
(1983) 03 KAR CK 0006
In the Karnataka High Court
Case No : WP 215/83

Janardhana Achary

APPELLANT

Vs

Dy. Commissioner, Chickmagalur and Others

RESPONDENT

Date of Decision : 16-03-1983

Acts Referred:

Karnataka Debt Relief Act, 1980 — Section 3

Citation : (1983) 2 KarLJ 383

Hon'ble Judges : N. R. Kudoor, J

Judgement

1. Although this writ petition is listed under the orders list, with the consent of the learned Advocates appearing for both parties, the writ petition is deemed to have been listed for final hearing and heard on merits.

2. S. No. 19 of Addada village of Koppa Taulk of Chickmagalur Dist. was granted to the petitioner in the year 1973 under the Karnataka Land Grant Rules. The petitioner entered into an agreement as per Annexure C dt. 5-4-1979 with the 2nd respondent agreeing to sell the said land to him for a sum of Rs. 4,000 and obtained an advance of Rs. 1,000.

3. On coming into force of the Karnataka Debt Relief Act, 1980 (the "Act" for short), the petitioner filed an application before the Asst. Commr., Chickmagalur for redemption of the property subjected under the agreement on the ground that he is a small holder. The petition was forwarded to the Tahsildar, Koppa, for consideration. The Tahsildar after holding an enquiry, passed an order on 18-1-1982 as per Annexure-B discharging the sum of Rs. 1,000 taken by the petitioner from the 2nd respondent under the agreement Annexure-C holding that it was a "debt" and that the petitioner is a "debtor" within the meaning of the Act, being a small holder and also a person belonging to the weaker section of the people and directed the 2nd respondent to deliver possession of the land by setting aside the agreement Annexure-C. The 2nd respondent filed an application before the Tahsildar to review the order passed by him on 18-1-1982 but his review petition was rejected by the Tahsildar as per his order dt.

31-7-1982. Followed by the order of rejection of the review petition a notice was issued to the 2nd respondent by the Tahsildar on 10-8-1982 to hand over possession of the land as per the order dt. 18-1-1982.

4. Thereupon, the 2nd respondent carried the matter in revision before 1st respondent Deputy. Commr., Chickmagalur Dist., who, by his order dt. 7-12-1982 Annexure-A set aside the order of the Tahsildar in granting the relief under the Act holding that the title of the property still rests with the petitioner, that the question of redeeming the property does not arise and consequently the petitioner is not entitled for any relief under the Act. Having held so, the 1st respondent also cancelled the grant of the land made in favour of the petitioner on the ground that the petitioner had violated the conditions of the grant and directed the Tahsildar to take possession and dispose of the same according to the Karnataka Land Grant Rules.

5. The petitioner, being aggrieved by the order passed by the 1st respondent at Annexure-A, filed this writ petition under Arts. 226 and 227 of the Constitution for the issue of a writ of certiorari quashing the order at Annexure A.

6. The object of the Act is to provide relief from indebtedness to small farmers, landless agricultural labourers and weaker sections of the people in the State of Karnataka. "Debt" as defined under sub-sec. (5) of S. 2 means any liability in cash or in kind whether secured or unsecured and whether decreed or not and includes any interest due on such debt. "Debtor" as defined under sub-sec. (6) of S. 2 means a person who is a landless agricultural labourer, a person belonging to the weaker section of the people or a small farmer, and from whom a debt is due. S. 3 provides for relief from indebtedness. It is stipulated under S. 3 (a) that every debt incurred by a debtor before the date of commencement of the Act and payable by him to his creditor on such date shall be deemed to be wholly discharged. S. 3 (f) provides that every mortgage executed by the debtor or his surety as security for such debt in favour of the creditor shall stand redeemed and the mortgaged property shall be released in favour of such debtor or his surety, as the case may be. S. 5(2) lays down the procedure to pass an order releasing the mortgaged property and grant a certificate of redemption and deliver possession of the mortgaged property etc. S. 13 (i) provides that any debtor may, on or before 31-12-1981 make an application to the concerned Asst. Commr. that any transfer of immoveable property made by him or any other person through whom he inherited the immoveable property so transferred, is in the nature of a mortgage and the Asst. Commr, may, after such enquiry as he deems fit, if satisfied that the circumstances connected with the transfer, showed the transfer to be in the nature of a mortgage, then notwithstanding anything to the contrary contained in any law, custom or contract, declare such transfer to be a mortgage. Sub sec. (2) of S. 13 provides that when the Asst. Commr. makes any such declaration, if the transfer was made prior to the date of commencement of the Act, the debt covered under the transfer shall be deemed to be wholly discharged and the provisions of sub-sec. (2) of S. 5 shall mutatis

mutandis apply for recording redemption of the mortgage and delivering possession of the property. S. 14 provides for revision by the Dy. Commr. of any order passed under S. 13. S. 6 provides for burden of proof etc. Sub-sec. (1) of S. 6 lays down that if in any suit or other" proceeding in a Court, a question arises whether a party thereto is a "debtor" under the Act, the Court trying the suit or other proceeding shall frame a preliminary issue as to whether such person is not a "debtor" under the Act and shall decide that issue before other issues are considered. Sub-sec. (2) provides that notwithstanding anything in any law, the burden of proving that a person is not a "debtor" under the Act shall lie on the creditor.

7. On a perusal of the above mentioned provisions, it would be clear that a "debtor" within the meaning of the Act is entitled to the benefits conferred upon him under the various provisions of the Act respecting the debt as defined under the Act due by him to his creditor. Whenever a person claims benefit under the provisions of the Act and approaches the concerned authorities to give him such relief as available to him, the foremost duty cast upon the authority granting relief to him is to frame a preliminary issue as to whether such person is not a "debtor" within the meaning of the Act and shall decide that issue before deciding the other issues that arise for consideration. In other words, the first and foremost duty that enjoins upon the concerned authorities, is to find out whether the person seeking relief under the Act is a "debtor" entitled for relief under the Act. If the finding on the preliminary issue is against the person, then the matter would end there itself. If, on the other hand, the finding on the preliminary issue is in his favour, then the concerned authority shall proceed to consider the remaining issues arising for consideration.

8. Against this back-drop of the legal position let me now consider the order passed by the 1st respondent Annexure-A which is under challenge in this writ petition. The order Annexure A consists of two parts. In the first part of the order, the 1st respondent declared the petitioner is not entitled for any relief under the Act on the ground that the agreement Annexure-C is only an agreement of sale of S. No. 19 belonging to the petitioner, that the sale is not completed, that the title of the property still vests with the petitioner and that therefore, the question of redeeming the property does not arise. The 1st respondent has failed to consider whether the petitioner is a "debtor" within the meaning of the Act and the sum of Rs. 1,000 received by him by way of advance under the agreement Annexure-C from the 2nd respondent is a "debt", before recording a finding that the petitioner is not entitled for any relief under the provisions of the Act. The petitioner had approached the Tahsildar as required under law that he is a "debtor" within the meaning of the Act and to discharge the sum of Rs. 1,000 received by him under Annexure C from the 2nd respondent declaring it to be a debt under the Act. He has not recorded a finding on either of the above points. Failure to do so vitiates the order passed by the 1st respondent in setting aside the order passed by the Tahsildar, as it is in contravention of the mandatory provisions of the Act, although the final result of

the order in setting aside the order passed by the Tahsildar cannot be said to be either incorrect or erroneous.

9. Now coming to the second part, it is really ununderstandable as to how the 1st respondent could set aside the grant of the land made in favour of the petitioner in a proceeding before him under the provisions of the Act. The second part of the order passed by the 1st respondent in cancelling the grant and giving direction to the Tahsildar to take possession of the land and dispose of the same according to the Karnataka Land Grant Rules, appears to me wholly without jurisdiction and beyond the scope of the jurisdiction conferred upon the 1st respondent under the provisions of the Act. Viewing the case from any angle, I am of the considered opinion that the order passed by the 1st respondent Annexure-A is totally invalid and liable to be set aside.

10. I have observed in the earlier portion of this order that the final result of the order passed by the 1st respondent in setting aside the order passed by the Tahsildar cannot be said to be either incorrect or erroneous, although I record my reasons against sustaining that part of the order of the 1st respondent. The order passed by the Tahsildar has been produced by the petitioner along with the writ petition at Annexure B. Undoubtedly this order of the Tahsildar gave rise to the proceedings before the 1st respondent. It is true that no relief is sought by the petitioner against Annexure B. However, if the order passed by the 1st respondent in setting aside the order passed by the Tahsildar at Annexure B is annulled, the final result would be to restore the order Annexure-B passed by the Tahsildar which would operate against the interest of the 2nd respondent. This position would certainly give rise to grave injustice to the 2nd respondent in view of the fact that even the order passed by the Tahsildar at Annexure-B cannot be sustained, as it is made in violation of the mandatory provisions of the Act for the reasons I shall presently show.

11. A perusal of the order Annexure-B would show that the Tahsildar appeared to have proceeded to grant the relief to the petitioner without following the mandatory provisions contained in S. 6. He had not formulated a preliminary issue as contemplated thereunder that the petitioner is not a "debtor" within the meaning of the Act and called upon the 2nd respondent to establish the same. On the other hand, he has straightaway observed in his order that the petitioner is a small holder as well as a person belonging to weaker section of the society, without recording any reasons to reach such a conclusion. Without recording a clear finding that the petitioner is a "debtor" and the sum of Rs. 1,000 received by him under the agreement Annexure C is a "debt" within the meaning of the Act, the Tahsildar has no jurisdiction to confer any benefit or grant any relief in exercise of his powers under the provisions of the Act to the petitioner. That being so, even the order passed by the Tahsildar at Annexure-B is wholly without jurisdiction and beyond his competence as it was rendered by him in clear violation of the mandatory provisions of the Act.

12. I do not propose to record a finding whether the order passed by the

Tahsildar at Annexure-B is an order falling within the purview of S. 13 and whether the revision petition filed before the Dy. Commr. was in order, as the same is not relevant for the disposal of this writ petition.

13. The next question that arises for consideration is, what order should follow in the peculiar circumstances of the case. No doubt, the order passed by the Tahsildar as such is not under challenge in this writ petition. However, in view of my discussion hereinabove, it seems to me appropriate to set at naught both the orders Annexures-A and B to meet the ends of justice, since both of them were rendered in flagrant violation of the mandatory provisions of the Act.

14. In the result, for the reasons stated above, the rule is issued and made absolute. The orders at Annexures A and B both are quashed. The matter is remitted to the Tahsildar, Koppa Taluk, Koppa for fresh consideration of the petition filed by the petitioner, after giving opportunity to both parties to adduce evidence and also of being heard. In the circumstances of the case, I make no order as to costs.