

(2009) 08 KAR CK 0089

In the Karnataka High Court

Case No : Writ Petition No"s. 55 and 14758 of 2006 and 9972 of 2007

Sri K.K. Kathare and Others

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 05-08-2009

Acts Referred:

Karnataka Co-operative Textile Mills Limited (Acquisition and Transfer) Act, 1986 —
Section 15, 4, 5, 8 (1), 9

Citation : (2009) 08 KAR CK 0089

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : D. Ramdas and Anitha Ravindran, in Writ Petition No. 14758 of 2006, D. Ramdas and Ramaswamy, in Writ Petition No. 9972 of 2007 and S.S. Havari, in Writ Petition No. 55 of 2006, for the Appellant; Deepak, for Respondent-2 in Writ Petition No. 14758 of 2006 and for Respondent-3 in Writ Petition No. 55 of 2006 and A.R. Sharadhamba, A.G.A. for Respondent-1 in Writ Petition No. 14758 of 2006 and for Respondents-1 and 2 in Writ Petition No. 55 of 2006, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—These petitions are heard and disposed of together as they arise under similar circumstances.

2. In writ petition 14758/2006 the petitioners' case is as follows:

The petitioners are joint owners of land in survey Nos. 123 and 124 beating CTS No. 470 ward No. 3, measuring about 5 acres 37 guntas at Mariyan Timmasagara, Hubli Taluk, Dharwad District. These lands were leased to M/s Southern Maratha Spinning and Weaving Company Limited, Hubli. The said leasehold rights were said to have been sold in favour of M/s New Gujarat Cotton Mills Limited, Calcutta in the year 1958. And in the year 1959 the said Company had, in turn, sold the leasehold rights in favour of the Karnataka Co-operative Textile Mills Limited, Dharwad, a Co-operative Society; In the year 1970 the lands were

sub-leased in favour of M/s G. Mahadevappa and Sons, a firm. In the year 1978, the mills closed down. In the year 1986, the State Government of Karnataka, in order to revive the Mills, enacted the Karnataka Co-operative Textile Mills Limited (Acquisition and Transfer) Act, 1986 (Act No. 29 of 1986) (hereinafter referred to as "the 1986 Act", for brevity) especially with that object. The Government thus took over the lease-hold rights alongwith the management of the mills in terms of a Notification dated 29.12.1987, issued u/s 8(1) of the said 1986 Act. However, inspite of the State Government's intervention, the company which was then incorporated under the Companies Act, 1956, became a sick unit and it was held by the Board for Industrial and Financial Reconstruction as an economically unviable unit under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. M/s Karnataka State Industrial Investment Development Corporation, a State Financial Corporation, was appointed as the selling agent to sell the assets of the company and the company was sought to be wound-up. A company petition was initiated before the Company Court in Company petition 149/1998. The same was allowed and the Company was ordered to be wound-up by an order dated 5.11.1998. The Official Liquidator thus had the custody of the properties of the company. Pursuant to the direction issued to Karnataka State Industrial Investment Development Corporation, by the Government of Karnataka - it had offered the assets of the company for sale, including the land belonging to the petitioners, of which the company had acquired only the lease-hold rights. The petitioners had thus challenged the action by way of a writ petition in WP 4590/1999. The petition was allowed, after contest, by an order dated 11.1.2001. This was affirmed in appeals, preferred by the State.

The petitioners had approached the Company Court and filed an application in CA 762/2003 in Company Petition 149/1998, seeking recovery of possession of the leased land. By an order dated 27.10.2005, the application was allowed with a direction to put the petitioners in possession of the land. The petitioners were also allowed to purchase the debris and machinery on the land for a total sum of Rs. 14.42 lakh. A Sale Certificate was issued to the petitioners in this regard. In this background, however, the State has enacted the Karnataka Co-operative Textile Mills (Acquisition and Transfer) (Amendment) Act, 2004 (Act 20/2005) (hereinafter referred to as "the 2005 Act" for brevity). The said Act envisages the acquisition of lands, held on lease for the purposes of the textile mills, with retrospective effect, from the date of the Parent Act. It is this which is under challenge.

3. In writ petition 55/2006, the case of the petitioners is as follows:

The petitioners are the joint owners of the property in survey Nos. 16,17,19B bearing CTS No. 99 measuring 14 acres 28 guntas of Mariyan Timmasagara, Hubli Taluk, Dharwad District. These lands had been taken on lease for the very textile mills referred to in WP.14758/2006 and the lease-hold rights have been similarly transferred - since the mills and appurtenant lands have been treated as

a composite unit at all times. The petitioners are similarly aggrieved by the 2005 Act. These petitioners are claiming recovery of possession of the lands.

4. In Writ Petition No. 9972/2007, the petitioner is the owner of land in survey No. 15 bearing CTS No. 98, Ward No. 3 measuring 8 acres 4 guntas of Mariyan Timmasagara Hubli Taluk, Dharwad District. The same was also leased to the Textile Mills and has undergone the same history of transfer of lease-hold rights. The sequence of events vesting with the 2005 Act applies to these lands as well. However, the petitioner had filed a civil suit in OS 260/2002 before the Court of the Additional Civil Judge, Hubli, seeking recovery of possession of the lands. The same was decreed on 20.12.2003. The State has filed an appeal against the same in RA 26/2007 which is said to be pending before the Court of the Civil Judge (Senior Division), Hubli.

The State has resisted these petitions on the legal principles involved and on the basis of the 2005 Act - as there is little dispute on facts or the sequence of events which are evidenced by documents or proceedings that are not in dispute.

5. It is contended on behalf of the petitioners that the 1986 Act provided for acquisition and transfer of the mills by the State Government in public interest and to ensure the continued production activity. The Act provided that the right and interest of the lessor and lessee in relation to the Mills stood transferred to the Government. It was stated that the effect of vesting would be that all assets, lease-hold rights and properties of the lessor and lessee would be deemed to be included in the mills and that such properties stood vested in the Government. It was provided that an amount of Rs. 446.59 lakh to be paid as compensation for the vesting of the mills in the Government.

The interest of the lessor, namely, Karnataka Co-operative Textile Mills Limited, at the time the 1986 Act was brought into force was only the lease-hold rights in the Immovable property - the title remained with the petitioners. Therefore, properties of the mills that stood vested under the Act, did not include the ownership of the land. This position was endorsed by this Court in the writ proceedings referred to above.

It is contended that the object of the Act was to revive the mills and render it a profit making entity. This effort failed though a sustained effort was made by the State Government for over a decade. The company ultimately having been ordered to be wound-up, the object of the Act was no longer relevant and the Act was rendered obsolete and had spent itself out. The Amendment Act seeking to amend an Act which is obsolete is therefore an exercise in futility and a blatant attempt to illegally acquire land that is no longer available for the benefit of the Textile Mills or the Company and the entity itself having been wound-up, the same is irrational and invalid.

It is contended that the amendment is brought only with a view to acquire the lands of the petitioner and to enable the sale of the same to ensure payment of dues to banks, private unsecured creditors and the Government itself. The object

of acquisition does not sub-serve any public purpose.

It is contended that the Amendment Act is not protected by Article 31C of the Constitution of India as it does not in any way give effect to any of the directive principles of State Policy. The Counsel for the petitioners places reliance on the following authorities in support of their case:

- a) Mahalakshmi Sugar Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others, ;
- b) Vimalben Ajitbhai Patel Vs. Vatslabeen Ashokbhai Patel and Others, ;
- c) Anuj Garg and Others Vs. Hotel Association of India and Others, ;
- d) Devinder Singh and Others Vs. State of Punjab and Others, ;
- e) Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others, ;
- f) Lachhman Dass Vs. Jagat Ram and Others, ;
- g) Bharat Petroleum Corpn. Ltd. Vs. Maddula Ratnavalli and Others, ;
- h) Devinder Singh and Ors. v. State of Punjab and Ors. 2007 AIR SCW 6692;
- i) State of Bihar and Others Vs. Project Uchcha Vidya, Sikshak Sangh and Others, ;
- j) Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, ;
- k) State of U.P. and Others Vs. Manohar, ;
- l) State of Tamil Nadu v. Arooran Sugars Limited (1977) 1 SCC 326;
- m) Union of India (UOI) and Others Vs. Tushar Ranjan Mohanty and Others, ;
- n) State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, ;
- o) Seervai Constitutional Law, II Edition - 44th Amendment - Extract;
- p) The State of Bihar v. Sir Kameshwar Singh AIR 1952 SC 252;
- q) Ranojirao Madhavrao Vs. State of Madhya Pradesh, .

The above are relied upon to emphasize the following propositions.

Any legislation made by the State to give effect to its legislative policy must not either be ultra-vires the Constitution of India or the Parent Act. The right to property is not only a constitutional right but also a human right. The procedure laid down for deprivation thereof must be scrupulously complied with. One of the essential ingredients warranting exercise of the power of eminent domain is public purpose. This purpose cannot be any different when legislative power is exercised under Entry-42 of List III of the Seventh Schedule to the Constitution of India. A Legislature cannot legislate to-day with reference to a situation that

obtained 20 years ago and ignore the rights accrued during that period. To do so would be arbitrary, unreasonable and a negation of history.

6. On the other hand, the learned Advocate General Shri Ashok Haranahalli appearing on behalf of the State submits as follows:

This Court had held in W.P.4227/1999, by its order dated 11.1.2001, that the lessor was not the owner of the land and having directed the State Government not to auction or sell the landed property of the Mills unless and until the ownership of the land is acquired by the Government in accordance with law.

The learned Advocate General clarifies that while enacting the 1986 Act it was assumed that the lands were owned by the lessor. The 1986 Act having also received the assent of the President as required under Article 31-C and Article 254(2), the objections of the Act indicates that the acquisition and transfer of the Mills was in public interest and to secure the proper management of the mill so as to sub-serve the interest of the general public by ensuring continuous manufacture and to ensure the employment of thousands of workmen. The Act was hence in accordance with Clauses (a) and (b) of Article 39 of the Constitution of India. Hence, the 2005 Act seeking to introduce a new definition (gg) "owner of land" and Sections 4, 5, 9, 10 and 15 of the Principal Act have been amended by inserting "owner of the land" after the words "lessor" and "lessee" wherever they appear. The petitioners are hence included to be covered under the provisions of the Act.

It is further pointed out that Section 9 of the Principal Act provides for payment of Rs. 446.59 lakh deposited by the State Government with the Commissioner of Payments to settle the claims of all concerned such as, Secured and Unsecured Creditors of the Company as well as the petitioners herein. It is contended that the above amount corresponds to the valuation of all assets of the Company, inclusive of the landed property, the said valuation is made even prior to the coming into force of the 1986 Act, as the valuation so arrived at finds mention in the said Act itself u/s 9 thereof. The learned Advocate General would further point out that the language of Section 4 and Section 5 of the 1986 Act are unambiguous and wide in their application. The transfer and vesting of the Mills, including the ownership of the lands in favour of the Government is in absolute terms. Therefore, the 2005 Act seeking to amend certain provisions of the Parent Act was warranted as a matter of form, to more particularly indicate the intention and purport to include the acquisition of the interest in land under the Parent Act which was already manifest. And the same was also warranted in the light of the view expressed by this Court in the earlier writ proceedings. The lacuna if any stands cured - the petitioners are also provided with adequate and just compensation which is in deposit with the Commissioner of Payments and hence the contention that the 1986 Act has spent itself out and the 2005 Act was invalid etc., are not tenable. Reliance is placed on the following authorities:

a) Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and

Another, ;

- b) Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, ;
- c) Utkal Contractors and Joinery (P) Ltd. and Others Vs. State of Orissa, ;
- d) State of U.P. Vs. Agra Electric Supply Co. Ltd. and Others, ;
- e) Union of India Vs. Elphinstone Spinning and Weaving Co. Ltd. and Others etc., ;
- f) Commissioner of Income Tax, Bhopal Vs. Shelly Products and Another,
- g) Bakhtawar Trust and Others Vs. M.D. Narayan and Others, ;
- h) Shri Chaman Singh and Another Vs. Srimathi Jaikaur, ;
- i) Bhubaneshwar Singh and Bimla Devi Poddar and Others Vs. Union of India (UOI) and Others, .

The above are cited to emphasize and demonstrate that the settled view of the Apex Court as regards legislation which contemplates the acquisition of property by the State in public interest is without question, in order to give effect to Article 39(b) of the Constitution of India and is hence protected by Article 31-C of the Constitution of India. The authorities cited above are also to support the proposition that where a statutory amendment seeks to clarify the legislation so as to remove doubts - the same would have retrospective effect. It is open to the Legislature to alter law, retrospectively, which may even result in altering the basis of an earlier judicial pronouncement.

7. In the above facts and circumstances before addressing the legality or the validity of the provisions of the 2005 Act, the sequence of events and the resulting position, vis-a-vis the rights over the landed property of the mills, is to be taken note of.

This Court had, at the instance of the petitioners who were the owners of part of the lands involved, in writ petition No. 4227/1999 and connected cases interpreted the provisions of the 1986 Act and held that the ownership rights of the land were not available for sale by the State Government under the Act. The said order passed on 11.1.2001 had attained finality. The above petition was filed in the wake of Karnataka State Industrial Investment and Development Corporation seeking to bring the lands to sale by public auction as the selling agent for the Board of Industrial Finance and Reconstruction which had opined in proceedings under the Sick Industrial Companies (Special Provisions) Act, 1985 that the Karnataka State Textile Mills company was not an economically viable unit and had recommended its winding-up by its minutes dated 6.7.1998, the same was received by the Company Court and numbered as Company Petition No. 149/1998. The company was promptly ordered to be wound-up by order dated 5.11.1998.

It is pertinent to note that the order of winding-up dated 5.11.1998 passed in

Company Petition 149/1998 is a brief order, produced as Annexure-F to WP No. 14758/2006, taking note of the report received from the Registrar, Board of Industrial Finance and Reconstruction and the statement of the Government Advocate on behalf of the State Government that the company will have to be wound-up. The Official Liquidator was directed to take all further steps.

Some of the petitioners herein had filed Company Application No. 762/2003 in the above Company petition contending that the land leased in favour of the company was under a perpetual lease deed and that the terms of the deed provided that the land would revert to the owners if the company is ordered to be wound-up - therefore prayed that the lands be handed over to the applicants.

The State Government which was a respondent therein had resisted the same on the ground that there was a proposal for acquisition of the said land by the Government and that the legislation in this regard was awaiting the President of India's assent. After taking note of this contention, the Company Court had, by an order dated 18.10.2004 in considering CA 106/2002 filed by the State, found that by an order dated 2.3.2000, passed in CA 56/1999, the Company Court had granted permission for the Divisional Commissioner, Belgaum to be appointed as the Liquidator of the Company. The post of Divisional Commissioner having been abolished - CA 106/2002 was filed seeking permission for the Deputy Commissioner, Dharwad District to be appointed in his place. The Company Court opined by its order dated 18.10.2004 that the Divisional Commissioner's appointment as liquidator in the first instance could only be construed and taken as appointment of an Assistant or Deputy Liquidator. As it is the responsibility of the Official Liquidator alone to over-see the winding-up proceedings. It was observed that as the Official Liquidator had never been allowed to take possession or control of the company - the company directed that the persons then in charge of the affairs of the company whether described as Managing Director or in any other capacity, hand-over the assets of the company to the Official Liquidator.

Subsequently there was a direction dated 20.10.2005 to ascertain the value of the buildings and machinery on the land - it was reported by the Official Liquidator that the same was totally valued at Rs. 14.42 lakhs. The applicants in CA 762/2002 expressed their willingness to purchase the same when the lands are to be handed over to them. The Company Court directed the Official Liquidator to receive the sum and deliver possession of the lands to the applicants, as per order dated 27.10.2005 in OLR 674/2005.

It was thereafter reported that the applicants in CA 762/2003 had been put in possession of the lands - accordingly the said application stood disposed of by order dated 11.11.2005.

The petitioners in WP No. 9972/2007 are yet to take steps to seek possession of their lands.

The petitioners in WP 55/2006 had filed a Civil Suit in OS.260/2002, seeking

recovery of possession and the same has been decreed as on 20.12.2003 and is pending in appeal preferred by the State Government against the same. In the above background, Act No. 20/2005 having received the assent of the President of India u/s on 24.6.2005, it is apparent that there is an absence of cohesion in the conduct of the State Government and the obviously belated legislation in respect of a company that was ordered to be wound-up as on 5.11.1998. The said Amendment Act is oblivious to the said circumstance.

While on the other hand, the State Government has conceded the possession of the assets of the company to the Official Liquidator and has also conceded the delivery of possession of the lands of some of these petitioners as already referred to hereinabove.

There is no initiative on the part of the State Government to demonstrate that the several orders passed by the Company Court from time to time ought to be recalled or that the same are to be varied to bring the same in consonance with the Act. In the absence of any reference to the effect of the events and proceedings, upto the date of coming into force of the amendment Act - purported retrospectively of the Act is fictitious and futile. It would not have any effect on the consequences that follow by virtue of orders of competent Courts of law and by operation of law. A glaring circumstance that may be readily pointed out is that the effect of winding-up order is that the company ceases to be the beneficial owner of its assets despite its continuance as legal owner.

The 2005 Act does not efface the order of winding-up by the Company Court. The endeavor to include the ownership of lands belonging to third-parties with effect from the date of coming into force of the 1986 Act by enacting the 2005 Act is therefore an exercise in futility.

In the words of the Supreme Court in the case of State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, :

The Legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing Laws but since the Laws are made under a written Constitution and have to conform to the do's and don'ts of the Constitution neither prospective nor retrospective Laws can be made so as to contravene Fundamental rights. The Law must satisfy the requirements of the Constitution to-day taking into account the accrued or acquired rights of the parties to-day....

A Legislature cannot legislate to-day with reference to a situation that obtained 20 years ago and ignore the march of events and the Constitutional rights accrued in the course of the 20 years. That would be most arbitrary, unreasonable and a negation of history.

Therefore, it is patent that the impugned legislation is a nullity. Accordingly, the writ petitions are allowed. The Karnataka Co-operative Textile Mills (Acquisition and Transfer) (Amendment) Act, 2004; (Act No. 20 of 2005) is null and void as

the same is inconsistent with the Constitution of India.