

(1999) 01 KAR CK 0020
In the Karnataka High Court
Case No : Writ Petition No. 17602 of 1992

Shivasharnappa

APPELLANT

Vs

The Deputy Commissioner, Gulbarga and Another

RESPONDENT

Date of Decision : 12-01-1999

Acts Referred:

Karnataka Prevention of Fragmentation and Consolidation of Holdings (Amendment) Act, 1983 — Section 4
Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, 1966 — Section 39, 6

Citation : (1999) 3 KarLJ 87

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : Sri Manikappa Patil, for the Appellant; Smt. Rosa Paramel, Government Pleader, Sri Praveen Kumar Raikote and Sri Basavaraj Kareddy, for the Respondent

Judgement

1. Land measuring 1 acre and 31 guntas out of a total of 4 acres and odd in Survey No. 64 of Nelkud Village in Gulbarga District was sold by the deceased-2nd respondent in favour of the petitioner in terms of a sale deed dated 28th of April, 1978. The seller then moved an application before the Tahsildar, Gulbarga challenging the validity of the transaction under the provisions of the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, 1966. The Tahsildar found favour with the challenge and declared the sale to be in contravention of Section 6 of the Act. Aggrieved, the petitioner appealed to the Karnataka Appellate Tribunal, who set aside the said order and remanded the matter to the Deputy Commissioner for fresh disposal. The Deputy Commissioner once again by his order dated 11th of May, 1992 came to the conclusion that the sale of 1 acre and 31 guntas out of a total of 4 acres and odd was in violation of the provisions of Section 6 of the Act as the said transfer tantamounted to creating a fragment. He accordingly declared the sale to be void in terms of Section 39 of the Act and directed his possession of the land to be re-

delivered to the 2nd respondent besides levying a fine of Rs. 250/- upon the petitioner. In the present writ petition, the petitioner has called in question the validity of the said order.

2. Mr. Patil, Counsel for the petitioner, raised a short point in support of the petition. He urged that the impugned order proceeded on the assumption that the sale in question was by reason of violation of Section 6 of the Act void in nature. That assumption was according to Mr. Patil misconceived in the light of the provisions of Section 4 of Karnataka Prevention of Fragmentation and Consolidation of Holdings (Amendment) Act, 1983. Section 4 of the said Act runs thus.-

"Notwithstanding anything contained in any law or in any judgment, decree or order of any Court or other authority, any transaction, including transfer, partition or sub-division of any land, entered into or effected and any action or thing taken or done in relation to land before the commencement of this Act and in contravention of the provisions of the Principal Act, shall notwithstanding anything contained in the Principal Act, be not deemed to be void merely on the ground of such contravention".

3. A plain reading of the above would show that any transaction including transfer, partition or sub-division of land and any action or thing taken or done in relation to land before the commencement of the amending Act shall continue to be valid, contravention of the provisions of the Principal Act notwithstanding. In other words, the provisions of Section 6 forbidding transfers, partitions or sub-divisions having the effect of creating fragments as also the penalty provided for any such transfers, partitions or sub-divisions in terms of Section 39 would lose their efficacy insofar as transactions effected before the commencement of the amending Act were concerned. The Act was deemed to have come into force on the 28th of June, 1983. The sale in favour of the petitioner having been made much prior to the said date would remain valid and binding upon the parties even when the same may have been in violation of Section 6 of the Act. That is in substance the effect of the validating provisions contained in Section 4 of the amending Act. Viewed thus, the very basis on which the Deputy Commissioner's order proceeds is knocked out. The Deputy Commissioner as is evident does not appear to have noticed the provisions of the amending Act while making his order for otherwise the end result may have been entirely different.

4. Mr. Raikote, Counsel appearing for the respondents, contended that the order passed by the Deputy Commissioner was an appealable order and that this Court need not interfere with the same in the present extraordinary writ proceedings. An alternative remedy by way of an appeal assuming any such appeal was available to the petitioner may have been a good ground for dismissal of this writ petition at the preliminary hearing stage, but not 6 years after the same was admitted. In any case, an alternative remedy is not an absolute bar to the maintainability of a writ petition against an order passed by a statutory authority. It is only a rule of prudence, which is not inviolable. I therefore see no reason

why the petitioner should at this distant point of time be relegated to the remedy of filing an appeal especially when the order passed by the Deputy Commissioner appears to me to be unsustainable on a plain interpretation of Section 4 of the amending Act.

5. Mr. Raikote next argued that there was a difference between declaring a transaction to be valid and one which simply deemed the same to be so. He urged that Section 4 of the amending Act only declares that any such transaction shall not be deemed to be void, which was according to the learned Counsel different from declaring that such transactions would continue to be valid. It is difficult to appreciate the distinction between a declaration which renders a transaction valid on the one hand and another which declares that the transaction shall not be deemed to be void. The essence of both such provisions would be that the transaction would continue to be valid, the violation of the provisions of the Principal Act notwithstanding. It was indeed possible for the legislature to express its intention in slightly different terms as suggested by Mr. Raikote, but the fact that the expressions suggested by Mr. Kumar were not chosen by the legislature does not mean that those actually used by it in Section 4 does not sufficiently convey its intention. The purpose underlying Section 4 clearly is that transactions which had taken place before the commencement of the amending Act shall not be void merely on the ground that any such transaction was contrary to any provisions of the Principal Act. So long as that is so, it is immaterial whether the object of the amending Act could be achieved by use of one or the other expression.

6. In the result, this writ petition succeeds and is hereby allowed. The impugned order passed by the Deputy Commissioner is quashed. In case the petitioner has been dispossessed pursuant to the impugned order, the same shall be restored to him. No costs.