

(1986) 12 KAR CK 0008
In the Karnataka High Court
Case No : Writ Petition No. 6656 of 1979

K.R. Govind

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 12-12-1986

Acts Referred:

Citation : (1987) ILR (Kar) 2041

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : B.T. Parthasarathy, for the Appellant; P.M. Appaji, HCGP for R-1 and 2, B. Aswathaiah, for R-3 and N.Y. Hanumanthappa for R-4, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Swami, J.—In this Petition under Article 226 of the Constitution of India, the petitioners have sought for quashing of the order dated 7-3-1979, bearing No. RD 37 IMA 78, produced as Exhibit "E", passed by the State Government, under the second proviso to Section 14 of the Mysore Personal and Misc. Inams Abolition Act. 1954 (Mysore Act 1 of 1955), (hereinafter referred to as the "Act"). There is also another prayer made in the Petition for a declaration that the second proviso to Sub-section(1) of Section 14 of the Act is unconstitutional. However, Sri Parthasarathy the Learned Counsel appearing for the petitioners submits that this prayer need not be considered and it be treated as given up. In view of this, it is not necessary to consider the validity of the second proviso to Section 14(1) of the Act.

2.1 The land in question is S. No. 55 (old No. 26) situated within the limits of Vasanthapura Village, Bangalore south Taluk. It is also not in dispute and it has also been held so by this Court that the entire land is nothing but a granite quarry.

2.2 This land was governed by the Act. Therefore, on the Resting of it, the first? petitioner who had purchased it under a registered sale deed on 7-2-1957, made

an application for registration of occupancy right u/s 9 of the Act. The Special Deputy Commissioner, and the Tribunal, both rejected the application of the petitioner on the ground that the land being a stone quarry, the first petitioner was not entitled to be registered as an occupant, having regard to the provisions contained in Section 9 of the Act. The first petitioner and the father of the petitioners 2 to 5 challenged the validity of those orders of the Special Deputy Commissioner and the Tribunal, before this Court in Writ Petition No. 1843 of 1969, *Muniramaiah & Ors. v. Ramakka & Ors.* which was decided by a Division Bench of this Court on 11th July 1972. This Court confirmed the order of the Tribunal. However, the observations made by the Tribunal that the land had vested in the State Government absolutely, was clarified by this Court. The relevant portion of the order of this Court is as follows :-

" 5. The undisputed facts of the case, as already mentioned, are that the land bearing S. Mo. 26 originally belonged to the inamdar (2nd petitioner), and that the same was sold in favour of the first petitioner under a registered sale deed dated 7th of February 1957. It is not the case of the respondents that the said sale was void or illegal under any law in force on the date of the execution of the sale deed. Though the parties are at variance, the concurrent finding recorded by the Special Deputy Commissioner as well as by the Tribunal is that the said land is nothing but a quarry. In view of these admitted and proved facts, the Tribunal has come to the conclusion that the said land though purchased by the first petitioner under a valid sale deed from the second petitioner, cannot be registered in his favour u/s 9 of the Act, solely on the ground that the land in question is nothing but a quarry.

6. Section 9 of the Act entitles the inamdar to be registered as an occupant of the lands vested in the State Government u/s 3 except the lands specified in Clauses (1) to (3) of Sub-section (1) of Section 9. Clause (1) of that sub-section includes within it "quarries". It is because the tribunal came to the conclusion that the land in question is a quarry that the application of the first petitioner for registering him as an occupant u/s 9 came to be dismissed. The finding that land is a quarry being a finding of fact, we would not be justified in interfering with the same. It therefore follows that we cannot also interfere with the order of the Tribunal in so far as it pertains to the rejection of the application of the first petitioner for his being registered as an occupant of the said land u/s 9.

7. But Sri Kadidal Manjappa appearing for the petitioner submitted that the findings or observations made by the Special Deputy Commissioner and by the Tribunal are to the facts that because the said land cannot be registered u/s 9 of the Act in favour of the first petitioner, that the land vests absolutely with the State Government u/s 3, and that the first petitioner has no right whatsoever in the quarry comprised in that land.

8. There is considerable justification for the apprehension entertained by Mr. Kadidal Manjappa. We therefore, consider it necessary to clarify the position in this behalf. The proceedings out of which this Writ Petition has arisen, arose out

of the application made by the first petitioner, u/s 9 of the Act. Therefore, the enquiry had to be confined to the question as to whether the first petitioner was or was not entitled to be registered as an occupant of that land u/s 9. The Special Deputy Commissioner as well as the Tribunal having come to the conclusion that land being a quarry the first petitioner is not entitled to be registered as an occupant u/s 9 need not have gone further and made observations on the question whether the vesting of land in favour of the State Government u/s 3 is or is not absolute and whether the first petitioner has any rights u/s 14 of the Act or not.

9. It is not possible to agree with the observations that because the land cannot be registered in favour of the first petitioner u/s 9 of the Act, that the vesting u/s 3 in favour of the State Government is absolutely free from any rights of the first petitioner. Section 3 itself states that the vesting contemplated under that section is save as otherwise expressly provided in the Act. Section 14 of the Act is a provision which saves the rights of persons in certain cases ; it states that where before the date of vesting an inamdar has created any right in any land which vests in the State other than land registered u/s 7 or 9 whether by way of lease or otherwise including rights in any forest, mines or minerals, quarries, fisheries or ferries, the transactions shall be deemed to be valid and all rights and obligations arising thereunder on or after the date of vesting, shall be enforceable by or against the Government. The proviso to that Section says that the rights shall be saved u/s 14 only when the transaction was not void or illegal under any other law in force at the relevant time. The second proviso to that Section further confers a right on the Government to terminate the rights saved u/s 14. Sub-section (2) of that section provides that if the right saved under that section is terminated, the person whose right is so terminated is entitled to compensation.

10. We are clearly of opinion that though the land in question cannot be registered in favour of the first petitioner the land being a quarry and though that land vests in the State Government u/s 3 of the Act, the first petitioner is entitled to the rights saved by Section 14 of the Act. We make it clear that the rights which the first petitioner claims as having been saved by Section 14 are not in any way, affected by the order passed by the Special Deputy Commissioner and affirmed by the Tribunal while rejecting the application of the first petitioner for registering him as an occupant u/s 9 of the Act. The first petitioner is entitled to have recourse to such remedies as are available to him to enforce the rights saved u/s 14."

2.3 After the aforesaid decision by this Court, the State Government issued the notice dated 25th September, 1978 bearing No. RD 37 IMA/78 (Exhibit-C) to the 1st petitioner to show cause as to why the right claimed by the petitioner in the land in question should not be terminated on the expiry of three months from the date of the notice. The 1st petitioner submitted his objections to it as per Exhibit-D. Thereafter the impugned order (Exhibit-E) was passed terminating the right of

the petitioner.

2.4 The relevant portion of the order is as follows :

"Section 14 of the Act saves certain rights created by the Inamdar prior to coming into force of the Act. The petitioner purchased the land in question from the Inamdar before the commencement of the Act, The petitioner is entitled to have recourses to such remedies as are available to him to enforce the rights saved u/s 14.

The rights of the petitioner saved u/s 14 of the Act can be terminated under proviso to Sub-section (1) of Section 14, As required under proviso to Sub-section (1) of Section 14, a notice was given to Sri K.R. Govind, S/o Sri K.H. Ramaiah intimating the termination of his rights over the land. In response to the notice, the reply received from Sri K.R. Govind has been examined. Government after examining the case is satisfied that it is necessary in public interest to terminate the right of Sri K.H. Govind in the said land.

ORDER NO. RD. 37 IMA 78, BANGALORE, DATED 7-3-1979.

Therefore, in exercise of the power conferred by second proviso to Section 14 of the Mysore Personal and Miscellaneous Inams Abolition Act 3954, the Government of Karnataka hereby terminate the rights of Sri K.R. Govind in the land bearing S. No. 55 (Old S. No. 26) of Vasanthapura village more particularly described in the Schedule with immediate effect.

Schedule

East : S. No. 22 and 23 (Old) of Vasanthapura.

West : S. No. 2 (Old) and Gubala boundary.

North : S. No. 1 (Old) of Vasanthapura and village Thana.

South : S. No. 25 (Old) of Vasanthapura and Kallusandra boundary.

By order and in the name of the Governor of Karnataka".

3. Sri Parthasarathy, Learned Counsel appearing for the petitioners has advanced the following contentions :-

i) It was necessary for the State Government to afford an opportunity of personal hearing.

ii) That reservation of the quarry in public interest is not valid because the order does not contain as to what is that public interest which is going to be served.

Contention No (i)

4. In order to appreciate the aforesaid contentions of the petitioners it is necessary to notice that the land in question is nothing but a stone quarry. Under the provisions of the Act, it has vested in the State Government, subject to the

rights saved by the Act. Sections 7 and 9 of the Act which relate to registration of occupancy rights specifically exclude the communal lands, waste lands, gomals, forest lands and beds, mines quarries, rivers, streams, tanks and irrigation works from the registration of occupancy rights. It is on this basis the right claimed by the petitioner has been rejected and it is upheld by this Court in W.P. 1843 of 1969, Muniramaiah & Ors. v. Ramakka & Ors. to which reference has already been made. The only right that is saved to the petitioner is the one contained in Section 14 of the Act. Section 14 of the Act reads thus :-

"14. Saving of rights in certain cases :-

(1) Where before the date of vesting, an inamdar has created any right in any land which vests in. the State, other than land registered u/s 7 or 9, (whether by way of lease or otherwise) including rights in any forest, mines or minerals, quarries, fisheries or ferries, the transactions shall be deemed to be valid and all rights and obligations arising thereunder on or after the date of vesting, shall be enforceable by or against the Government :

Provided that the transaction was not void or illegal under any law in force at the time :

Provided also that where such right was created in any land, unless it relates to land registered u/s 7 or 9, the Government may, if, in their opinion, it is in the public interest to do so, by notice given to the person concerned, terminate the right with effect from such date as may be specified in the notice, not being earlier than three months from the date thereof.

(2) The person whose right has been terminated by the Government under the foregoing proviso shall be entitled to compensation from the Government equal to the estimated net income to such person from the land for the unexpired portion of the period for which the right was created having regard to all the circumstances of the case."

A close reading of Section 14 of the Act, reveals that it is open to the Government to terminate the right created by the inamdar by a valid transaction, in the land other than the one registered u/s 7 or 9 of the Act, if it is of the opinion that in the public interest, it is necessary to terminate the right, it may do so by giving notice to the person concerned and terminate the right with effect from such date which shall not be less than three months from the date of giving such notice. Thus, it is in exercise of this statutory power the impugned order is passed. In such a proceeding no formal hearing as is understood in a judicial or quasi judicial proceeding is required to be given. In fact, in my view, the first notice issued as per Annexure-C itself was not necessary. Straightaway the right could have been terminated with effect from the date which shall not be earlier than three months from the date of service of notice, if the Government was of the opinion that it was necessary in public interest to do so. Further on termination of the right, the person concerned is not completely deprived of the property. He is entitled to compensation as per Subsection (2) of Section 14 of

the Act. That being the position, the contention of the petitioner that a personal hearing ought to have been given and as no such personal hearing is given, therefore the action is violative of the principles of natural justice cannot be accepted. Reliance is placed on a decision of the Supreme Court reported in S.L. Kapoor Vs. Jagmohan and Others, That was a case in which the Municipal Council was superseded without notice. It was held that the principles of natural justice required that the notice ought to have been given. As it is already pointed out in the instant case statute empowers termination of the right by giving notice, which is just as terminating a lease by notice. For the purpose of termination of lease-hold right by notice no preliminary notice or hearing is necessary. It is only the exercise of power vested in the lessor that is required to be exercised in accordance with law. Similarly in the instant case it is in the exercise of power that is vested in the State Government by reason of the second proviso to Sub-section (1) of Section 14 of the Act, the right is terminated. The State Government can terminate the right claimed under-Section 14 of the Act- Accordingly, contention No. (i) is rejected.

Contention No. (ii)

5. The second contention is that public interest or public purpose has not been specified in the order, therefore, it is bad in law. It is also not possible to accept this contention No doubt in the 2nd proviso to Sub-section (1) of Section 14 of the Act, the expression used is "public interest". The order and the notice use the expression "public purpose" referring to the second proviso to sub Section (1) of Section 14 of the Act,. It is apparent that the State Government has used both the expressions as synonymous or as interchangeable expressions. The land in question is admittedly a quarry. If the State Government is of the opinion to reserve it in public interest, it only means that it does not want to make it a private property and wants to use it in a manner which will serve public interest. The income derived from it can be utilised for public benefit or the quarry itself may be exploited by the Government for its own use. Therefore, reserving the land in question for public purpose cannot be held to be erroneous or cannot be held to be in contravention of the 2nd proviso to Sub-section (1) of Section 14 of the Act. Sub-section (2) of Section 14 of the Act gives a right to the person concerned to claim compensation. That being so, the petitioner No. 1 has to work out his right as per the provisions contained in sub Section (2) of Section 14 of the Act. Hence no irreparable injury and no deprivation of the property without compensation is caused to the 1st petitioner by termination of his right as he is entitled to compensation from the State Government equal to the estimated net income from the land for the un-expired portion of the period for which the right was created. Accordingly, contention No. (ii) is rejected.

6. For the reasons stated above, the Writ Petition fails and it is accordingly dismissed.