
(2004) 11 KAR CK 0047
In the Karnataka High Court
Case No : Writ Petition No. 32815 of 2003

Township Enterprises

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 16-11-2004

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 79 B, 80
Registration Act, 1908 — Section 22 A, 72

Citation : (2005) ILR (Kar) 717 : (2005) 1 KarLJ 385 : (2005) 1 KCCR 193

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : H. Srinivasa Rao, for the Appellant; M. Keshava Reddy, High Court Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—The owners of the agricultural lands in Sy. No. 39/2 measuring 18 guntas of Yelahanka Amanikere Village, Yelahanka Hobli, Bangalore North Taluk, offered the said property for sale. The petitioner, a non-agriculturist, agreed to purchase the lands, provided it secured the permission to divert the lands for use to residential purpose by the authorities, under the Karnataka Land Revenue Act, 1961 (for short, "Revenue Act"). The parties executed an agreement to sell, dated 28-3-2003, incorporating the aforesaid condition together with a stipulation that the subject-matter of conveyance would be converted land, the possession of which, is to deliver on execution and registration of the deed of conveyance. The landowners and the petitioner, on presenting the agreement to sell for registration, the 2nd respondent, by an order dated 28-3-2003, Annexure-B refused registration on the ground that registration of such a document was declared to be opposed to public policy by the Government Notification No. RD 56 MUNOSA 99, dated 20-5-1999, Annexure-A. Hence, this writ petition seeking to quash the notification Annexure-A insofar as it declares the registration of the agreement to sell, without delivery of possession of agricultural lands to non-agriculturist, as opposed to public policy

and to quash the order dated 28-3-2003, Annexure-B of the 2nd respondent. The petitioner has sought for a direction to the 2nd respondent to register the agreement to sell, Annexure-C.

2. Petition is opposed by the respondents by filing their statement of objections dated 26-5-2004, inter alia, contending that the agreement to sell agricultural lands, to a non-agriculturist, without the permission from the authorities under the Revenue Act, is declared as being opposed to public policy by the Government notification dated 20-5-1999, Annexure-A issued u/s 22-A of the Registration Act, 1908 (for short, "Registration Act"). In addition, it is contended that the writ petition is not maintainable, as the petitioner has not exhausted the alternative and efficacious remedy by way of an appeal, u/s 72 of the Registration Act, before the District Registrar.

3. Having heard the learned Counsels for the parties and perused the pleadings, the question for decision-making in this writ petition is, whether the declaration of registration of an agreement to sell between the landowner and a non-agriculturist, without delivery of possession of the agricultural lands, in terms of the Government Notification (Circular-I) bearing No. RD 56 MUNOSA 99, dated 20-5-1999, as being opposed to public policy, is valid and legal?

4. Sri H. Srinivasa Rao, learned Counsel for the petitioner drew my attention to the covenant in the agreement to sell, Annexure-C, which stipulates securing of permission to divert the use of the agricultural lands for use to residential purpose, as a sine quo non, for delivery of possession of the converted land, on the execution and registration of the deed of conveyance, to contend that the petitioner/purchaser did not acquire any right over the agricultural lands in question. The learned Counsel further contends, that Sections 79-B and 80 of the Karnataka Land Reforms Act, 1961 (for short, "Reforms Act") does not prohibit the execution and registration of an agreement to sell agricultural lands, without possession, to a non-agriculturist. In the premise of the aforesaid contentions, the learned Counsel would seek the interference of this Court to hold, as illegal and invalid, the declaration of the registration of an agreement to sell agricultural land, without delivery of possession, to a non-agriculturist, as opposed to public policy, in the Government notification dated 20-5-1999.

5. Per contra Sri Keshav Reddy, learned HCGP would maintain that the terms and conditions of the agreement to sell, Annexure-C, discloses the intention of the petitioner to evade Section 79-B of the Reforms Act and that it would amount to holding agricultural lands which is prohibited by Sections 79-B and 80 of the Reforms Act. In this view of the matter, it is contended that no exception can be taken to declaring the registration of the agreement to sell agricultural lands whether with or without possession, as being opposed to public policy by the Government notification, Annexure-A.

6. The Government notification dated 20-5-1999 declaring, the registration of the agreement to sell, as opposed to public policy, is at clause (d), to the said

notification, which reads thus:

"(d) Agreement to sell, sale, lease, mortgage with possession or otherwise of any agricultural land to an educational, religious, charitable institution society, trust company, association, other body of individuals or a co-operative society other than the co-operative farming society in contravention of Section 79-B of the Karnataka Land Reforms Act, 1961 subject to the exceptions and exemptions provided u/s 109 of the said Act and the rules framed thereunder".

7. From a plain reading of the said clause, what is discernable, is that the execution and registration of an agreement to sell agricultural lands with or without possession, in contravention of Section 79-B of the Reforms Act, is a document opposed to Public Policy.

8. Section 79-B of the Reforms Act, reads thus:

"79-B. Prohibition of holding agricultural land by certain persons.-(1) With effect on from the date of commencement of the Amendment Act, except as otherwise provided in this Act.-

(a) no person other than a person cultivating land personally shall be entitled to hold land; and

(b) it shall not be lawful for,

(i) an educational, religious or charitable institution or society or trust, other than an institution or society or trust referred to in Sub-section (7) of Section 63 capable of holding properties;

(ii) a company;

(iii) an association or other body of individuals not being a joint family, whether incorporated or not; or "

(iv) a co-operative society other than a co-operative farm, to hold any land.

(2) Every such institution, society, trust, company, association, body or co-operative society.-

(a) which holds lands on the date of commencement of the Amendment Act and which is disentitled to hold lands under Sub-section (1), shall, within 90 days from the said date furnished to the Tahsildar within whose jurisdiction the greater part of such land is situated a declaration containing the particulars of such land and such other particulars as may be prescribed; and

(b) which acquires such land after the said date shall also furnish a similar declaration within the prescribed period.

(3) The Tahsildar shall, on receipt of the declaration under Sub-section (2) and after such enquiry as may be prescribed, send a statement containing the prescribed particulars relating to such land to the Deputy Commissioner, who

shall, by notification, declare that such land shall vest in the State Government free from all encumbrances and take possession thereof in the prescribed manner.

(4) In respect of the land vesting in the State Government under this section an amount as specified in Section 72 shall be paid.

Explanation.-For purposes of this section it shall be presumed that a land is held by an institution, trust, company, association or body where it is held by an individual on its behalf".

9. This section prohibits the holding of agricultural land by certain persons and that the Tahsildar on receipt of the declaration under the section, after such enquiry as prescribed, is required to forward the particulars to the Deputy Commissioner, who shall take steps to declare the vesting of the land in the State and take possession thereof. This section does not prohibit a non-agriculturist to enter into an agreement to purchase agricultural lands, of course, without possession. When possession of agricultural lands is not delivered to the purchaser, a non-agriculturist, under the agreement to sell, it cannot be said that the purchaser is the holder of agricultural lands.

10. Section 80 of the Act bars the transfer of lands to non-agriculturists. A conjoint reading of Sections 79-B and 80 of the Reforms Act, would reveal that a non-agriculturist is prohibited, in law, to hold agricultural land, in contravention of the Reforms Act.

11. In the instant case the document Annexure-C, is neither a concluded contract of conveyance nor there is delivery of possession of agricultural lands to the petitioner, so as to be prohibited, by either, Section 79-B or 80 of the Reforms Act. The covenants in the agreement to sell stipulate that it is only after the agricultural lands, are permitted, by the authorities under the Revenue Act, to be diverted to be used for residential purpose, a conveyance of the converted lands is to be executed in favour of the purchaser, together with the delivery of possession. The agreement laced with such a condition cannot by any stretch of imagination be said to be prohibited u/s 79-B of the Reforms Act.

12. In this context, it will be useful to refer to the observations of this Court in the case of Ningappa Durgappa v Hanumantappa Balappa and Anr. 1982(1) Kar. L.J. 419 which reads thus:

"Section 80 of the Act does not prohibit an agreement of sale between the landowner and a non-agriculturist of the categories specified in that section purchasing an agricultural land. But he too can purchase after obtaining necessary permission as provided in the proviso. Hence, the agreement cannot be construed as one opposed to public policy or contrary to law".

(emphasis supplied)

13. In Shivannappa Sidramappa Prantur v Virupaxappa Allappa Bagi ILR 1980 Kar. 702 (DB) the observations of the Division Bench of this Court, in the

circumstances is apposite:

"An agreement to sell agricultural lands even to a non-agriculturist is not a contract in contravention of the provisions of the Act. Section 83 of the Act provides for an inquiry, by the Competent Authority in respect of any sale made in contravention of Section 80 and to declare such sale as null and void. Therefore, the said section applies only to completed transactions and not to any agreement to sell agricultural lands. Hence, Section 83 is not at all attracted to the facts of the present case. As there is no bar in the Act for entering into an agreement to sell agricultural lands, even in favour of a non-agriculturist the question as to whether the intending purchaser is an agriculturist or not at all a relevant issue for consideration in a suit for specific performance of the agreement to sell agricultural lands".

14. Thus, this Court has laid down the law that an agreement to sell agricultural lands to a non-agriculturist is not a contract in contravention of the prohibition of the Reforms Act, and there is no bar under the Reforms Act for entering into an agreement to sell agricultural land in favour of a non-agriculturist, and that such an agreement cannot be said, to be opposed to public policy or contrary to law.

15. In the light of the authoritative judicial pronouncements, supra, the notification, Annexure-A, to the extent it declares the document, being an agreement to sell agricultural lands, to a non-agriculturist, without delivery of possession, as being opposed to public policy, is invalid, arbitrary and cannot be sustained. As a consequence the refusal to register the agreement to sell, Annexure-C by order dated 28-3-2003, Annexure-B of the 2nd respondent is illegal.

16. The contention of the learned HCGP that the terms and conditions of the agreement to sell, Annexure-C, is in the nature of evading the law, in my considered opinion, is without merit and deserves to be rejected. Every citizen has a right to avoid law but not evade law. In the facts and circumstances of this case, the petitioner having entered into an agreement to purchase lands, laced with the condition that the contract would be concluded only if, the purchaser secures the permission, to divert the use of the agricultural lands for use to residential purposes, from the authorities concerned, cannot be said to be evading the law.

In the result, the writ petition is allowed, the Government Notification bearing No. RD 56 MUNOSA 99, dated 20-5-1999, Annexure-A, insofar as it declares the agreement to sell, without delivery of possession of agricultural lands, to a non-agriculturist, as being opposed to public policy, is quashed. Consequently the order dated 28-3-2003 of the 2nd respondent at Annexure-B is also quashed. A direction is issued to the 2nd respondent to register the agreement to sell dated 28-3-2003 Annexure-C, within a fortnight of receipt of a certified copy of this order.