

(1991) 06 KAR CK 0040

In the Karnataka High Court

Case No : Writ Appeals No's. 1959 and 1960 of 1989

The State of Karnataka

APPELLANT

Vs

Gopalakrishna Nelli and others

RESPONDENT

Date of Decision : 04-06-1991

Acts Referred:

Karnataka Municipalities (Guidance of Officers, Grant of Copies and Miscellaneous Provisions) Rules, 1966 — Rule 39
Public Health Act, 1875 — Section 174
Transfer of Property Act, 1882 — Section 118, 54

Citation : AIR 1992 Kar 198 : (1991) 2 KarLJ 270

Hon'ble Judges : S. Mohan, C.J;N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : Sri N.K. Gupta, G.A. and Sri T.S. Ramachandra, for the Appellant; Sri Ramesh for Sri Kadidal Manjappa, for the Respondent

Judgement

1. The parties are referred to as arrayed in W.A. No. 1959; 1989.
2. The Government of Karnataka by its order No. HUD 352 TMI) 79 Bangalore, dated 5th of June 1981 accorded sanction to the proposal of Municipal Commissioner, City Municipal Council, Shimoga, to grant the Site No. 23/A measuring 47" x 60" in Mission Compound Area in lieu of site No. 11 measuring 57" x 100" in Hosamane Extension.
3. This exchange by the Municipal Commissioner was in favour of the third respondent G. Panchaksharan, Aggrieved by this, the first respondent preferred Writ Petition No. 16722/81. The principal contention before the learned single Judge was that the procedure set out in Rule 39 of the Karnataka Municipalities (Guidance of Officers, Grant of Copies and Miscellaneous Provisions) Rules 1966 (in short "the Rules") has not been followed. No doubt that takes within it, sale, lease or auction. Nevertheless, having regard to the Legislative intention, it must be so interpreted as to include exchange as well, otherwise the objects of the salutary provision like Rule 39 would be rendered nugatory. In opposition to this,

on behalf of the Municipality, the Government as well as the party G. Panchaksharan, it is urged that there is a vital distinction between sale and exchange as laid down in Commissioner of Income Tax, Hyderabad Vs. Motors and General Stores (P.) Ltd., Where, therefore, the Legislature has, only used the words sale, lease or auction, in the guise of interpretation the scope of rule cannot be enlarged. Further, "sale" is entirely different from an "exchange", the former involves a price while no such price is contemplated in the case of exchange. The Legislature must be attributed its wisdom when it has chosen to deal with the scope of Rule only to sale, lease or auction.

4. The learned single Judge, on a consideration of the above arguments, was of the view that Rule 39 of the Rules must be liberally construed in order to give effect to the intention of the Legislature. Further, he was of the view, when the Rule talks of sale, lease or auction, they are merely illustrative in character and it could not be considered exhaustive in nature; besides if these were not the object of the Rule, the property could not be scrumptiously dealt with without the general public having any say in the matter. In this view, he upheld the contention of the writ petitioner, who is respondent No. 1 in this writ appeal. However, he ultimately gave a direction as follows :

"With these observations, leaving the parties to agitate their rights in the appropriate forums, this Court can only direct that Annexure-D be quashed and all other questions settled elsewhere in accordance with law."

In so far as the interpretation has been held against the Government, this Writ Appeal (W.A. 1959,89) has been preferred while aggrieved by the directions contained in the concluding paragraph of the learned single Judge W.A, No. 1960/89 has come to be preferred. Therefore, both these appeals arise out of one and the same judgment. Any decision rendered by us with regard to interpretation on Rule 39 would govern the other appeal as well. Hence, we propose to lake W.A. No. 1959/1989 first.

5. In this case Mr. N. K. Gupta, learned High Court Government Advocate, strenuously urged that Rule 39 of the Rules speaks of only sale, lease or auction. The transfers are entirely different from an exchange. "Sale" as defined u/s 54 of the Transfer of Property Act totally differs from an exchange u/s 118 of the Transfer of Property Act. The former involves the element of price which price may be paid, part paid or part promised. But here, no such payment of price at all is contemplated. One property is exchanged in lieu of another property. No doubt, the property of the third respondent might have been acquired for laying the road. In view of that acquisition, when a property belonging to Municipality is given, they involve transfer of ownership without element of price. Therefore, where there is a specific exchange of two items, it is not open to the learned single Judge in the guise of interpretation to enlarge the scope of the Rule. The Legislature has chosen to use the specific transfers as sale, lease and auction. It must be attributed all wisdom. To hold, therefore, that the legislative intention is to include exchange, would amount to adding to the legislation in the guise of

interpretation. This is what has been criticised by Courts.

6. Lastly, it is submitted that where there is a clear distinction between two transfers namely sale and exchange, the learned Judge ought to have followed that ruling. In support of this reliance is placed on a decision in Commissioner of Income Tax, Hyderabad Vs. Motors and General Stores (P.) Ltd.,

7. Mr, T. S. Ramachandra, learned counsel for the first respondent, in meeting this, submission, urged the interpretation placed by the learned single Judge which brings about the true intention of the Legislature is unexceptionable. No doubt, Rule 39 of the Rules does not in specific terms say "exchange". However, one must have regard to the intention of the Legislature where a property belonging to the Municipality is sought to be exchanged that will also partake the character of sale and the general public must have a say in the matter. Even though, there is no specific inclusion of exchange, the rule must be read liberally so as to avoid the mischief of private treaties by the Municipality.

8. Even otherwise, a careful reading of the so-called "exchange" would clearly disclose that the market value of the property which was given in exchange to the Municipality is stated to be Rs. 15,000/-. Therefore, it must be regarded as sale.

9. Concerning Writ Appeal No. 1960/-1989, the argument is that the directions given were not warranted.

10. Neither the Municipal Council nor the beneficiary, under the impugned exchange, has preferred appeal.

11. In order to appreciate the rival contentions, we will now extract Rule 39 of the Rules :--

"39. Procedure in respect of lease, sale or auction.-- Save as otherwise provided in the Act or rules, when the Municipal Council proposes to lease, sell or auction any move-able or Immovable property, it shall give notice of such lease, sale or auction by :--

- i) affixing copies thereof on the notice board of the offices of the municipal council;
- ii) exhibiting copies thereof in all municipal reading rooms and places considered by the municipal council to be conspicuous within the municipality;
- iii) publication in a daily newspaper having wide circulation within the municipality;
- iv) by beat of drum or circulation of notice in the locality."

A reading of the above rule will clearly disclose that the procedure contemplated under the rule is to be followed only when the Municipal Commissioner proposes to lease, sale or auction. These transfers namely, lease or sale are the various kinds of transfers which are contemplated under the Transfer of Property Act.

Section 54 of the Transfer of Property Act deals with the sale of Immovable property. That sale involves a transfer of ownership in lieu of price which price may be paid, promised or part-paid or part-promised. What is essential, therefore, is there must be an element of price. That is axiomatic. In contradistinction to this, we go to "exchange" u/s 118 of the Transfer of Property Act. In that this element of price is totally absent because one property is exchanged in lieu of another. In other words, there is a mutual transfer of ownership and money is totally absent. That is clear from the following definition of Section 118 of the Transfer of Property Act :--

"When two persons mutually transfer the ownership of one thing for the ownership of another neither thing or both things being money only, the transaction is called an "exchange".

The definition, therefore, is as between day and night. This is precisely what is laid down by the Supreme Court in Commissioner of Income Tax, Hyderabad Vs. Motors and General Stores (P.) Ltd.,

"The presence of money consideration is therefore an essential element in a transaction of sale. If the consideration is not money but some other valuable consideration it may be an exchange or barter but not a sale. Both under the Sale of Goods Act and the Transfer of Property Act, sale is a transfer of property in the goods or of the ownership in Immovable property for a money consideration. But in exchange there is a reciprocated transfer of interest in the Immovable property, the corresponding transfer of interest in the movable property being denoted by the word "barter". The difference between a sale and an exchange is this, that in the former the price is paid in money, whilst in the latter it is paid in goods by way of barter."

11-A. The question now, therefore, is whether "exchange" could be included within the scope of this rule. We are afraid not. Where the Legislature has chosen to include only specific transfers like, sale, lease or auction, in the guise of interpretation, it is not open to us to add to the Legislation. The Legislature must be attributed all wisdom it possesses. Where, therefore, there is an ambiguity that is a different matter. But, here, we take it the Legislature knows the scope of transactions like sale, lease or auction and it also knows what an exchange is. Therefore, how could exchange be included?

12. This kind of judicial interpretation is what is deprecated. With regard to law of interpretation, the authorities are not wanting in this regard. We may usefully quote from Craies on Statute Law, Seventh Edition, pages 91 and 92. The relevant portions read thus :--

"It is not, however, competent to a judge to modify the language of an Act of Parliament in order to bring it into accordance with his own views as to what is right or reasonable. Boni Judicial est dicere, non jus dare. "No doubt", said Willes, J., in *Abel v. Lee* (1871) LR 6 365 the general rule is that the language of an Act is to be read according to its ordinary grammatical construction unless so

reading it would entail some absurdity, repugnancy, or injustice.....But I utterly repudiate the notion that it is competent to a Judge to modify the language of an Act in order to bring it in accordance with his views of what is right or reasonable."

An extreme instance of the application of this rule is to be found in *Young & Co. v. Mayor, of Leamington* (1882) 8 QBD 579 : (1883) 8 Comp Cas 517. Section 174 of the Public Health Act 1875 required contracts entered into by a sanitary authority for a sum over ₹50 to be under seal. The plaintiff executed works approved by the defendants under the supervision of their engineer, and under a contract in writing with the engineer which was not sealed by the Corporation. The Court of Appeal decided that the defendants were not bound by the contract, although they had had the benefit of it, on the ground that to hold otherwise would be to repeal the enactment. "It may be", said Lindley L.J., in (1882) 8 QBD 585 that this is a hard and narrow view of the law; but my answer is, that Parliament has thought it expedient to require this view to be taken, and it is not for this or any other court to decline to give effect to a clearly expressed statute because it may lead to apparent hardship....."

"In *R. v. Mansel Jones* (1889) 23 QBD 29 Lord Coleridge C.J. said that it was the business of the courts to see what Parliament had said, instead of reading into an Act what ought to have been said. This involves the assumption that the Act in question is intelligible (see 6 LQR 118). But the consequences of any other mode of construction would be to defeat the purposes of the Legislature. And in *Latham V. Lafone* (1867) LR2 Ex. 115 121 Martin B. said : "I think the proper rule for construing this statute is to adhere to its words strictly; and it is my strong belief that, by reasoning on long-drawn inferences and remote consequences the courts have pronounced many judgments affecting debts and actions in a manner that the persons who originated and prepared the Act never dreamed of." *Valentini v. Canali* (1889) 24 QBD 166 167, Lord Coleridge C.J. : "No doubt the words of the Infants Relief Act 1874 are strong and general: but a reasonable construction ought to be put upon them.....When an infant has paid for something and consumed or used it, it is contrary to natural justice that he should recover back the money which he has paid." And in *Coxhead v. Mullis* (1878) 3 CPD 439 Lord Coleridge C.J. said : "The tendency of my own mind.....always is to suppose that Parliament meant what Parliament has clearly said, and not to limit plain words in an act of Parliament by considerations of policy, if it be policy, as to which minds may differ and as to which decisions may vary." The object and policy of an Act are, however, often the basis of interpretation -- See Pp. 175, 176, Post."

Therefore, we conclude that "exchange" cannot be brought within the scope of Rule 39 of the Rules at all. If that be the position, it is not open to us to apply the liberal interpretation to include something which was not contemplated by legislation.

13. It may be true that, as contended by Mr. T. S. Ramachandra, learned counsel

for the first respondent, it may be laudable to include "exchange" where that property belonging to a public institution like Municipality cannot be frittered away or dealt with when the public having a say in the matter. But the laudability is one thing. Law is another. We look at the law, as it stands and interpret more so when it presents, no ambiguity whatsoever. Thereafter, we apply the law as we find it, not by enlarging its scope in the guise of its interpretation. Once such conclusion is arrived at, we have to necessarily hold that the impugned sanction by the Government is fully warranted and there was no reason to follow the procedure under Rule 39. The argument that failure to follow the procedure under Rule 39 of the Rules will vitiate the impugned sanction by the Government, has to be rejected and it is accordingly rejected.

14. In the result, we allow Writ Appeal No. 1959 of 1989.

15. Turning to Writ Appeal No. 1960/ 1989, Mr. T. S. Ramachandra, learned counsel for the appellant, submitted that under the scheme, this property was resolved by the Municipal Commissioner to be allotted in favour of the appellant herein namely the first respondent in the other Writ Appeal No. 1959 of 1989. If this were to be correct, all that the appellant need to do is to approach the Government praying for the adjustment of equity since that property, according to him, is now given to G. Panchaksharan. With this direction, Writ Appeal No. 1960 of 1989 is dismissed.

However, there shall be no order as to costs.

16. Order accordingly.