(1980) 11 KAR CK 0021

In the Karnataka High Court

Case No : WP 11215/80

Somashekar B.G. APPELLANT

Vs

Village Panchayat, Yellavara and Others RESPONDENT

Date of Decision : 14-11-1980

Acts Referred:

General Clauses Act, 1897 — Section 3(26)
Transfer of Property Act, 1882 — Section 3

Citation : (1981) 2 KarLJ 263

Hon'ble Judges : K. S. Puttaswamy, J

Judgement

1. On 25-7-80 Swami, J. ordered notices to the respondents to show cause as to why rule nisi should not be issued in the case. As it generally happens, after several adjournments before several learned Judges, the case was ultimately posted on 23-10-80 before me for preliminary hearing "Group-B". On that day, as agreed to by all sides, the case was treated as listed for final hearing and I heard the case in part and adjourned the same at the request of the learned Government Pleader to 27-10-80 on which day I heard the arguments in full and reserved the case for orders.

2. Issued rule nisi.

3. Among others the Group Village Panchayat of Yelavara, Kolar Taluk (hereinafter referred to as the V.P.) constituted and functioning under the provisions of the Karnataka Village Panchayats and Local Boards Act of 1959 (hereinafter referred to as the Act) is the owner of lands bearing Sy. Nos. 136 and 137 of the same village measuring 383,28 and 319.11 acres respectively. On the said lands, the V.P. has planted about one lakh

Eucalyptus trees more than a decade ago. With a view to avoid illegal cuttings and thefts of the trees, the V.P. on 13-9-78 unanimously decided to dispose of the said trees by public auction. The resolution passed by the V.P. on that day reads thus:

* * * * *

In conformity with the resolution, a recommendation was made to ascertain the value of the trees and accord necessary sanction for the disposal of the trees. On 17-11-79 the Divisional Forest Officer, Kolar Division, informed the Chief Executive Officer, Taluk Development Board, Kolar that the value of the trees on the said lands was Rs. 77,400 On receipt of the said reference, the Deputy Commissioner, Kolar (hereinafter referred to as the D.C.) by his Official Memorandum No. VPC. CR. 331/78-79 dated 29-11-79 accorded his permission for the disposal of the trees specifying the initial bid at Rs. 77,400. The said order of the D.C. reads thus:

Official Memorandum

Under Rule 3 (i) of the Karnataka Panchayats (Acquisition and Transfer of Movable and Immovable property) Rules, 1960, permission is accorded to the V.P. Yelawara in Kolar taluk to dispose of the Eucalyptus trees raised under form Forestry in S. No. 136 and 137 of Yelawara village in public auction with an initial bid of Rs. 77,400 (Rs. seventy seven thousand and four hundred) as per the valuation made by the Forest Department. The Chief Executive Officer, Taluk Development Board, Kolar is authorised to conduct the auction as per rules.

Sd/- xxx

Deputy Commissioner Kolar Dist.

As authorised by the aforesaid refererence, the Chairman of the V.P. fixed the auction sale of the trees to be held on 19-12-79. Before the auction sale could be held on 19-12-79 various persons of the village and neighbouring villages approached the Asst. Commissioner. Kolar Sub-Division, Kolar (hereinafter referred to as the A.C.) by styling as appeal petitions for cancellation of the sale scheduled to be held on 19-12-79 and also stay of the sale. Somewhat curiously, the A.C. entertained those appeal petitions and by his Memo No. VPC. CR. 88/79-80 dated 18-12-79 stayed and cancelled the sale for the various interesting reasons stated in that memo. In view of the said order, the auction sale scheduled to be held on 19-12-80 was not held. Evidently on a reference made by the Deputy Commissioner, the Divisional Commissioner Bangalore by his Official Memorandum No. VPC. CR. 554/79-80 dated 3-6-80 cancelled the aforesaid order of the A.C. and directed the D.C. to examine the matter afresh and issue appropriate further directions to the V.P. for the sale of the standing timber on the land.

4. On receipt of the aforesaid order of the Divisional Commissioner, the D.C. examined the matter afresh and by his Official Memorandum No. VPC. DR. 331/78-79 dated 20-6-80 directed the Chief Executive Officer, TDB, Kolar to conduct the auction sale. The said order of the D.C. reads thus:

"The Divisional Commissioner, Bangalore in his order cited under reference (3) has rescinded the memo No. VPC; CR. 88/79-80, dated 18-12-79 of the

Assistant Commissioner, Kolar Sub-Division, Kolar on the ground that the Assistant Commissioner cannot issue any directions regarding the manner in which the trees are to be disposed of, as only the Deputy Commissioner is competent to issue such directions.

2. In view of the above facts the Chief Executive Officer, Taluk Development Board, Kolar is instructed to take action to conduct the sale of eucalyptus, in public auction as per rules as already directed in this office O.M. cited under reference (1)

3. Wide publicity should be given about the auction of trees in the. news papers which are being published in Bangalore having largest circulation in the State.

Sd/- P.S.V. RAO

Deputy Commr. Kolar District"

In pursuance of the aforesaid orders, the Chief Executive Officer, fixed the sale of the timber to be held on 16-7-80 from 1 p.m. on the terms and conditions stipulated in the sale proclamation No. VPC. CR. 41/80-81 dated 2-7-80. Apart from publishing the aforesaid sale proclamation on the office boards of the various Government Offices and other centres, the Chief Officer gave wide publicity of the same in the leading Kannada daily Prajavani which has wide circulation in our State and various other local newspapers like ''Kolar Patrike'', ''Honnudi'' and ''Kolar Vani''. In terms of the aforesaid sale proclamation as many as 127 persons deposited the initial deposit of Rs. 10,000 before the sale conducting officer and participated in the auction sale held on 16-7-80. In the said auction sale held on that day, the petitioner offered the highest bid at Rs. 95,200. On the same day, the petitioner deposited the aforesaid bid amount and various cesses and taxes amounting to Rs. 1,66.600 to the credit of the V. P. On 19-7-78 the Chief Executive Officer submitted the sale papers to the D.C. as called for by him along with the original petition filed before him by K.M. Kempaiah, Secretary, District Organising (I) Congress, Kolar objecting to the sale held on 16-7-80 On 16-7-80 four persons had also filed a. petition before the D.C. purporting to be under S. 269 of the Act, a section that does not exist in the Act, for cancellation of the auction sale scheduled to be held on the same day with an application for stay. On an examination of the reference received by the Chief Executive Officer, the objections filed by various other persons and inspection of the area, the D.C. by his order No. VPC. CR. 331/78-79 dated 26-7-80 cancelled the auction sale held on 16-7-80 and directed the Chief Executice Officer, to hold a fresh sale. The operative portion of the said order of the D.C. reads thus:

"Order

Under the above circumstances, the auction sale of Eucalyptus trees raised under Farm Forestry in S. No. 136 and 137 of Yalawara village held by the Chief Executive Officer, Taluk Development Board, Kolar on 16-7-80 is hereby cancelled. The Chief Executive Officer is directed to conduct the sale of the Eucalyptus trees in the above survey numbers afresh Blockwise on sealed tender-cum-auction basis after observing the formalities as per rules: Further, the Chief Executive Officer should obtain the. valuation of trees blockwise by the Divisional Forest Officer, Kolar before issue of sale notification. The bid amount of Rs. 1,66,600 received from Sri B.G. Somashekar should be refunded to him immediately.

Sd/- P.S.V. RAO

Deputy Commr. Kolar District."

On 25-6-80 the petitioner has moved this Court under Art. 226 of the Constitution for quashing the aforesaid order of the D.C. and other incidental reliefs sought in his writ petition. Even though this Court has not expressly stayed the operation of the aforesaid order of the D.C. and the further proceedings thereto, in my opinion, the authorities have not rightly precipitated the matter and have not conducted fresh sale of the trees.

5. The petitioner has asserted that the D.C. has made the impugned order without notice, considering his representation and providing him an opportunity of hearing. This assertion of the petitioner which is not denied by the D.C., is borne out by the records made available by the learned High Court Government Pleader. He has also contended that having regards to his prior permission for sale of the trees, the sale having been conducted regularly and the sale price fetched being reasonable, there was no justification for the D.C. to withhold the confirmation of the same, which was also wholly unnecessary.

6. In its return, respondent No. 1 has sought to justify the action of the D.C. It has contended that the refusal of the D.C. to confirm the sale is in conformity with clause 4 of the sale proclamation. Respondent No. 1 has alleged that the petitioner was an influential contractor and has manoeuvred with other contractors not to offer higher bids in pursuance of a secret meeting the contractors had for that purpose. Lastly it has challenged the valuation made by the D.F.O. and has urged that the value of the trees was more than Rupees two lakhs including cesses.

7. Sri B.G. Sridharan, learned counsel for the petitioner has contended that no confirmation of sale was required under the Karnataka Village Panchayats and Local Boards Act of 1959 (hereinafter referred to as the Act) and the Karnataka Panchayats (Acquisition and Transfer of Moveable and Immoveable Property) Rules, 1960 (hereinafter referred to as the Rules) framed under the Act and that even if confirmation was necessary, the reasons on which the D.C. had refused the confirmation were manifestly illegal.

8. Sri K.V. Narayanappa, learned counsel for respondent No. 1 and Sri M.H. Motigi, learned High Court Government Pleader, appearing for respondents 2 to 4 sought to support the order of the D.C.

9. Purchase and sale of movable and immovable property by or of a panchayat is regulated by the Rules. Rule 3 of the Rules deals with the purchase and sale of movable property. Rule 4 of the Rules deals with the acquisition of immovable property by the panchayat. Rules 5, 6, 7, 8, 9, 10 and 11 deal with the transfer of immovable property including leases belonging to a panchayat. In order to determine which of the Rules is attracted, it is first necessary to ascertain the nature of the property viz. whether it is movable or immovable that was sold in public auction.

10. On the first occasion i.e., on 29-11-79 the D.C. accorded his sanction for the sale of Eucalyptus trees on the lands under Rule 3(1) of the Rules. In the second order made by him on 20-6-80 the D.C. does not expressly refer to the said rule. But, the said order must only be read as a, reiteration of the earlier order made by him in that behalf. By the said orders, the D.C. has treated the property sold as movable property which conclusion, in my opinion, is factually and legally correct.

11. The Act and the Rules do not define the terms ''movable property'' and ''immovable property''. I have therefore, to ascertain their meanings from the context in which they occur, for which purpose it is permissible to refer to the meanings given to the said terms in the General Clauses Act, the Transfer of Property Act, the Indian Registration Act and the dictionaries also. But, fortunately for us on the meanings to be given to the said terms as also the distinction and difference that exists between the terms ''standing, timber'' and standing trees'' that are crucial for this case, the Supreme Court in Shantabai v. State of Bombay, AIR 1958 SC 532, had occasion to examine the same. In that case Vivian Bose, J. has expressed thereto thus:

"(27) Under S. 3(26) of the General Clauses Act, it would be regarded as immoveable property because it is a benefit that arises out of the land and also because trees are attached to the earth. On the other hand, the Transfer of Property Act says in S. 3 that standing timber is not immoveable property for the purposes of that Act and so does S. 2 (6) of the Registration Act. The question is which of these two definitions is to prevail.

(28) Now it will be observed that "trees" are regarded as immoveable property because they are attached to or rooted in the earth. Section 2(6) of the Registration. Act, expressly says so and, though the Transfer of Property Act does not define immoveable property beyond saying that it does not "include "standing timber, growing crops or grass", trees attached to earth (except standing timber) are immoveable property, even under the Transfer of Property Act, because of S. 3 (26) of the General Clauses Act. In the absence of a special definition, the general" definition must prevail. Therefore, trees (except standing timber) are immovable property.

(29) Now, what is the difference between standing timber and a tree? It is clear that there must be a distinction because the Transfer of Property Act draws one

in the definitions of "Immoveable property" and "attached to the earth"; and it seems to me that the distinction must lie in the difference between a tree and timber. It is to be noted that the exclusion is only of

"standing timber" and not of "timber trees".

(30) Timber is well enough known to be "wood suitable for building houses, bridges, ships etc., whether on the tree or cut and seasoned" (Webster''s Collegiate Dictionary).

Therefore, "standing timber" must be a tree that is in a state fit for these purposes and, further a tree that is meant to be converted into timber so shortly that it can already be looked upon as timber for all practical purposes even though it is still standing. If not, it is still a tree because, unlike timber, it will continue to draw sustenance from the soil".

(31) Now, of course, a tree will continue to draw sustenance from the soil so long as it continues to stand and live; and that physical fact of life cannot be altered by giving it another name and calling it"standing timber". But the amount of nourishment it takes, if it is felled at a reasonably early date, is so negligible that it can be ignored for all practical purposes and though, theoretically, there is no distinction between one class of tree and another, if the drawing of nourishment from the soil is the basis of the rule, as I hold it to be, the law is grounded, not so much on logical abstractions as on sound and practical commonsense. It grew empirically from instance to instance and decision to decision until a recognisable and and workable pattern emerged; and here, this is the shape it has taken.

(32) The distinction, set out above has been made in a series of Indian cases that are collected in Mulla''s Transfer of Property Act, 4th edition at pages 16 and 21. At page 16, the learned author says-

"Standing timber are trees fit for use for building or repairing houses. This is an exception to the general rule that growing trees are immoveable property."

At Page 21 he says-

"Trees and shrubs may be sold apart from the land, to be cut and removed as wood, and in that case they are moveable property. But if the transfer includes the right to fell the trees for a term of years, so that the transferee derives a benefit from further growth, the transfer is treated as one of immoveable property."

The learned author also refers to the English law and says at page 21-

"In English law an unconditional sale of growing trees to be cut by the purchaser, has been held to be a sale of an interest in land; but not so if it is stipulated that they are to be removed as soon as possible."

(33) In my opinion, the distinction is sound. Before a tree can be regarded as"standing timber"it must be in such a state that, if cut, it could be used as

timber; and when in that state it must be cut reasonably early. The rule is probably grounded on generations of experience in forestry and commerce and this part of the law may have grown out of that. It is easy to see that the tree might otherwise deteriorate and that its continuance in a forest after it has passed its prime might hamper the growth of younger wood and spoil the forest and eventually the timber market. But, however that may be, the legal basis for the rule is that trees that are not cut continue- to draw nourishment from the soil and that the benefit of this goes to the grantee."

On the views expressed by Vivian Bose, J. the other four learned Judges did not express their opinion. The views expressed by Vivian Bose, J. in Smt. Shantabai''s case does not appear to have been dissented in any other case and in that view, it would be proper to treat the same as the law declared by the Supreme Court. A Division Bench of the High Court of Gujarat in Vora Ibrahim Akbarali v. State of Gujarat, (1968) 9 Guj.L.R. 939 and a full bench of the High Court of Allahabad in Baijanath v. Ramdhar, AIR 1963 All 214 FB, have followed the principle stated by Vivian Bose, J. in Shantabai''s case, AIR 1958 SC 532.

12. In the light of the above principles, I propose to examine whether the trees sold is ''standing timber'' or ''standing trees'', an answer to which, would also answer whether the property sold is movable property or immovable property.

13. As is well known, Eucalyptus trees, the right of which only is sold are not fruit bearing trees. Eucalyplus trees are generally used for manufacture of fibre, fuel and extraction of Eucalyptus oil. Clause (3) of the terms and conditions of the sale proclamation stipulates that the auction purchaser should only remove the trees without removing the roots and stems. As pointed out by Lord Coleridge, CJ. in Marshal v. Green, (1875-6) 1 CPD 35, 39, where the parties agree, as in the present case, that the thing sold shall be immediately withdrawn from the land, the land is to be considered as a mere ware-house of the thing sold, and the contract is for goods. From the foregoing, itfollows, that what has been sold is only "standing timber" and not ''standing trees'' which is movable property and the D.C. was, therefore, justified in according his sanction under Rule 3 of the Rules.

14. Rule 3 of the Rules dealing with the acquisition and transfer of moveable property of a panchayat reads thus:

3. Acquisitionand transfer of moveable property.-(i) In the case of purchase of moveable property or sale of any moveable property belonging to a Panchayat, if the expenditure which the purchase would involve, or the value of the property to be sold as estimated in the Panchayat accounts, exceeds Rs. 100 the Chairman shall obtain the approval of the Panchayat:

Provided where the value of the purchase or sale exceeds Rupees 2,000 the sale or purchase shall be made with the previous approval of the Deputy Commissioner and in such manner as he directs.

(ii) Every sale or purchase of moveable'' property the value of which exceeds Rs. 100 made by the Panchayat shall be in the form of a contract and shall be in writing and shall be signed by the Chairman of the Panchayat.

(iii) Whenever a Panchayat resolves to purchase or sell moveable property, a notice mentioning the details of the articles or goods shall be published on the notice board of the Panchayat office and also on the notice board of the Taluk Board. within whose jurisdiction the Panchayat is situated giving at least one week''s notice for submission of quotations by intending purchasers or sellers as the ease may be:

Provided where it is decided to sell the moveable property in public auction, the notice published shall specify the date, time and place of such sale."

Any purchase of movable property, the expenditure of which would involve or the value of the property to be sold exceeds Rs. 100 the Chairman is required to obtain the approval of the Panchayat. If the value of the purchase or sale exceeds Rs. 2000, then such purchase or sale can be made only with the previous approval of the D.C. of the District and in such manner as he directs. Clause (ii) of Rule 3 directs the sale or purchase of movable property that exceeds Rs. 100 to be made under a written contract to be signed by the Chairman of the panchayat. Clause (iii) of the said rule directs the manner and method of sale or purchase of movable property by the panchayat.

15. As the value of the property to be sold exceeded Rs. 100 the matter was placed before the panchayat which by its resolution dated 13-9-78 has accorded its approval to sell the same after obtaining the previous approval of the D.C. On the basis of the said resolution and as the value of the property to be sold exceeded Rs. 2000 the D.C. after ascertaining the value of the property from the Forest Department, accorded his approval on 29-11-79 which has been reiterated by him on 20-6-80. By his two orders dated 29-11-79 and 20-6-80 the D.C. directed the property to be sold by public auction after giving wide publicity in the newspapers. In conformity with the resolution of the panchayat and the orders of the D.C. the Chief Executive Officer after giving wide publicity, has sold the property in the public auction held on 16-7-80. In his earlier orders, under the latter part of the proviso to clause (i) of Rule 3 of the Rules, the D. C: did not direct that the area should be divided into various blocks and the property to be sold by dividing them into blocks. The said rule only requires prior approval of the D.C. before the sale of the property. The rule does not require confirmation of sale after the sale is effected. The reason for such provision is obvious. Sale of movable property cannot be delayed and the sale purchaser cannot be asked to wait indefinitely to await confirmation by the authorities. When once the sale is knocked down and the price is paid, the property is expected to be delivered then and there to the sale purchaser. From these, it follows that the sale held was in accordance with the Rules and the orders made by the D.C. and the cancellation of the sale made by him entertaining objection petitions by busy bodies was wholly unwarranted.

16. Clause 4 of the sale proclamation issued by the Chief Executive Officer stipulates that the sale is subject to confirmation by the higher authorities, obviously referring to confirmation by the D.C. In his two orders, the D.C. had not directed the the Chief Executive Officer to stipulate such a condition in the sale proclamation. Secondly, condition No. 4 stipulated by the Chief Executive Officer by way of abundant caution, as is generally done, is contrary to the Rules and the order of the D.C. and the same has, therefore, to be treated as a wholly illegal and unenforceable condition that requires to be ignored. In this view, the respondents cannot rely on condition No. 4 of the sale proclamation to sustain the order of the D.C.

17. The reason that appears to have prompted the D.C. to cancel the sale is set out in para 8 of the preamble to his order dated. 26-7-78 and the same reads thus:

"I have inspected the Farm Forestry at Yalawara on 23-7-80 along with the Divisional Forest Officer, Kolar, the Block Development Officer and others. It covers quite an extensive area. The trees in some blocks are about 13 years old and the trees in other blocks are 6 to 7 years old. After inspection, the Divisional Forest Officer, Kolar has opined that if the area is divided into 5 to 6 blocks and sold on sealed tender-cum-auction basis, the panchayat will get a higher price, as many parties may not be able to compete if the entire area is auctioned. It is, therefore, considered desirable to cancel the auction and hold a fresh one on sealed tender-cum-auction basis."

From this the D.C. appears to conclude that if the sale is held by dividing into blocks on tender-cum-auction basis, there was the possibility of the panchayat securing higher price. As observed by me earlier it was undoubtedly open to the D.C. to direct the sale in the manner he has now done. But, he did not do so and the sale was held in the manner he earlier directed. The D.C. has not found that the sale which has been held regularly is vitiated by fraud and has not fetched adequate price. The price secured is higher than the valuation made by the D.F.O. on 17-11-79.

18. Under what circumstances the sale can be refused to be confirmed, even assuming such confirmation is necessary or can be set aside, is not dealt in the Act and the Rules. In these circumstances, it would be proper to apply the principles that regulate the Court sales before the Civil Courts incorporated in the Code Of Civil Procedure. The first principle is that a sale should be held regularly and should not be vitiated by fraud. The second principle is that the price fetched at the auction sale should be adequate. The other equally important principle is that if the price secured is adequate, a subsequent higher offer is not a ground for refusing confirmation or setting aside a sale. Vide Navalkha and Sons v. Ramanya Das, AIR 1970 SC 2037 and Kayjay Industries (P) Ltd. v. Asnew Drums (P) Ltd., AIR 1974 SC 1331.

19. Examining the auction sale held on 16-7-80 from the above principles, which

unfortunately have been thrown overboard or totally ignored by the D.C., there was no justification for him not to confirm the same if confirmation was necessary, cancel the sale or direct a re-sale, the result of which cannot be predicted with any certainly. From the foregoing, it is manifest that the order made by the D.C. is without jurisdiction and even if it is within his jurisdiction, is manifestly illegal. Even though this conclusion should conclude the controversy, as my order is subject, to appeal, I will briefly notice the other contentions urged for the parties and state my views.

20. Sri Sridharan next contended that the order made by the D.C. without notice to the petitioner and affording an opportunity of hearing is violative of the principles of natural justice.

21. At the auction sale held, the petitioner was the highest bidder and the sale conducting officer accepted the same on the basis of which the petitioner paid the entire sale price on the same day. By these, the petitioner had acquired an interest, if not a right, to cut and remove the trees sold to him. Before cancelling the sale and ordering a re-sale the D.C. did not notify the petitioner and provide him on opportunity of hearing to state his case. When the petitioner had acquired an interest though not a right, the principles of natural justice, the true scope and ambit of which has been examined and stated by the Supreme Court and this Court in a catena of cases required the D.C. to issue a show cause notice and provide an opportunity of hearing to the petitioner and in not so doing, he has contravened the principles of natural justice and has committed a manifest'' illegality apparent on the face of the record. But, on this conclusion, I do not propose to reserve liberty to the D.C. to issue a show cause notice and re-do the matter.

22. In para 4 of its return, the panchayat has alleged that the petitioner was an influential contractor, there was a secret understanding between him and other bidders and the same has been sold to him at a cheaper price. In my view these serious allegations made by the panchayat, which are not even verified and cannot be acted, are not also established either before the D.C. or before this Court. In this view, I have no hesitation in rejecting the reckless justification urged by respondent No. 1.

23. Clause (ii) of Rule 3 of the Rules stipulates that every sale of movable property, the value of which exceeds Rs. 100 should be in the form of a contract in writing and should be signed by the Chairman of the panchayat. Since the value of the property sold exceeds Rs. 100 a contract in writing has to be executed by the Chairman before the petitioner can cut and remove the trees for which purpose it is necessary to issue an appropriate writ.

24. In the light of my above discussion, I quash the order No. VPC.CR. 331/78-79 dated 26-7-80 of the Deputy Commissioner, Kolar District, Kolar respondent No. 3 (Annexure-H) and issue a writ in the nature of mandamus to the Chairman, Yelwara Group Village Panchayat, Yelwara, Kolar Taluk, Kolar

District respondent No. 1 to execute a contract in writing in respect of the movable property sold on 16-7-80 in sale notification No. VPC. CR. 41/80-81 dated 2-7-80 (Annexures-B to D) to the petition within 15 days from the date of receipt of the writ or order of this Court.

25. Rule issued is made absolute.

26. In the circumstances of the case, I direct the parties to bear their own costs.

