(1997) 06 KAR CK 0016

In the Karnataka High Court

Case No : Writ Petition 15735-36 of 1995

Sri Abdul Majeed and Another — APPELLANT

Vs

State of Karnataka and Others — RESPONDENT

Date of Decision : 13-06-1997

Acts Referred:

Constitution of India, 1950 — Article 19, 31
Karnataka Land Revenue Act, 1964 — Section 195 (1), 79 (2)

Citation : (1997) ILR (Kar) 2478 : (1997) 4 KarLJ 590

Hon'ble Judges : S.R. Venkatesha Murthy, J

Bench : Single Bench

Advocate : M. Jyoti, for S.A. Nazeer and U. Abdul Khader, for the Appellant; Adhok N. Nayak, HCGP for R-1 to 3 and K. Raghavendra, for R-4 to 6, for the Respondent

Final Decision : Allowed

Judgement

S.R. Venkatesha Murthy, J.—In this Writ Petition, the challenge is to the order in Appeal No. 494/1989, filed by respondents 4 to 6 herein, before the Karnataka Appellate Tribunal.

2. the 1st petitioner was granted 5 guntas of land in Sy.No. 52/ 1 A and 1C and 52/1A 1D of Naricombu village and were placed in possession of the lands. The Deputy Commissioner prior to the grant is stated to have by an order withdrawn the Kumki privilege by notifying the respondents 3 to 6 herein. The respondents 3 to 6 challenged the order of the Deputy Commissioner, Mangalore dated 8.5.1989 in B.Dis.LND (4) H.S.406/87-88. The contention before the Revenue Appellate Tribunal was that the Deputy Commissioner had not placed on record the Government Order No. RD.28.LGW 71 dated 29.1.1971 and 10.12.1971 and there was no such power vested in the Deputy Commissioner to withdraw the Kumki Privilege. The Revenue Appellate Tribunal accepting the contention, allowed the appeal and set aside the order withdrawing the kumki privilege allegedly enjoyed by respondents 3 to 6, herein.

3. The Writ Petitioners who, as stated above, were granted land, subsequent to withdrawal of the Kumki-privilege, have filed this Writ Petition, Their contention is that the order of the Revenue Appellate Tribunal is without jurisdiction and is liable to be set aside.

4. During the course of arguments, the Government Pleader placed before this Court the notification relied upon by the Deputy Commissioner while passing the order withdrawing the Kumki Priveledge The Notification reads as follows:-

GOVERNMENT OF MYSORE

No. RD 28 LCW 71 Mysore Government Secretariat, Vidhana Soudha, Bangalore,Dated 29th Nov 71 NOTIFICATION

In exercise of the powers conferred by Sub-section (1) of Section 195 of the Mysore Land Revenue Act, 1864 (Mysore Act 12 of 1964), the Government of Mysore hereby delegate the powers conferred on the State Government u/s 79(2) of the said Act to the Deputy Commissioners of the Districts who shall exercise the said powers within their respective Districts.

By Order and in the name of the President of India,

(J.T. Borker) Under Secretary to Government, Revenue Department. What happened before the Revenue Appellate Tribunal was that it did not believe the notification referred to, on the ground that the notification had not been produced before it. Though the existence of that notification was never sought to be contested by the respondents 3 to 6, who were the appellants, before the Revenue Appellate Tribunal, the Revenue Appellate Tribunal proceeded to take the view expressed, by not insisting on the production of the notification, to find out whether such a notification had been issued at all or not. It is now clear that the Deputy Commissioner had infact been delegated the power u/s 79(2) of the Karnataka Land Revenue Act by the State Government.

5. The Learned Counsel for the respondents 3 to 6 sought to contend on Section 79(2) of the Karnataka Land Revenue Act only empowered the State Government to pass an order withdrawing the Kumki priveledge and therefore the order cannot be sustained. It was sought to be contended that the delegation of power itself as per notification dated 29.11.1971 is invalid having regard to the scheme of 79(2) of the Act. Apparently, two different situations are sought to be dealt with by the two sub-sections of Section 79 of the Act. The non-obstinate cause with which Sub-section (2) of Section 79 commences, excludes from its preview, the situation dealt with by Section 79(1) of the Act. Though Sub-section (2) of Section 79 of the Act seeks to preserve interalia Kumki privileges, the Government reserved for itself the power to abridge modify and withdraw the Kumki privileges selectively depending on the predominant public interest sought to be achieved. It was sought to be made out that the Kumki Privileges are property rights which can only be withdrawn by law, by placing reliance upon the decision in State of Mysore and Others Vs. K. Chandrasekhara Adiga and

Another, wherein it is observed as follows:-

"26. Although styled as ''privileges'', Kumki rights are recognised by statutory rules (viz. Land Grant Rules) and the Standing Orders. They are property rights within the contemplation of Article 19 and 31 of the Constitution, notwithstanding the fact that their scope is restricted and their exercise is subject to these statutory Rules. Therefore, these rights could be curtailed, abridged or taken away only by law and not by an executive fiat.

23. The general order, dated March 17, 1964, issued by the Government whereby a Kumkidar''s right to receive timber was unconditionally reduced to 20 per cent of the trees limited to the value of Rs. 1000/- was an executive order. It is not a law. The condition attached, pursuant to that executive order to the assignment of the Kumki plot in question in favour of Respondent-1, was thus violative of Article 19 and 31 of the Constitution."

It is clear from the above observation that the Kumki Privilege is not and never was an indefeasible one, and was capable of being withdrawn by law, though not by an executive fiat.

6. The Learned Counsel for the respondents 3 to 6 contends that the order of the Deputy Commissioner could at best be regarded as an executive fiat and is therefore invalid in so far as it seeks to withdraw the kumki privilege, Sub-section (2) of Section 79 of the Act stipulates the mode in which the State Government may withdraw the Kumki priveledge viz., "by a general or a special order." The object is to allow a measure flexibility to the State Government to choose the particular land/lands in respect of which privileges are to be withdrawn to enable effectuating a public purpose. It cannot be contended that merely because of the power u/s 79(2) of the Act takes the form of an order to be made by the Deputy Commissioner, the same is an executive fiat. The source of the power exercised being clearly traced to Section 79(2) of the Act, the form of the order would not render it any less Legal.

7. The only other contention that was sought to be raised was that having regard to the scheme of Section 79 of the Act, the power could only be exercised by the State Government and not by its delegate. The notification referred to above has been issued u/s 195(1) of the Karnataka Land Revenue Act which empower the State Government to delegate its power subject to such conditions as it deems fit to impose. What is significant to note is that Section 195(2) of the Act enumerates the sections, under which the State Government cannot delegate its power and Section 79(2) is not one of them. It is clear, therefore, by a reading of Section 195 of the Act, the State Government has the power to delegate its power to such sub-ordinate as it considers suitable to discharge its powers.

8. The notification dated 29.1.1971 being issued in the exercise of the power u/s 195(1) of the Act, delegating the power, u/s 79(2) of the Act, to the Deputy Commissioner of the respective districts, being in accordance with law, and there being no other bar for such a delegation of power, is valid. The order impugned

by respondents 3 to 6 before the Karnataka Appellate Tribunal, is a Special order, whose source of power is traceable to Section 79(2) of the Act and is therefore law. No grievance can be, and is, made as to the procedure followed by the Deputy Commissioner in withdrawing the kumki privilege. Thus the order of the Deputy Commissioner withdrawing the Kumki Privilege of the respondents 3 to 6 herein is in accordance with law.

9. The reason given by the Revenue Appellate Tribunal for setting aside the order of the Deputy Commissioner is whole by unsustainable. Consequently, the order of the Revenue Appellate Tribunal in Appeal 494/1989 is liable to be and is set aside dismissing the appeal filed by respondents 3 to 6. In the circumstances, the Writ Petitions are allowed.

