SUPRME COURT OF INDIA

Hon'ble Justice A Ray, Justice V R Krishna Iyer, Justice Y V Chandrachud

Chairman, Ramappa Gundappa ... vs State Of Mysore

Citation: AIR 1974 SC 856, (1974) 2 SCC 221

JUDGMENT

Krishna Iyer, J.

1. The appellant in Civil Appeal No. 602 of 1971 is a co-operative society claiming to consist of members who are "local landless backward class people". It has come to this Court by special leave against the judgment of the High Court of Mysore (now Karnataka), having been deprived of the leasehold right granted to it pursuant to the order of Government dated July 17, 1968. Although the term of the lease, namely, five years, has by now expired, still the finding of the High Court is sure to injure the claims of the petitioner society in future and so we proceed to consider the subject-matter on the merits.

2. Considerable lands had been acquired in the last century in the village of Gudas in Belgaum District by the Government of Bombay on the score that they were likely to be submerged by the construction of a weir on the river Ghataprabha. However, during summer when the storage of water would shrink, the lands on the contours would be exposed for a whole season and could be put to agricultural use. Therefore, the Government of Bombay resolved by Ex. A of 1898 that such lands could be "let annually for cultivation to such persons and on such terms as may be decided soon", and a further policy decision was taken regarding the persons to whom the lands might be given for seasonal cultivation, and the resolution of Government ran to the effect that "in consideration that the original holders have been dispossessed for a public purpose, Government are pleased to direct as a matter of grace that they should have the first option of cultivating their former holdings". (emphasis added).

3. A few decades later, the same Government, by Ex. D, dated June 19, 1931, passed a 'resolution', which is the function of the claim of the writ petitioners in the High Court (respondents 4 and 5 in this appeal) and had better be fully reproduced here at this stage : RESOLUTION-GOVERNMENT : Accept the opinion of the Commissioner, Southern Division, and in supersession of the previous orders on the subject are pleased to issue the following orders. The lands, which have been acquired for the Gokak Storage works as being liable to be submerged annually, should be given out for cultivation, when it is feasible to do so on account of the level of water going down after October, to the holders of the survey numbers lying immediately in their rear, such land should be charged Rs. 28. O per acre as rent in addition to the current

settlement rates plus any water rates for water advantage according to the land since the fixing of the settlement rates, either under Section 44 of the Irrigation Act or under Section 55 of the Land Revenue Code. The lands previously mentioned for such cultivation should be treated in the same way after that termination of the period of the current auction sales. BY ORDER OF THE GOVERNOR IN COUNCIL.

4. As years passed, Government changed its policy and by a circular dated December 19, 1953, a new decision was reached and communicated to the concerned officers. Since the appellant rests its claim on, the strength of this circular memorandum, it is appropriate to set it out in full here.

GOVERNMENT CIRCULAR MEMORANDUM;

In supersession of all orders issued so far in connection with the disposal of Galper lands in charge of the public works department, Government is pleased to direct that the principles laid down in the accompanying note printed as an accompanyment, should be adopted while disposing of such lands in future.

2. These orders in the accompanying note do not supersede the orders contained in Government Resolution, Revenue Department No. 7056/49, dated the 14th October, 1950, as the letter are applicable to the disposal of Galper Lands under the control of the Revenue Department.

By order and in the name of the Governor of Bombay Sd/-

(P.R. Joshi) DEPUTTY SECRETARY TO GOVERNMENT A note on the General Policy regarding disposal of tank bed lands in charge of public works department.

In order to eliminate middlemen, profiteering and malpractices in the disposal of tank bed lands (i.e. galper lands)

Government has had under consideration for some time past the question about disposal of such lands. Taking into consideration the present systems and with a view to rehabilitating some of the landless villages who are keen on personal cultivation, and evolving a uniform practice throughout the State in this respect, Government is pleased to direct that tank bed lands should hence forth be disposed of in the manner indicated below.

2. In disposing of tank bed lands situated in a village or group of villages, preference should be given in the following orders:-

I. (1) Co-operative Societies of local landless backward class people.

(2) Co-operative Societies of local landless backward and other people mixed.

(3) Co-operative Societies of other local landless people.

(4) Local landless backward class people.

(5) Local landless people of other communities.

(6) Outside landless people.

(7) Local landholders.

Note : 1. Allotment to category 4, 5, 6 or 7 should be made after referring the matter to Govt.

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5. This decision of Government made in 1953 was reiterated in 1954 and 1956, apparently because Government must have noticed lapses in adherence to this important decision by the implementing officers.

6. It is apparent that while the decision of 1931 refers specifically to the lands acquired for the Gokak storage works it proceeds to authorise the giving of such lands for cultivation "when it is feasible to do so on account of water going down after October galper" to the holders of adjacent lands in the area. On the other hand, the later Government memorandum of 1953 covers all lands which admittedly includes also the lands acquired for the storage works covered by the present appeal, and is "in supersession of all orders issued so far in connection with the disposal of galper lands".

7. As pointed out above, adjoining owners enjoyed a weightage in getting the lands for seasonal cultivation under the 1931 resolution of Government but that stood superseded by the 1953 memorandum of Government which gave a list of priorities in regard to persons who should be eligible for getting leases of tank bed lands. Local landless backwards class people forming themselves into co-operative societies were given the highest preference, and we have no doubt that they form a class which the State may well encourage. It is not only open to the State but may be desirable that local landless backward class members should be given special advantages, more so when they form themselves into co-operatives, and we see a fulfilment of the Directive Principles of State Policy in Part IV of the Constitution in this Government memorandum of December 1953. However, we are not concerned with any aspect of this Government memorandum except to this extent that it has been passed in supersession of Ex. D of 1931.

8. The sole point that falls for decision is whether the High Court is right in holding that the Government resolution of 1931 confers on the writ petitioners (respondents 4 and 5 herein) a right "to cultivate the lands in perpetuity conditionally on the payment of the amounts due on account of the land revenue for the same and on the fulfilment of the other terms incorporated in Ex. D". Certainly, if an indefeasible

right in property has been vested in the petitioners, as the High Court thinks, there may be something to be said in favour of its ultimate finding, but we have no doubt whatever that the land belonged to Government, that it was free to give leases or rights to cultivate to whomsoever it chose, that its policies could change from time to time in accordance with its own social objectives and that any order modifying or nullifying the earlier policy decision by a subsequent resolution cannot be deprivatory of anyone's rights. At the most, the 1931 decision of Government raised hopes and expectations. What is more, the right to cultivate was precarious and seasonal depending on the recession of the water level during summer, and it is impossible to predicate the vesting of any right in the adjoining owners on the strength of Ex. D. In short, the writ petitioners had no right to property created in their favour by Ex. D of 1931, and in its absence the writ petition itself was unsustainable.

9. If every policy statement or direction of Government regarding disposal of State Property were construed as irreversibly creating right to property in prospective beneficiaries strange consequences would follow. An administrative decision of the last century would hold Government Prisoner perpetually and deny it the power to alter its policies and programmes, according to its understanding of the needs of the people. Moreover, how can an interest in immovable property and that in perpetuity be created by a mere Government proceeding ? Nor could the Bombay Land Revenue Code confer such right in real property merely from the circumstance that seasonal cultivation was permitted by the State to be carried on by neighbouring landholders. The provisions of the Code pressed into inapt service by the contesting respondents cannot by statutory operation transform an ephemeral permission to cultivate government land into a permanent estate in it. For we cannot predicate a tenure, much less an unlimited tenures here, as contemplated in Section 68. It is a curious social sidelight of this erroneous construction that even if tank beds and reservoirs got silted up by ploughing up the top soil the State will be helpless to prevent it even though the area is part of the irrigation project.

10. The village of Gudas, in which the property is situate, eventually became a part of the State of Karnataka on the Re-organisation of States on November 1, 1956. It was thereafter that on August 24, 1967 the appellant co-operative society was registered, professedly formed by landless labourers belonging to backward communities in Gudas village. The society made an application for the grant of the lands in dispute on lease and a Tehsildar did grant it on September 4, 1967. The term of the side lease was 10 years, and the lease itself was executed on September 15, 1967. Thereupon the adjacent owners, who would have enjoyed a professional right under Ex. D, moved the Government for cancellation of the lease granted by the Tehsildar in favour of the appellant and for the grant of the lease in their favour. On February

23, 1968 the Government cancelled the lease in favour of the appellant and directed the grant of the lease to the respondents 4 and 5. When this cancellation of the appellant's lease came to its notice. Government was moved for reconsideration of its policy decision and for re grant of the lease in the society's favour. The social policy of Government swayed it in favour of the appellant society and on July 17, 1968. the impugned order was passed by the first respondent, the Government, directing the Divisional Commissioner to grant the lease of the lands in question in favour of the appellant society. It was this order which was successfully challenged in the High Court by the present respondents 4 and 5.

11. We have already observed that neither the 1931 resolution nor the 1953 memorandum created rights in any person Government has laid down its policy from time to time in these resolutions. Since respondents 4 and 5 could not found a claim for a grant of lease or a right in property based on Ex. D, the allowance of the Writ petition by the High Court was clearly wrong. Nor are we disposed to think that we should decide the rights of the appellant before us, and in any case the period of the lease granted in favour of the appellant society has expired.

12. There was some dispute raised at the Bar as to whether the appellant society really consisted of landless labourers or backward class members. We are not concerned to adjudicate on that issue here. We set aside the judgment of the High Court and leave the matter of the grant of the lease of the lands in question to in the appellant, Government being free to grant leases of its lands according to any public policy which it may evolve in that behalf.

13. In the circumstances of the case, we allow Civil Appeal No. 602 of 1971. This decision will also govern the fate of the other appeals viz. Civil Appeal Nos. 983 988 of 1971. However, in regard to facts we direct that the appellants be given costs by the contesting respondents in the various appeals (C.As. Nos. 602/71, 983/71, 984/71, 985/71, 986/71, 987/71 and 988/71) but only one set of hearing fees will be allowed in all the appeals together. The burden of one set of the costs will thus be borne by the aforesaid respondents equally. With this direction regarding costs, we allow all the appeals.