Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. 1351-1352 OF 2016
(@ SPECIAL LEAVE APPEAL (C) Nos. 22677-22678 of 2011)

N. Venkateshappa. …… Appellant

Versus

Munemma & Ors. …. Respondents

JUDGMENT

Uday Umesh Lalit J.

1. Leave granted.

2. These appeals arise out of Judgment and Order dated 27.07.2010 in Regular Second Appeal No.323 of 2008 and order dated 1.06.2011 passed in R.P. No.476 of 2010 by the High Court of Karnataka at Bangalore.

3. The Karnataka Village Offices Act, 1961 abolishes village offices which were held hereditarily before the commencement of the Constitution of India. The appointed date under Section 2(a) of the Act is 01.02.1963. Section 4 of the Act abolishes all village offices on and with effect from the appointed date and sub-section (3) of Section 4 stipulates that subject to the provisions of Sections 5, 6 and 7 land annexed to a village office shall stand resumed and be subject to the payment of land revenue as if it were unalienated land or ryotwari land. Section 5 of the Act lays down that the lands so resumed under Section 4(3) of the Act and not falling under Sections 6 and 7 of the Act be granted to the person who were holders of the village offices immediately prior to the appointed date on such payment as prescribed. Sections 6 and 7 of the Act lay down that if the land so resumed is held by an authorized holder it shall be re-granted to such holder on payment of occupancy price as prescribed.

4. The Act was amended by Act No.13 of 1978 which inter alia inserted Section 5(4) as under:-

> "5(4) Any transfer of land in contravention of sub-section (3) shall be null and void and the land so transferred shall, as penalty, be forfeited to and vest in the State Government free from all encumbrances and any person in possession thereof shall be summarily evicted therefrom by the Deputy Commissioner and the land shall be disposed of in accordance

with the law applicable to the disposal of unoccupied unalienated lands:

Provided that if the person who has transferred the land in contravention of sub-section (3) is not alive, while disposing of such land, preference shall be given to the heirs of such person.

Explanation.—For removal of doubts it is hereby declared that in sub-section (3), and in this sub-section transfer includes creation of a lease. ”

Section 7 of the Act as substituted by the Amendment Act now reads as under:

“7. **Eviction of unauthorised holders etc**.—

(1) Where any land resumed under clause (3) of Section 4 is in the possession of an unauthorised holder such unauthorised holder shall be summarily evicted therefrom and the land shall be taken possession of by the Deputy Commissioner in accordance with law: Provided that no such summary eviction shall be made except after giving the person affected a reasonable opportunity of making representation.

(2) Any order of eviction passed under sub-section (1) shall be final and shall not be questioned in any court of law and no injunction shall be granted by any court in respect of any proceeding taken or about to be taken by the Deputy Commissioner in pursuance of the power conferred by sub-section (1).

(3) The land from which an unauthorised holder is evicted under sub-section (1) shall,-

(a) if it was granted or continued in respect of or annexed to an inferior village office be re-granted to the holder of such village office; and

(b) in other cases be disposed of in accordance with the law applicable to the disposal of unoccupied unalienated lands.”

5. In ***Lakshmana Gowda*** v. ***State of Karnataka***[1]**,** Division Bench of the High Court had an occasion to consider questions including one concerning rights of an alienee of a service inam land from its holder or the authorized holder. It dealt with various issues but the one concerning the present matter was Question No. (iii) which was to the following effect:

> "(iii) Did an alienee of a service inam land from its holder or the authorized holder, acquire title to such land, if the alienation had taken place between the date of the coming into force of the Principal Act and the date of the re-grant, after its re-grant to its holder or the authorized holder under Section 5 or 6, as the case may be, of the Principal Act ? "

6. The answer to the aforesaid question was given in para 66 of the Judgment in the following words-:

> "Hence, our answer to the question is that if the holder or the authorized holder of a Service Inam land had alienated it after the Principal Act came into force and before it was re-granted to him under Section 5 or 6 of the Principal Act, the alienee acquired a title to that land after such re-grant to his alienor."

7. During the course of its discussion concerning the aforesaid question, it was also observed:-

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[1] (1981) 1 Karnataka Law Journal 1

> "We have already held that though the holder or the authorized holder of a Service Inam Land got title to such land only when it was actually re-granted to him under S. 5 or 6 of the Principal Act, such title related back to the date of coming into force of that Act. From this, it would follow that if he purported to alienate such land before it was re-granted to him, but after the Principal Act came into force, the doctrine of feeding the grant by estoppels embodied in S. 43 of the Transfer of Property Act, would apply and the title he subsequently acquired on such re-grant of that land, would ensure to the benefit of his alienee, who would get a good title to such land after such re-grant to his alienor."

8. The aforesaid view in ***Lakshmana Gowda*** [1] was affirmed by Full Bench of the High Court in ***Syed Bhasheer Ahamed*** v. ***State of Karnataka***[2] . While considering the rights of an alienee under an alienation made between 01.02.1963 and 07.08-1978 i.e. between the period of the appointed date and the date when the Amendment Act came into force, the Full Bench in para 30 (f) of its judgment observed as under:-

> "There is no provision in the Act authorizing the State Government or its authorities to evict an alienee under an alienation made between 1-2-1963 and 7-8-1978. Section 7 is not applicable, as such an alienee is not an 'unauthorised holder'. If the land alienated between 1-2-1963 and 7-8-1978, is subsequently re-granted to the alienor, the benefit of such re-grant, namely, title will enure to the benefit of the alienee. If the land is not re-granted to the alienor, but to someone else on the ground that the alienor is not a 'holder' or 'authorised holder', then the alienee will be in the position of a transferee from a person without any title; and the grantee to whom the

[2] 1994 (1) KLJ 385

> re-grant is made, will be entitled to obtain possession from the alienee and the limitation for such grantee to dispossesses the alienee will commence from the date of re-grant."

9. Agricultural land bearing Survey No.83 of Hoshalli Village, Kolar District, Karnataka admeasuring 3 acres 39 guntas was Thalavari Inamthi land in the hands of original Baruvardars named Muni Papanna and his father Narasappa. Said Muni Papanna and Narasappa sold this land under registered sale deed dated 13.05.1971 in favour of one Nadumpalli Muneppa. Pursuant to the sale deed, the alienee was put in possession of the land. The land in question was re-granted in favour of Muni Papanna on 31.03.1982. This was challenged in appeal and the matter stood remitted to the Tehsildar to pass fresh orders. Accordingly, fresh re-grant proceedings were taken up and the land was re-granted in favour of said Muni Papanna and two others. The re-grant in favour of those two others was challenged by Muni Papanna which challenge was allowed and the re-grant was confirmed in favour of Muni Papanna alone. Those proceedings attained finality and became conclusive.

10. Original Suit No.19 of 2004 was filed by the present appellant, being the successor-in- interest of Nadumpalli Muneppa i.e. the alienee in the Court of Civil Judge, Junior Division Srinivaspuri, District Kolar. It was

submitted that after the re-grant in favour of the original holder, by virtue of the judgments of the High Court of Karnataka as mentioned herein above, the plaintiff was entitled to the land in question. It was further submitted that the defendants namely the wife and the children of Muni Papanna had however executed registered sale deeds in favour of defendants 5 and 6 and that they were seeking to obstruct the possession of the plaintiff. With these assertions, the plaintiff prayed for declaration that he be declared absolute owner of the land in question and also prayed for appropriate permanent injunction restraining the defendants from interfering with his peaceful possession.

11. All the defendants filed common written statement. It was not disputed that there was alienation in favour of the predecessor of the plaintiff on 28.05.1971 but it was submitted that in proceedings initiated by Tehsildar under Section 7 of the Act, an order of eviction was passed against the alienee and that the alienee was evicted from the land on 24.09.1981. It was thus submitted that on re-grant in favour of Muni Papanna, the benefit must accrue to the heirs of said Papanna alone and that the plaintiff had no right, title or interest in land in question.

12. The Trial Court by its judgment and order dated 12.02.2007 accepted the claim of the plaintiff and decreed the suit. Relying on the decisions in ***Lakshmana Gowda*** and ***Syed Bhasheer Ahamed*** it was observed that the alienation between 01.02.1963 and 07.08.1978 was not invalid and that the land having been re-granted in favour of Muni Papanna, the alienee can certainly claim the benefit by doctrine of feeding the grant by estoppel in view of the re-grant of land in favour of the alienor/holder of the office under Section 5(1) or 6 of the Act and the subsequent sale deeds in favour of Defendant Nos.5 and 6 would therefore be of no legal consequence. The suit was decreed declaring the plaintiff to be absolute owner.

13. The aforesaid decision of the Trial Court was challenged before the Principal District Judge Kolar in Regular Appeal No.163 of 2007. The lower Appellate Court affirmed the view taken by the Trial Court and dismissed the appeal by its judgment and order dated 05.01.2008. The respondents carried the matter further by filing Second Appeal No.323 of 2008 which came to be allowed by judgment and order dated 27.07.2010. It was observed by the High Court that the alienee having been evicted from the land on 24.09.1981, as on the date when re-grant was ordered, the possession was not that of the alienee and as such the courts below were not justified in relying upon the decisions of the High Court ***Lakshmana Gowda***

and ***Syed Bhasheer Ahamed*** case. The review petition preferred by the present appellant was rejected by the High Court vide order dated 1.06.2011.

14. We have heard Mr. Sampat Anand Shetty, learned Advocate for the appellant and Mr. S.N. Bhat, learned Advocate for the respondents and have gone through the record and considered the rival submissions. The law on the point as to the rights of an alienee of an Inam land where the alienation had occurred between 01.02.1963 and 07.08.1978 stands settled by the decisions in ***Lakshmana Gowda*** (supra) ***and Syed Bhasheer Ahamed*** (supra).

15. As laid-down in these cases, upon re-grant of the land in favour of the holder of a Service-Inam, the re-grant must enure to the benefit of the alienee, if such alienation was between 01.02.1963 and 07.08.1978. Further, upon such re-grant, the title of a holder of the Service-inam land would relate back to the date of coming into force of the Act. In the circumstances, upon re-grant, the title of the predecessors of the respondents herein would relate back. The alienation effected by them on 13.05.1971, by principles of "feeding the grant by estoppel" would enure to the benefit of the alienee who would get good title to such land after such re-grant. As observed by the Full-Bench, where the alienation occurred between

01.02.1963 and 07.08.1978 the alienee would not be "unauthorized holder". In the circumstances, the Tehsildar was not competent to initiate proceedings for eviction under Section 7 of the Act against the alienee, namely, the predecessor-in-interest of the present appellant. Both the Courts below were, therefore, right and justified in accepting the claim of the plaintiff-appellant and the High Court was completely in error in setting aside the concurrent view and allowing the second appeal.

16. We, therefore, allow these appeals. The judgment and orders of the High Court under appeal are set aside and the judgment and decree passed by the Trial Court in OS No.19 of 2004 as affirmed by the Appellate Court in Regular Appeal No.163 of 2007 is restored. No orders as to costs.

……..J.
(V. Gopala Gowda)

…….J.
(Uday Umesh Lalit)

New Delhi,
February15, 2016