

(2014) 11 KAR CK 0131

In the Karnataka High Court

Case No : Writ Appeal No. 4183 of 2013(KLR-RES)

Pare Keshavayya

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2
Karnataka Land Revenue Act, 1964 — Section 79, 79(2), 94, 94(b), 94A

Citation : (2014) 11 KAR CK 0131

Hon'ble Judges : Ravi V. Malimath, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : O. Shivanna Bhat, Advocate for the Appellant; D. Ashwathappa, AGA, Advocate for the Respondent

Judgement

K.L. Manjunath, J.—The unsuccessful writ petitioners have filed this appeal challenging the legality & correctness of the order passed by the learned Single Judge dated 27th May 2013, in writ petition No. 1853/2007. In the writ petition the petitioners have sought for the following reliefs.

"(a) Issue a Writ of Mandamus directing the Respondents not to enforce the provisions of Clause (i) of sub-section (1) of Section 94B of the Karnataka Land Revenue Act, 1964 to the extent it applies to the Kana, Bane and Kumki in Dakshina Kannada District and Udupi District;

(b) Declare that Clause (i) of sub-section (1) of Section 94B of the Act of 1964 to the extent it applies to the Kana, Bane and Kumki lands of D.K. and Udupi Districts is ultra vires the State Legislature, self- Contradictory and unenforceable;"

2. At the time of opening up of the arguments Mr. Shivaram Bhat, the learned counsel for the appellant submits that the appellants do not press prayer (a) in the writ petition and requests this Court to consider his case only in regard to the second prayer, wherein they have challenged the virus of sub-Section (1) of

Clause (i) to Section 94(b) of the Land Revenue Act.

3. According to the appellants they are enjoying certain privileges attached to the agricultural land which is called as Varg land. In South and North Canara it is known as Kana and Bane lands. These privileges are enjoyed by them pursuant to the powers granted to them under Section 79(2) of the Karnataka Land Revenue Act.

4. The contention is that the privilege granted to them under Section 79(2) is taken away by the State of Karnataka on account of the amendment brought to the Karnataka Land Revenue Act by introducing Section 94(B) of the Act. According to them in view of Section 94-B the Government or the revenue authorities are entitled to evict the persons who are enjoying the privileges of Kane, Bane and Kumki. Therefore, the virus of the aforesaid provision is called in question in this writ petition.

5. The learned Single Judge having examined the relevant provision of law has rejected the writ petition by upholding the virus of sub-Section(1) of Clause(i) of Section 94-B of the Karnataka Land Revenue Act. Therefore, the present appeal is filed.

6. In order to appreciate the contention of Mr. Bhat, we have to consider the provisions of section 79(2) and Clause (1) of sub-Section 94-B of the Karnataka Land Revenue Act, which reads as follows:--

"79. Regulation of supply of firewood and timber for domestic or other purposes--

(1) xxxxxxxxxx

(2) Notwithstanding anything contained in sub-section (1) but subject to such general or special orders that may be issued by the State Government from time to time the privileges that are being enjoyed either by custom or under any order such as privileges in respect of Kumki lands, Bane lands and Kane lands in South Kanara District, Betta lands and Hadi lands in North Kanara District, Kan and Soppina Betta lands in Mysore Area, Jamma and Bane in Coorg District and (Motasthal wet lands) in Hyderabad Area shall continue."

"94-B. Grant of land in certain cases.--(1) Notwithstanding anything contained in this Act, if the Deputy Commissioner or other officer authorized by the State Government in this behalf is satisfied after holding such enquiry as he deems fit, that a person.-

(i) has, prior to the fourteenth day of April, 1990, un-authorisedly occupied any land including land referred to in sub-section(2) of Section 79 from which he is liable to be evicted under Section 94; and

(ii) being eligible to grant of such land under Section 94-A has failed to apply for such grant under Sub-section (4) of the said section within the period specified therein: and

Provided that nothing in this clause shall apply to a person who has become eligible for grant of land by virtue of the Karnataka Land Revenue (Amendment) Act, 1997;

(iii) has continued to be in actual possession of such land on the date of commencement of the Karnataka Land Revenue (Amendment) Act, 1997.

he may [[within eleven years] from the date of commencement of the Karnataka Land Revenue (Amendment) Act, 2000] and subject to such rules, as may be prescribed make recommendations to the Committee or the Additional Committee as the case may be, constituted under Section 94-A and such committee may on receipt of the recommendation grant the land to such person:

Provided that if an application made under Section 94-A by any other person for grant of the same land is pending consideration under that section the committee, or the Additional Committee, as the case may be, shall consider the claim of such other person before granting the land under this sub-section:

Provided further that where prior approval of the Central Government under Section 2 of the Forest Conservation Act, 1980 (Central Act 69 of 1980) is required for grant of any land under this section, such grant shall not be made without such prior approval.

(2) The provisions of the first proviso, Second Proviso, including the table and the explanation in sub-section (4) and of subsections (5) and (6) of Section 94-A shall apply mutatis mutandis in respect of the grant of land made under sub-section (1).

(3) Nothing in this section shall apply to forest land except any land referred to in sub-section (2) of Section 79 which is classified as forest land.]"

7. According to Mr. Bhat, certain privileges granted to the petitioners under Section 79(2) is taken away by virtue of the amendment to Section 94-B of the Land Revenue Act. Therefore he contends that Section 94-B is in contravention to Section 79(2) of the Act.

8. Upon reading of both the provisions we are of the view that the rights given to the petitioners has not been taken away by virtue of introduction of Section 94-B to the Karnataka Land Revenue Act because the privileges granted to the petitioners and others under Section 79(2) of the Act is subject to such general or special orders that may be issued by the State of Karnataka from time to time. Therefore, it is clear that as long as the Government does not issue general or special orders, the privileges can be enjoyed by them under Section 79(2). If the Government thought it fit to introduce Section 94-B to take away the rights granted to the petitioners under Section 79(2) of the Act the same cannot be held as ultra vires because the privileges granted to the petitioners under Section 79(2) is not an absolute privilege enjoyed by them but the same was subject to general or special orders which may be issued by the State Government. Under the circumstances, we do not see any error committed by the learned Single

Judge in rejecting the writ petition.

9. Consequently, the appeal is dismissed.

Sri D. Ashwathappa, the learned Additional Government Advocate is permitted to file memo of appearance within 4 weeks.