

(2010) 09 KAR CK 0028

In the Karnataka High Court

Case No : Regular Second Appeal No. 513 of 2010

Smt. Sakamma and Others

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 24-09-2010

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10 (3), 10 (6)
Urban Land Ceiling (Amendment) Act, 1999 — Section 3 (1) (a)

Citation : (2011) 1 KarLJ 500

Hon'ble Judges : K. Govindarajulu, J

Bench : Single Bench

Advocate : B.S. Nagaraj, for the Appellant; Manjula R. Kamadalli, High Court Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Govindarajulu, J.—Plaintiffs in O.S. No. 404 of 2002 on the file of the I Additional Civil Judge, Mysore are the Appellants in this appeal.

2. Parties will be referred according to their status found in the original suit for convenience.

3. O.S. No. 404 of 2002 is filed by the wife and children of one K Raju. It is the case of the Plaintiffs that plaint schedule property stood in the name of K. Raju. K. Raju has filed a declaration of excess land under the provisions of the Urban (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the "Act, 1976)". Thereafter K. Raju has expired. They have not received any compensation from the Government of Karnataka. They have also preferred a Writ Petition No. 2964 of 1999. During the pendency of the writ petition, the Act, 1976 was repealed under the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as the "Act of 1999"). The writ petition was dismissed as abated. The Plaintiffs are protected u/s 3(1)(a) of the Act of 1999. Plaintiffs are in possession of the land in Sy. No. 227. The Government has neither taken possession nor paid any compensation. So, pray for a decree for permanent injunction.

4. In the written statement, Defendants have taken a contention that the suit is not maintainable. The husband of the first Plaintiff Raju sought for compensation of Rs. 25,000/-. A notification u/s 13(1) is published in the Official Gazette. The said notification is served on first Plaintiff. The order is passed by the State in the year 1980. The revenue records are changed in the name of the Defendants as on 3-7-1986. So, the Plaintiffs are not entitled for any relief as prayed for. So, pray for dismissal of the suit.

5. Learned Trial Judge has framed issues. Permitted parties to lead evidence. On behalf of the Plaintiffs, P.W. 1 is examined. Exs. P. 1 to P. 7 are marked. On behalf of the Defendants, no one is examined. Learned Trial Judge has answered the following issues with the following reasons while dismissing the suit of the Plaintiff:

ISSUES

1. Whether the Plaintiff proves that they were in possession and enjoyment of the plaint schedule property as on 22-3-1999 i.e., on the repeal of the Urban Land Ceiling Act?
2. Whether the Plaintiff is entitled for the relief of permanent injunction?
3. What relief is the Plaintiff entitled to?
4. What order?

Findings to the above issues:

Issue No. 1: In the negative.

Issue No. 2: Do not survive for consideration.

Issue No. 3: As per order.

Issue No. 4: As per the final order.

6. Learned Trial Judge disbelieves Plaintiffs case on the ground that revenue documents are not produced to prove possession. It is the case of the State that it has taken possession. So burden cast on the Plaintiff is incorrect. Ownership of K. Raju is admitted. So, burden shifts on Defendants as to the compliance of Section 10(3) or (6) of Act 1976.

7. Learned Presiding Officer, Fast Track Court II, Mysore in RA No. 326 of 2009 has raised the following points for consideration and answered them as follows while dismissing the appeal:

1. Whether the judgment and decree passed by the lower Court is opposed to the law, facts and probabilities of the case?
2. Whether the judgment and decree of the lower Court calls for interference?
3. What order?

Findings to the above issues:

Points 1 and 2: In negative

Point 3: as per the final order, for the following:

8. Approach of the appellate Judge is similar. Burden under the Act 1976 is not considered even by the Appellate Judge.

9. The submission of the learned Advocate for the Plaintiff is that provisions of Act 1999, repealed the Act, 1976. Under the Act of 1976 after the declaration, possession has to be taken, compensation has to be fixed and compensation has to be paid. No material evidence is placed to support the case of the State that possession is taken and compensation is paid to the said K. Raju. It is the finding of the learned Trial Judge also. So the approach of the learned Judges of both the Courts is not justified. So, pray for allowing the appeal.

10. In reply, learned High Court Government Pleader Smt. Manjula R. Kamadolli submits that the action of the State cannot be challenged after the publication in the Gazette by a notification. The very fact that the records are changed in the name of the State would probabalise the right which K Raju has, is vested with the State. So, pray for dismissal of the appeal.

11. Substantial question of law that arise for consideration is as follows.--

Whether under the Urban (Ceiling and Regulation) Act, 1976 possession is taken over and compensation is paid by the State to K. Raju?

12. To understand the controversy placed in the facts of the case, the object and the manner in which the land is vested under Act, 1976 will help the Court in deciding the case. Preamble to Act, 1976 declares that it is apt to provide an imposition of a ceiling under the vacant land in urban agglomeration, for acquisition of such land in excess of ceiling limit, for preventing the concentration of urban land in the hands of few persons, avoid speculation and profiteering and with a view to bring about an equitable distribution of land in urban areas.

13. Section 2(n) defines "Urban agglomeration". Section 2(o) defines "urban land". Chapter III prescribes ceiling of vacant land. Section 3 declares that no person shall hold vacant land in excess of the ceiling limit prescribed u/s 4 of the Act. Section 5 prohibits transfer of vacant land during the pendency of the declaration filed u/s 6. Section 6 direct the persons holding excess vacant land to file a statement. Section 8 prescribes preparation of the draft statement in regard to the excess land available. Section 9 deals with final statement. Section 10 deals with acquisition of vacant land in excess of ceiling limit.

In the facts of the case, K. Raju having filed the statement is the ground urged by the State in response to the case to the Plaintiffs for suit for permanent injunction.

14. Section 10(3) which answer the situation reads as follows.--

At any time after the publication of the notification under Sub-section (1), the Competent Authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to in the notification published under Sub-section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.

Section 10(6) reads as under:

If any person refuses or fails to comply with an order made under Sub-section (5), the Competent Authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary.

While Section 10(3) declares that from the appointed day, the excess land is deemed to have been acquired. While Sub-section (6) to Section 10 authorise the Competent Authority to take possession.

15. The Act, 1999 having come into force is not in dispute. Act, 1976 being repealed is found in Section 2 of the Act, 1999. Section 3 of the Act 1999 reads as follows.--

3. (1) The repeal of the principal Act shall not affect.--

(a) the vesting of any vacant land under Sub-section (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the Competent Authority;

(b) the validity of any order granting exemption under Sub-section (1) of Section 20 or any action taken there under, notwithstanding any judgment of any Court to the contrary; and

(c) any payment made to the State Government as a condition for granting exemption under Sub-section (1) of Section 20.

(2) Where.--

(a) any land is deemed to have vested in the State Government under Sub-section (3) of Section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the Competent Authority; and

(b) any amount has been paid by the State Government with respect to such land, then such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

16. A careful consideration of the Act, 1999 would probabalise there should be

completed transaction of taking over of the possession under the Act, 1976 i.e., an authority of the State has to take over possession. Similarly, the said person whose property is taken over should be paid the necessary compensation. In the facts of the case, except for contending to the written statement that possession is taken over and the revenue records are changed. No evidence is adduced. No document is produced to support the claim of the State as to the date on which, which of the officer of the State is said to have taken possession or the date of recording of mahazar while taking over possession is stated. In addition to it the case of the State is that said K. Raju did not come forward to receive the compensation, notification is served on the 1st Plaintiff. So, the Defendants have failed to prove the burden u/s 10(3), (6) of the Act, 1976 or amount being paid to K. Raju. So, the action of the State in the facts of the case would not come within the purview of Section 3(1)(a) of the Act, 1999. So, the submission of the learned Advocate for the Plaintiffs is accepted.

17. One more reason that is reflected in the facts of the case is though State contends that in pursuance of the orders in the writ petition, the claim of K. Raju is lost, the facts that have to be proved in a case of permanent injunction is that the Plaintiffs do not have any right. To prove this stand, the Defendants ought to have produced materials in regard to the date of possession, the officer who took possession, the records that are recorded while taking over possession, the date of payment of the compensation into the Treasury. Not even the date of 1st Plaintiff being notified is proved. No evidence is placed by the Defendants to prove this mixed question of law and fact. Finding in regard to possession cannot be declared in a writ unless admitted. Not even the orders in the writ petitions are placed before the Court. So state has failed to prove ingredients u/s 10 of 1976, Act. So, the submissions of the learned Advocate for the Plaintiffs is accepted. Submissions of the learned High Court Government Pleader are rejected.

18. In the result, the following order is passed.

Appeal is allowed, suit O.S. No. 404 of 2002 on the file of I Additional Civil Judge (Junior Division), Mysore, for permanent injunction is decreed.

19. Smt. Manjula R. Kamadolli, learned High Court Government Pleader is permitted to file her memo of appearance within four weeks.