

(1987) 08 KAR CK 0031

In the Karnataka High Court

Case No : W.A. No's. 1798 and 1800 of 1981

Huvappa Mahadev Mense

APPELLANT

Vs

Land Tribunal

RESPONDENT

Date of Decision : 10-08-1987

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 108, 142, 45, 48 A
Mysore Agricultural Income Tax Act, 1957 — Section 5

Citation : (1987) ILR (Kar) 2797 : (1987) 2 KarLJ 327

Hon'ble Judges : Prem Chand Jain, C.J.; Shivashankar Bhat, J

Bench : Division Bench

Advocate : N.A. Mandgi, for the Appellant; S.V. Jagannath, Government Advocate for R-1 and R.U. Goulay, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Shivashankar Bhat, J.—These appeals are by Huvappa, the petitioner, in W.P. Nos. 6517 and 7971 of 1977. He claimed the status of a tenant entitled to registration as an occupant u/s 45 of the Karnataka Land Reforms Act, 1961, which was not granted.

2. The disputed lands are situated at Yallur village in Belgaum Taluk. One Nilkanthappa Sangappa Potdar of Yallur died a few days prior to 27-2-1938 leaving behind, his mother, widow and two minor sons by name Sangappa and Mohan who are respondents 2 and 3 in W.P. No. 7971/77. The lands in question along with other properties formed part of a vast estate left by the deceased Nilkanthappa, situated both within and outside the limits of erstwhile State of Kurundbad. As the aforesaid two sons of the deceased Nilkanthappa were minors, the estate of the deceased including the lands in question were taken under the management of the Court of Wards by the order dated 27-2-1938 issued by the Chief of Kurundwad State, under the provisions of the Bombay Court of Wards Act, 1905 (the provisions of which appear to have been adopted by the erstwhile State of Kurundwad). The management of the Court of Wards

continued until the Kurundwad State came to be merged with the erstwhile State of Bombay on 8-3-1948. After the merger, the management of the Court of Wards of the estate of the deceased Nilkanthappa was Transferred to the Court of Wards, Belgaum, in 1949 and was continued by the Government of Bombay by the Order dated 7-8-1950.

3. Consequent upon the reorganisation of States, Bombay-Karnataka area covering the lands in question became part of the State of Mysore, now known as State of Karnataka. The State of Mysore, on the attainment of majority by Sangappa Nilkanthappa Potdar, passed an Order dated 17th October 1988 withdrawing the superintendence of the Court of Wards under : Section 40(2)(a) of the Bombay Court of Wards Act, 1905 and directed restoration of the properties in question to Sangappa.

4. The Bombay Tenancy and Agricultural Lands Act. 1948 (Bombay (sic)ct 7 of 1948) came into force on 28-12-1948. The lands in question came to be governed by the Bombay Act 67/1948 on the merger of Kurundwad State in the erstwhile State of Bombay. Bombay Act 1955 (Bombay Act 13/56) which amended the Act 67/48 came into force on 1-8-1956 and as a result thereof, the lands in question came to be excluded from the purview of Sections 1 to 87A of the Bombay Act 67/48. On 2-10-1965, Bombay Act 67/48 as amended by Bombay Act 13/56 came to be repealed by the Karnataka Land Reforms Act, 1961 (Act 10/62) (for short referred as the "Land Reforms Act"). Thus, the lands in question came to be released from the management of the Court of Wards, as per the order of the Government of Mysore dated 17-10-1968 during the period when the Land Reforms Act was in force. Pursuant to the withdrawal of the superintendence by the Court of Wards, the steps were being taken to restore possession of the lands in question to respondents 2 and 3. It is the validity of these steps that are challenged in W.P No. 6517/77.

5. In the meanwhile, Karnataka Act No. 1/74 came into force on 1-3 1974, drastically amending the Land Reforms Act. The petitioner filed an application in Form No. 7 for being registered as an occupant under the Land Reforms Act as amended by Karnataka Act No. 1/74, before the Land Tribunal, Belgaum. The Land Tribunal rejected the application on the grounds that it was not proved that the petitioner was cultivating the lands in question as a tenant at the time when the Court of Wards assumed the management of the lands in question in the year 1938; that he came to cultivate the lands in question only during the management of the Court of Wards, and therefore, in view of the provisions of Section 88 of the Bombay Act 67/48 as amended by Bombay Act 13/56, and Section 108 of the Land Reforms Act the lands in question did not vest in the State Government and as such the petitioner was not entitled to be registered as an occupant.

6. In the Writ Petitions as well as in these appeals Sri Mandgi, Counsel for the appellant-petitioner-1 proceeded on the basis that the petitioner came to cultivate the lands in question under the Court of Wards and not earlier thereto.

7. The learned Single Judge rejected the Writ Petitions and held that the petitioner was not entitled to any of the benefits of the Act.

8. The question for consideration is, whether a person inducted as a tenant by the Court of Wards in the year 1938 can claim the benefit of the Land Reforms Act after the withdrawal, in 1968 by Court of Wards, of its management.

9. Sri Mandgi, Counsel for the appellant, contended that, under the Bombay Tenancy and Agricultural Lands Act, 1948 (for short the "1948 Act") petitioner was vested with the rights of a tenant, which cannot be taken away by the amendment of said Act, by Bombay Act 13/56, and therefore, the said amending Act did not govern his case. Similarly, he further contended that, Section 108 of the Land Reforms Act was not retrospective so as to take away such a vested right. If so, it was urged, that, the petitioner was entitled to the benefits available to a tenant under the Land Reforms Act.

10. On 8-3-1948 Kurundwad State merged in Bombay State. By that time, Court of Wards had taken the management of the estate and the petitioner was inducted as a tenant. On 28-12-1948, the 1948 Act came into force. It was amended by Act 13/56. The Act thus amended, in Section 32, provided for the tenant having deemed to have purchased the tenanted land subject to Section 31, Section 31 enabled the landlord to terminate the tenancy under certain circumstances. Section 88 stated, inter alia, that nothing in the foregoing provisions of the 1948 Act as amended (i.e. Sections 1 to 87A) shall apply to an estate or land taken under the management of the Court of Wards. Proviso to Section 88 stated as follows :

"Provided that with effect from the date on which such estate or land is released from such management, the foregoing provisions of this Act shall apply thereto and in the case of tenancy (other than a permanent tenancy subsisting on such date in respect of any land in such estate or such land, the landlord shall be entitled to terminate such tenancy u/s 31 within one year from such date and the tenant shall have the right to purchase the land u/s 32 with one year from the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31 The provisions of Section 31 to 3(sic)D (both inclusive) and 32 to 32R (both inclusive) shall, so far as may be applicable, apply to such termination of tenancy and to the right of the tenant to purchase the land."

11. On 1-11-1956 the area became part of the Mysore State. By Section 5 of Mysore Act 13/57, Sections 31 to 31D and 32 to 32B and any reference to any of these provisions in any other provisions of the 1948 Act, was declared as not to have effect during the period of suspension. Period of suspension stated in Section 2 thereof was originally a period commencing on and from 2-8-1956 and ending on 31-12-1957. But the ending date was extended by several yearly amendments to this Mysore Act 13/57 and thus the period of suspension came to be between 2-8-1956 to 31-3-1966.

12. In the meanwhile Karnataka Tenants (Temporary Protection from Eviction)

Act, 1961 - Karnataka Act 37/61 came into force, which directed stay of eviction of all ten-ants. But that Act specifically excludes from its operation, inter alia, the lands taken under the management of Court of wards.

13. Thus, the position as on 1-11-1956 was that, Sections 31 to 31D and 32 to 32R, as well as the proviso to Section 88 were not in force at all. The said proviso became ineffective and unworkable by virtue of Section 5 of the Mysore Act 13/57. None of the provisions of Sections 1 to 87A of the 1948 governed the petitioner's tenancy. In 1968, when the management was withdrawn by the Court of Wards, Bombay Act itself was not in force, by virtue of the Land Reforms Act, which came into force on 2-10-1965.

14. An express provision is found in Section 108 of the Land Reforms Act, governing the lands taken on management by Court of Wards. Therefore, the provisions of Section 142 of the Land Reforms Act invoked by Sri Mandgi (to attract the 1948 Act to his case has no application at all, even if it is to be assumed that the 1948 Act applied earlier. Where an express provision is enacted in the Land Reforms Act governing the lands taken under the management of Court of Wards, there cannot be an implication that a similar provision under the repealed enactment will continue to operate. Section 142 itself says, that savings therein are, applicable, "save as otherwise provided in this Act".

15. The decision of Supreme Court in Sidram Narsappa Kamble Vs. Sholapur Borough Municipality Another, is directly on point. An argument that Section 89(2) of the 1948 Act saved the rights accrued under an earlier 1939 enactment (which stood repealed by 1948 Act) was repelled by the Supreme Court. In para 9, it is stated as follows :-

"It is true that Section 88 does not in so many words say that the interest of a protected tenant acquired under the 1939 Act is being taken away so far as lands held on lease from a local authority are concerned ; but the effect of the express provision contained in Section 88(1)(a) clearly is that Section 31 must be treated as non-existent so far as lands held on lease from a local authority are concerned and in effect therefore Section 88(1)(a) must be held to say that there will be no protection under the 1948 Act for protected tenants under the 1939 Act so far as lands held on lease from a local authority are concerned. It was not necessary that the express provision should in so many words say that there will be no protected tenants after the 1948 Act came into force with respect to lands held on lease from a local authority. The intention from the express words of Section 88(1) is clearly the same and therefore there is no difficulty in holding that there is an express provision in the 1948 Act which lays down that there will be no protected tenant of lands held on lease from a local authority. In view of this express provision contained in Section 88(1)(a), the appellant cannot claim the benefit of Section 31 ; nor can it be said that his interest as protected tenant is saved by Section 89(2)(b)."

16. Any legislation, even when it is prospective, affects an existing right. It has

to operate on an accrued or an existing right. Such affectation will not make it retrospective. The Supreme Court in Trimbak Damodhar Raipurkar Vs. Assaram Hiranman Patil and Others, observed :

"Where a statute operates in future, it cannot be said to be retrospective merely because within the sweep of its operation all existing rights are included."

17. Therefore the contention of the appellant that the Land Reforms Act should not be construed so as to make it retrospective and that his rights under 1939 Act and 1948 Act are saved, has to be rejected.

18. When certain provisions of the Act are held as inapplicable, any right, title or delegation accrued or acquired under the said provisions ceases to exist, as observed in Smt. Parvati and Others Vs. Smt. Fatehsinhrao Pratapsinhrao Gaekwad, In Kamble's case referred already at page 541, it was held that there was no separate protected tenant under the 1948 Act, except the one stated in Sections 3, 3-A and 4 of the 1939 Act, and that is only for the purpose of Section 31 of the Act (before its amendment by Bombay Act 13/56).

19. If so, the result is that, no purpose is served by the concept of "protected tenant" after the substitution of Section 31 etc., by the Bombay Act 13/56. There cannot be any saving of the alleged right vesting in the petitioner at all arising out of the 1939 Act.

20. Appellant has invoked Section 48A of the Land Reforms Act seeking registration as an occupant u/s 45. Admittedly he was inducted by Court of Wards Therefore, Section 108 of the Land Reforms Act is relevant to his claim which reads as follows :

"108: Lands taken under management of the Court of Wards, etc.--Subject to the provisions of Sections 110, nothing in the provisions of this Act except Section 8 shall apply to lands taken under the management of the Court of Wards or of a Government Officer appointed in his official capacity as a guardian under the Guardians and Wards Act, 1890) or to the lands taken under management temporarily by the civil revenue or criminal Courts by themselves or through the receivers appointed by them during the period of such management ; Provided that :

(a) in the case of a tenancy subsisting on the date of taking over the management, the provisions of Section 44 shall apply and the land shall vest in the Government.

(b) In the case of a tenancy created during the period of management, when the land is released from such management, the tenant shall be dispossessed and the possession of the land shall be delivered to the person lawfully entitled to such possession,

(c) with effect from the date on which such land is released from such management, all the provisions of this Act shall apply to such land."

21. The main provisions of Section 108 make it clear that nothing in the provisions of the Land Reforms Act except Section 8 (relating to rent) shall apply to lands taken under the management of Court of Wards. That means, provisions such as Sections 4, 45, 48-A etc., are not at all applicable. In fact, a person inducted to cultivate the land by the Court of Wards does not even come within the definition of "tenant" under the Land Reforms Act. The land falls outside the sweep of the Land Reforms Act during the period of management by Court of Wards. Proviso(a) to Section 108 is not applicable to the case of the appellant, because admittedly there was no tenancy subsisting on the date of taking over the management. He comes under proviso (b) which is specific and governs the tenancy created during the period of management by Court of Wards, Public interest requires that those entrusted with the responsibility of managing an estate or land under statutory powers should not burden the estate or land permanently. Such managements by Court of Wards or Receivers appointed by any Court, are temporary in duration. Their task is to preserve the properties for the real title holder. This purpose will be defeated, if, in the course of management they are constrained to have lands cultivated by third parties and those cultivations are to be there permanently, resulting in loss of title to the title holder. Therefore, proviso (b) in mandatory terms, says that such tenants shall be dispossessed and the possession shall be delivered to the persons lawfully entitled to sue possession on the cessation of management by Court of Wards, etc.

22. Proviso (b) operates simultaneously with the cessation of management by Court of Wards. It is only after said proviso operates and is satisfied, proviso (c) can become effective. Proviso (c) has to be interpreted to harmonise 11 with proviso(b). Therefore, provisos (b) and (c) are to be understood as follows :

(i) on cessation of management by Court of Wards etc., the immediate task is to dispossess the tenant inducted by the Court of Wards and (ii) thereafter, after dispossession, the land shall be governed by all the provisions of Land Reforms Act.

23. Proviso (c) is actually, a clarificatory proviso. There are several provisions such as those prohibiting leasing of lands, imposition of ceiling on the holdings, effect of failure to cultivate the land etc. All these provisions and other provisions start operating on the land, under proviso (c) to Section 108 after the cessation of management by Court of Wards and others - which, as already stated above, is subject to the provisions of proviso (b).

24. In view of these provisions, it is clear that, in 1968, on the cessation of the management by Court of Wards, appellant was liable to be dispossessed. He had no legal right to continue to hold on to the land. Proceedings taken to dispossess him was perfectly justified in law. His application in Form No. VII u/s 48-A of the Land Reforms Act was liable to be rejected. It was rightly rejected by the Tribunal.

25. In the result, for the reasons stated above, these Appeals fail and are dismissed No order as to costs.

ORDER ON ORAL PRAYER

An oral prayer is made by Mr. Mandagi, Learned Counsel for the appellant, for certifying these appeals to be fit ones for appeal to the Supreme Court. The prayer is rejected as no substantial question of law of general importance is involved in these appeals.