

(1983) 08 KAR CK 0026
In the Karnataka High Court
Case No : W.P. No. 2377 of 1976

Kashi @ Rukmini Bai and Another

APPELLANT

Vs

The Assistant Commissioner, Coondapur and Others

RESPONDENT

Date of Decision : 04-08-1983

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 83

Citation : (1984) 1 KarLJ 215

Hon'ble Judges : V. S. Malimath, Acting C.J.;N. Venkatachala, J

Judgement

Malimath, (Ag.) CJ.-This writ petition has been referred by the learned Single Judge to the Division Bench as it involves an important question of law.

2. The undisputed facts of the case may briefly be stated as follows:

The petitioners are the owners of eighteen lands situated in Malebettu Durga Village in Karkal Taluk. They had leased them in the year 1961 to the third respondent on Chalgeni basis. The third respondent, who was admittedly a Chalgeni tenant of the said lands, transferred his tenancy rights in favour of the second respondent on the 8th of April, 1968 under a registered document. The petitioners moved the Assistant Commissioner of Coondapur, with an application under S. 83 of the Karnataka Land Reforms Act, 1961 (hereinafter referred to as the "Act"), praying that the transfer of the tenancy rights by the third respondent in favour of the second respondent brought about by the registered document dated the 8th of April, 1968 be declared as null and void, the same having been brought about in contravention of the provisions of S. 21 of the Act, and for consequential reliefs.

3. The Assistant Commissioner, after holding an enquiry and giving an opportunity showing cause to all the parties, passed an order on the 9th of December, 1975 as per Annexure "A". He came to the conclusion that the transfer of the tenancy rights of the third respondent in favour of the second respondent on the 8th of April, 1968 is in violation of the provisions of S. 21 of the Act. He, therefore, declared the said transaction as null and void in exercise

of the powers conferred on him by S. 83 of the Act. He further made an order forfeiting all the eighteen lands to the Government and directed that the same shall stand vested in the Government. It is the said order of the Assistant Commissioner that is challenged by the petitioners in this writ petition.

4. Sub-sec. (1) of S. 21 provides that no sub division or sub-letting of the land held by a tenant or assignment of any interest therein shall be valid. It is not disputed that the third respondent was a chalgeni tenant in respect of eighteen lands which belong to the petitioners and that he transferred his rights as a tenant in favour of the second respondent on the 8th of April, 1968. It is therefore clear that the contravention of S. 21(1) of the Act has been clearly established. The finding of the Assistant Commissioner that the transfer is in contravention of S. 21 of the Act, has not been, therefore, rightly contested by any of the parties before us.

5. S. 82 of the Act provides for reporting of transactions in respect of any land in contravention of any of the provisions of the Act as they stood before and as they stand after the commencement of, the Amendment Act. S. 83 of the Act provides for enquiry regarding illegal transactions. The said section provides for a summary inquiry being held by the prescribed authority to determine as to whether the transaction reported to it under S. 82 or otherwise coming to its notice in any other manner, has been brought about in contravention of the provisions of the Act and to make a declaration accordingly. It further provides that any transaction so declared to have been brought about in contravention of any of the provisions of the Act, shall be null and void. The Assistant Commissioner having declared that the transaction between the third respondent and the second respondent dated the 8th of April, 1968 has been brought about in contravention of S. 21 of the Act, he was right in making a further declaration that the said transaction is null and void. Consequent upon such a declaration, the second respondent will not acquire any rights by virtue of the transfer made by the third respondent in his favour under the registered document dated 8th of April, 1968. There is no dispute between the parties about this position as well.

6. S. 83 of the Act further provides that the land in respect of which such transaction has taken place shall, as penalty, be forfeited to and vest in the State Government free from all encumbrances and that no amount is payable therefor. It is by invoking this part of the provision of S. 83 that the Assistant Commissioner has, by way of penalty, forfeited all the eighteen lands and declared that the same vest in the State Government free from all encumbrances. Sri B.V. Acharya learned Counsel for the petitioner-owners, contends that the order of the Assistant Commissioner, in so far as it pertains to forfeiting of lands and vesting the same in the State Government is illegal and invalid.

7. The relevant portion of S. 83, which calls for interpretation, reads as follows:

"The land in respect of which such transaction has taken place shall, as penalty,

be forfeited to and vest in the State Government free from all encumbrances. No amount is payable therefor".

On a proper analysis of this provision, it is clear that what can be forfeited and declared as vested in the State Government is the land in respect of which such transaction has taken place. The expression "such transaction" obviously refers to the transaction which has been brought about in contravention of the Act and which has been declared by the Assistant Commissioner as null and void. The forfeiting and vesting of the lands in the State Government is required to be made as expressly stated in the provision, by way of penalty. It is by way of penalty for bringing about a transaction in contravention of the Act that the land is required to be forfeited to and vested in the State Government. As the forfeiting and vesting of the land in favour of the State Government is required to be made by way of penalty, it is obvious that it is only the land of the person who has incurred the penalty that becomes liable for forfeiting and vesting in the State Government. In other words, the land must belong to the person who has brought about transaction in contravention of the provisions of the Act and who has thereby become liable for penalty. In this case, the Assistant Commissioner has forfeited the land and vested the same in the State Government after coming to the conclusion that the third respondent has transferred the chalgani interest in the lands in favour of the second respondent in contravention of the provisions of S. 21 of the Act. He has not come to the conclusion that the petitioners-owners have brought about any transaction in contravention of any of the provisions of the Act. It therefore follows that for the contravention to which only the third and the second respondents are parties, the petitioners cannot be penalised. It would be unreasonable to interpret the aforesaid provision as empowering the Assistant Commissioner to forfeit the lands of the petitioners and vest the same in the Government not on the ground that the petitioners are guilty of the contravention of any of the provisions of the Act, but because the third respondent and the second respondent are guilty of the contravention of the provisions of S. 21 of the Act. It is obvious that it could not be the intention of the legislature to penalise innocent persons, who are not guilty of contravention of any of the provision Act. We have, therefore, no hesitation in taking the view that the Assistant Commissioner can only forfeit and vest the lands in the State Government if these lands belonged to the person who has brought about a transaction in contravention of the provisions of the Act. As, in this case, the petitioners are admittedly not guilty of contravention of any of the provisions of the Act, the lands which belong to them cannot, by invoking S. 83 of the Act, be forfeited and vested in the State Government. The order of the Assistant Commissioner, to the extent, is therefore clearly illegal and invalid.

For the reasons stated above, this writ petition is allowed and only the portion of the order of the Assistant Commissioner, which directs forfeiting and vesting of the lands in favour of the State Government, is quashed. The order of the Assistant Commissioner in other respects remains undisturbed. No costs.