

(2003) 07 KAR CK 0091

In the Karnataka High Court

Case No : Writ Appeal No. 7594 of 1999 etc.

K. Sham Bhat and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 17-07-2003

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 10, 18, 20, 21, 3

Citation : AIR 2003 Kar 403 : (2003) ILR (Kar) 3026 : (2004) 1 KarLJ 490 : (2003) 4 KCCR 3031

Hon'ble Judges : N.K. Jain, C.J.;V.G. Sabhahit, J;H.G. Ramesh, J

Bench : Full Bench

Advocate : B.M. Krishna Bhat, Sanath Kumar Shetty K., O. Shivarama Bhat, A. Keshava Bhat, K.G. Raghavan and K.M. Nataraj, for the Appellant; Kumar and Kumar for C/R4 and S.S. Sripathy, for R6, M.N. Sheshadri, AGA for R1 to R2 and R3, Shetty and Hegde Assts. for R4, Udaya Holla, for R5 and Meerkaje Ganapath Bhat, for R6 and R9, Sri Hegde Associates for R1 and M.N. Sheshadri AGA for R2-R4, I.T. Poojary, for R1 and M.N. Sheshadri, AGA for R4-R6 and M. Vishwajith Rai, for R3-R5, for the Respondent

Judgement

N.K. Jain, C.J.—A Division Bench of this Court vide Order dated 12.7.2000 has referred these Writ Appeals and Writ Petition to a Full Bench as there appears to be conflicting view between Devakumarshetty and Others Vs. State of Karnataka and Others, and State of Mysore and Others Vs. K. Chandrasekhara Adiga and Another, . As per the order of the Chief Justice dated 4.3.2003, the matter has been placed before Full Bench and has come before us on 8.7.2003.

2. The point involved in these Writ Appeals, Writ Petition and connected matters is:

"Whether the Deputy Commissioner in exercise of his delegated power u/s 79(2) of the Karnataka Land Revenue Act, 1961, (hereinafter called the `Act') could withdraw the privileges in respect of `KUMKI' rights exercised by any person?"

3. As the point in issue is identical and common in Writ Appeals and Writ

Petitions as agreed, it is decided by this common Order.

4. In order to appreciate the question referred for decision, we would refer to facts in W.A.No. 7594/1999.

Polya Krishna Bhat was the owner of the land comprised in Sy.No. 138/5 of Kabaka Village since time immemorial Kumki land bearing Sy. No. 138/3A1 was attached to said land and he had permitted Temple authorities to make use of Kumki land for Temple activities. Sri Krishna Bhat died in 1982. After his death, Kumki land had been allotted to the share of K. Seetharam Bhat Trustees of Sri Venkata Ramana Temple requested the revenue authorities for grant of 60 Cents of land in Sy. No. 138/3A1. Seetharam Bhat gave consent for grant of land to the Temple. However, same was opposed by other sons and the Deputy Commissioner, Dakshina Kannada, Mangalore, by his order dated 18.3.1996 withdrew Kumki right to the extent of 60 Cents as the same was ordered to be used for the public purpose of devotees of Temple during Jathras and like festive occasions. That being aggrieved by the order of the Deputy Commissioner, K. Sham Bhat, son of Krishna Bhat and Polya Krishna Bhat preferred Appeal No. 176/1996 on the file of the Karnataka Appellate Tribunal, which by its order dated 30.9.1996 allowed the Appeal and set aside the order of the Deputy Commissioner in view of the observations of the Supreme Court in K.C. ADIGA's case that Kumki right cannot be extinguished by executive fiat. Being aggrieved by the said order, Managing Trustee of Temple filed W.P.NO. 18214/ 1997, which was allowed by order dated 23.7.1999 holding that the Deputy Commissioner had power to withdraw Kumki privileges in view of decision of the Division Bench of this Court in DEVAKUMAR SHETTY AND OTHERS vs STATE OF KARNATAKA AND OTHERS (Supra) and W.A.No. 7594/1999 is filed against the said order by Respondents 4 and 5. Respondent No. 6 has been impleaded in the Writ Appeal on his application by order dated 3.10.2001.

This Appeal was connected with other Appeals and Writ Petition and Division Bench of this Court passed order of reference to Full Bench as stated.

5. Sri B.M. Krishna Bhat, the learned Counsel appearing for the appellant in W.A.NO. 7594/1999 submitted that the decision of the Division Bench in DEVAKUMARASHETTYs case is contrary to the principles laid down by Supreme Court in K.C. ADIGA's case and order of Deputy Commissioner extinguishing Kumki rights is an executive order and can never be termed as law and the privileges enjoyed by Kumkidars cannot be extinguished by the order of the Deputy Commissioner by his order. It can be done only by a valid legislation. He has relied upon the Full Bench decision of this Court in the case of Machettira Machaiah and others Vs. Machettira Kariappa and another, and the decision of the Kerala High Court in the case of KAMMARAN MANIYANI vs MAHALAKSHMI RAJANI, 1980 KLT 971;. He has also relied upon decisions of the Supreme Court in the case of I.T. COMMISSIONER GUJARAT vs AHMEDABAD RANA CASTE ASSOCIATION, and in the case of Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc., and contended that order of Division Bench in

DEVAKUMARASHETTY's case is not correctly decided and it must be held that Kumki privilege can be taken away only by legislation and Deputy Commissioner's order is illegal and without jurisdiction.

6. Sri S.S. Sripathy, the learned Counsel appearing for the impleading respondent in W.A. No. 7594/1999 submitted that kumki privileges are continued u/s 79(2) of Karnataka Land Revenue Act subject to any order to regulate said privileges. He submitted that the privileges can be taken away only by legislation and Section 79(2) never empowers the Government to cancel Kumki privileges and hence under delegation, Deputy Commissioner would get power to cancel Kumki privileges and hence order of Deputy Commissioner is illegal.

7. Sri Sanath Kumar Shetty, the learned Counsel appearing for Appellants in W.A. No. 1410 -1412/2000 and Sri A. Keshav Bhat, the learned Counsel for the Appellant in W.A.No. 1484/2000 also reiterated the arguments of learned Counsel appearing in W.A.No. 7594/1999 and submitted that when the Government itself has no power to extinguish Kumki right, the said power cannot be exercised by Deputy Commissioner as only power of State Government u/s 79(2) of the Act is delegated to him, which does not include power to extinguish Kumki privileges and hence, Kumki privilege, which is a property can be taken away only by law as contemplated under Article 300A of the Constitution and hence, decision of the Division Bench in DEVAKUMARASHETTY's case is liable to be reversed.

8. Sri Udaya Holla, the learned Counsel appearing for respondent No.5 in W.A. No. 5767/1998, submitted that Kumki right is only a privilege which is continued u/s 79(2) of the Karnataka Land Revenue Act subject to general or special order of the Government which may include order to cancel Kumki privilege and this power has been validly delegated to Deputy Commissioner and hence, order of Deputy Commissioner is not an executive order, but, exercise of power u/s 79(2) of the Karnataka Land Revenue Act and hence valid and legal as held by Division Bench in DEVAKUMARASHETTY's case.

9. Learned Government Advocates Sri M.N. Seshadri and Sri Sateesh M. Doddamani, submitted that privileges are continued u/s 79(2) of the Land Revenue Act subject to power of Government to pass order, which would include power to take away privilege and hence, order of Deputy Commissioner is traceable to statutory power and is not a mere executive order. The learned Government Advocate further submitted that the principles laid down in the cases cited by the Appellants are not in dispute, but they are applicable to the facts of the present case. He submits that the Division Bench has rightly held in DEVAKUMARASHETTY's case and hence the said decision is in conformity with observations of the Supreme Court.

10. We have heard the learned Counsel appearing for Appellants/ Writ Petitioners and learned Counsel appearing for contesting Respondents and the learned High Court Government Advocate and perused the material on record.

11. The legal position, which is not in dispute, is that Articles 19(1)(f) and 31 conferring fundamental right to acquire and hold property are deleted by 44th Amendment to the Constitution with effect from 20.6.1979 and Article 300A, which is not a fundamental right but only a constitutional right has been inserted and according to it no person shall be deprived of his property otherwise than by due authority of law. Now in the instant reference, in short it is to be seen whether the order passed by the Deputy Commissioner is an executive order or one passed as per law?

12. The Apex Court while considering the nature, content and extent of privilege conferred in respect of "Kumki" lands in South Kanara in KC Adigas case held "that "Kumki" rights could be curtailed, abridged or taken away only by law and not by an executive fiat".

13. It is seen that the Apex Court while considering the Kumki right, which had been assigned to Kumkidar by the order dated 17.3.1964, has disposed of the matter with certain conditions as stated above.

14. The Karnataka Land Revenue Act, 1964, (for short, the "Act") has come into force from 1.4.1964. In view of the provisions of the Act all privileges conferred under any custom or law is repealed u/s 202(1) of the Act and only the privileges as stated u/s 79(2) has been continued subject to such general or special order passed by the State Government from time to time. Section 79 of the Act pertains to regulation of supply of firewood and timber for domestic or other purpose and clause (2) of Section 79 is a non-obstinate clause. The power to pass orders regarding kumki privileges has been delegated to the Deputy Commissioner by the State Government in exercise of power u/s 195(1) of the Act. Section 195 reads as follows:-

"195. Delegation of Powers : (1) The State Government may, by notification, delegate to any officer or authority subordinate to it, any of the powers conferred on the State Government or any officer subordinate to it under this Act, to be exercised by such officer or authority, subject to such restrictions and conditions, if any, as may be specified in the said Notification.

(2) Notwithstanding anything contained in sub-section (1), the State Government shall not delegate any of its powers under Sections 3, 4, 6, 7, 8, 9, 10, 18, 20, 21, 40, 43, 48, 114, 115, 121 or 125 or the power to make rules u/s 197 or the power to remove difficulties u/s 201".

15. Now, the question is: whether any order passed in pursuance of the delegated power is a statutory order having force of law or only an executive order?

16. The argument that Section 79(2) of the Act is related to regulation and there is no provision to delegate the power to curtail, abridge or take away kumki privileges, cannot be accepted Section 79 reads as follows-

"79. Regulation of Supply of firewood and timber for domestic or other

purposes :- (1) In any village or land in which the rights of the State Government to the trees have been reserved u/s 75 subject to certain privileges of the villagers or of certain classes of persons to cut fire-wood or timber for domestic or other purposes and in any land which has been set apart u/s 71 for forest reserve subject to such privileges, and in all other cases in which such privileges exist in respect of any alienated land, the exercise of the said privileges shall be regulated by such rules as may be prescribed, or by orders to be made either generally or in any particular instance by the Deputy Commissioner or by such other officer as the State Government may direct. In any case of dispute as to the mode or time of exercising such privileges, the decision of the Deputy Commissioner or of such officer, shall be final.

(2) Notwithstanding anything contained in sub-section (1) but subject to such general or special orders that may be issued by the State Government from time to time, the privileges that are being enjoyed either by custom or under any order such as privileges in respect of Kumki lands, Bane lands and Kane lands in South Kanara District, Betta lands and Hadi lands in North Kanara District, Kan and Soppina Betta lands in Mysore Area, Jamma and Bane in Coorg District and Motashal Wet lands in Gulbarga area shall continue".

In view of provisions of Section 79(2), it cannot be said that passing of the order by the Deputy Commissioner after delegation of power, is only an executive order as the same is a statutory order having force of law.

17. The argument that the order passed by the Deputy Commissioner is not traceable to statutory power as there is further delegation of power is not acceptable or tenable in view of provisions of Section 195(2) of the Act which states that notwithstanding anything contained in sub-section (1) of Section 195, the State Government shall not delegate any of its powers under Sections 3, 4, 6, 7, 8, 9, 10, 18, 20, 21, 40, 43, 48, 114, 115, 121 or 125 or the power to make rules u/s 197 or the power to remove difficulties u/s 201. The source of power of the Deputy Commissioner is Section 79(2) of the Act and hence, it would not be an executive fiat but, by statutory order having force of law.

18. As already stated, the Apex Court has held that kumki privileges can be curtailed, abridged or taken away only by law and not by an executive fiat and in view of provisions of Section 79(2), privileges or rights in respect of kumki lands can be exercised by any person only subject to such general or special orders that may be issued by the State Government from time to time and that the State Government had issued a Notification delegating its power u/s 79(2) of the Act in favour of the Deputy Commissioner. Under the circumstances, we hold that the order passed by the Deputy Commissioner is an order traceable to statutory power u/s 79(2) of the Act and hence abolition of privileges by law need not be by new legislation and may be by statutory order having force of law. However, such power to extinguish Kumki privileges can be exercised by the Deputy Commissioner selectively depending upon predominant public interest sought to be achieved and it is open to aggrieved party to work out his remedy under the

Act having regard to the facts and circumstances of each case.

19. It is also seen that the aforesaid question was also considered by the Division Bench of this Court in *DEVAKUMARASHETTY AND OTHERS vs STATE OF KARNATAKA AND OTHERS* (Supra). The notification dated 29.11.1971 which has been issued getting the assent of the President of India, reads:

"In exercise of the powers conferred by sub-section (1) of Section 195 of the Mysore Land Revenue Act, 1964 (Mysore Act 12 of 1964), the Government of Mysore hereby delegate the powers conferred on the State Government u/s 79(2) of the said Act to the Deputy Commissioners of the Districts who shall exercise the said powers within their respective Districts"

So the order passed by the Deputy Commissioner assumes the character of a statutory order passed by a Competent authority having the force of law and can curtail or take away the right in consonance with the decision of the Apex Court and is also not violative of Article 300A which authorises deprivation of property by law.

The Division Bench also considered the said Notification and found thus:

"In view of the said delegating notification, the impugned order dated 5.8.1999 was passed by the Deputy Commissioner, Dakshina Kannada. As noticed above the said order was admittedly passed after giving a reasonable opportunity of hearing to all the tenants and persons who were likely to be affected by the extinction of Kumki rights/privileges over the said lands. Therefore, in our considered opinion the Deputy Commissioner had passed the order pursuant to a statutory provision and as a competent authority and that too after compliance with principles of natural justice. In that view of the matter, no infirmity whatsoever can be found with the order of the Deputy Commissioner".

We find no reason to differ from the view taken by the Division Bench to the extent as stated and we approve the same. The decisions relied on by the learned Counsel for the Appellants are not applicable to the facts of the present case.

20. This Court cannot go into the facts of each case, which will be considered by the concerned Bench in accordance with law.

21. In view of the above discussions, we are of the clear view that the order of the Deputy Commissioner is not an executive order, but a statutory order having force of law and accordingly we answer the point for determination in the Affirmative.