

(1988) 08 KAR CK 0044
In the Karnataka High Court
Case No : Writ Petition No. 14889 of 1987

Yellappa

APPELLANT

Vs

Assistant Commissioner

RESPONDENT

Date of Decision : 18-08-1988

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Land Revenue Act, 1964 — Section 135, 136 (2)
Karnataka Village Offices Abolition Act, 1961 — Section 5, 5 (3), 6, 7

Citation : (1989) ILR (Kar) 1032 : (1988) 3 KarLJ 253

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : Ravi S. Balikai, for the Appellant; S. Udayashankar, for R-1 and 2 and I.G. Gachchinmath, for R-3 and 4, for the Respondent

Judgement

K.A. Swami, J.—In this petition under Articles 226 and 227 of the Constitution, the petitioner has sought for quashing the order dated 6-7-1987 passed by the Assistant Commissioner, Belgaum Sub-Division in Case No. RTS.AP.25-86 Annexure-A. He has also sought for issue of a Writ in the nature of mandamus directing the Revenue Authorities to make necessary changes in the record of rights by mutating the petitioner's name and to issue such other directions as deemed fit in the circumstances of the case.

2. The facts necessary for the purpose of deciding the contentions raised In this petition are as follows:

(a) The land In question is an agricultural land bearing S. No. 117 measuring 28 guntas situate in Jabapur Village, Hukeri Taluk. It was assigned to the village office. The third respondent was a holder of the village office. On the abolition of the village office under the provisions of the Karnataka Village Offices Abolition Act, 1961 (hereinafter referred to as the K.V.O. Act) the land became available for regrat as per the provisions of the K.V.O. Act.

(b) On 19-6-1967 the third respondent sold the land in question under a

Registered Sale Deed for a sum of Rs.800/- to one Sri Appasaheb Bhimappa Karugol. The fact that it was sold by the third respondent to Appasaheb Bhimappa Karugol and Appasaheb Bhimappa Karugol in turn sold the land in question to the petitioner under a Registered Sale Deed dated 3-9-1969 for a sum of Rs. 1,300/- is not in dispute. True copies of both the Sale Deeds are produced as Annexures C & D respectively.

(c) Long time after the land in question was sold, the third respondent gave a "Varadi" on 16-7-1985 to the Village Accountant, Jabapur for mutation the name of the fourth respondent on the ground that the fourth respondent was his bahubundh and in a partition between him and the fourth respondent the land in question had fallen to the share of the fourth respondent; therefore, his name should be entered in the revenue records. The petitioner objected to the same. Therefore the matter was heard and decided by the Tahsildar, Hukkeri in RTS.SR.22/85. The Tahsildar by the order dated 30-12-1985 Annexure-B set aside the mutation Entry No. 1287 made pursuant to the varadi dated 16-7-1985 made by the third respondent. The Tahsildar held that the land in question was sold by the third respondent to one Appasaheb Bhimappa Karugol who In turn had sold the same to the petitioner and as such the land in question could not have been mutated in the name of the fourth respondent. He also noticed that the petitioner was residing in the land since the date of purchase. Accordingly, he set aside the mutation entry.

(d) The fourth respondent in whose favour the mutation Entry No. 1287 was made, and according to the case of the third respondent the land in question had fallen to the share of the fourth respondent, did not go up in appeal against the order of the Tahsildar; whereas the third respondent went up in Appeal before the Assistant Commissioner in R.T.A. RTS:AP-25-86. The fourth respondent was not even made a party to the appeal by the third respondent. The Assistant Commissioner by the order dated 6-7-1987 (Annexure-A) allowed the appeal and set aside the order of the Tahsildar and restored the mutation Entry No. 1287 on the sole ground that though the land in question was regranted under the provisions of the K.V.O. Act but it was not converted into Raithawa on payment of requisite amount; therefore the same was not valid. Accordingly, he set aside the mutation entry.

(e) One more fact that has to be mentioned is that the land in question was regranted in the name of the third respondent by the order dated 9-3-1976 passed by the Assistant Commissioner in No. WTN.SR.1541. A certified copy of the order of regrant is produced as Annexure-F.

3.1. The facts stated above would make it clear that the case clearly falls within the ratio of a Division Bench decision of this Court in The Bangalore University, Bangalore and Another Vs. B.P. Puttaraju and Others, The relevant portion of the decision is as follows:

"Para 77: To decide which of the above rival contentions should be accepted we

have to examine the object of original Sub-section (3) of Section 5 of the Principal Act. Once village offices were abolished, lands attached thereto ceased to be emoluments of such offices. No public policy was involved, in our opinion, in prohibiting transfer of such lands after abolition of village offices. Under original Sub-section (3) of Section 5 of the Principal Act, the Deputy Commissioner had no option but to grant such previous sanction to the regretted of a land u/s 5 or 6 of that Act, if he had paid an amount equal to 15 times the full assessment of that land. The provisions in Sections 5, 6 and 7 of that Act envisaged conferment of title to Service Inam Lands upon regretted, i.e., holders, authorised holders, or unauthorised holders at concessional prices if they wanted to retain those lands for themselves without the right to alienate them and at higher prices if such regrantees desired to have those lands together with the right to alienate them. Thus, in imposing a restriction on alienation of lands by the grantees under the said provisions, the Legislature did not intend to prohibit totally regrantees from alienating the regranted lands. The only object of Sub-section (3) of Section 5 of that Act, which was made applicable to subsequent alienations by all types of regrantees, was to collect higher prices for the lands regranted if the regrantees wanted to have the right of alienating such lands. Hence, the omission to obtain the previous sanction of the Deputy Commissioner under original Sub-section (3) of Section 5 of the Principal Act did not, in our opinion, render void a transfer of a land regranted u/s 5 or 6 or 7 of the Principal Act prior to 7-8-1978, but such transfer can be regularised by paying to the Government an amount equal to 15 times of full assessment of that land."

Thus in the instant case as the sale had taken place prior to coming into force of the Act 13/1978 the vendee was entitled to have the sale regularised on payment of the requisite sum. Similar matter came up before this Court In W.P. No. 1309/1986 Nagappa v. Bhimappa Kenchappa And Ors. challenging the mutation entry. This Court following Lakshman Gowda's case quashed the order of the Assistant Commissioner and permitted the petitioner therein to deposit the amount equivalent to fifteen times the assessment of the land within two months from the date of the order before the fifth respondent therein and directed the fifth respondent to regularise the transaction of sale concerned therein as per the decision in Lakshman Gowda's case. That being so, the Assistant Commissioner is not Justified in setting aside the order of the Tahsildar on the ground that the sale was not valid because it was effected without converting the land into a Raithawa land even though the regrant under the K.V.O. Act had taken place.

3.2. This is sufficient to allow this Writ Petition. However, Sri Gachchinmath, learned Counsel appearing for respondents 3 and 4 has raised several contentions which have to be dealt with before parting with the case.

4. The first contention of Sri Gachchinmath is that the order passed by the Assistant Commissioner is the one u/s 136(2) of the Karnataka Land Revenue Act, 1964, therefore, no relief under Articles 226 and 227 of the Constitution can

be granted as the aggrieved person has a right to file a suit under the provision to Section 135 of the Karnataka Land Revenue Act, 1964. It has to be remembered that this is not an usual type of case wherein the entries in the record of rights are made and the aggrieved party has to be directed to establish his title to the land in a Civil Court. This is a case in which the land in question was assigned to the village Office and on abolition of the village offices, the holder of the village office alienated the land in favour of Appasaheb Bhimappa Karugol who in turn alienated it in favour of the petitioner. These transactions have taken place before the Karnataka Act 13/1978 came into force; and these transactions are not disputed. That being so, there is nothing to be decided by the Civil Court. In fact the Assistant Commissioner who was bound by a Division Bench decision of this Court in Lakshman Gowda's case ought to have himself regularised the sales by collecting the amount equivalent to fifteen times the assessment. Instead of demanding and collecting the amount equivalent to fifteen times the assessment, and regularising the transactions of sale he has declared that it was not permissible to alienate the land without converting it into Raithawa and as such the Sale Deeds did not have the effect of conveying title to the purchasers. Thus, in other words, he has acted in violation of the decision of a Division Bench of this Court in Lakshman Gowda's case. In such a situation the two Division Bench decisions of this Court in PAYAPPA NAMANNA HUDED v. CHAMU APPAYYA HUDED AND ORS 1969 (2) KarLJ 198. and Srimanmaharaja Niranjana Jagadguru Mallikarjuna Murugarajendra Mahaswamy Vs. Deputy Commissioner, cannot be applied. Therefore it is not possible to hold that exercise of jurisdiction under Articles 226 and 227 of the Constitution is not permissible in a case like this. In fact similar contentions were raised in W.P. No. 1309/1986 referred to earlier, and it was observed by this Court thus:

"5. Sri R.U. Goulay, learned Counsel for the respondents 1 & 2 has raised an objection that the matter arises out of the, proceeding initiated for effecting a mutation entry pursuant to the sale; that as per the decision of this Court reported in 1969(2) Kar.L.J 198 (PAYAPPA NEMANNAHUDED v. CHANUR APPAYYA HUDED) interference in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India, is not warranted. Normally it is so in a case where the facts are required to be established by evidence; but in a case where on the admitted facts a decision of this Court applies and the transfer has to be regularised according to a decision of this Court and the authorities below have failed to give effect to a decision of this Court, and thereby have failed to regularise the transfer on collecting the amount equal to 15 times of full assessment of the land. It is not only just and appropriate, but it is also necessary to exercise jurisdiction under Articles 226 and 227 of the Constitution to do justice and to avoid multiplicity of proceedings. The case on hand is one such. This is a case in which respondents 3 to 5 in spite of the fact that legal position is settled by a Division Bench decision of this Court in LAKSHMANA GOWDA v. STATE OF KARNATAKA AND ORS. (1981 (1) KarLJ 1) that such a transfer is not void and it can be regularised by paying to the Government an amount equal to 15 times of

full assessment of land instead of collecting the amount equal to 15 times of full assessment of the land and regularising the transaction, have declared the transaction as illegal.

XXX XXX XXX Para 108(vi): The omission to obtain the previous sanction of the Deputy Commissioner under original Sub-section (3) of Section 5 of the Principal Act, did not render void a transfer of a land regranted u/s 5 or 6 or 7 of the Principal Act prior to 7-8-1978, but such transfer can be regularised by paying to the Government an amount equal to 15 times the full assessment of that land. The respondents 3 to 5 were bound to follow the aforesaid decision which was specifically brought to the notice of respondents 3 and 4. The only option left to them was to collect the amount equal to 15 times of full assessment of the land and make the regrant transferable and regularise the sale. That being so respondents 3 to 5 have not only acted in disobedience to the aforesaid decision of this Court; but have also acted without jurisdiction in declaring the sale as illegal. As such it is not one of those routine cases arising out mutation proceedings in which normally this Court does not interfere as per a Division Bench decision of this Court in Payappa's case. Hence, it is not possible to accept the contention of Sri Goulay."

Therefore the contention that it is not permissible or at any rate It is not Just and appropriate to exercise jurisdiction under Articles 226 and 227 of the Constitution is negatived.

5. It is next contended that Appasaheb Bhlmappa Karugol to whom the third respondent sold the land in question is not made a party. Therefore, the petitioner is not entitled to the relief. This contention is not tenable. Appasaheb Bhlmappa Karugol has sold the land to the petitioner and these two sale deeds are not disputed by respondents 3 and 4. Therefore the contention is misconceived.

6. It is next contended that respondent-4 has been added as a party subsequently. Therefore the petitioner is not entitled to a relief. Respondent-4 to whose share, according to the case of the third respondent, the land in question is stated to have fallen himself did not challenge the order of the Tahsildar. As far as the impleading of a necessary party is concerned as long as the claim is not barred by time he can be impleaded at any time and it is the duty of the Court to permit the petitioner to implead the necessary party instead of dismissing the petition on that score. In the Instant case this question was raised when the matter was heard on 15-6-1988. The Court considered the objection raised by respondent-3 and passed the following order:

"During the course of hearing Sri I.G. Gachichinmath, learned Counsel for respondent-3, raised an objection that the order dated 6-7-1987 passed by the Assistant Commissioner, Belgaum Sub-Division, Belgaum, in No. RTS.AP-25/86 restores mutation Entry No. 1287; that the said entry is in favour of Laxman - Shivaraya Patil. Therefore the said Laxman Shivaraya Patil is a necessary party to

the Writ Petition. However, learned Counsel for the petitioner contends that as the Tahsildar has set aside the mutation Entry No. 1287 and Laxman Shivaraya Patil has not gone up in appeal, against the said order, he need not be made a party. It is not possible to accent this contention. The mutation entry in the name of Laxman Shivaraya Patil is restored in the record of rights and other revenue records pertaining to land bearing No. 117 of Jabapur, Hukkeri. Therefore Laxman Shivaraya Patil becomes a necessary party. The petitioner has also produced a certified copy of the order dated 9-3-1976 bearing WTN.SR.1541 passed by the Assistant Commissioner, regrating the land in question in favour of respondent-3 who is the vendor of the petitioner. That order is relevant for deciding the petition. Therefore, the same is taken on record. Having regard to the fact that Laxman Shivaraya Patil is a necessary party, the petitioner is directed to implead him. Cause title be amended. Emergent notice to Laxman Shivaraya Patil. Bring up this petition for further hearing after Laxman Shivaraya Patil is served."

Accordingly, Laxman Shivaraya Patil was impleaded as respondent-4 and he was served with notice. After service of notice he is represented by learned Counsel Sri Gachchlnmath. Thus the necessary party is impleaded as respondent-4. In this connection the learned Counsel was placed reliance on a decision of the Supreme Court in *UDIT NARAIH SINGH MALPALHARIA v. ADDL. MEMBER, BOARD OF REVENUE, BIHAR AND ANR.* In the aforesaid decision it is held that the necessary party is one whose presence is necessary in a proceeding for the purpose of complete and final adjudication of the question Involved in the proceeding. That being so, it is not possible to hold how this decision helps the third respondent. On the contrary, It helps the petitioner to have the fourth respondent impleaded. Thus, it follows that respondent-4 has been rightly impleaded.

7. It is next contended that the land In question was In the possession of Appasaheb Bhimappa Karugol as a tenant as recited in the Sale Deed Annexure-C. Therefore, the sale In favour of Appasaheb was null and void and as such he could not have conveyed any title to the petitioner under a registered Sale Deed dated 3-9-1969, This contention is also misconceived. The Karnataka Land Reforms Act as it stood when the first sale took place in the year 1967 did not prohibit the sale of land to a tenant by the land owner. Even otherwise, at that time the land had not been regranted and therefore there was no question of relationship of landlord and tenant. The validity of the sale effected on 19-6-1967 and 3-9-1969 depended on the regrat of the land. Subsequently, the land had been regranted on 9-3-1976 thereby the vendees are entitled to the relief as held by a Division Bench of this Court In Lakshman Gowda's case. Therefore the contention does not hold water. It is accordingly rejected.

8. Lastly, It is contended that regrat order had not been produced along with the petition. The regrat order came to be produced subsequently along with a memo. Therefore, it is contended that production of the regrat order is not In

accordance with law. In this connection it is also relevant to notice that during the course of the hearing It was felt by the Court that it was necessary to look into the regrant order as the relief sought for depended on that order; therefore on 13-6-1988 the following order was made:

"It is submitted on behalf of the petitioner that the land in question has been regranted to the vendor of the vendor of the petitioner. If that be so, that order is relevant to the issue in question. Accordingly, the petitioner is permitted to produce the same with a copy to the other side.

Call on 15-6-1988."

It is pursuant to this order the petitioner has produced a certified copy of the order of regrant. It is one thing to say that a party who wants to rely upon a document shall produce it in accordance with the provisions of the Code of Civil Procedure, and the Writ proceedings Rules, and it is quite another thing to produce the same on the direction of the Court. When a Court considers It necessary that a particular document or order should be produced for the purpose of considering the issue Involved in the case, It can straight away direct the party to produce the same or call for It from the person, party or authority in whose custody such document or order is. In such a situation it is not necessary to file an application seeking permission for production. This is what has happened in this case. Hence, the contention is rejected.

9. Sri. Gachchinmath, learned Counsel for respondents 3 and 4 submits that there are still two more contentions which are to be considered. According to him there is a delay in approaching this Court, inasmuch as the name of the 3rd respondent was continued in the record of rights from 1969 to 1986, therefore, there is a delay. The contention is misconceived. From 1969 to 1986 the 3rd respondent did not take any step to have the mutation effected. The execution of the sale deeds is not disputed. The proceeding was Initiated by the 3rd respondent by giving a wardi. That being so, the contention is misconceived. It is next contended that the petitioner did not appear before the Assistant Commissioner, therefore, he cannot seek any relief in the Writ Petition. This is really a very strange argument. The appeal was preferred by the 3rd Respondent. In that appeal the petitioner was made a party. He has appeared through a Counsel and has filed the written arguments. Of course, on the date of hearing neither the 3rd respondent who was the appellant nor the petitioner who was the respondent was present. However, the Assistant Commissioner on looking into written arguments decided the case. The fact that on the date of final hearing the petitioner remained absent did not In any way disable him from challenging the order of the Assistant Commissioner. The contention is misconceived. Accordingly, it is rejected. The learned Counsel for respondents-3 and 4 was specifically asked to state as to whether there was any other contention left to be considered; learned Counsel submitted that there were no other contentions which had remained to be considered. Accordingly, all the contentions raised by respondents-3 and 4 are negatived.

10. For the reasons stated above, the petition is allowed in the following terms:

"The order dated 6-7-1987 passed by the Assistant Commissioner, Belgaum, Sub-Division, Belgaum, in case No. RTS AP.25-86 - Annexure "A" is quashed. If the petitioner pays 15 times the assessment as per Division Bench decision of this Court in Lakshman Gowda's case within 60 days from today, the Assistant Commissioner shall regularise the sale transaction in question in terms of the decision in Lakshman Gowda's case failing which it is open to the Assistant Commissioner to take action in accordance with law."