(2004) 03 KAR CK 0081

In the Karnataka High Court

Case No : Writ Petition No. 18166 of 2002

Y.N. Gangadhara Setty and Others — APPELLANT

Vs

Karnataka Milk Federation and Others — RESPONDENT

Date of Decision : 31-03-2004

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2004) 6 KarLJ 621 : (2004) 3 KCCR 255 SN

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : B.L. Acharya, for the Appellant; Udaya Holla, for Respondent-1 and Shashidhar S. Karmadi, High Court Government Pleader for Respondents-2 to 4, for the Respondent

Final Decision : Allowed

Judgement

Chandrashekaraiah, J.—The petitioners in this writ petition have sought for a direction directing respondent 1-Karnataka Milk Federation (KMF) to restore possession of the schedule property forthwith to them and to hold an enquiry regarding the acts of omission and commission on the part of the respondents and fix the responsibility and for other reliefs.

2. The facts in this case are as follows.--

The then Government of Mysore issued a notification dated 24-12-1960 under the Land Acquisition Act, 1894, as amended by the State Act, proposing to acquire 20 acres 32 guntas of land, which includes the schedule land, invoking the urgency clause. The subject-matter of this writ petition is in respect of 2 acres 5 guntas of land in Sy. No. 76/2 of Audugodi Village, Begur Hobli, Bangalore South Taluk bounded on the east by Sy. No. 76/1, west by 76/2, north by 76/3 and south by Bangalore Hosur Road (hereinafter referred to as ''Schedule land''). Pursuant to the notification referred to above, possession of the land, covered under the said notification, was taken over by the Government on 8-3-1961. The purpose of acquisition is for the use of Bangalore Dairy Project which was then a wing of the Government. After taking over possession, the Land Acquisition Officer passed an award on 19-5-1962 determining the market value at the rate of Rs. 8,500/- per acre. Out of the lands acquired under the above said notification, land measuring 15 acres 18 guntas belonged to the Firm called M/s. Yadalam Subbiah Setty and Sons. The said firm was dissolved on 31-12-1973. The assets of the firm vested with the petitioners ever since the dissolution of the firm. Consequent upon the dissolution of the firm and the vesting of the said land, the petitioners become the owners of the. said property.

Aggrieved by the award passed by the Land Acquisition Officer, the then firm filed M.F.A. No. 215 of 1966 before this Court seeking for enhancement of compensation at the rate of Rs. 15,000/- per acre. The State also had filed an appeal M.F.A. No. 288 of 1966 on the ground that the compensation awarded by the Land Acquisition Officer is on the higher side. During the pendency of the said proceedings before this Court, there were some correspondence between the then Firm and the Government of Mysore. Thereafter, Government issued an order dated 15-9-1967 proposing to reconvey the land measuring 2 acres 5 guntas in Sy. No. 76/2 of Adugodi Village in schedule land to the Firm subject to the condition that the firm should refund a sum of Rs. 19,265.38 being the value of the said property. The Government order is produced in this petition as Annexure-A. Pursuant to the said Government Order the firm remitted a sum of Rs. 19,265.38 under Cheque No. BLR(T) 648653, dated 25-6-1968 drawn on Central Bank of India, KG. Road, Bangalore-9, in favour of the Special Land Acquisition Officer, Bangalore.

This Court heard the MFA''s filed by the then Firm and the Government and enhanced the compensation from Rs. 8,500/- to Rs. 15,000/- by allowing the appeal filed by the firm and dismissing the appeal filed by the State. This enhancement of compensation is in respect of 13 acres 13 guntas excluding 2 acres 5 guntas in respect of which the State Government had agreed to reconvey from out of 15 acres 18 guntas.

As against the order passed by this Court in the above said M.F.A.''s, the then Government of Mysore had filed Civil Appeal No. 514 of 1972 before the Supreme Court. The Supreme Court ultimately disposed of the above said civil appeal by passing a decree on the compromise petition filed by the parties. The terms of the compromise petition reads as follows.--

(1) The appellant will execute a sale deed in respect of 2 acres and 5 guntas of land in Sy. No. 76/2 of Adugodi Village.

(2) The respondent shall pay to the appellant Rs. 2,300/- which are the expenses to be incurred by the Government to remove the fencing now existing on the said land to re-fix it at the corresponding boundary of the land retained by Government.

(3) The price at which the appellants will reconvey the land to respondents will

be the same as the one which the Land Acquisition Officer had awarded as compensation, i.e., Rs. 6,500/-per acre. The respondent will agree to withdraw all their claims for enhanced rate of compensation in respect of this extent of 2 acres and 5 guntas.

(4) The respondents undertake to re-deposit in the Court of District Judge, Bangalore in the proportionate amount of compensation in respect of 2 acres and 5 guntas so conveyed to them, which they have already, received from the Court or from the Land Acquisition Officer or from both.

(5) The amounts payable by respondents as per paras 2 to 4 above amounting to Rs. 19,264.38 paise, has been in fact, remitted by respondent by Cheque No. BLR/T-648653, dated 25-6-1968, of the Central Bank of India, Kempegowda Road, Bangalore-9, in favour of the Special Land Acquisition Officer, Bangalore.

(6) Respondents shall bear the full costs of the deed of conveyance. Both the parties agree to restrict the dispute in respect of the enhanced claim before this Hon''ble Court only to the remaining extent of 13 acres 13 guntas (thirteen acres and thirteen guntas).

By virtue of the compromise decree, the deed of reconveyance dated 2-9-1974 was prepared on the stamp paper and signed by the parties. However, on account of some practical difficulties, the same was not got registered.

In the year 1974, Karnataka Dairy Development Corporation (KDDC) came into existence as per the Government Order dated 29-11-1975. Under this Government Order the assets and liabilities of the Bangalore Dairy Project were transferred in favour of the KDDC. Subsequently, the KMF became the successor of the said Corporation. Prior to the Government Order dated 29-11-1975, the Bangalore Dairy by its letter dated 18-1-1975 had agreed to hand over the schedule property to the petitioners provided the condition in the Government Order is fulfilled. Prior to that the Land Acquisition Officer in his letter dated 4-12-1974 intimated that the condition imposed in the Government Order had been fulfilled. Copy of the said letter is produced along with the writ petition.

3. The case of the petitioners is that by virtue of the above said Government Order and also in view of the reconveyance deed signed by the parties, the petitioners entered into possession of the schedule land. The further case of the petitioners is that they have made several representations for complying with the formalities relating to the reconveyance.

4. The learned Counsel for the petitioners submits that in the year 1995 the KMF tried to assert its possession over the schedule property by putting up compound. At this stage it is relevant to mention that the State Government by its letter dated 6-6-1995 directed the KMF to hand over possession of the schedule property to the petitioners, copy of which is produced as Annexure-F in this writ petition. On 22-8-1995 the Revenue Department wrote to the Department of Animal Husbandry directing the department to honour the

Government Order regarding reconveyance of the lands to the petitioners as per order of the Supreme Court passed in Civil Appeal No. 514 of 1972. The Principal Secretary, Revenue Department, had also informed the Animal Husbandry Department to implement the order of the Supreme Court, otherwise it may lead to serious consequences. Ultimately, the Government also wrote a DO letter dated 14-3-2001 to the Managing Director of the KMF pointing out the consequences, if any, in the event if the order of the Supreme Court and the order of the Revenue Department had not been implemented. The affidavit filed by the Principal Secretary to the Government before the Supreme Court of India in Civil Appeal No. 514 of 1977 discloses the above said facts. The said affidavit reads as follows.--

I, Rameshkumar, aged about 54 years, s/o. Dr. G.N. Tiwari, Indian Administrative Service, now working as Principal Secretary to Government, Revenue Department, M.S. Building, Bangalore, do hereby solemnly affirm and state as follows.--

1. I submit that I have been working as Principal Secretary to Government of the said Department since 31-5-2001. I know the facts of the case on the basis of the records available in the connected files relating to the above matter. Hence, I am swearing and deposing to the contents of this counter-affidavit as hereunder.

2. I submit that in the above civil appeal a compromise petition was filed under Order 23, Rule 3 of the CPC and this Hon''ble Court recording the terms entered into and agreed upon in the said compromise petition, as per the order dated 30-8-1972, disposed of the same.

3. I submit that, after disposal of the civil appeal the Court had made the following order.--

"This order shall be punctually carried and executed by all concerned".

The Government accordingly has ordered reconveyance of the same in consultation with the Bangalore Dairy vide G.O. No. RD 74 LGB 67, dated 15-1-1967. The deed of reconveyance had been signed on 2-9-1974 by the then Special Deputy Commissioner, Bangalore, on behalf of the Government, but it has remained unexecuted for some unknown reason.

4. The Bangalore Dairy, in its letter dated 18-1-1975 had stated that they would hand over the possession of the land after the claimants comply with all the conditions stipulated in the Government Order. The Special Land Acquisition Officer, Bangalore, vide his letter dated 25-1-1975, intimated the Director, Bangalore Dairy that the landowners have deposited the amount and hence, necessary action be taken to delver possession of the land and settle the matter at the earliest. Subsequently, also the Special Land Acquisition Officer, Bangalore, has written letters to the Bangalore Dairy to hand over possession of the land. The Bangalore Dairy was taken over along with assets and liabilities by the Karnataka Milk Federation (KMF), a co-operative organisation. The matter

remained unsettled due to non-co-operation of the KMF. The Government, in their letter dated 5-6-1995 directed the Bangalore Dairy to hand over the possession of the said land. Again the Revenue Department has requested the Animal Husbandry Department who is controlling the Bangalore Dairy in U.O. Note No. RD 20 AQB 95, dated 22-8-1995 that the Bangalore Dairy is duty-bound to honour the Government decision and also the orders of the Hon''ble Supreme Court of India.

5. In U.O. Note dated 13-12-1995, Secretary, Revenue Department informed the Animal Husbandry Department that if the Hon''ble Supreme Court''s directions are not executed it may lead to serious consequences.

6. Government sent a D.O. Letter to the Managing Director, KMF vide No. RD 20 AQB. ...... dated 14-3-2001 by informing the KMF that in the matter in which the final adjudication has been done by the Hon''ble Supreme Court of India, and wherein appropriate orders have already been issued by the Revenue Department the Government would not take any responsibility if the landowners intimate any legal action/contempt proceedings for the lapse on the part of the KMF.

7. In view of this, the Government directed the Deputy Commissioner to comply with and give effect to the order of this Hon''ble Court. Thereafter, the deed of reconveyance of the land was registered on 31-5-2001.

8. In view of the facts and circumstances of the case enumerated supra, the application is liable to be dismissed against Government.

8-a. No facts which were no pleaded before Courts below have been pleaded in this Counter-affidavit.

9. Wherefore, I pray that this Hon''ble Court be pleased to dismiss the above application with exemplary costs, in the interest of justice and equity.

DEPONENT

The KMF instead of honouring the compromise decree passed by the Supreme Court and the orders issued by the Government referred to above, proposed to put up a building on the schedule property. When this fact came to the knowledge of the petitioners they filed a suit O.S. No. 6969 of 1998 before the City Civil Court, Bangalore, seeking for specific performance of the agreement contained in the compromise decree of the Supreme Court and for other reliefs. In the said suit the petitioners had also made an application for temporary injunction under Order 39, Rules 1 and 2 of the CPC restraining the KMF from putting up any construction over the schedule property. The Civil Court after hearing both the parties granted temporary injunction in favour of the petitioners by its order dated 15-2-2000. This order was challenged by way of filing an appeal M.F.A. No. 1189 of 2000 before this Court. This Court by its order dated 11-4-2000 allowed the appeal and set aside the order of the Civil Court making it clear that any construction put up by the KMF would be without prejudice to the rights of the petitioners and that no special equity could be claimed by the KMF. This Court has also directed the Trial Court to dispose of the suit without being influenced by any of the observations made by this Court in the above said order.

5. This order was challenged by the petitioners before the Supreme Court by way of preferring SLP No. 9309 of 2001. The petitioners had also made an application in the Civil Appeal No. 514 of 1972 for certain direction to comply with the terms of the compromise decree. Both the SLP and the interlocutory application came up before the Supreme Court on 12-5-2001. In these proceedings the Principal Revenue Secretary had filed the above said affidavit referred to supra. In the said proceedings the Supreme Court directed the parties not to change the nature of the land. But, in total disobedience of the order, the KMF proceeded with the construction of the building on the schedule land. The petitioners came to know of this fact only when the KMF issued a notification calling for offers for taking up of the building on lease. Immediately after the publication of the said notification calling for offers, the petitioners moved the Supreme Court for appropriate action by way of filing an interlocutory application. Immediately thereafter the KMF withdrew the said notification. In the meanwhile the State Government executed the reconveyance deed transferring 2 acres 5 guntas of land in Sy. No. 76/2, referred to above, by executing a registered deed dated 31-5-2001. In view of this development the Supreme Court dismissed the SLP and the LA. filed in the civil appeal by order dated 31-12-2001. Therefore, the petitioners have filed this writ petition seeking for restoration of possession and for other reliefs.

6. The KMF in its statement of objections has raised several contentions. One of the contention raised by the KMF is that the writ petition is not maintainable; that the deed of sale dated 31-5-2001, under which the schedule property has been transferred to the petitioners, is a fraudulent document; that the Government has no right to transfer the schedule property as the Government itself did not have, any title over the same. The further contention of the KMF is that the compromise decree, since barred by limitation, cannot be executed and therefore, the petitioners are not entitled for any relief sought for in this writ petition.

7. The facts pleaded by the petitioners in the writ petition, which are referred to above, are not disputed by the KMF, as they are based on the orders passed on judicial side. The contention of the KMF is that the writ petition is not maintainable. The KMF is a Corporate body and is an instrumentality of the State. Further, the facts pleaded by the petitioner in the writ petition, as stated earlier, are not disputed because they are all based on the orders passed on the judicial side. If that is so, it cannot be said that the writ petition is not maintainable. The only question that requires to be considered is:

"Whether this Court, in view of the orders passed on the judicial side and also in view of the several orders passed by the Government can grant the, relief sought for by the petitioners under Articles 226 and 227 of the Constitution of India?"

8. The land in question was acquired by the State Government for the benefit of Bangalore Dairy Project which was a wing of the Government. The Government in its order dated 29-11-1975 ordered to transfer all the assets and liabilities of the Bangalore Dairy Project in favour of the KDDC. This Corporation subsequently became the Karnataka Milk Federation (KMF) i.e., respondent 1. The copy of the Government Order has been filed by KMF along with a memo on 10-12-2003. Clause 6 of the Government Order reads as follows.--

"The Government further direct that requisite agreements should be executed between the KDDC and the Government of Karnataka effecting legal transfer of the properties as envisaged in this Government Order and investing in the Karnataka Dairy Development Corporation the proprietary rights in these properties so transferred".

From this clause it is seen that pursuant to the above said Government Order, requisite agreements are to be executed between the KDDC and the Government of Karnataka effecting legal transfer. But till today there is no such requisite agreement or deed transferring the properties belonging to the Government either in favour of the KDDC or in favour of the KMF. If that is so, the suit schedule property continued to be the property of the State Government till now. Hence, the contention of the KMF that the Government has no title to the property so as to reconvey the same in favour of the petitioners is liable to be rejected.

9. The Government by its order dated 15-9-1967 agreed to reconvey the schedule property by collecting Rs. 19,265.38. Pursuant to that the firm has also paid a sum of Rs. 19,265.38 by way of cheque which is evident from the letter of the Special Land Acquisition Officer dated 25-6-1968. Even before the Government order proposing to transfer all assets and liabilities of the Bangalore Dairy Project to the KDDC, the State Government agreed to transfer the suit schedule property to the Firm under a compromise petition filed before the Supreme Court in Civil Appeal No. 514 of 1972. Accordingly, the Supreme Court has also passed a decree in terms of the compromise petition. Pursuant to the said compromise the State Government has now transferred the suit schedule property under a registered deed dated 31-5-2001. From the affidavit filed by the Principal Revenue Secretary before the Supreme Court in SLP No. 9309 of 2001, where KMF is also a party, it is seen that the Government has admitted the execution of the sale deed dated 31-5-2001 in favour of the petitioners. Under these circumstances, it is not open for the KMF to contend that the deed dated 31-5-2001 is a fraudulent document. When the highest Court of our country has passed a decree on the basis of the compromise entered into between the parties, that too in view of the fact that by that time the Assets and Liabilities had not been transferred to the KDDC, it is not open for the successor in interest to disobey the decree of the Supreme Court by contending that it is not binding on it.

10. The Government, since-continued to be the owner of the property in the

absence of any document under which the immovable property was transferred in favour of the KDDC, has got every right to transfer the same by virtue of the compromise decree of the Supreme Court. The KMF being successor of the KDDC, having not acquired any right over the suit schedule property, has no right to characterise the conduct of the Government as a fraudulent one, in order to defeat the terms of the decree of the Supreme Court, by raising all sorts of contentions, which are untenable in law. The State Government supports the case of the petitioners and has no objection to order for delivery of possession in view of its commitment in the compromise decree before the Supreme Court.

11. As stated earlier, since the Government has undertaken to transfer the above said land subject to certain condition and as the said condition was fulfilled by the petitioners, it has rightly executed a deed of reconveyance in favour of the petitioners. If that is so, the KMF having no right whatsoever in respect of the schedule property, has no right to resist delivery of possession pursuant to the deed of sale executed by the State Government in favour of the petitioners.

12. One another contention raised by KMF is that the compromise decree passed by the Supreme Court cannot be executed after the expiry of the period of limitation and therefore, the petitioners are not entitled for delivery of possession.

13. In this case the prayer of the petitioners is for delivery of possession, as the KMF has no right whatsoever in respect of the schedule property. Further, KMF having no title to the property, has no right to dispute the correctness of the sale deed executed by the Government in favour of the petitioners. As the State Government has executed the sale deed in favour of the petitioners by virtue of compromise decree of the Supreme Court, there is no need to institute execution proceedings and therefore, the contention of the KMF regarding delay in execution of the decree of the Supreme Court is not maintainable.

14. The KMF being an instrumentality of the State shall not come in the way of the State Government in honouring its commitment made in the compromise petition filed before the Supreme Court, much before the KDDC came into existence.

15. From the facts it is seen that the KMF proceeded to put up construction contrary to the direction issued by the State Government to deliver possession of the schedule land to the petitioners. Further, the KMF being aware of all the above narrated facts proceeded to put up construction. This Court in the MFA No. 1189 of 2000 referred to above has observed that the KMF cannot plead any equity in its favour in the event it has proceeded to put up construction. The suit filed by the petitioners is also disposed of since the State Government itself has reconveyed the property under the registered deed dated 31-5-2001. The Supreme Court also disposed of the SLP (C) No. 9309 of 2001 and the application filed in SLP No. 514 of 1972 taking into consideration the subsequent development of the Government reconveying the property in favour of the petitioners. Therefore, the construction put up by the KMF on the schedule

property is unauthorised and illegal and it has no right, title or interest whatsoever in respect of the said land. Therefore, in my considered view the petitioners are entitled for possession of the schedule land from the KMF.

16. The petitioners in the writ petitions have stated that there is ; large area of vacant land adjoining the suit schedule property and therefore, as a matter of concession, the petitioners are willing to accept the adjoining land of similar dimension if the KMF is agreeable for the said course.

17. Rightly or wrongly the KMF has proceeded to put up construction on the schedule land even though it has no right whatsoever over the suit schedule property. Keeping in view that the KMF is a corporate body, if it wants to save the building constructed by it by investing huge amount, it may transfer the vacant land adjoining the schedule land in favour of the petitioners and retain the schedule land where the building is in existence as on today.

18. Hence, the following order.--

(i) Writ petition is allowed;

(ii) Direction is issued to the KMF to restore possession of the schedule land measuring 2 acres 5 guntas in Sy. No. 76/2 of Audugodi Village, Bangalore South Taluk, bounded on the east by Sy. No. 76/1, west by 76/2, north by 76/3 and south by Bangalore Hosur Road, within three months from today;

OR

(ii) In the alternative the KMF is directed to hand over vacant land measuring 2 acres 5 guntas adjoining the schedule land to the petitioners within three months from today and retain the schedule land;

(iv) The KMF is directed to pay the cost of Rs. 5,000/- to the petitioners.

