

(2011) 11 KAR CK 0381
In the Karnataka High Court
Case No : Writ Petition No. 22221 of 2004 (LR)

Sri J. Rama

APPELLANT

Vs

M. Vittal Bhat and Others

RESPONDENT

Date of Decision : 25-11-2011

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 12 (A), 48 A, 79 A, 79 A (2) (ii), 79 B

Citation : (2011) ILR (Kar) 5637

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : V.R. Prasanna and Sri M. Thimmaraya Swamy, for the Appellant;
Sanath Kumar Shetty Advocate for R1 to R11 and Smt. Manjula Kamadalli, HCGP
for R12 to R14, for the Respondent

Final Decision : Dismissed

Judgement

Ajit J. Gunjal

1. Smt. Manjula Kamadalli, learned High Court Government Pleader is directed to take notice for respondents 12 to 14. The subject matter of this writ petition is an agricultural land bearing Sy.No. 71/1A1 measuring 2 acres 86 guntas of Paduva village, Mangalore.

2. The petitioner makes an application in Form No. 7 u/s 48A of the Karnataka Land Reforms Act for grant of occupancy rights. On contest the said application was granted pursuant to the order dated 20.10.1981. On such grant, the petitioner mortgaged the property to an extent of 1 acre 46 cents in favour of the Corporation Bank for the purpose of development and improvement of the said agricultural land. The petitioner defaulted in the payment of the dues. The Bank filed a suit in O.S.No. 96/1976 on the file of the Civil Judge at Mangalore for recovery of the amount. On contest the said suit was decreed on 12.1.1982. Notwithstanding the decree the petitioner did not pay the decretal amount. The Bank-financial institution had no option but to initiate execution proceedings in

Execution Case No. 51/1978. In the execution proceedings, the property, which was mortgaged to the Bank to an extent of 1 acre 46 cents was brought to sale. The property was sold in public auction on 28.11.1980. The said sale was confirmed on 10.1.1982.

3. Incidentally, it is to be noticed that before confirmation of the sale the petitioner filed an application in I.A.No. 6 before the executing Court. An application was moved by the purchasers in I.A.No. 10 for delivery of possession before the Executing court. Another application was filed by the petitioner for recalling the applications. The Executing Court heard both the applications I.A.Nos. 10 & 12 and the application filed by the petitioner was dismissed and that of the respondents was allowed. Thus, directed delivery of possession. Not satisfied with this, the petitioner comes up to this Court by way of revision in C.R.P.No. 1691/1982 as against the order passed on I.A.No. 12. The said revision was not entertained. The Executing Court delivered the possession of the property in favour of the respondents. It appears, thereafter, a representation is given by the wife of the petitioner complaining that the auction sale of the land in question in favour of the respondents violates the provision of Section 79A of the Act.

4. Suffice it to note that the proceedings were initiated as against respondents u/s 83 of the Karnataka Land Reforms Act for alleged violation of the provision of Section 79A. The Assistant Commissioner pursuant to the order dated 30.5.1994 granted the request holding that the sale in favour of the respondents violates Section 79A of the Act and the sale is null and void and the land is forfeited to the Government. The respondent filed an appeal as against the order passed by the Competent Authority before the Karnataka Appellate Tribunal. The said appeal was allowed by the Tribunal and the proceedings initiated u/s 79A were set at naught. Aggrieved by the said order passed by the Tribunal, the petitioner is before this Court.

5. I have heard Mr. V.R. Prasanna, learned counsel appearing for the petitioner and Mr.Sanath Kumar Shetty, learned counsel appearing for the respondents.

6. Mr. V.R. Prasanna, learned counsel appearing for the petitioner submits that all the purchasers of the land are non-agriculturists and further the income of the purchasers is more than Rs. 2,00,000/- . He submits that the purchasers are none other than the employees of the Bank itself. Hence, in the circumstances, the sale is clearly hit by Section 79A of the Act.

7. Mr.Sanath Kumar Shetty, learned counsel appearing for the respondents submits that there is no violation of Section 79A of the Act inasmuch as the said provision is not applicable when the property, which is granted is brought to sale for recovery of the money advanced by the financial institution. He further submits that the fact that the purchasers who are the bank employees does not necessarily debar them from participating in the auction and purchase the land. He further submits that no material was placed by the petitioner before the

Competent Authority or before the Tribunal to show that the income of the purchasers was more than Rs. 2,00,000/- .

8. I have given my anxious consideration to the submissions made by the learned counsel appearing for the parties.

9. Apparently, the petitioner after the confirmation of occupancy rights by the land Tribunal mortgaged a portion of the property to an extent of 1 acre 46 cents in favour of the Corporation Bank to avail loan for development and agricultural purpose. The facts thereafter are also not in dispute inasmuch as the property was brought to sale and in the execution proceedings the respondents have purchased small bits of lands. It is also not in dispute that the matter had come up to this Court on the execution side and the sale was also confirmed. Not being satisfied with the failure of getting the sale set aside the petitioner ingeniously makes an application u/s 79A of the Act on the premise that the auction purchasers are not agriculturists and their income is more than Rs. 2,00,000/- .

10. It is to be noticed that Section 79A of the Act would fall under Chapter 5, which would deal with the restrictions on holding or transfer of agricultural lands. Indeed, Section 79A of the Act would speak about the acquisition of land by certain persons prohibited. Section 79A(2)(ii) would speak about a person or a family or a joint family shall be deemed to have an assured annual income of not less than rupees two lakhs from sources other than agricultural land on any day if such person or family or joint family had an average annual income of not less than rupees two lakhs from such sources during a period of five consecutive years preceding such day. Indeed, there are certain conditions, which are to be complied before a person can purchase the agricultural land. One of the conditions is that he must be an agriculturist. The prohibition of holding agricultural land by certain persons is to be found u/s 79B referable to a person cultivating the land personally shall be entitled to hold a land. Section 79C is referable to penalty for failure to furnish declaration.

11. It is to be noticed that Section 81 of the Act would control the provisions of Sections 79A, 79B & 80. Section 81(1) (b) would read as under:

The mortgage of any land or interest therein in favour of

(i) a co-operative society.

(ii) a financial institution.

12. Section 81(1)(c) is more relevant for our purpose, which would read as follows:

The sale of any land or interest therein referred to in clause (b) in enforcement of the said security.

13. Clause (b) (ii) is referable to a financial institution and clause (c) is referable to sale of any land or interest therein referred to in clause (b) for enforcement of the said security. The definition of financial institution as contemplated u/s 12A of

the Act, which includes Banking Company as defined in the Banking Regulation Act, 1949; the State Bank of India constituted under the State Bank of India Act, 1955; a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959; a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.

14. A perusal of the definition of financial institution with reference to Section 81(b)(ii) would clearly indicate that the said provisions of Section 79A in particular are not applicable when the property is brought to sale for enforcement of security.

15. Indeed, in the case on hand it is to be noticed that the land in question was mortgaged to the Bank, which is a financial institution as defined under the Act as well as under the Banking Regulation Act. The said property was brought to sale in public auction, which has been purchased by the respondents. Hence, I am of the view that having regard to the provisions of Section 81 of the Act, question of invoking Section 79A in the circumstances would not arise.

16. Another factor, which would weigh with this Court, is the inordinate delay in initiating the proceedings. Section 79C contemplates that the proceedings can be initiated sua motu or on a request made by the aggrieved party. But however, such initiation of proceedings u/s 79A is required to be done within a reasonable time. Indeed, the Act does not provide as to the limitation when the proceedings are required to be initiated. In the absence of any period of limitation, the requirement is that initiation of the proceedings will have to be within reasonable time. What is reasonable time is a matter, which is required to be considered with reference to the violation of the statute.

17. In the case on hand, it is to be noticed that the sale has taken place in the year 1980 and confirmation has taken place in the year 1982. But however, the proceedings are initiated in the year 1994, which would be after nearly 12 years. Indeed, in such circumstances, where limitation is not provided or not prescribed the general rule, which is applicable would be the initiation of proceedings within a period of one or two years at the maximum.

18. Indeed, the Apex Court in the case of Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, has observed thus:

Where no time limit is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time.

19. I am satisfied that in the facts and circumstances of the present case, the suo motu power u/s 79A of the Act has not been exercised within a reasonable time inasmuch as 12 years is too long period to be termed as reasonable period. Having said so, I am of the view that the question of interference does not arise. Petition stands rejected. Rule is discharged. Smt. Manjula Kamadalli, learned High Court Government Pleader appearing for respondents 12 to 14 is permitted to file memo of appearance within four weeks.