
(2014) 12 KAR CK 0304

In the Karnataka High Court

Case No : Writ Petition Nos. 42278-295/2012 (SC/ST)

M. Narasimha Murthy and Others

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Karnataka Industrial Areas Development Act, 1966 — Section 28(4), 3(1)(b), 4 —
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain
Lands) Act, 1978 - Section 11, 4(2), 5-A, 7

Citation : (2015) ILR 954

Hon'ble Judges : B.S. Patil, J.

Bench : Single Bench

Advocate : M.J. Alva and S.J. Alva, for the Appellant

Final Decision : Allowed

Judgement

B.S. Patil, J.?Petitioners are challenging the order dated 27.09.2012 passed by the 1st respondent - Deputy Commissioner, Bengaluru District, Bengaluru.

2. By the impugned order, 1st respondent has allowed the appeal filed by respondents 3 to 14 under Section 5-A of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (for short, the Act") and has directed resumption of the land to the Government and for restoration of the same in favour of the original grantees or their legal heirs.

3. All the 74 petitioners who have joined together to file this joint writ petition claim to be in possession and enjoyment of different sites formed in Sy. No. 62 measuring 7 acres 23 guntas of Naganathapura village, Begur Hobli, Bengaluru South Taluk. Petitioners 1 to 57 were parties in the appeal filed before the 1st respondent, whereas the other petitioners were not parties in the said proceedings before the 1st respondent, but they also feel aggrieved by the order passed by the 1st respondent, therefore, they have joined the other petitioners in challenging the impugned order.

4. It is the case of the petitioners that in the land in question layout of sites by name Vinayakanagar Layout had been formed which falls within the limits of Bruhat Bengaluru Mahanagara Palike. It is urged that the layout was formed by the original owners of revenue land after obtaining approval for the same from the jurisdictional panchayat. It is further urged by the petitioners that they have purchased the sites formed in the layout and have constructed residential houses. They claim that majority of them have been residing in the houses constructed in the sites. In support of their contention that several houses have been constructed over the sites and the land has become fully developed and the petitioners have occupied the same, they have produced photographs at Annexures-F1 to F7.

5. The land in question originally belonged to Naganateshwara Temple. Smt. Chinnamma, Muniyappa and Narayanappa had claimed occupancy rights. According to the petitioners, they were granted occupancy rights in respect of different bits of land. Karnataka Industrial Areas Development Board (for short, "KIADB") proposed to acquire the said lands for industrial purpose and in this regard preliminary notification was issued on 21.11.1986. This was followed by final notification dated 26.06.1987. An award was passed on 24.01.1997. Thus, the lands stood acquired by the State Government for the benefit of KIADB.

6. Petitioners have urged that when the acquisition proceedings were underway, the original grantees entered into joint development of the land with one Jayaram Reddy by executing General Power of Attorney in his favour in respect of a portion of the land measuring 3 acres 5 guntas. The said Jayaram Reddy formed private layout on behalf of the original grantees. The remaining area was developed by one of the grantees himself. Thus the entire land was converted into a private layout and sale deeds were executed in respect of the sites in favour of various persons including petitioners herein. The purchasers of sites constructed dwelling houses wherein they continued to reside. Petitioners urge that roads were formed, street lights were laid, water supply and other basic amenities including drainage and sewage system was provided to the entire area making it a purely residential locality.

7. It is contended by the petitioners that as the lands were under acquisition, they moved the Government for de-notifying the land comprised in Sy. No. 62. In fact, respondents 5 to 14 herein had filed W.P. No. 355/2007 before this Court seeking a direction to the Government and KIADB to restore the land and to put them in vacant possession of the same. These petitioners were not made parties in the said writ petition. Later on, some of the petitioners came on record and after noticing the developments that had taken place in the interregnum, this Court dismissed the writ petition on 19.09.2007. Writ appeal filed against the said order was also dismissed with an observation that the writ petitioners could approach the Civil Court to redress their grievance. The grantees/legal heirs have filed O.S. No. 1183/2010 seeking direction against the State Government and the Special Deputy Commissioner for land acquisition to restore vacant possession of

the property.

8. Petitioners have also contended that having regard to the representations made by them and the development that had taken place over the land in question, KIADB had passed a resolution dated 22.02.2002 in Subject No. 20 resolving to "re-grant the property to the respective land/site owners, in view of existence of structures and formation of housing layout, subject to the condition that they should bear the expenses towards stamp duty and registration charges". The resolution further made it clear that a sum of Rs. 34,49,623/- paid by MICO (for whose benefit the land was acquired) towards the cost of the land be refunded to the company.

9. Indeed, in the impugned order passed by the 1st respondent, there is a reference made to an endorsement dated 04.12.2003 issued by the KIADB, wherein this aspect has been reiterated by referring to the resolution dated 22.02.2002 passed by the KIADB. It is thus clear that the land was acquired for the benefit of KIADB. It stood vested in the KIADB in terms of the provisions contained under Section 28(4) of the Karnataka Industrial Areas Development Act, 1966, (for short, "KIAD Act") for industrial purpose and on the publication of the final notification, it stood absolutely vested in the State Government free from all encumbrances and indeed an award also came to be passed as back as on 24.01.1997. As the owners who had constructed houses in the said land in their respective sites moved the State Government and KIADB bringing their helpless condition to the notice of the authorities and sought for re-grant of the land, wherein they had put up construction. KIADB passed the resolution referred to above and the State Government has thereafter passed the order dated 26.11.2005. Annexure-R is the gazette notification published in the Karnataka Gazette dated 26.11.2005, wherein it is made clear that the extent of 7 acres 3 guntas comprised in Sy. No. 62 of Naganathapura village was excluded from the notifications acquiring the land for industrial purpose and the said notification has been issued in exercise of the power under Section 4 of the KIAD Act. It is, thereafter that the legal representatives of the grantees have moved the Assistant Commissioner - 2nd respondent seeking resumption and restoration of land claiming that the land was originally a granted land as per Section 3(1)(b) of the Act.

10. The 2nd respondent dismissed the application holding that as the predecessor-in-title of the applicants before him were granted land under Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 (for short, "Inams Abolition Act"), occupancy rights had been granted in recognition of their preexisting right over the land and therefore, in the light of the judgment rendered in M. Munikenchappa Vs. The Special Deputy Commissioner and Others, , it was not a granted land and the provisions of the Act were not applicable to the same.

11. On appeal before the 1st respondent, 1st respondent has reversed the said finding holding that sale transactions in favour of the purchasers had taken place

after 01.01.1979, the date on which the Act came into force without obtaining previous permission from the Government as required under Section 4(2) of the Act, and therefore, all those transactions in the form of various sale deeds were null and void being in violation of Section 4(2) of the Act. He has further found that as could be seen from the endorsement issued by the KIADB on 04.12.2003, the land in question was re-granted/returned to its owners and that occupancy rights had been conferred in respect of the land in question by the Land Tribunal vide its order dated 31.03.1981 under the Mysore (Religious and Charitable) Inams Abolition Act, 1955 (for short, "1955 Act"), and therefore, the provisions of the Act were applicable to the said land in the light of the judgment in Bhemanna Vs. Deputy Commissioner, Chitradurga District and Others, . It is in this background, petitioners have filed this writ petition.

12. I have heard Mr. M.J. Alva, learned Counsel appearing for the petitioners and the Mr. Sreevatsa, learned Senior Counsel appearing along with Mr. T. Krishna, learned Counsel for respondents 3 to 14.

13. It is mainly contended by the Counsel for the petitioners, placing reliance on the judgment of the Full Bench in the case of Mohammed Jaffar and Another Vs. State of Karnataka and Others, , and the judgment in the case of M. Munikenchappa Vs. The Special Deputy Commissioner and Others, , that occupancy rights have been granted in recognition of the preexisting rights and therefore, the same cannot be termed as a granted land for the purpose of the Act. He also submits that the judgment of Munikenchappa's case has been affirmed by the Division Bench in the two judgments of this Court in the case of Sri Jagadish Vs. The State of Karnataka and Others, , and another unreported judgment in the case of Smt. Jayamma v. Assistant Commissioner & Others in W.A. No. 3914/2009 disposed of on 25.07.2012. Counsel for the petitioners has further submitted that in any event, upon the acquisition of the lands by the State Government, the rights if any, in all the grantees and their legal representatives ceased and by virtue of the Section 7 of the Act, there is an exemption from application of the Act in so far as transfer of granted lands in favour of Government either before or after the commencement of the Act. He submits that by virtue of the acquisition, the lands stood transferred and vested in the State Government and therefore, even in the face of Section 11 of the Act, which gives overriding effect by virtue of provisions of Section 7, the land in question cannot be regarded as a granted land and the provisions of the Act cannot be made applicable.

14. Mr. Sreevatsa, learned Senior Counsel appearing for respondents 3 to 14, contends that this is not a case of grant of occupancy rights in favour of tenants under Sections 4, 5 or 7 & 8 of 1955 Act; order passed by the Land Tribunal makes it clear that registration of occupancy rights in favour of the grantees has been ordered by the virtue of Section 31-A of 1955 Act, which is not in recognition of any pre-existing rights of the tenant for grant of such occupancy and hence, the ratio laid down in the judgment of the Full Bench has no

application to the facts of the present case. He points out that occupancy has been registered under Section 27 of the 1955 Act by collecting one hundred times the land revenue payable in respect of the land and therefore it cannot be regarded as conferment of occupancy rights in favour of the tenants in recognition of the pre-existing rights. It is urged, in this context that the grantees would fall under the provisions of Section 6 of the 1955 Act, which provides for registration of occupancy under Section 27 or 31-A of the 1955 Act, as the case may be.

15. In so far as the acquisition of land is concerned, he points out that upon de-notification of the land, the status quo ante gets restored and the ownership of the grantees over the land in question by virtue of the grant made would automatically get recognized and therefore, any alienations made either by virtue of execution of power of attorney or by way of registered sale deeds after coming into force of the Act, would be affected by Section 4(2) of the Act.

16. Learned Additional Government Advocate submits that indeed the lands have been exempted from being utilized for industrial area only keeping in mind the interest of the persons who have put up construction over the sites and this fact has been amply demonstrated by the resolution passed by KIADB read with the notification issued by the State Government excluding the land from industrial area.

17. Having heard the learned Counsel for all the parties and on consideration of the entire materials on record, I find that the facts and circumstances as pleaded and probalitized by the documents produced would disclose that petitioners have purchased various sites formed in the land in question and have put up construction over the same. Many of them have been residing there. The photographs produced clearly disclose construction of buildings over the land. It is also clear from the notifications issued acquiring the land and the award passed that the State Government acquired the land for the purpose of MICO Company way back in the year 1987. Final notification had been issued on 26.06.1987. Award has been passed on 24.01.1997. Petitioners have purchased the sites formed in the land after the land was acquired and after the land stood vested in the State. Therefore, once the land stood vested in the State by virtue of the acquisition made by the State, the provisions of the Act will not be applicable because the land stood transferred in favour of the State. After acquisition, right, title and interest of the owners of land ceased. They will only get the right to seek compensation and would be entitled to seek reference to the Civil Court for enhancement of compensation under the provisions of the KIAD Act read with Land Acquisition Act. Proceedings of KIADB as reflected in the resolution dated 22.02.2002 disclose that KIADB has taken note of the construction put up over the land by the said owners and the futility of the land being continued and earmarked for industrial purpose. Therefore, it has passed a resolution keeping in mind the interest of the owners of the constructed buildings viz., petitioners herein that the land to that extent has to be re-granted in their

favour. Based on this resolution, the State Government having considered the matter has issued notification dated 26.11.2005 vide Annexure-R excluding and exempting this land from the acquisition in exercise of the power under Section 4 of the KIAD Act. This action of the State Government is not to de-notify the land but is not in recognition of the fact that the land would not be any longer made use of for industrial purpose of the beneficiary MICO Company, because of the constructions put up. Therefore, the grantees or their legal representatives cannot claim any right over the land contending that there has been de-notification of the land and the effect of de-notification would be to restore the land to its owners/original grantees along with all their right, title and interest over it.

18. Apart from the above, this is not a case where land comprised in Sy. No. 62 has been granted in favour of the original grantees without the original grantees having any preexisting right or claim rights in respect of the lands. The grant of occupancy rights under the provisions of 1955 Act in favour of tenants even under Section 6 by virtue of the provisions contained under Sections 27 or for that matter under Section 31-A cannot but be regarded as grants made in recognition of the existing rights of the tenants.

19. The Land Tribunal has passed the order on 31.03.1981 conferring occupancy rights in favour of the grantees under Section 31-A of the 1955 Act. The said provisions make it clear that they are applicable to persons who are entitled to be registered as occupants under Sections 4, 5, 7 & 8 and agriculturists who hold lands on lease from such persons as tenants immediately before the date of vesting. Merely because occupancy is not granted under Sections 4, 5, 7 & 8 or that the occupancy rights are granted recognizing grantees as tenants under Section 6, it cannot be said that they had no pre-existing rights. In fact, even assuming that the grants are made under Section 27 as contended by the learned Senior Counsel, the language used in the said provision makes it clear that once the grantee is shown to be a tenant and comes forward to pay amount equal to one hundred times of the revenue payable, then he shall be registered as occupant of such land. Therefore, the right conferred in favour of tenant to seek registration of occupancy rights is recognized under Section 27 of 1955 Act provided he establishes that he was a tenant under the Inamdhara as on the date the land stood vested in the State. Section 6 recognizes such tenants and enacts that such tenants shall continue to be tenants under the Government. There is protection against their eviction followed by recognition of their rights to get registration of occupancy rights on payment of 100 times of the land revenue. Therefore, the argument advanced by the learned Senior Counsel that there was no pre-existing right in favour of the grantees to seek occupancy rights cannot be accepted.

20. The judgment of the Full Bench and the Division Bench referred to supra and relied upon by the learned Counsel for the petitioners are applicable to the facts and circumstances of the instant case. 1st respondent has erred in law in placing

reliance on the judgment of this Court in the case of Bhemanna Vs. Deputy Commissioner, Chitradurga District and Others, . The said case has no relevance to the facts of the present case because question of pre-existing right of a tenant who has been conferred with occupancy rights under the provisions of 1955 Act did not fall for consideration in the said judgment. Therefore, reasons assigned and conclusions reached by the 1st respondent are wholly erroneous.

21. In the light of the above, this writ petition is allowed. Impugned order passed by the 1st respondent is set aside. It is made clear that question dealt with in this case is confined to the applicability of the provisions of the Act.