(1978) 01 KAR CK 0036

In the Karnataka High Court

Case No : WPs. 6036 & etc. of 1975

Shamala D.S. APPELLANT

Vs

Asst Commr. Mysore and Others RESPONDENT

Date of Decision : 31-01-1978

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 66a

Citation : (1978) 1 KarLJ 472

Hon'ble Judges : Jagannatha Shetty, J

Judgement

1. These Writ Petitions under Art. 226 are directed against the orders made by the Assistant Commissioner, Mysore Sub Division, under Sec. 33 of the Karnataka Land Reforms Act, 1961 (hereinafter called ''the Act'') whereby the sale transactions made in favour of the petitioners were set aside as null and void being contrary to Sections 66 and 74 of the Act.

2. The facts in all these petitions are almost identical and may briefly be stated as follows: Late Maharaja Jayachamaraja Wadeyar of the erstwhile State of Mysore had created several Trusts out of which we are concerned with the following three: (1) Yuvaraja Sri Srikanta Datta Narasimharaja Wadeyar Trust; (2) Maharaja Kumari Indirakshi Devi Trust and (3) Smt. Tripurasudarammani Trust. Yuvaraja Sri Srikanta Datta Wadeyar is the only son of late Maharaja. Maharaja Kumari Indirakshi Devi is the fourth daughter and Smt. Tripurasundarammani is the wife of late Maharaja. Srikanta Datta Trust has among others, a Rayankere Dairy Farm and Madhuvana. They consist of lands situated at Gurur, Chowdanahalli, Halalu, Kalalwadi and Mysore Kasba. Out of those lands, the petitioners in WPs. 6036 and 6060 to 6065/75, 6037 and 6056 to 6059/75, 212 to 221/76, 641 to 645, 1348 to 1352 and 1411/77 have purchased different bits of lands. They were first put in possession either in 1972 or 1973, when agreements for sale were executed. They paid full consideration, but registered sale deeds were not executed immediately then for one reason or the other.

The property belonging to Maharaja Kumari Indirakshi Devi Trust consists of land bearing Sy. No. 4, described as "Lucerne Garden" in the Deed of Trust. It measures about 100 acres 32 guntas and situated in Kurubarahalli village. This land has got a history behind. It once formed part of a vast extent of land measuring about 1516 acres which was very close to the then Mysore Palace. It was acquired for Palace purpose as far back in 1917 under the Land Acquisition Act. A portion of the land has been subsequently acquired by the CITB, Mysore, and, out of the remaining, an extent of 100 acres 32 guntas was endowed to the said Trust. In this, a portion was used for cultivation of what is known as "Lucerne Grass". It is a clove like plant meant as fodder for the palace horses. The petitioners in WPs. 885 to 895/77 purchased different sites therein. They were put in possession under agreements for sale executed in the year 1972. WP.1365/77 has been preferred by the trustee challenging the validity of the order of the Assistant Commissioner.

The properties belonging to Smt. Tripurasundarammani Trust consist of the lands in Sy. Nos. 227 and 177 of Bogadi and Dattagalli villages. The petitioners in WPs. 790 to 799/77 and 1078 to 1090/77 have purchased these lands. Like the other petitioners, they were also put in possession of the lands under agreements for sale executed in 1972 or ''73.

The registered sale deeds in respect of all these transactions finally came to be executed on behalf of the aforesaid Trusts either in the month of May, June or July 1974, and those sale deeds have been held to be void by the Asst Commr, as they were executed after the 1st March 1974.

3. The Asst Commr, who is the prescribed authority under Sec. 83 of the Act suo motu initiated proceedings against the petitioners with a notice issued to each of them. One such notice is herein set out for immediate reference:

"Whereas it has been brought to my notice that you have purchased the land shown in the schedule to this notice from the Secretary, Palace Trust on 17-3-74.

This sale transaction is in contravention of Sections 66 and 74 of the KLR. Act 61. It is therefore proposed to take action u/s. 83 of the said Act.

You are therefore required to show cause within 15 days from the date of service of this notice as to why the sale transaction entered into between you and the Secretary, Palace Trust should not. be treated as null and void. If no reply is received from you within the time stipulated, it will be presumed that you have nothing to say in the matter and that it will be decided as per rules."

It is seen from the above notice that the Asst Commr was of opinion that the sale deeds above referred to were in contravention of Secs. 66 & 74 of the Act.

4. The petitioners resisted the action contemplated against them on several grounds. Those grounds have been set out in the order of the Asst Commr and if I may summarise, they are as follows: That the petitioners were entitled to the protection under Sec. 53A of the Transfer of Property Act; that their vendors

were not obliged to file any declaration under Sec. 66 of the Land Reforms Act and the lands purchased by them were non-agricultural lands.

5. The Asst Commr, has made an elaborate enquiry. There were as many as 66 witnesses examined and 63 documents produced. The Asst Commr, after considering some of those evidence, held that the lands purchased by the petitioners were agricultural lands and since they were in excess of the ceiling limit prescribed under the Act and since there was no declaration filed by the Trusts as required under Sec. 66, the alienations were bad. He accordingly, set aside the alienations with a further declaration that the said lands shall be forfeited to the Govt and shall vest in the Govt without payment of compensation. He also directed the Tahsildar, Mysore, totake possession of the lands and dispose of the same under the provisions of the Act.

The validity of the aforesaid orders has been called into question in all these petitions.

6. The contentions which were not accepted by the Asst Commr have been pressed before me for consideration. It was also urged for the petitioners that the Asst Commr has no jurisdiction, under Sec. 83, to initiate the proceedings and determine the disputed questions which are exclusively within the jurisdiction of the Tahsildar under Secs. 66 & 66A of the Act.

The decision on these contentions must, therefore, turn on the scope of Sections 66, 66A, 67 and 83 of the Act.

Section 66, so far as it is relevant, provides.

"66.-Filing of declaration of holding:

(1)(a) Every person who on the date of commencement of the Amendment Act holds- (i) ten acres or more of lands having facilities for irrigation from a source of water belonging to the State Government; or (ii) twenty acres or more of lands on which paddy crop can be grown with the help of rain water; or (iii) forty acres or more of lands classified as dry but not having any irrigation facilities from a source of water belonging to the State Government, shall on or before the 31st day of December, 1974; or (b) every person who acquires land in excess of the extent specified in clause (a) in any manner referred to in Section 64; and (c) every person whose land is deemed to be in excess of the ceiling area under Section 65A, shall, within the prescribed period, furnish a declaration to the Tahsildar within whose jurisdiction the holding of such person or the greater part thereof is situated containing the following particulars, namely- (i) particulars of all the lands;

(ii) particulars of the members of the family; and (iii) such other particulars as may be prescribed.

(1A) where a person holds different categories of land mentioned in clause (a) of sub-sec. (1), the total extent of lands held by such person shall, for purposes of this section, be determined by converting all categories of lands into any one category in accordance with the following formula, namely:

One acre of land referred to in category (i),

Two acres of land referred to in category (ii),

Four acres of land referred to in category (iii)".

Sub-sec. (2) of Sec. 66 confers power on the Tahsildar to issue notice to any who has failed to file declaration as stated above.

Sec. 66A provides penalty for failure to furnish declaration. Where a person who is required to furnish a declaration fails without reasonable cause so to do or furnishes a declaration which he knows or has reason to believe to be false, the Tahsildar shall call upon him to file a declaration after issuing him a notice of 15 days. The section also authorises the Tahsildar to impose penalty for failure to do any of those things and after imposing penalty, he could also ask the person to furnish a true and correct statement complete in all particulars within a period of one month from the date of the service of the order. If still that person fails to comply with the said order, the Tahsildar may declare that the right, title and interest of such person in the land held to the extent in excess of the ceiling area shall be forfeited to the State Govt. If any declaration is made either under Sec. 66 or in response to the demand made under Sec. 66A, then, the Tahsildar shall place the declaration along with the connected records before the Tribunal as provided under Sec. 67. The Tribunal will consider the claims of the person and decide the questions raised before it in accordance with law.

Sec. 74 provides that if any alienation of the land in excess of the ceiling limit prescribed under the Act has been made by a person without filing a declaration under Sec. 66, such alienation will be null and void.

7. The Asst Commr, after considering these provisions and the evidence onrecord, has observed that the lands concerned were agricultural lands and the Trusts were required to file declarations under Sec. 66, and since no such declarations were made, the alienations in favour of the petitioners were void as provided under Section 74.

8. The short question is whether the Asst Commr was competent to decide the questions in the exercise of his power conferred by Sec. 83, as to the liability of the Trusts to file declarations, and the nature of the land purchased by the petitioners. Sec. 83 confers summary power on the Asst Commr, to determine whether the transaction reported to him by anybody or coming to his notice in any other manner is in contravention of the provisions of the Act. The scope of this section came up for consideration before me, in Hadali Rajeeva Shetty v. Manjayya Shetty, (1974) 2 Kar. L.J. 215, Therein, the question was whether the sale made in respect of an agricultural land was void being in contravention of Sec. 39 of the Act. Under Sec. 39, it is obligatory for the landlord to offer his land to his tenant before he sells the same to any other person. The person claiming

to be in possession of the land as a tenant moved the Asst Commr to invalidate the sale transaction as no such offer was made to him by the landlord. The Asst Commr, after holding an enquiry, held that the complainant was a tenant and the sale was therefore void since it was not offered to him for purchase by the landlord. While setting aside the order of the Asst Commr, I observed:

"....The Asst Commr could declare the sale invalid only when he finds that respondent-1 was a tenant and his landlord has not offered to respondent-1 to purchase the land. The entire matter before the Asst Commr rests on the tenancy pleaded by respondent-1. It was not an incidental question which falls for adjudication before the Asst Commissioner. It was one of the main questions for decision. I do not think that the Asst Commr could decide such an important question affecting the rights of the parties in his summary jurisdiction. When there is no provision in the Act conferring jurisdiction on the Asst Commr to decide whether a person is a tenant or not and when there is a special provision conferring power on the Tribunal to decide that question, it has to be held that the Asst Commr cannot decide the said question. The fact that the Asst Commr has been conferred suo motu power to initiate proceedings for invalidating any transaction made in contravention of any of the provisions of the Act, makes no logical distinction in the above proposition."

The same view was taken by a Bench of this Court in Mahabala Shetty v. KRAT, WA. 392/74 dt. 12-3-1975, Therein, it was observed that the Asst Commr has no jurisdiction to decide the question of tenancy even incidentally while considering whether the transaction impugned before him was in contravention of the provisions of Sec. 39 of the Act.

9. Mr. Annadanayya Puranik, learned III Addl High Court Govt Advocate, did not dispute the above proposition of law. But he maintained that the Asst Commr in these cases is competent to decide the nature of the lands and the obligation of the Trusts to file declarations under Sec. 66. According to him, the determination of those two questions were not within the exclusive jurisdiction of the Tahsildar or the Tribunal under any one of the provisions of the Act.

10. I do not think that learned Govt Advocate is right in his submission. Secs. 66 and 66A, will give a conclusive answer to the contention urged by him. A person holding land in excess of the ceiling limit is required to file a declaration under Sec. 66. If he fails to file a declaration, the Tahsildar could impose a penalty for not filing a declaration and also could call upon him to file a declaration. If the holder of the land still refuses, the Tahsildar could take further steps to declare that the land in excess of the ceiling limit shall be forfeited to the Govt. The nature of the power conferred, the scope of the enquiry contemplated and the civil consequence that follows from the order clearly indicate that the proceedings before the Tahsildar are penal in nature and the power is quasi-judicial in character. The proceedings before the Tahsildar should, therefore, conform to all the norms governing the quasi-judicial procedure. He must first of all decide the question if it is disputed before him whether the person who has

not filed the declaration holds land in excess of the ceiling limit. The said question involves in itself the determination of the scope of the words "hold or to hold land" found in Sec. 66 and as defined under the Land Revenue Act. The Act specifically confers power to decide those questions on the Tahsildar under Secs. 66 and 66A and that power cannot be exercised by anybody else, much less by the Asst Commr under S. 83. As observed by this Court in Hadali Rajeeva Shetty''s case, (1974) 2 Kar. L.J. 215, that what is required to be decided by one authority, in the absence of specific provision, cannot be decided by another authority under the Act. It is of logical deductions. If this principle is not followed and the power is conceded to the Asst Commr, to determine questions which the Tahsildar is required to do, it will lead to anomalous position and conflicting decisions. That cannot be the sense of the law. The Asst Commr must, therefore, be held to have no jurisdiction to invalidate the sale transactions before any action is taken by the Tahsildar under Section 66A of the Act.

12. I do not want to express any opinion on the other contentions urged for the parties.

13. In the result, rule issued in each of these petitions is made absolute and the impugned orders are quashed.

14. In the circumstances of the case, I make no order as to costs.