

(2007) 09 KAR CK 0064

In the Karnataka High Court

Case No : W.A. No's. 1936 and 2202 of 2005

Sri NI PRA Channabasava Deshikendra Swamigalu
Matadhipathigalu Kannada Mutt

APPELLANT

Vs

C.P. Kaveeramma and Others
 C.P. Kaveramma and
Others Vs The Thasildar, N. Channabasava Deshikendra
Swamigalu Matadhipathigalu Bettadapura Math and M.N.
Subba Rao, Thashildar Now Retired

RESPONDENT

Date of Decision : 12-09-2007

Acts Referred:

Karnataka Certain Inam Abolition Act, 1977 — Section 4 (1) (2) (a), 4 (1) (2) (b)
Karnataka Land Reforms Act, 1961 — Section 41

Citation : (2008) ILR (Kar) 805 : (2008) 3 KarLJ 560

Hon'ble Judges : L. Narayanaswamy, J;K. Sreedhar Rao, J

Bench : Division Bench

Advocate : Jayakumar S. Patil Associates in WA Nos. 1936 and 1941/2005 and H.R. Vasudha and B.C. Rajeeva, in WA Nos. 1936 and 1946/2005 and A.K. Subbaiah and A.S. Ponnanna, in WA No. 2205/2005, for the Appellant; A.K. Subbaiah and A.S. Ponnanna, in WA Nos. 1936 and 1946/2005, A.K. Subbaiah, for R1 to R5 in WA No. 1941/2005 and G.S.V. Associates for C/R2 in WA No. 2202/2005, for the Respondent

Judgement

1. All the three appeals arise out of the common order. Hence all the appeals are considered together for common disposal.

2. The lands bearing Sy. No. 9, 10, 12 & 13 of Bettigeri village are inam lands belongs to the appellant Mutt governed by Karnataka Certain Inam Abolition Act, 1977, hereinafter referred to as the Act-1977. The appellant in the first instance by a registered deed dated 1/3/1955 created usufructuary mortgage of the land to the extent of 175 acres 60 cents and in the second phase usufructuary mortgage is created by registered deed dated 5/4/1967 to an extent of 17 acres. Both the registered deeds are executed in favour of predecessors of the respondents 1 to 5.

3. After the advent of "Act-1977", the appellant made an application for re-grant of the above lands, The respondents 1 to 5 also made an application for grant of occupancy rights, The Tribunal re-granted the lands to the appellant, The claim of respondents 1 to 5 for occupancy rights was rejected, The respondents 1 to 5 aggrieved by the orders filed W P No. 6379/93 challenging the order of grant in favour of the appellant. The respondents 1 to 5 however did not challenge the order rejecting their claim for occupancy rights in the Writ Petition.

4. In W.P. 6379/93, the learned Single Judge found that the appellant is not entitled to the re-grant under the provisions of the "Act-1977", The. Usufructuary Mortgage created in favour of predecessors of respondents 1 to 5 is held to be extinguished by the provisions of the "Act-1977" and directed that the lands should vest in the Government.

5. The appellant filed W.A. No. 5689/97, challenging the order of learned single Judge. The respondents 1 to 5 filed W A No. 5816/1997 challenging the order of the learned Single Judge. The Division Bench allowed the appeal of the appellant and held that the want made in favour of the appellant is valid in law. It is also held that the appellant is only in constructive possession and that respondents 1 to 5 are in actual physical possession by virtue of the usufructuary mortgage. The order of the learned Single Judge directing vesting of the lands in Government was also set aside.

6. The appellant moved respondent No. 6 for delivery of possession of the above lands by evicting respondents 1 to 5. The respondent No. 6 issued notice to respondent 1 to 5 and there after passed an order dated 28,8,2004 u/s 41 of the Land Reforms Act directing eviction of respondents 1 to 5.

7. The respondent 1 to 5, aggrieved by the said order filed one set of Writ Petitions challenging the order at Annexure-B passed u/s 41 of the Karnataka Land Reforms Act. In the other set of Writ Petitions the respondents 1 to 5 challenge that the notice at Annexure-D and the order at Annexure-B is illegal and that there is no issuance of notice and the order is passed without any opportunity to the respondents and without enquiry.

8. In the Writ Petitions filed by respondents 1 to 5 the learned Single Judge found that the Tahsildar has not properly conducted the enquiry. Hence set aside, the (sic) order at Annexure-B and remanded the matter to Tahsildar for fresh enquiry, The learned Single Judge further directed that respondents 1 to 5 should be reinducted into possession of the above lands subject to the final results of the enquiry. The appellant aggrieved by the orders of learned single Judge has tiled 3 separate appeals. The respondents 1 to 5 aggrieved by the order of remand have tiled W.A. 2202/05.

9. The contentions canvassed by both the parties before this Court involve the following points for determination:

(i) Whether the Tahsildar has no jurisdiction in respect of the lands in question to

initiate proceedings u/s 41 of the Karnataka Land Reforms Act?

(ii) Whether vesting of the lands with the Government under Karnataka Certain Inams Abolition Act has the effect of obliterating the usufructuary mortgage created in favour of R-1 to R-5 and whether the usufructuary mortgage does not revive after the re-grant is made in favour of the Mutt?

10. It is not in dispute that the lands are governed by the "Act-1977" and that the usufructuary mortgage is validly created prior to in the advent of "Act - 1977" in favour of predecessor of the respondents 1 to 5.

11. The relevant provisions of Section 4-(1)(2)(a) & (b) of Karnataka Certain Inam Abolitions Act of 1977 are extracted herein for convenient reference:

Section 4: Abolition, vesting of inams and the consequences thereof,-

(1) Notwithstanding anything contained in any contract, grant or other instrument or in any decree or order of Court or in any other law for the time being in force, with effect from and on the appointed date, the inam tenure of all inams and minor inams to which this Act applies u/s 2 shall stand abolished.

(2) Save as otherwise expressly provided, in this Act with effect from and on the appointed date, the following consequences shall ensue, namely,-

(a) the provisions of the Act relating to inams of alienated holdings shall be deemed to have been repealed in their application to inam or alienated holding and the provisions of the Act and all other enactments applicable to unalienated villages or lands shall apply to the said inams or alienated holding;

(b) all rights, title and interest vesting in the inamdar including those in all communal lands, cultivated lands, uncultivated lands, whether assessed or not, waste lands, pasture lands, forests, mines and minerals, quarries, rivers and streams, tanks and irrigation works, fisheries, and ferries shall cease and be vested absolutely in the State Government, free from all encumbrances;

12. It is the contention of Sri Jayakumar S Paul that the effect of Section 4 declares that all the encumbrances created on the land get extinguished and that lands will vest in the State free from all encumbrances. Section 10 of the "Act-1977" protects the rights of transferee unless it relates to lands granted u/s 5. In the instant case, the lands are granted u/s 5. Therefore, the respondents 1 to 10 as transferees cannot claim any benefit u/s 10, When once the lands vest in Government free from all encumbrance the appellant becomes absolute owner of the property by virtue of regrant and that the earlier encumbrance created viz., usufructuary mortgage created does not get revived.

13. The close reading of the provisions of Section 4(2)(b) declares categorically that after passing of the Act, the inam lands stand vested absolutely in the State Government free from all encumbrance. The provisions of the Act, however, is silent with regard to the position whether the encumbrance created earlier to abolition of inam get revived after the re-grant. The Full Bench of this Court in

Syed Bhasheer Ahamed and others Vs. State of Karnataka and others, has held that alinee who have purchased the land between the period 1.2.1963 to 7.8.1978 are not entitled to seek regrant in his own name under the Karnataka Village Officers Abolition Act, 1961 herein after called "Act-1961" but his right is only to claim the benefit of doctrine of feeding of the grant by estoppel envisaged in Section 43 of the T.P. Act, The "Act-1961" came to be amended with effect from 7.8.1978 declaring that all alienations subsequent to 7.8.1978 are illegal and that the aliens do not get any benefit and they are deemed to be unauthorised holders liable for eviction.

14. The provisions of Section 43 of the T.P. Act are extracted hereunder for convenient reference:

43. Transfer by unauthorised person who subsequently acquires Interest in property transferred.- Where a person fraudulently or erroneously represents that he is authorized to transfer certain immovable property or professes to transfer such property for consideration such transfer shall at the option of the transferee operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Sri Jayakumar S. Patil strenuously contended that Section 43 has no application to the facts because the primary requisite of fraud or erroneous representation which is an essential ingredient for invoking Section 43 is absent. The Mutt had created usufructuary mortgage without any fraudulent or erroneous representation, The predecessors of respondents 1 to 5 were fully aware of the fact situation that the land is an Inam land and that the Mutt had no absolute rights of ownership. Therefore Section 43 does not apply and that respondents 1 to 5 cannot canvas the doctrine of feeding the grant by estoppel to contend that usufructuary mortgage gets revived after regrant.

15. On thorough consideration of the Section 4(2)(b) we find that there is no express or implied provision to hold that after regrant the encumbrance created would not get revived, Under the Section 4(2)(b), the inam land after passing of the "Act-1977" shall stand vested in the State Government free from all encumbrance and that the transferee cannot enforce their contractual rights against the Government. Section 4(2)(b) is silent with regard to contractual rights of the alinee after regrant in respect of alienation validly created prior to vesting in favour of Government u/s 4(2)(b). The provisions of Section 43 of the T.P. Act makes it clear that when a person with imperfect title transfers the property for consideration and subsequently the transferor's title becomes perfect in law, the transferee is entitled to enforce the terms of the contract by equitable doctrine of feeding the grant by estoppel. The contention that there is no fraud or erroneous representation in the instant case is untenable. The appellant was aware of the fact that the Mutt is not the absolute owner of the

property but technically in the eye of law was in permissive possession. The terms of inam did not prohibit alienation, the Mutt being aware of its imperfect right over the land has created usufructuary mortgage for a period of 99 years. Therefore it cannot be argued that Section 43 does not attract the facts of the case. When there is no express prohibition in the provision of the "Act-1977" regarding the revival of contractual rights of parties created prior to the passing of "Act-1977" and in view of the provisions of Section 43 of the T.P. Act, it is inequitable in the eye of the law to hold that after regrant in favour of inam holder, the contractual commitments between the inam holder and the alienee created prior to the passing of "Act-1977" would not revive. Accordingly the contra contention of the appellant is rejected. In that view, the usufructuary mortgage created by the Mutt in favour of predecessors of respondents 1 to 5 would stand revived after the regrant and the Mutt is bound by the contractual terms of usufructuary mortgage.

16. The existence of tenancy rights and relationship of landlord and tenant is a necessary pre requisite for invoking jurisdiction u/s 41 of the Karnataka Land Reforms Act. In the present case none of the prerequisites exists for initiating proceedings u/s 41 by respondent No. 6. The provisions of Section 130 of the Karnataka Land Reforms Act also gives jurisdiction to the Tahsildar for evicting the persons unauthorisedly occupying or in wrongful possession of any land only if the provisions of Karnataka Land Reforms Act apply to the land in question. In the instant case, under no circumstances, we find that the provisions of Land Reforms Act apply to the lands in question. In that view, the exercise of jurisdiction by the Tahsildar under the provisions of Land Reforms Act for evicting respondents 1 to 5 is bad in law and without jurisdiction.

17. Accordingly, impugned orders made at Annexure-B & D are quashed. In view of the above reasons and discussions, the order of remand is unwarranted, Writ Appeal Nos. 1936, 1941 and 1946/2005 are dismissed. Writ Appeal No. 2202/2005 is allowed.

Effect of the order is stayed for six weeks.