Supreme Court of India

JUSTICE L. NAGESWARA RAO JUSTICE A. S. BOPANNA

The State of Karnataka v. G. Ramanarayana Joshi

CIVIL APPEAL NO. 4117 OF 2022

17th May 2022

Karnataka Land Revenue Rules 1966, R. 119(2)

Petitioner Counsel: V. N. RAGHUPATHY, Respondent Counsel: RAGHAVENDRA S. SRIVATSA

JUDGEMENT

A. S. Bopanna, J.

1. Leave granted.

2. This appeal is directed against the judgment dated 17.07.2019 passed by the High Court of Karnataka at Bengaluru in Writ Appeal No.2319 of 2018 (KLRRES). Through the said judgment, the Division Bench has dismissed the appeal filed by the appellants herein. The intracourt appeal before the Division Bench was filed by the appellants, assailing the order dated 13.09.2017 passed by the learned Single Judge of that Court, in W.P. No.46003/2013 (KLRRES). The learned Single Judge had allowed the writ petition filed by the respondent herein and had quashed the communication that was impugned at Annexure M and N to the writ petition. Consequently, direction was issued to the appellants herein to withdraw the land belonging to the respondent which was transferred to the Forest Department and restore the same to the appellant in terms of subrule (2) to Rule 119 of the Karnataka Land Revenue Rules, 1966 (for short, ‘Rules 1966’).

3. The brief facts necessary to be noted for the disposal of this appeal are; the respondent claims to have succeeded to the property bearing Survey No.170 measuring 45.01 acres situated in Horanadu village, Kasaba Hobli, Mudigere Taluk, Chikmagaluru District. The said property is claimed to have been purchased by his ancestors, namely, Bhima Jois, son of Venkatasubba Jois of Horanadu Village in a public auction held on 10.12.1887. The ancestors of the respondent and thereafter, the respondent who succeeded to the property, claim to have continued in uninterrupted possession of the said property. However, the land revenue having not been paid, the property was forfeited to the Government during 1892. Though that was the position, the property remained in the possession and enjoyment of the family even after such forfeiture and they continued to enjoy it. To that effect, the Khetwar extract for Survey No.170 (Old Survey No.132) of the year 1919 is produced in the writ petition and relied upon by the respondent.

4. When this was the position, through notification no. RD 50 LGP 96 dated 07.09.2000 the Government amended subrule (2) to Rule 119 of the Rules 1966 providing for restoration of

the forfeited property, if such application is made during a period of not more than one year from the date of the commencement of the amendment i.e. within one year from 08.04.2000. The said benefit was granted notwithstanding the expiry of the period allowed under subrule (1) to that Rule. The appellant taking benefit of the said amendment filed the applications on 30.09.2000 and 05.10.2000 seeking for restoration, which were well within the time prescribed. When the said applications had not received consideration, the respondent was before the High Court in W.P. No.11334/2007 seeking for a direction to consider the applications. The learned Single Judge disposed of the writ petition on 24.07.2007 with a direction to the Deputy Commissioner to dispose of the applications filed by the respondent.

5. On consideration, the applications came to be rejected by order dated 27.11.2009. The respondent claiming to be aggrieved by such rejection, filed another writ petition in W.P. No.36324/2009 (KLRRES). The learned Single Judge allowed the writ petition on 26.06.2012 quashed the order dated 27.11.2009 impugned therein and directed the Deputy Commissioner to consider the applications afresh on merits, by taking into consideration reports of the Assistant Commissioner and Tehsildar, as also the observations contained in the order passed by the learned Single Judge on 26.06.2012. However, contrary to the directions issued, the claim of the respondent was negatived by the order dated 19.08.2013 passed by the Additional Chief Conservator of Forest. The Forest Department also issued notice dated 16.09.2013 based on the said order, which were assailed in W.P. No.46003/2013 (KLRRES). The learned Single Judge having taken note of all these aspects of the matter allowed the writ petition by the order dated 13.09.2017 as noted above. It is against the said order the appellants herein had preferred the intracourt Writ Appeal No.2319 of 2018 (KLRRES), which was dismissed by the order dated 17.07.2009, assailed herein.

6. In the background of the factual narration leading to the present appeal, we have heard Mr. Nikhil Goel, AAG with Mr. V.N. Raghupathy for the appellants, Mr. Raghavendra S. Srivatsa with Mr. P.N. Manmohan for the respondents and perused the appeal papers.

7. The contention on behalf of the appellants is that the land was forfeited as far back as in the year 1892 and as such the application filed under Rule 119 of the Rules 1966 would not be maintainable. It is contended that even assuming the amended subrule is held applicable the same specifies that the application would be entertained only in respect of the land which has not been disposed of otherwise. It is contended that in the instant case the Government of Karnataka by order dated 20.07.1994 had transferred an extent of 2.58 lakh hectares of ‘C’ and ‘D’ category lands to the Forest Department for the formation of land bank, which included the extent of land that is in issue, in this proceeding. It is contended that the land was ‘disposed of’ and was therefore not available to be considered for restoration under subrule (2) to Rule 119 of Rules 1966. It is the appellant’s case that the G.O. dated 20.07.1994 whereby the land was transferred to the Forest Department had in fact been assailed by the respondent herein in W.P. No.10786 of 2006 (KLRRES) before the High Court of Karnataka but the learned Single Judge disposed of the writ petition on 08.08.2006 without interfering with the said notification. In that circumstance, the application filed for restoration in respect of land which has already been transferred to

Forest Department was not sustainable and the competent authority had rightly dismissed the application which ought not to have been interfered with by the High Court. Though in the present round of proceedings the benefit was granted by the learned Single Judge in W.P. No.46003/2013, the issue essentially was considered in the earlier writ petition in W.P. No.36324/2009 wherein reconsideration was directed. The learned Additional Advocate General while referring to the order passed therein would seek to contend that the very observation contained in the said order about the predicament for the Deputy Commissioner due to the order dated 20.07.1994 in W.P. No.11334/2017 should have tilted the consideration in favour of the appellant. In that light, it is contended that the lands which were forfeited to the government and being transferred to the Forest Department were not in the possession of the respondent.

8. The learned counsel for the respondent while seeking to sustain the order passed by the Division Bench has also made reference to the order passed by the learned Single Judge in the present round of the proceedings, as well as the order in the earlier writ petition. In that light, it is contended that the property in question is the property which was purchased by the ancestors of the respondent in an auction. Hence as on the date of forfeiture, the property was a privately owned land and the forfeiture was due to nonpayment of land revenue arrears. Though the forfeiture had taken place by operation of law, factually the ancestors had continued to be in possession and the appellant has succeeded to the same. The property in question is being cultivated as a plantation. The house of the respondent and a temple is also situated therein. Notwithstanding the Government Order dated 20.07.1994 the respondent had continued to remain in possession and cultivation of the property. There is no other contrary material available on record to dispute the claim of the respondent. When this was the position, a right became available to the respondent by amendment of subrule (2) to Rule 119 of Rules 1966. The benefit of the amendment made on 07.09.2000, with effect from 08.09.2000 was availed by the respondent and an application for restoration was made on 30.09.2000 and 05.10.2000 within the time frame provided under the subrule. It is contended that the High Court having taken into consideration all these aspects of the matter and also the fact that the reports submitted by the Tehsildar and the Assistant Commissioner which established the position that the respondent continued to be in possession, has granted the relief, which does not call for interference.

9. In the light of the contentions, keeping in view the background referred to by the respondent herein, the document of the year 1919 at AnnexureA to W.P. No.36324/2009 would disclose that the property originally was a privately owned property in the name of Bhima Jois, under whom the respondent is claiming right and title to the property. Though that is the position, the indisputable aspect is that the property which is said to have been purchased in the public auction by the ancestors of the respondent was forfeited to the Government on 23.08.1892 for nonpayment of arrears of land revenue. One aspect of the matter is with regard to the predecessor of the respondent having continued to be in possession of the property and thereafter succeeded to by the respondent. On that aspect, the finding of fact recorded by the competent authority and noted by the High Court would be relevant since it will not be open for reappreciation in the limited scope under Article 136 of the Constitution, in a petition of the present nature. The other aspect of the matter is

regarding the right available to the respondent to seek restoration and in that regard whether such right subsisted in favour of the respondent.

10. The right to seek restoration is traced to subrule (2) of Rule 119 of Rules 1966 which read as hereunder:

“119. Restoration of forfeited occupancy or alienated holding on payment of the arrear due.

(1) The Deputy Commissioner may restore any forfeited occupancy or alienated holding which has been purchased on account of the Government and which has not been disposed of otherwise within three years from the date of forfeiture on payment of the arrear in respect of which the forfeiture was incurred together with the amount of land revenue in respect of the holding from the date of forfeiture to the date of restoration and the expenses incurred so far in the recovery and further proceedings as may be forced by the Commissioner.

(2) During a period of not more than one year from the date of commencement of Karnataka Land Revenue (Amendment) Rules, 2001 the Deputy Commissioner may, notwithstanding the expiry of the period specified in subrule (1), restore any forfeited occupancy or alienated holding which has been purchased on account of the Government dues and which has not been disposed of otherwise, to the person who has not been dispossessed of such occupancy or holding immediately before such commencement, on payment of the arrears in respect of which the forfeiture was incurred together with the amount of land revenue in respect of the holding from the date of forfeiture to the date of restoration and the expenses incurred so far in the recovery and further proceedings as may be fixed by the Deputy Commissioner.”

11. By the amendment to subrule (2) by way of substitution with effect from 08.09.2000 the final effect is that an application was required to be filed within one year from the date of substitution, which was filed by the respondent on 30.09.2000 and 05.10.2000, seeking restoration.

12. Having taken note of the same what is also to be taken into consideration is that the property which is the subject matter of this proceeding was also a part of the total extent of 2.58 lakh hectares which was transferred to the Forest Department for formation of land bank through the Government Order dated 20.07.1994. The Government Order reads as hereunder:

“GOVERNMENT ORDER NO. RD 106 LGP 88,

BENGALURU DATED 20.07.94

The Government after detailed examination of the proposal issued order for transfer of total extent of 1,31,86661 hectare area as given in the Annexure enclosed to this Order to the Forest Department for formation of land bank, subject to the following conditions.

1. If the land is required for the public purpose and for Government itself the Revenue

Department may take back this land from the land bank.

2. The transferred lands have to be continued as C and D category lands. No Notifications can be issued stating that these lands are reserved as Forest under the Forest Act.

3. At the time of release of Forest areas for mining activities from the Forest Department. As a compensation for that, for growing relief Neduthopu the Government may release land out of C and D Category lands from the land bank and may make it available for the Forest Department.

By Order and in the name of the Governor of Karnataka, Jitendra Singh Under Secretary to Govt. Revenue Department"

13. The relevant Rule and the Government Order will have to be taken note of, to consider the contention of the learned Additional Advocate General that the right was not available to the respondent to seek restoration since the Government Order dated 20.07.1994 transferring the land to Forest Department will amount to disposal of the forfeited land and subrule (2) excludes the land "disposed of otherwise" from being considered for restoration. In that background, a perusal of the Government Order would indicate that it is not in the nature of a Gazette notification invoking power under the Karnataka Forest Act to notify the land as 'reserved forest' or such other forest area. On the other hand, the decision of the Government is explicit to indicate that the land is to be continued as 'C' and 'D' category lands which is a classification of the revenue lands. In fact, the Government Order specifies that no notification can be issued stating that these lands are reserved as forest under the Forest Act. The only intention appears to be to encourage afforestation and safeguard the lands vested in the Government but should continue to be available to the Government as revenue land. This is clear from the preamble to the said order which specifies that if the land is required for the public purpose and for the Government itself, the Revenue Department may take back this land from the land bank. Therefore, as on the date when the right accrued to the respondent to make an application seeking restoration, the status of the property was the same and the transfer was only from the Revenue Department of the Government to the Forest Department of the same Government i.e., from one arm to another. The position therefore was that the Forest Department was made the 'custodian' of the revenue land for a limited purpose. Hence, as on the date when the respondent had made an application it cannot be construed that the land in question had been disposed of as contemplated under subrule (2) to Rule 119 of Rules 1966.

14. Further, as noted, neither at the time when forfeiture happened nor at the time when the property of respondent was made over to the Forest Department by an executive order, is there any proceeding to indicate that the respondent or his predecessor was evicted and vacant possession was handed over to the Forest Department. In that light, if the possession had continued with the respondent, the respondent was entitled for consideration of his application for restoration. That apart, though much is made about the respondent having failed in his attempt to assail the Government Order dated 20.07.1994 in W.P. No.10786/2006, the same does not alter the position. The Government Order as noted was a common order in respect of a larger extent of land. There was no need to

assail the Government Order since the Forest Department was only made the 'custodian' and the property of the respondent was also included but it remained to be forfeited land which was restorable subject to meeting other requirements. The respondent was to establish his right, in which event on consideration of his application the property to the extent belonging to the respondent would get restored in accordance with law, which will thereafter cease to be a part of the Government Order and the Forest Department can neither object to it nor claim possession to the same. Instead of following the said process and awaiting consideration of his application, the respondent had in fact put the 'cart before the horse' in assailing it and failed, which is inconsequential. The learned Single Judge in any event had left it open for the respondent to work out his remedy before the Deputy Commissioner, which has been availed.

15. In the above backdrop, before adverting to the order passed in the present round of litigation before the High Court, keeping in view the fact that the reconsideration by the Deputy Commissioner is predicated and was to be based on the observations contained in the order dated 26.06.2012 in W.P. No.36324/2009 (KLRRES), the finding recorded by the learned Single Judge in the said writ petition would be relevant to be noted, which read as hereunder:

"11. In so far as second ground is concerned, same is contrary to the very finding of the authority which passed the impugned order namely contrary to the finding recorded in AnnexureE & K, whereunder, it has been specifically held by the second respondent Deputy Commissioner himself that land in question is in possession of petitioner.

12. In view of the same, question that arises would be whether petitioner is entitled for being restored with the possession of land by virtue of sub rule (2) of Rule 119. As rightly pointed out by Mr. Patil, learned HCGP land in question has been diverted by the Government under a Government order bearing No.RD 106 LGP 88 dated 20.07.1994 to the Land Bank for being transferred to various departments of the Government. However, factually the land in question has continued to be in possession of the petitioner as consistently held by the respondents including the 2nd respondent authority which has passed the impugned order. In fact, one of the basic criteria for considering an application under subrule (2) of Rule 119 is that applicant should have continued to be in possession of the land, though said land was forfeited to the Government for non payment of revenue. In other words possession should not have been diverted. Thus, the criteria prescribed in this regard is duly satisfied by the petitioner even according to the respondent authority themselves. However, to avoid any technical plea being raised and obviously by way of abundant caution, second respondent has requested the Government by communication dated 26.12.2000 and communication dated 23.08.2007 AnnexureE and J requesting the first respondent Government to cancel/annul the orders under which the land in question is said to have been diverted i.e., Government order dated 20.07.1994. In the absence of any order having been passed by the first respondent Government, no order could have been passed by the second respondent by considering the claim of the petitioner. However, the Deputy Commissioner was placed in a situation in which, he was facing a direction issued by this court in Writ Petition No.11334/2007 dated 24.7.2007 whereunder he was directed to dispose of the application within time frame and non compliance of said order would

have resulted in proceedings being initiated against him and he had yet to receive reply from the Government for his requests made under letters dated 26.12.2000 and 23.08.2007 vide Annexures E & J respectively. In this background and left with no other option and in spite of there being no orders having been passed by the first respondent Government withdrawing or canceling the order dated 20.7.1994 he was perforced to pass the impugned order. The reasons assailed by the second respondent to reject the applications cannot be accepted by this court for the reasons aforesaid. Hence, the impugned order cannot be sustained."

16. A perusal of the extracted portion of the order would indicate that the learned Single Judge in the said writ petition had taken note of the documents which indicated the possession over the property by the respondent. The said order has attained finality. It is in the background of the said sorder, reconsideration was required to be made by the Deputy Commissioner. Though the said order of the learned Single Judge had attained finality, the Forest Department in disregard of the legal procedure and niceties involved, erroneously intervened in the process and issued the communication dated 16.09.2013, based on an Order dated 19.08.2013 passed by the Additional Chief Conservator of Forests against the respondent which necessitated the filing of the W.P. No.46003/2013 (KLRRES). In the said writ petition a detailed consideration was made by the learned Single Judge by framing the relevant questions for consideration. In the course of the order the learned Single Judge took note of the notice issued by the Forest Department and while doing so the learned Single Judge has adverted to the report dated 11.10.2010 of the Tehsildar disclosing the land to be in possession of the respondent and the detailed consideration on that aspect made by the coordinate Bench in the earlier writ petition. The action of the Forest Department was accordingly held impermissible. It is in that light, the learned Single Judge had allowed the writ petition and had quashed the impugned communications and order, consequent to which direction was issued to restore the ownership of land.

17. The Division Bench, in that background had taken into consideration all these aspects of the matter. The nature of transfer made to the land bank to be retained as 'C' and 'D' category land has been adverted to by the Division Bench and it has been emphasised that the land was not notified as 'reserve forest'. Be that as it may, even if at this point there is sufficient tree growth over the lands which were transferred to the Forest Department, the property to which the respondent claims cannot be considered in today's perspective. Though the lands were made over to the Forest Department by an executive order, the factual finding indicates that the respondent continued to be in possession and had developed coffee and areca plantation which in any event will require tree growth. The right which accrued to the respondent to seek restoration in the year 2000 is within about six years from the date of Government Order during 1994. In such event, the Forest Department could not have intervened in the present situation, unmindful of the earlier orders.

18. In the circumstance, the High Court has kept in view, the legal position and has taken note that the possession of the property remained with the respondent throughout, which would satisfy the requirement to claim restoration under subrule (2) to Rule 119 of Rules 1966. When a factual finding is rendered to that effect, it will not arise for consideration in

the limited scope available to this Court in a proceeding of the present nature.

19. In that view, the appeal being devoid of merit stands dismissed with no order as to costs.

20. Pending application, if any, shall stand disposed of.