

(2003) 08 KAR CK 0023

In the Karnataka High Court

Case No : Writ Appeal No's. 1418 and 1728 of 2003

V. Ramakrishna and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 20-08-2003

Acts Referred:

Karnataka General Clauses Act, 1899 — Section 24, 6, 8
Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 —
Section 78

Citation : (2003) 5 KarLJ 417 : (2003) 4 KCCR 2952

Hon'ble Judges : N.K. Jain, C.J.;Mohan Shantanagoudar, J

Bench : Division Bench

Advocate : C. Dinakar, for the Appellant; Sateesh M. Doddamani, A.G.A. for Respondents 1 and 2 and A. Nagarajappa, for Caveator Respondent 8, for the Respondent

Final Decision : Allowed

Judgement

N.K. Jain, C.J.—These writ appeals are filed against the order of the learned Single Judge passed in W.P. Nos. 23803 to 29809 of 2002 (GM), dated 28-11-2002.

2. It is stated that the appellants-petitioners 1 and 2 were appointed as Trustees of Sri Someswara Swamy Temple, Ulsoor, Bangalore, for a period of three years vide order dated 25-8-2001 (Annexure-A). One C. Narayanappa filed Writ Petition No. 31827 of 2001 as his nomination had been rejected, and got an interim order. However, on 7-3-2002 the writ petition was dismissed vide Annexure-B as having become infructuous as the three years period of appointment of petitioner-Narayanappa with effect from 12-2-1999 had come to an end. Thereafter the 2nd respondent issued an order (Annexure-C) on 8-3-2002 directing the concerned officer to implement the order dated 25-8-2001. But, the same could not be given effect to on account of the order dated 30-4-2002 (Annexure-D) passed by 2nd respondent stating that the order

dated 25-8-2001 had been cancelled as per the directions of the Minister of State of Endowments as per his note. The same was challenged by seven persons in W.P. Nos. 23803 to 23809 of 2002, which were dismissed as stated. Hence, these appeals have been filed by petitioners 1 and 2 only.

3. The learned Counsel appearing for the appellants C. Dinakar, submits that the learned Single Judge has erred in not interfering with the order passed by the 2nd respondent merely on the representation made by the M.L.A. and on the basis of a note of the State Minister for Muzrai Institutions. He submits that the learned Single Judge has not appreciated the facts properly and the order at Annexure-D is liable to be set aside as no notice or opportunity was given nor the procedure for setting aside the order dated 25-8-2001 has been followed. He also submits that the learned Single Judge has not considered the Karnataka Government Transaction of Business Rules in the proper perspective and has erred in holding that the petitioners have no vested right to challenge the order.

4. The learned Additional Government Advocate Sateesh M. Doddamani, submits that the order passed by the learned Single Judge needs no interference as the order dated 25-8-2001 has not been implemented. The Government by notification dated 30-4-2003 declared that the provisions of the Hindu Religious Institutions and Charitable Endowments Act shall come into force with effect from 1-5-2003. He also submits that in absence of any repeal and saving clause the appellants have no vested right to interfere. More so, the 10 persons have accepted the order and only two have challenged this appeal.

5. Learned Counsel for Caveator-respondent 8, A. Nagarajappa submits that the appellants cannot take advantage of the earlier appointment order, which could not be given effect to and the new Act came into force on 1-5-2003. He further submits that the Government is competent to issue list of such persons and the learned Single Judge has rightly not interfered, and therefore, no interference is called for.

6. In rejoinder the learned Counsel for the appellants submits that when amended statute also provide repeal and saving clause, Section 6 of the Karnataka General Clauses Act is not attracted. He relied on the decision rendered in K.T. Venkatappa and Others Vs. K.N. Krishnappa and Others, Therefore, it is submitted that Government cannot take advantage of this argument.

7. We have heard the learned Counsels for the parties, perused the material placed on record and the relevant provisions.

8. No doubt, once a new Act comes into force the old Act will cease and the provisions of the new Act will be applicable. In other words, if once the statute in its old form is superseded by the statute in its amended form, the amended statute takes the place of original unless a contrary intent is clearly indicated. It is also not disputed that when there is a provision empowering to pass an order, the same can be withdrawn in view of the provisions of the Karnataka General

Clauses Act and it is also settled that if there is no repealing clause provisions of the Karnataka General Clauses Act will not be applicable.

9. A perusal of the records reveals that admittedly the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 came into force from 1-5-2003 and Section 78 thereof is the repeal and savings clause. By the said Section three Acts were saved and seven other Acts including the Mysore Religious and Charitable Institutions Act, 1927 (Mysore Act VII of 1927) were repealed with a proviso that Section 6 of the Karnataka General Clauses Act, 1899 (Karnataka Act III of 1899) shall be applicable in respect of the repeal of the said enactment and Sections 8 and 24 of the said Act shall be applicable as if the said enactments are repealed and re-enacted by this Act.

10. Section 6 of the Karnataka General Clauses Act, 1899 reads as follows:

"6. Effect of repeal.--Where this Act or any Mysore Act or Karnataka Act made after the commencement of this Act, repeals any enactment hitherto made or thereafter to be made, then, unless a different intention appears, the repeal shall not-

(a).....

(b).....

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed;

(d).....

(e).....

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed".

Section 8 of the Karnataka General Clauses Act, deals with the construction of references to repealed enactments. Section 24 deals with the continuation of orders issued under enactments repealed and re-enacted.

11. The argument of the learned Government Advocate is that for want of savings clause, the old order will cease and the appellants have no vested right. Considering the provisions of the above enactments, the argument does not seem to be correct in view of the savings clause, as noted above. Even otherwise, Section 24 of the Karnataka General Clauses Act is very clear that where an order is issued under the enactments repealed and re-enacted, it shall continue in force if the same is not inconsistent with the provisions re-enacted or superseded by any order issued under the provisions so re-enacted.

12. Learned Government Advocate has not been able to show any inconsistency or there is any repugnancy in the earlier order of the 2nd respondent, dated 25-8-2001, appointing 12 persons for a period of 3 years as Trustees of Sri

Someswara Swamy Temple, Ulsoor, Bangalore. The argument of the learned Government Advocate that in view of the new Act, the Government is competent and can exercise its jurisdiction to appoint, is not acceptable as the right which has already accrued and the existing right cannot be taken away even though they have not worked. So also, merely on the basis of some averments that in the Committee of Dharmadarshis five persons are from the same family and on account of irregularities there is a disqualification, the earlier order cannot be set aside without affording any opportunity to parties to be affected.

13. The order is also not sustainable for the reason that the order dated 30-4-2002 reveals that it has been passed on the basis of note of the Government and we are not able to find any reason therein. An aggrieved party cannot get the reasons communicated as a matter of right. Nor the reasons can be added or supplemented by filing an affidavit. What is necessary is, there should be reasons available on the record. This Court can always look into the reasons. The learned Government Advocate has not been able to show any reasons. Even though some local M.L.As of the constituency made representation to the Chief Minister, who in turn forwarded it to concerned Minister as per the Karnataka Allocation of Business Rules, 1977, no opportunity was given to the appellants before cancelling the order and the order dated 25-8-2001 was cancelled based on some alleged irregularities.

14. We have also seen the original record submitted by the learned Government Advocate, on our direction, on 18-8-2003. On a perusal, we find no reasons to justify the order dated 30-4-2002 at Annexure-D.

15. Under the circumstances and in the fact situation, the learned Single Judge erred in observing that the petitioners cannot find fault with the note put up by the Minister for Muzarai Institution for want of any vested right. Therefore, the order of the learned Single Judge is not sustainable.

16. In view of what we have discussed above, the order of the learned Single Judge is liable to be set aside to the extent of the appellants and the same is accordingly set aside. Consequently, order dated 30-4-2002, at Annexure-D, is quashed as stated. However, the Government is not precluded from taking appropriate action after issuing notice to the appellant-petitioners, in accordance with law.

Accordingly, these writ appeals are allowed with no order as to costs.