

(2000) 12 KAR CK 0010
In the Karnataka High Court
Case No : Writ Petition No. 11696 of 1997

Sri. Subramanya Iyer

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 06-12-2000

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 4, 5, 55, 61

Citation : (2001) 1 KCCR 313

Hon'ble Judges : Tirath S. Thakur, J;K. Sreedhar Rao, J

Bench : Division Bench

Advocate : M.R. Rajagopal, for the Appellant; Jayakumar S. Patil, for C. Shivakumar, for Respondents Nos. 6 to 11, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedhar Rao, J.—The Petitioner claims to be espousing the cause of General Public has filed petition challenging the order of the Tahsildar, Shimoga, wherein the Tahsildar has passed an order in Annexures-K and L by giving retrospective effect to Form No. 10 relating to grant of occupancy rights in respect of Sy. Nos. 176, 186, 187 and 188 of Mandali village, Kasba Hobli, Shimoga Taluk u/s 55 of the Land Reforms Act. The material facts disclose that the 6th Respondent was granted occupancy rights by the Land Tribunal, Shimoga in respect of the aforesaid land by an order dated 5.3.1975. Form No. 10 u/s 55 of the Act was granted on 16.4.1984. The Tahsildar by the impugned order at the instance of the 6th Respondent gave retrospective effect to Form No. 10 with effect from 25.11.1980, the date on which the amendment to Section 55 came into effect. Under the terms of Form No. 10, the grantee is prohibited from alienating the land for a period of 15 years. The 6th Respondent said to have sold the lands within the prohibited period under the following registered document:

Document No. Sy. No.

(a) 2523/1995-96 186 25.75 Item No. 1 in Annexure-F (b) 2634/1995-96 186

25.50 Item No. 1 in Annexure-E (c) 2640/1995-96 187 0.27 Item No. 3 in Annexure-D (d) 2629/1995-96 187 0.38 Item No. 1 in Annexure-D (e) 2638/1995-96 186 0.11 Item No. 2 in Annexure-D (f) 2521/1995-96 186 50.100 Item No. 1 in Annexure-H (g) 2636/1995-96 186 25.75 Item No. 2 in Annexure-E

2. The learned Counsel for the Respondent relied on the Division Bench Ruling of this Court in Vijayakumar Shankarayya Sardar Vs. State of Karnataka, , wherein it has been held thus:

Whenever an Amended Act has to be applied subsequent to the date of amendment, the various unnamed provisions of the Act have to be read along with the amended provisions "as though they are part of it". The amended part of the provision having got incorporated into the Act the provision of Section 79A of the Act as such should be read. Section 79A of the Act has the opening words "on and from the commencement of the Amended Act". The amended Act is defined to be Act 1 of 1974 which came into effect from 1.3.1974. From that date, no one can acquire an agricultural land if his income from sources other than agricultural lands is in excess of Rs. 50,000/-. The interpretation to be placed on Section 79A of the Act is only by reference to the entire provisions of the section as amended by Act 1 of 1991 and it must be held that the said words "Rs. 50,000/-" as always being there in the enactment because the language of the section permits no other construction.

The aforesaid ratio was laid down in the context when the retrospective effect of the provisions of 79 of the Karnataka Land Reforms Act was under consideration. The Counsel for the Respondent placing reliance on the aforesaid ratio by analog, contended that the said ratio also applies to the present amendment to Sections 55 and 61 of the Land Reforms Act and the amendment has a retrospective effect and the date of amendment by way of substitution relates back to the date of the amendment w.e.f. 25.11.1980.

3. The Counsel also referred to the latest amendment to the provisions of Section 61 by Karnataka Act No. 34 of 1998 with effect from 5.12.1998 which omits words, "from the date of certificate u/s 55 is issued" and substitutes the words "from the date of the final order" under Sections 4 and 5 of the Act of Section 48A".

4. The Counsel for the Petitioner relied on the Ruling of the Supreme Court in Ramkisto Mandal and Anr. v. Dhankisto Mandal, 1969 SC 342, in the facts of the case u/s 27 of the Sonthal Praganas Settlement Regulation 3 of 1872, a person was prohibited from transfer of holding of a raiyati lands either by sale, lease or by any other contract or agreement. A widow having interest in the raiyati lands covered under the said regulation transferred the land by some other lands in exchange. The widow has only life estate in the property. It was contended that transaction of exchange is also prohibited u/s 27 of the Regulation 3 of 1872. The Supreme Court upheld the contention and held that although the said

Regulation 3 repealed subsequently. However, as on the date of transaction Section 27 of the Regulation was in force and therefore, the transaction of exchange was held to be bad.

In the context of the said facts, the Supreme Court held thus:

It is true that Sections 27 and 28 of the Regulation were repealed by the Santal Tenancy (Supplementary Provisions) Act, 14 of 1949. But Section 27 was in force when the said transaction of exchange was made and governed the transaction made by Nilmoni Dasi and Premmoyee Dasi. That transaction being invalid and void, the fact that Section 27 was subsequently repealed made no difference as the repeal could not have the effect of rendering an invalid and void transaction a valid and binding transaction.

5. Based on the said ratio, it was contended that as on the date when Form No. 10 in question was issued on 16.4.1984 to the 6th Respondent, the law envisaged under Sections 55 and 61 of the Land Reforms Act declares the date of issuance of Form No. 10 to be the date of reckoning and the law which stood in force at the time of grant of Form No. 10 in question was to alone govern the situation and if it is so held the transactions in question would come within the prohibited period of 15 years. The argument put forth by the Counsel for the Petitioner does not appear to carry any merit.

7. The amendment to Section 55 of the Act was brought about with effect from 25.11.1980 and that the Tahsildar has issued Form No. 10 on receipt of the final orders from the Land Tribunal. u/s 61 the period of 15 years to be reckoned from the date of certificate issued u/s 55 of the Act. Since the amendment is by way of a substitution in view of the Ruling of this Court in Vijayakumar Shankarayya Sardar Vs. State of Karnataka, . The said ratio would apply to the amendment made to Section 55 by way of substitution. The Tahsildar is obliged to issue certificate immediately on receipt of the final orders of the Tribunal and the date of issuance of Form No. 10 and receipt of the final orders are simultaneously co-incide. In view of the said position of law, the Tahsildar was right in giving retrospective effect to Form No. 10 granted with effect from 25.11.1980 instead of the actual date of issue i.e., 16.4.1984.

8. Further by Act 34 of 1998, the amendment is brought to Section 61 of the Land Reforms Act. The statement of objections and reasons and Section 2 of the Act 34 are extracted here under for benefit of reference:

It is considered necessary to amend the Karnataka Land Reforms Act to provide,-

(i) for reckoning the period of 15 years for transfer of the land for which occupancy rights have been given under this Act from the date of final order passed by the Tribunal u/s 48A instead of from the date of issue of certificate u/s 55;

(ii) that not only the Special Deputy Commissioner but any other Officer authorised by the State Government may grant the land under this section;

(iii) that the process of granting land may be completed within one year from the date of commencement of the Karnataka Land Reforms (Amendment) Act, 1997.

(iv) that the land which shall be granted together with the land already held by such person shall not exceed 2 hectares of D class of land or its equivalent and no land which lies within the limits of the area specified in the Table shall be granted.

Section 2: Amendment of Section 61-In Sub-section (1) of the Karnataka Land Reforms Act, 1961 (Karnataka Act 10 of 1962) (hereinafter referred to as the Principal Act) for the words and figures "from the date of the Certificate u/s 55 is issued" the words, brackets, figures and letters "from the date of the final order passed by the Tribunal under Sub-section (4) or Sub-section (5) or Sub-section (5A) of Section 48A" shall be substituted".

9. The rationale in bringing about the uniformity about the application of the restriction clause u/s 61 to the date of final order of the Tribunal appears to be with a significant purpose to avoid any possible anomalous situation. If the effect of restriction on alienation for a period of 15 years is made applicable from the date of receipt of final order by the Tahsildar upon which the Tahsildar shall issue Form No. 10 and when there is a gap between the date of final order and issuance of Form No. 10 u/s 55 many a time, it may create situation where some of the grantees may suffer the rigour of non-alienation of clause more than the envisaged period of 15 years. Therefore, to obviate such anomalous situation, the amendment to Section 61 is brought out by Act 34 of 1998 which makes the uniform application of the effect of non-alienation clause to be reckoned from the date of the final order of the Tribunal irrespective of the date of grant of Form No. 10 u/s 55.

Therefore, from the latest amendment to Section 61 of the Land Reforms Act, the date of reckoning for the commencement of restrictive covenant of alienation is deemed to be the date of final order of the Tribunal irrespective of the date of grant of Form No. 10. The said amount has retrospective effect with effect from 1.3.1975. Although at the time when the impugned order came to be passed, Section 61 of the Land Reforms Act was not yet amended by the Act No. 34 of 1998. But nonetheless, by amendment to Section 55 by the Act 3 of 1982, retrospective effect was given with effect from 25.11.1980. In view of the said amendment, it cannot be said that the Tahsildar was wrong in giving retrospective effect to Form No. 10 in question with effect from 25.11.1980. However, by subsequent amendment to obviate anomalous and discriminative situation. The amendment is brought to Section 61 making it uniform that the final order of the Tribunal would be the reckoning date. Therefore, in view of the amendments to Sections 55 and 61 noticed above, the act of Tahsildar cannot be held to be illegal and the alienation also cannot be held to be illegal.

In view of the reasons and discussions made above without reference to the locus-standi of the Petitioner, we see that the petition lacks merit and same

deserves to be dismissed with costs of Rs. 1,000/-.