

(1981) 09 KAPT CK 0014
In the Karnataka Appellate Tribunal
Case No : Appeal 155/81 (Rev)

Mukhambika Shedthy

APPELLANT

Vs

Asst. Commr., Coondapur

RESPONDENT

Date of Decision : 14-09-1981

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 44

Citation : (1981) 1 KarLJ 166

Hon'ble Judges : K. V. Narayana Raju, Member; B. S. Muddappa, J

Judgement

K.V. Narayana Raju, M.-This appeal under section 118(2) of the Karnataka Land Reforms Act, 1961 is from the order dated 27-1-1981 passed by the learned Assistant Commissioner, Coondapur Sub-Division, Coondapur declaring that the two sales dated 18-4-1979 each in respect of 25 cents out of survey number 238/1, Shirur village were null and void being contrary to the provisions of the Land Reforms Act; further directing that said lands be forfeited to the State under Section 83 of Land Reforms Act.

2. On 4-10-1979 the Village Accountant reported to the Tahsildar that the lands sold were tenanted, and therefore the sales were contrary to law and action may be taken under the Land Reforms Act. Mutations were not effected. The Tahsildar, Coondapur reported the matter to the Assistant Commissioner by letter dated 18-2-1980. He stated that the land held on "Mulgeni" had been transferred by way of sale contrary to section 44 of the Land Reforms Act.

3. The Assistant Commissioner issued notices dated 5-6-1980 to the vendors as also the vendee Smt. Mukhambika appellant before us. That notice stated that the land had been sold contrary to Land Reforms Act and called upon the parties to show cause why the sale should not be cancelled and the lands forfeited to the State. It may be noticed that the Assistant Commissioner did not mention the provision of Karnataka Land Reforms Act which had been violated. The appellant replied on 29-7-1980 that the "Punja" land sold was a house site and so the Karnataka Land Reforms Act did not apply at all. The vendor Chikkayya Shetty

also filed a similar reply.

4. The Assistant Commissioner proceeded to pass the order dated 27-1-1981 now impugned. He has said that the land sold was tenanted agricultural land, that after filing objections that the lands sold were house sites, the parties had not appeared before him, that there was no evidence in support of the contention that only house sites were sold; and therefore the transactions were null and void. He further directed that the person in possession may be evicted.

5. The appellant has contended before us that the lands in question are "Punja" lands in South Canara District which have been held to be non-agricultural lands; that the lands are not used for agricultural purposes; that they were only house sites and therefore the Karnataka Land Reforms Act did not apply at all.

6. Having heard the counsel for the appellant and the learned State Representative we are of the opinion that there is no material to support the findings of the Assistant Commissioner that any provision of the Karnataka Land Reforms Act has been contravened justifying action under Section 83 of the Land Reforms Act.

7. The Tahsildar appears to have thought that Section 44 of the Karnataka Land Reforms Act had been violated. The Assistant State Representative who has filed written statement before us has also emphasised that all lands leased vested in the State with effect from 1-3-1974 under Section 44 of the Land Reforms Act and so the lands in question which were held on "Mulgeni" which is the same as a permanent lease could not have been sold. We are unable to accept this argument as valid to support action under Section 83 of the Land Reforms Act. Section 83 of the Act no doubt enables the prescribed authority, namely the Assistant Commissioner, to determine after a summary enquiry whether a transaction is contrary to the provisions of this Act. Section 44, of the Act does not deal with any kind of transactions. It only says that with effect from the appointed date all lands held by or in possession of tenants shall vest in the State.

8. It may also be seen that the vesting of the lands in the State is for a limited purpose, namely the conferment of occupancy on tenants. Section 44(e) states that the State Government shall not dispossess any person of any land in respect of which it considers, after such enquiry as may be prescribed, that he is prima-facie entitled to be registered as an occupant under this Chapter-III. Section 44(g) mentions that tenants shall be entitled only to such rights as are provided by or under the Act. Section 44 of the Act, does not say that a landlord or tenant shall not sell the land which for the purpose of Chapter-III is vested in the State. We repeat that it is not possible to say that Section 44 prohibits the transfer of a land. In this connection, we may point out that dealing with similar provisions in Inam Abolition Acts vesting inam lands in the State as preliminary to conferring ownership, the High Court has held that the transferee after vesting becomes entitled to claim occupancy and that such transfers are neither illegal nor invalid.

9. No doubt Section 61 imposes restrictions on transfer of land of which the tenant has become occupant. We need only say that there is no similar provision imposing restrictions on the transfer of the land prior to the conferment of occupancy but after the vesting of the lands in the State.

10. We assume, as there is no clear evidence per contra, that the sales in question have been effected by the "Mulgenidar" who is undoubtedly a permanent tenant. Such a tenant can transfer his rights under S. 21 and no provision in the Land Reforms Act is pointed out as prohibiting or restricting the right of transfer.

11. We are of the opinion that the learned Assistant Commissioner ought to have first ascertained the exact provision of the Land Reforms Act that had been contravened and specifically pointed out such contravention in the notice issued. That has not been done. Some of the transactions which are prohibited by the Land Reforms Act are to be found in Section 79-A and Section 80 of the Act. There is no allegation that the sales in the present case are in contravention of those two sections or any other provision except Section 44 of the Act. The purchaser is not one of the persons prohibited from holding land, and it is also not the case of the Assistant Commissioner that she is a non-agriculturist.

12. What has been stated so far may be sufficient to say that the learned Assistant Commissioner has not pointed out the exact provision which has been contravened, and that Section 44 of the Act, does not contemplate any transaction which is bad. We do not propose answering the question whether only transactions mentioned in Chapter-V, section 79-A, and Sec. 81 attract Section 83 of the Land Reforms Act. The Assistant Commissioner will be at liberty to take fresh action if he is satisfied that the sales before us contravene any other provisions of the Land Reforms Act. In this view of the matter we have thought it unnecessary to go into the question whether the lands which are described as "Punja" lands in the revenue records were only house sites and not agricultural lands.

13. In the result subject to what has been said, the appeal is allowed and the order passed by the Assistant Commissioner, forfeiting the land is set aside.