

A GURUPUTRAPPA MALLAPPA HARKUNI ETC. ETC.
v.
TAHSILDAR AND ORS. ETC. ETC.

AUGUST 11, 1992

B [LALIT MOHAN SHARMA, S. MOHAN AND
N. VENKATACHALA, JJ.]

C *Karnataka Village Offices Abolition Act, 1961—Section 5(3)—Amendment Act 13 of 1978—Alienation of regranted land—Prohibition for 15 years w.e.f. 7.8.1978—Alienation on 4.12.1982—Void.*

C.A. No. 3231/1991

D The land bearing survey No. 187/2 measuring an extent of 18.21 acres was Patilki Inam Land. The land was resumed to the Government under Section 4 of the Karnataka Village Offices Abolition Act 1961 with effect from 1.2.1963.

E On 6.2.1968, the watan land-holder filed an application for regrant of land. He also paid an amount equal to 3 times the assessment and health cess.

The Assistant Commissioner directed the regrant on 15.4.1968. Thereafter the papers were forwarded to the Tahsildar for information and necessary action.

F The watan land-holder sought sanction to alienate land as provided under Section 5(3) of the Act. He also deposited an amount equal to 15 times the assessment of land as required.

The Assistant Commissioner on 28.8.1968 granted the sanction.

G Section 5(3) of the Act was amended by Karnataka Act 13 of 1978. The amended section prohibited the alienation of regranted land for a period of 15 years from the date of commencement of Section 1 of the Amendment Act of 1978.

H On the strength of the permission dated 28.8.68, the watan land-holder sold away the property in parcels to three persons. The appellant

purchased 5 acres on 4.12.1982.

A

The Tahsildar issued a notice to the appellant as to why action should not be taken against him for eviction since the land in question had been purchased in contravention of the provisions of the Act.

The appellant explained that in view of the order granting sanction to the watan land-holder, the land-holder was entitled to alienate the same; that when such a permission was granted, the land ceased to be governed by the provisions of the Act; and that the order of sanction mentioned that the land in question was transferable.

B

Rejecting the explanation, the Tahsildar ordered that possession of the land be taken over by the Government.

C

Against the order of the Tahsildar, the appellant filed a writ petition before the High Court.

The Single Judge dismissed the writ petition holding that if the regranted land had not been alienated with prior permission before 7.8.1978, it could not be alienated for a period of 15 years after 7.8.1978.

D

An appeal was preferred to the Division Bench of the High Court, which was also dismissed.

E

Hence this appeal by special leave contending that by order dated 28.8.1968 the watan land-holder was granted sanction to alienate the lands; and that merely because Section 5(3) of the Act came to be amended in 1978 that would not, in any manner, affect the sanction already granted.

F

The respondent-State submitted that though the sanction was granted to alienate the lands, the alienation did not take place prior to 7.8.1978; that the statutory prohibition contained under Section 5(3) would squarely apply; that it could not be alienated for a period of 15 years after 7.8.1978; and that as the alienation took place on 4.12.1982, long after the amended Section 5(3) had come into force, such an alienation was null and void.

G

Dismissing the appeals, this Court,

HELD: Section 5(3) of the Karnataka Village Abolition Act, 1961

H

A was amended by Karnataka Act 13 of 1978. There is a clear prohibition under the amended provision that the regranted land shall not be transferable for a period of 15 years from the date of commencement of Section 1 of the Amendment Act 1978. The effect of which is, for period of 15 years from 7.8.1978, the Statutory bar against alienation would operate. [791C]

B *Lakshimana Gowda v. State of Karnataka and others*, (1981) 1' Karnataka Law Journal Page 1, approved.

State of Karnataka and Anr. v. G. Seenappa and Anr. etc. etc., Special Leave Petition (Civil) No.14627 of 1985 etc. D/-27.2.1992 and *Rehman Khan and others v. State of Karnataka*, C.A. Nos. 3104-13 of 1981, referred to.

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3231 of 1991.

D From the Judgment and Order dated 5.6.1990 of the Karnataka High Court in W.A. No. 2700 of 1985.

AND

Civil Appeal Nos. 4418-19 of 1990.

E From the Judgment and Order dated 26.11.1982 of the Karnataka High Court in W.P. Nos. 8744 & 8745 of 1980.

WITH

C.A. Nos. 1609-1610 and 1616-1617 of 1986, 4385/85, 3232- 33/91, 3576 and 2289 of 1984.

F R.S. Hegde, K.R. Nagaraja and Ms. Sushila for the Appellant in C.A. Nos. 3231 and 3232-33 of 1991.

M. Veerappa for the Appellant in C.A. Nos. 4418-19/90.

G M. Veerappa for the Respondents in C.A. Nos. 3231 and 3232-33 of 1991.

The Judgment of the Court was delivered by

H MOHAN, J. In all these appeals the common question of law which arises is the scope of Section 5(3), as amended, of Karnataka Village

Offices Abolition Act, 1961 (hereinafter referred to as the Act). Hence the appeals are dealt with under a common judgment. A

It is enough if we note the facts briefly in Civil Appeal No. 3231 of 1991. The land bearing Survey No. 187/2 measuring an extent of 13.21 acres of Anigaol Village was Patilki Inam Land. The land was resumed to the Government under Section 4 of the Act with effect from 1st February, 1963. Ninganagouda Ramanagouda Patil of Anigol was the holder of these watan lands. He filed an application dated 6.2.1968 for regrant of land. He also paid an amount equal to 3 times the assessment and health cess. The Assistant Commissioner Sailhongal Division directed the regrant by an order dated 15.4.1968. Thereafter the papers were forwarded to the Tahsildar of Sampagaon for information and necessary action. B C

Ninganagouda Ramanagouda Patil sought sanction to alienate land as provided under Section 5(3) of the Act as it stood then. He also deposited an amount equal to 15 times the assessment of land as required. The Assistant Commissioner by his order dated 28.8.1968 granted the sanction. D

In the year 1978, by Karnataka Act 13 of 1978 Section 5(3) of the Act was amended. The amended section prohibited the alienation of regranted land for a period of 15 years from the date of commencement of Section 1 of the Amendment Act of 1978. E

On the strength of the permission dated 28.8.68, N.R. Patil, the holder, sold away the property in parcels to three persons. An extent of 5 acres came to be purchased by the appellant on 4.12.82. The Tahsildar Sailhongal issued a notice to the appellant as to why action should not be taken against him for eviction since the land in question had been purchased in contravention of the provisions of the Act. The appellant explained that in view of the order granting sanction to the holder of the land the holder was entitled to alienate the same. Once such a permission was granted the land ceased to be governed by the provisions of the Act. In any event, the order of sanction mentioned that the land in question was transferable. F G

This explanation was rejected by the Tehsildar who, by his order dated 23.6.1984 held that the appellant was liable to be evicted. Accord- H

A ingly, he ordered that possession of the land be taken over by the Government free from encumbrances, if any. Thereupon the appellant moved the High Court of Karnataka by way of W.P. No. 11238 of 1984.

B The learned Single Judge held that if the regranted land had not been alienated with prior permission before 7.8.1978, it could not be alienated for a period of 15 years after 7.8.1978. That is the clear intention of the Amendment Act of 1978. On this line of reasoning he dismissed the writ petition. An appeal was preferred to the Division Bench in W.A.No. 2700 of 1985 unsuccessfully. It is under these circumstances, special leave to appeal was preferred. Leave was granted by an order dated 22.8.91.

C The only contention urged on behalf of the appellant is that by order dated 28.8.68 the holder of Ex.Patilki watan lands was granted sanction to alienate the lands. Such sanction is complete in every respect. Merely because Section 5(3) of the Act came to be amended in 1978 that will not, in any manner, affect the sanction already granted. It matters very little when the alienation actually took place even within a prohibited period of 15 years from 1978.

E The learned counsel for the State would submit that it is true by an order dated 28.8.1968 that sanction was granted to alienate the lands. However, if the alienation had not taken place on the strength of that sanction prior to 7.8.1978, the statutory prohibition contained under Section 5(3) will squarely apply. In other words, it could not be alienated for a period of 15 years after 7.8.1978. In this case, the alienation took place on 4.12.1982 long after the amended Section 5(3) had come into force. F Therefore, such an alienation is null and void. As a matter of fact, the question is no longer *res integra*. A Division Bench of the Karnataka High Court in *Lakshmana Gowda v. State of Karnataka and others*, (1981) 1 Karnataka Law Journal Page 1, categorically ruled that such alienations are *null and void*. Several special leave petitions preferred by the State and G parties assailing that judgment have been dismissed. The same is the position here.

On a careful consideration of the above submissions, we hold that the contention advanced on behalf of the State deserves to be accepted. H Section 5(3) of the Amendment Act, 1978, reads as follows:

"5(3) The occupancy or the ryotwari patta of the land, as the case may be, re-granted under sub-section (1) shall not be transferable otherwise than by partition among members of Hindu joint family for a period of 15 years from the date of commencement of Section 1 of the Karnataka Village Offices Abolition (Amendment) Act, 1978."

Though the sanction to alienate was granted on 28.8.1968 yet the alienation took place on 4.12.82. In the meanwhile, the above amendment, namely, section 5(3) had come to be introduced by Karnataka Act 13 of 1978. There is a clear prohibition under the above provision that the regranted land shall not be transferable for a period of 15 years from the date of commencement of Section 1 of the Amendment Act 1978. The effect of which is, for a period of 15 years from 7.8.1978, the statutory bar against alienation would operate. In fact, in *Lakshmana Gowda* (supra), in paragraph 87 at page 18 it is stated thus:

"87. In the light of the above principles of statutory construction, we hold that sub-sec. (4) of S.5 of the Principal Act should be construed as being applicable only to transfers made subsequent to 7.8.1978 and not to transfers which had taken place prior to that date and that sub-sec. (3) occurring in that section should be construed as having reference to amended sub-sec. (3) and not to original sub-sec. (3) of that Section."

The High Court has laid down the correct legal position. This line of reasoning has been approved in Special Leave Petition (Civil) No. 14627 of 1985 etc. in *State of Karnataka and Anr. v. G. Seenappa and Anr. etc. etc.* which were dismissed by an order of this Court on 27.2.1992. Again in *Rehman Khan and others v. State of Karnataka* (C.A. Nos. 3104-13 of 1981) this Court upheld the ruling of *Lakshman Gowda's* case (supra). Thus, we conclude that the High Court is right. No interference is called for.

In the result, the appeals are dismissed with no order as to costs.

V.P.R.

Appeals dismissed.