

(1977) 04 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No. 3638 of 1975

Mahalingeswamigalu

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 13-04-1977

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Karnataka Land Reforms Act, 1961 — Section 107, 107 (1) (ii), 45, 48 A

Citation : AIR 1978 Kar 95 : (1977) 1 KarLJ 409

Hon'ble Judges : G.K. Govinda Bhat, C.J;M.N. Venkatachaliah, J

Bench : Division Bench

Advocate : B. Veerabhadrappe, for the Appellant; M.P. Chandrakantharaj Urs, Govt. Advocate, P.R. Mohan Rao, for Padubidri Raghavendra Rao, S.T. Parthasarathy and V.R. Govindarajulu, for the Respondent

Judgement

Govinda Bhat, C.J.—This is a writ petition toy a Mathadhipathi preferred under Articles 226 and 227 of the Constitution, for a writ in the nature of certiorari or other suitable writ or order quashing the proceedings before the Land Tribunal, T. Narasipur Taluk, Mysore District, initiated on the applications of respondents 3 to 7 u/s 48-A of the Karnataka Land Reforms Act, 1961, hereinafter called the Act".

2. Respondents 3 to 7, claiming that they are tenants of three agricultural lands in Survey Nos. 131, 133 and 134 of Vadayendaballi village, measuring in all about 14 acres 1 gunta, applied to the Land Tribunal, T. Narasipur Taluk, for grant of occupancy u/s 45 of the Act. On receipt of the applications, the Land Tribunal issued notices to the petitioner Mathadhipathi, in form No. 9, to appear before the Tribunal on 6/8/1975. On service of the said notices, the petitioner Mathadhipathi has preferred the above writ petition.

3. Two grounds have been urged in this writ petition. The first ground is that the notice in form No. 9 is not proper. This ground was not pressed toy Shri Veerabhadrappe, learned counsel for the petitioner, at the hearing. The second ground, which is the only ground pressed at the hearing is that by virtue of

Section 107 of the Act all other provisions of the Act, except Section 8, do not apply to the lands in question and, therefore, the Land Tribunal has no jurisdiction to proceed with the case.

4. The short question that arises for decision is, whether by virtue of Section 107 of the Act, all the provisions of the Act, except Section 8, are made inapplicable to the lands in question.

5. In order to appreciate the arguments advanced on behalf of the petitioner, it is necessary to state briefly the relevant facts. The management of the properties of the Mutt was taken over by the Government of Mysore in the year 1937, under the provisions of Section 25 of the Mysore Religious and Charitable Institutions Act, 1927. The management of the properties of the Mutt by the Government continued from 1937 till 1970, when the Government restored the management of the properties to the petitioner Mathadhipathi.

6. During the period of management of the properties of the Mutt by the Government, the lands in question were leased to tenants by Officers of the Government appointed as managers. The last such lease was made to respondent No. 5 on 8-5-1953. That lease was for a term of five years. It was submitted that although in the auction held by the managers appointed by the Government the fifth respondent "became the successful bidder, there was an agreement between respondents 3 to 7 inter se to cultivate the lands in separate shares and pay rent also separately. According to the case of the petitioner, the tenants had surrendered the lands on the expiry of the term of the lease and petitioner was put in actual possession of the lands at the time of restoration of management. It is averred by petitioner that the tenants having obtained an order of injunction from the Civil Court, they are in possession of the lands. The contention of respondents 3 to 7 is that they are tenants personally cultivating the lands immediately prior to 1/3/1974.

7. Section 44 of the Act, as substituted by Act 1 of 1974, vests all tenanted lands immediately prior to 1/3/1974 in the State Government and Section 45 entitles tenants personally cultivating such lands to obtain registration of occupancy.

8. The case of the petitioner is that by virtue of Section 107 of the Act, the whole of the Act except Section 8, is made inapplicable and that Ss. 44 and 45 being inapplicable to the lands in question, the lands have not vested in the State Government; and that even assuming without conceding that the lands are tenanted lands and that Ss. 44 and 45 and other provisions of Chapter III are applicable, the Tribunal has no jurisdiction to adjudicate on the question of tenancy set up by respondents 3 to 7.

9. The learned High Court Government Advocate Shri Chandrakantharaj Urs appearing for the State, and the learned counsel appearing for respondents 3 to 7, contended that the exemption that had been originally granted to religious and charitable institutions by Section 107 of the Act as it stood prior to its substitution by Act 1 of 1974, was not continued after the amendment as

claimed by the petitioner.

10. Section 107, before it was substituted by Act 1 of 1974, read thus:--

"107, Act not to apply to certain lands.-- Subject to the provisions of Section 110, nothing in the provisions of this Act except Section 8 shall apply to lands belonging to or held on lease from the Government or lands belonging to or held on lease from religious or charitable institutions managed by or under the control of the State Government, or lands belonging to or held on lease from, a public trust or a society for public educational purpose created or formed before the 16th Nov. 1961 and in existence on the date of commencement of the Mysore Land Reforms (Amendment) Act, 1965....."

The said section, as substituted by Karnataka Act 1 of 1974 reads thus:--

"107. Act not to apply to certain lands.--

(1) Subject to the provisions of Section 110, nothing in this Act, except Section 8, shall apply to lands--

(i) belonging to Government;

(ii) held on lease from Government for a period not exceeding twenty years;

(iii) belonging to or held on lease by or from a local authority, an Agricultural Produce Marketing Committee constituted under the Karnataka Agricultural Produce Marketing Regulation Act, 1966 (Karnataka Act 27 of 1966), a University established by law in India, the Karnataka Bhoodhan Yagna Board established under the Karnataka Bhoodhan Yagna Act, 1963 (Karnataka Act 34 of 1963);

(iv) given as a gallantry award;

(v) used for such stud farms as are in existence on the 24th day of January 1971 and approved by the State Government;

(vi) used for the cultivation of linaloe;

(vii) held by the Coffee Board constituted under the Coffee Act, 1942 (Central Act 7 of 1942) for purposes of research, development or propaganda:

Provided that in the case of lands belonging to or held on lease from the Karnataka Bhoodhan Yagna Board, the exemption under this section shall not be applicable if such lands were in the possession of tenants on the date of donation to the said Board....."

11. A reading of the above section before and after the amendment, makes it abundantly clear that the exemption that had been conferred on religious or charitable institutions managed by or under the control of the State Government, has been altogether taken away by Act 1 of 1974. What has been retained after the substitution of the section by Act 1 of 1974, is the exclusion from the provisions of the Act, except Section 8 which relates to fair rent, of lands (1)

belonging to Government; (2) held on lease from Government for a period not exceeding twenty years; and (3) belonging to or held on lease by or from a local authority.

12. The argument of Shri Veerabhadrappe, learned counsel for the petitioner, was that the lease in favour of the fifth respondent, on the basis of which respondents 3 to 7 claim their rights, was granted when the Government was managing the properties of the Mutt and, therefore, this is a case of lands "held on lease from Government for a period not exceeding twenty years" and that the case falls under Clause (ii) of Sub-section (1) of Section 107 of the Act.

13. That the Legislature, while it enacts Act, does not introduce words superfluous, nor does it delete words, phrases or clauses necessary, is a well recognised rule of interpretation of statutory enactments. Presumption is always against superfluity. Section 107, before it was substituted by Act 1 of 1974, clearly exempted, except with regard to provisions regarding fair rent, lands belonging to religious and charitable institutions under the control or management of the State Government. The reference to religious and charitable institutions is altogether omitted in Section 107 as substituted by Act 1 of 1974. If the intention of the Legislature was to continue the benefit already granted to religious and charitable institutions managed by the Government, there was no need to make substantial changes in the language of Section 107 and altogether delete the reference to religious and charitable institutions in the said section. The argument of the learned counsel for the petitioner is that although the lands "belonged to the Mutt, when they were leased, by an Officer of the Government appointed as manager on the Government assuming management of the lands, the lands are being held on lease from Government. This argument is unsound. When the Government assumes management of the property of a Mutt or a religious or charitable institution u/s 25 of the Mysore Religious and Charitable Institutions Act, the property does not cease to be the property of the Mutt or the institution. What is taken over is merely possession and management of the property of the Mutt. If a suit has to be instituted in respect of any claim relating to such property when the property is under the management of the Government, the plaintiff in such an action is not the Government but the Mutt or the Mathadhipathi. If a suit has to be instituted against the Mutt, the defendant in such cases will not be the State Government but the Mathadhipathi or the Mutt represented by its Manager. Assumption of management by the Government does not change or take away the ownership of the Mutt. In order to claim the benefit of Clause (ii) of Sub-section (1) of Section 107 of the Act what is required is that the lands should be held on lease from the Government. Land can be said to be held on lease from the Government only where they are owned by the Government and not where the Government by virtue of a statutory provision assumes management of the property of a citizen or an institution.

14. Therefore, in our judgment, the ground urged by the learned counsel for the petitioner that the Act does not apply to the lands in question, is wholly

untenable. No other grounds are urged.

15. For the reasons stated above, the writ petition fails and is dismissed but in the circumstances without costs.

16. Petition dismissed.