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(1994) 08 KAR CK 0041

In the Karnataka High Court

Case No : Writ Petition No. 17273 of 1993

T.L. Channegowda — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 10-08-1994

Acts Referred:
Constitution of India, 1950 — Article 226
Karnataka Land Revenue Act, 1964 — Section 70

Citation : (1994) ILR (Kar) 3092 : (1994) 4 KarLJ 564

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Udaya Holla, for the Appellant; H.H. Kaladgi, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Hari Nath Tilhari, J.—By this Petition under Article 226 of the Constitution of India, the petitioner has sought the following reliefs.-

(a) that the Karnataka Land Revenue (Amendment) Act 1993 (Karnataka Act No. 20 of 1993) be declared to be unconstitutional and void;

(b) issue a Writ of prohibition, prohibiting the respondents herein or their officers, men, servants, agents, subordinates or any one claiming through or under them from interfering with the right of the petitioner to excavate and transport granite from the lands fully set out in the schedule;

(c) to direct the respondents to pay costs.

2. The facts of the case in brief are that the petitioner has filed this Petition alleging that he is the absolute owner of the land mentioned in the schedule given at page 16 of the Writ Petition, describing the property in dispute as under: -

3. Land bearing Sy.No.83/7 of Thenganayakanahalli village, Sathanur Hobli,

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Kanakapura Taluk, in the Bangalore District measuring 4 acres and bounded as below :-

East by : Land of Kamalingaiah; West by : Land of K.Shivanna; North by : Land of Veerabasavaiah; South by : Lands of Gowramma & Kaialingegowda.Thus the petitioner has described the property in dispute by the survey number, area and very specifically by its description by boundaries. The petitioner has mentioned that he is the owner of this land. It is also alleged that in the revenue records the land is recorded in the name of the petitioner. The petitioner claims that he having got the right to excavate granite and other ordinary minerals as absolute owner thereof, as held by the Supreme Court and this Court in several Decisions, including the one given in W.P.No. 4563 of 1987, the Government or the opposite parties or their employees, agents or servants have got no right to interfere with the petitioner''s absolute right to excavate that. In this connection petitioner has referred to Section 38 of the Mysore Land Revenue Code. Section 70 of the Karnataka Land Revenue Act, 1964 has also been quoted. The petitioner''s case is that to get rid of the Judgments of this Court, the State Government enacted Karnataka Land Revenue Amendment Act, 1993 (Act No. 20 of 1993) and thereby amended Section 70 of the Karnataka Land Revenue Act and the expression ''Save as otherwise expressly provided under'' has been substituted therein for the words "Notwithstanding anything contained in". The petitioner''s case is that the said amendment of 1993 is null, void and ultra vires.

4. No counter affidavit has been filed. The learned Government Counsel has stated in the course of arguments that he has ascertained from the Tahsildar that the land is Patta Land.

5. I have heard learned Counsel for the petitioner Sri Udaya Holla and Sri H.H. Kaladgi, the learned Government Advocate.

6. The learned Counsel for the petitioner Sri Udaya Holla in support of his claim has relied on the Full Bench Decision of this Court in the case of State of Karnataka Vs. Dundamada Shetty, which has later on been followed by Single Judge of this Court, in support of his contention that amending Act introducing amendment in Section 70 of the Karnataka Land Revenue Act is ultra vires. The learned Government Counsel admitted that the amending Act has been held to be ultra vires and he submitted that Section 70 as unamended did not affect the right of the owners of Patta Land. He submitted that Section 70 of the Act only applies to the cases where the land has been transferred by lease by State and the ownership of the land vests in the Government, then the right in those cases to excavate granite are provided to vest in the State Government, but where claimant is himself the owner of the land and himself wants to excavate granite without creating lease in favour of any body, he is entitled to do that. The learned Government Counsel very fairly conceded that the case no doubt is covered by the Full Bench Decision, but tried to raise a technical plea and he did raise it though half heartedly, on the basis of the relief claimed in the Writ Petition and he submitted that relief No. 2 cannot be granted in the

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circumstances of the case, because according to well settled principles of law, according to learned Government Counsel, Writ of Prohibition can only be issued against judicial or quasi-judicial authorities.

7. I have applied my mind to the contention of the learned Counsel for the parties. As regards the technical plea, it is well settled principle of law that technicalities should not be allowed to obstruct the flow of the course of Justice. Rules of procedure are meant to advance the object and the course and the path of Justice. No doubt the relief claimed in the Writ Petition is mentioned as Writ of Prohibition and it is beyond doubt that a Writ of Prohibition can be claimed only in the matters of judicial or quasi-judicial nature against the judicial and quasi-judicial authorities. The real purport of the relief is that the respondents be restrained from causing any interference in any manner otherwise than law with the rightful and legal exercise of right by the petitioner to excavate and to transport the granite from the lands set out in the schedule. It is well settled principle of law that if a person is found to be entitled to get certain relief but the same has not been claimed by mistake, then he should not be deprived of the same and it is open to the Court to grant the relief he is entitled to, if found entitled to get in the circumstances of the case. The jurisdiction of the Court under Article 226 of the Constitution is also not limited to the specific relief mentioned therein, as is clear from the bare reading of the language of Article 226 of the Constitution, which says Court may issue Writs in the nature of such and such Writs and may also issue orders or directions in the nature thereof in the circumstances of the case to enforce Fundamental Rights and for other purposes. In this case the petitioner ought to have claimed Writ of Mandamus in the negative form that a Writ of Mandamus or order in the nature of Mandamus to be issued prohibiting and restraining the respondents or their officers etc., from interfering with exercise of the right of the petitioner to excavate granite from plots in dispute; or say directing the opposite parties not to interfere in any manner with petitioner''s right to excavate granite from land or plots in dispute. In that view of the matter, I do not find any force in this technical plea of State and do reject it. That as regards the question of vires of the Karnataka Land Revenue Amendment Act, it has been held by the Full Bench of this Court in the case of State of Karnataka v. Dundamada Shetty, at page-2665, the Full Bench has been pleased to observe as under :-

"This clearly shows that the Legislature wanted to introduce the Bill by which ownership rights of minor minerals like granite which were vesting in the pattadars had to be divested and were sought to be vested in the State and with that end in view, the amending provision was sought to be enacted. Once that conclusion is reached, result is obvious. It directly conflicts with and becomes repugnant to the Central Act, the Land Acquisition Act which is the law in force for the entire Nation. It is pertinent to note the acquisition of property is in the Concurrent List being item No. 42 in List III. When on this topic in the Concurrent List there is already Central Law in force and if State law is enacted on the topic of acquisition of a given type of property and if it is sought to be

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acquired without giving any compensation, it will be clearly repugnant to the Central Act regarding acquisition of private properties which guarantees payment of compensation at market value and also 30% solatium. That would directly attract Article 254 Sub-article (1) which states that if any provision of a law made by the Legislature of a State is repugnant to any provision of law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the ease may be, the existing law, shall prevail and the law made by the Legislature of the State shall to the extent of the repugnancy, be void, in that view of the matter, the impugned provisions will have to be declared to be void as per Article 254(1) of the Constitution of India. It is also to be noted that the extent of repugnancy is complete and not partial as the impugned provision of Section 70 of the Karnataka Land Revenue Act wholly deals with the subject of acquisition of minor mineral rights in granite which were tilt then vesting in the pattadars. It may be noted that Sub-article (2) of Article 254 cannot save this law as it was never reserved for consideration of the President and has not received his assent....."

Their Lordships further observed there is therefore, no escape from the conclusion that the impugned provisions of the Ordinance and the Act are void in the light of Article 254(1) of the Constitution of India and are not saved by Article 254(2) thereof. Lastly at page 2672, the Hon''ble Judges constituting the Full Bench ordered in that case as under :-

"Ail these Writ Petitions, in so far they have challenged vires of the Karnataka Ordinance 2/93 and the Karnataka Act No. 20/93 as amending Section 70 of the Karnataka Land Revenue Act 1964, will stand allowed by holding that the aforesaid Ordinance and the Act are void under Article 254(1) of the Constitution of India and they are struck down accordingly".

8. Once this has been so found by the Full Bench, the petitioner is entitled for grant of declaration in this Writ Petition as well to the same thing in the light of the Full Bench Decision. It being an admitted fact that the land in dispute mentioned in the schedule is patta land belonging to the petitioner as full owner thereof, in my opinion Section 70 of the Karnataka Land Revenue Act, does not apply to the land belonging to pattadar as owner who has not leased it out. Section 70 of the Karnataka Land Revenue Act reads as under :-

"70. Right to mines and mineral products to vest in Government -Save as otherwise expressly provided under any law in force before the commencement of this Act or under the terms of any grant made or of any other instrument of transfer executed, by or on behalf of the Government for the time being, the right to mines, minerals and mineral products, shall vest absolutely in the State Government and the State Government shall, subject to the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 (Central Act No. 67

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of 1957), have all the powers necessary for the proper enjoyment or disposal of such rights."

9. The pattadar of the land as a owner has got full right to excavate the granite. Section 70 of the Land Revenue Act, is confined in its application to the cases where the land in question belongs to and is owned by the State Government. That in cases where the land belongs to the State Government and in respect of that land certain grant has been made or instrument of transfer is executed to lease or the like on behalf of the Government for the time being, then in these cases Section 70 preserves the right to Mine, minerals and mineral products absolutely in the State Government, but where the land, as I have mentioned above, does not belong to Government nor any transfer in respect of that land is made on behalf of Government, Section 70 will not apply. Dealing with the rights of the pattadars of Ex Mysore State, in the context of Section 38 of Mysore Land Revenue Code. Their Lordships observed as under:-

"It is obvious that the Proviso carves a different field of its own and excludes it from the sweep of the main Section. Main Section sought to vest absolutely all sub-soil minerals in the Government in any land whatsoever which would include even patta lands. But the exception as carved out by the Proviso saves from its main sweep lime-stone granite and such other ordinary minerals. This Proviso recognises that lime-stone and granite are to be considered to be ordinary minerals and there would also be other ordinary minerals as the Government, by notification in the Official Gazette, may from time to time exempt from the scope of the Section, Granite, therefore, is by express terms of the 1st Proviso to Section 38 exempted from being vested absolutely in the Government. That necessarily means, that it remains vested in (third) persons other than the Government. It cannot be that vesting of sub-soil minerals can be in a state of suspended animation i.e., not vesting in State and also in turn not vesting in the occupants of lands wherein they are situated. That would obviously mean that they would vest in the occupants of the land. It is not possible to agree with the contentions of the learned Advocate General that this Proviso to Section 38 of the Mysore Code does not provide for any express vesting of granite in the occupants of patta lands and that it only fettered the rights and power of the Government to deal with the minor minerals like granite as an owner so long as Mysore Code operated."

10. Thus dealing with the Mysore Code, the Full Bench held that with respect to the minor minerals such as granite rights vested in the owner of the land. Their Lordships further observed, dealing with Section-70 of the Act as under :-

"We have seen that as per Section 38 of the Mysore Code right to minor mineral like granite situated in the sub-soil of the patta lands remained vested with the occupants of the land in Ex Mysore State territory. These vested rights were expressly saved by Section-70 of the Karnataka Land Revenue Act which was enacted in 1964. Therefore, it must be held that even after coming into force of the Karnataka Land Revenue Act, 1964, so far as the occupants of patta lands in

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Ex Mysore State lands territory which were subsequently comprised in Karnataka State were concerned, rights over the minor mineral granite found in the sub-soil of their patta lands continued to vest in them. They obviously vested in them as full owners as there was no statutory provision reducing any extent of full ownership in these minor minerals like granite which was conferred by Section 36 of the Mysore Code at least from 1888".

11. In view of this state of affairs of law as held by the Full Bench of this Court, I am of the opinion that the petitioner has got full rights with aspect to minor minerals and particularly with respect to the question of excavation of granite as such, is fully entitled to excavate it and to export it in accordance with the provisions of law and after having complied with the requirement of law and subject to grant of permit for transport only, entitled to transport the granite.

12. Having thus considered, I am of the opinion, that the Writ Petition deserves to be allowed. The Writ Petition is allowed and it is held that as held by the Full Bench of this Court, Karnataka Act No. 20 of 1993 is ultra vires of the Constitution. It is further directed that let a Writ of Mandamus be issued directing the respondents as well as their officers, agents, servants etc., claiming to be functioning on behalf of the opposite parties, not to interfere with the exercise of petitioner''s legal right to excavate the granite as well as his right to transport, subject to the provisions of law applicable in the matter of transport of granite.

13. Thus the petitioner is entitled and is declared entitled to excavate granite from the land mentioned in the schedule and as has been mentioned in the earlier part of the Judgment. Let a Writ of the nature as mentioned above be issued to the opposite parties, containing the above directions.

Cost of the petition are to be borne by the parties.

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