and Others		
Another Vs Sri Narayanappa and Another		RESPONDENT

Date of Decision : 11-08-1992

Acts Referred:

Karnataka Village Offices Abolition Act, 1961 — Section 5(3)

Citation : AIR 1993 SC 98 : AIR 1992 SC 98 : (1992) 4 JT 476 : (1992) 2 SCALE 153 : (1993) 1 SCC 496 Supp : (1992) 3 SCR 786 : (1992) 2 UJ 604

Hon'ble Judges : S. Mohan, J;N. Venkatachala, J;L. M. Sharma, J

Bench : Full Bench

Final Decision : Partly Allowed

Judgement

S. Mohan, J.

1 In all these appeals the common question of law which arises is the scope of Section 5(3), as amended, of Karnataka Village Offices Abolition Act, 1961 (hereinafter referred to as the Act). Hence the appeals are dealt with under a common judgment.

2. It is enough if we note the facts briefly in Civil Appeal No.3231 of 1991. The land bearing Survey No.187/2 measuring an extent of 13.21 acres of Anigaol Village was Patilki Inam Land. The land was resumed to the Government u/s 4 of the Act with effect from 1st February, 1969. Ninganagouda Ramanagouda Patil of Anigaol was the holder of these watan lands. He filed an application dated 6.2.1968 for regrant of land. He also paid an amount equal to 3 times the assessment and health cess. The Assistant Commissioner Railhongal Division directed the regrant by an order dated 15.4.1969. Thereafter the papers were forwarded to the Tahsildar of Sampagaon for information and necessary action.

3. Ninganagouda Ramanagouda Patil sought sanction to alienate land as provided u/s 5(3) of the Act as it stood then. He also deposited an amount equal to 15

times the assessment of land as required. The Assistant Commissioner by his order dated 28.8.1968 granted the sanction.

4. In the year 1978, by Karnataka Act 18 of 1978 Section 5(3) of the Act was amended. The amended section prohibited the alienation of regranted land for a period of 16 years from the date of commencement of Section 1 of the Amendment Act of 1978.

5. On the strength of the permission dated 28.8.68, N.R. Patil, the holder, sold away the property in parcels to three persons. An extent of 5 acres came to be purchased by the appellant on 4.12.82. The Tahsildar Sailhongal issued a notice to the appellant as to why action should not be taken against him for eviction since the land in question had been purchased in contravention of the provisions of the Act. The appellant explained that in view of the order granting sanction to the holder of the land the holder was entitled to alienate the same. Once such a permission was granted the land ceased to be governed by the provisions of the Act. In any event, the order of sanction mentioned that the land in question was transferable.

6. This explanation was rejected by the Tahsildar who, by his order dated 23.6.1984 held that the appellant was liable to be evicted. Accordingly, he ordered that possession of the land be taken over by the Government free from encumbrances, if any. Thereupon the appellant moved the High Court of Karnataka by way of W.P. No. 11238 of 1984.

7. The learned Single Judge held that if the regranted land had not been alienated with prior permission before 7.8.1978, it could not be alienated for a period of 15 years after 7.8.1978. That is the clear intention of the Amendment Act of 1978. On this line of reasoning he dismissed the writ petition. An appeal was preferred to the Division Bench in L.A. No.2700 of 1985 unsuccessfully. It is under these circumstances, special leave to appeal was preferred. Leave was granted by an order dated 22.8.91.

8. The only contention urged on behalf of the appellant is that by order dated 28.8.69 the holder of Ex.Patilki watan lands was granted sanction to alienate the lands. Such sanction is complete in every respect. Merely because Section 5(3) of the Act came to be amended in 1978 that will not, in any manner, affect the sanction already granted. It matters very little when the alienation actually took place even within a prohibited period of 15 years from 1978.

9. The learned Counsel for the State would submit that it is true by an order dated 28.8.1968 that sanction was granted to alienate the lands. However, if the alienation had not taken place on the strength of that sanction prior to 7.8.1978, the statutory prohibition contained u/s 5(3) will squarely apply, In other words, it could not be alienated for a period of 15 years after 7.8.1978. In this case, the alienation took place on 4.12.1982 long after the amended Section 5(3) had come into force. Therefore, such an alienation is null and void. As a matter of fact, the question is no longer res integra. A Division Bench of the Karnataka

High Court in *Lakshmana Gowda v. State of Karnataka and Ors.* 1981(1) KLJ 1 categorically ruled that such alienations are null and void. Several special leave petitions preferred by the State and parties assailing that judgment have been dismissed. The same is the position here.

10. On a careful consideration of the above submissions, we hold that the contention advanced on behalf of the State deserves to be accepted. Section 5(3) of the Amendment Act, 1978 reads as follows:

5(3) The occupancy or the ryotwari patta of the land, as the case may be, re-granted under Sub-section (1) shall not be transferable otherwise than by partition among members of Hindu joint family for a period of 15 years from the date of commencement of Section 1 of the Karnataka Village Offices Abolition (Amendment) Act, 1978).

11. Though the sanction to alienate was granted on 28.8.1968 yet the alienation took place on 4.12.82. In the meanwhile, the above amendment, namely, Section 5(3) had come to be introduced by Karnataka Act 13 of 1978. There is a clear prohibition under the above provision that the regranted land shall not be transferable for a period of 15 years from the date of commencement of Section 1 of the Amendment Act 1978. The effect of which is, for a period of 15 years from 7.8.1978, the statutory bar against alienation would operate. In fact, in *Lakshmana Gowda (supra)*, in paragraph 87 at page 18 it is stated thus:

87. In the light of the above principles of statutory construction, we hold that Sub-section (4) of Section 5 of the Principal Act should be construed as being applicable only to transfers made subsequent to 7.8.1978 and not to transfers which had taken place prior to that date and that Sub-section (3) occurring in that section should be construed as having reference to amended Sub-section (3) and not to original Sub-Section (3) of that section.

12. The High Court has laid down the correct legal position. This line of reasoning has been approved in SLP (Civil) No. 14627 of 1985 etc. in *State of Karnataka and Anr. v. G. Seenappa and Anr. etc. etc.* which were dismissed by an order of this Court on 27.2.1992. Again in *Rehman Khan and Ors. v. State of Karnataka* C.A. Nos. 3104-13 of 1981 this Court upheld the ruling of *Lakshman Gowda's* case (*supra*). Thus, we conclude that the High Court is right. No interference is called for.

13. In the result, the appeals are dismissed with no order as to costs.