

CASE NO.:
Appeal (civil) 7136 of 2001

PETITIONER:
M/S MURUDESHWARA CERAMICS LTD. & ANR.

Vs.

RESPONDENT:
STATE OF KARNATAKA & ORS.

DATE OF JUDGMENT: 12/10/2001

BENCH:
S. Rajendra Babu & Doraiswamy Raju

JUDGMENT:

[with C.A.No. 7137/2001 (@ SLP(C) No.9330/1999)]

J U D G M E N T

RAJENDRA BABU, J. :

Leave granted.

Respondent Nos.13 to 22 filed a writ petition in the High Court to restrain the appellants from putting up any construction, digging of well or carrying out any activity or establishing and putting up of a clay processing industry in the land comprised in Survey No. 23 of Varakodu Village, Hosangar Taluk, Shimoga District in the State of Karnataka and for a direction to the appellants and respondent Nos. 1 to 12 to appoint a commission for scientific study of the environment and ecology in the area for establishing of clay processing unit in the land in question or in any other land in Sahyadri mountain range or the entire western ghat with reference to the feasibility of mining and establishing industry. They also alleged that there has been contravention of the provisions of the Karnataka Land Reforms Act, 1961 [hereinafter referred to as the Act] in addition to the enactments made for protection of the environment and ecology like the Karnataka Forests Act, Karnataka Preservation of Trees Act and Forests Conservation Act. The land was purchased by appellant No.2 from the descendants of one Seetarama Maruti under a registered sale deed dated 22.2.1997. Appellant No.2 also happens to be the Executive Director of the appellant No.1 company.

The High Court found that various permissions, licences or clearances obtained from different authorities are not in accordance with law and set them at naught. The High Court also held that the acquisition of land by appellant No.2 is in contravention of the provisions of the Act. As regards sustenance of ecology and environment, the High Court directed a scientific study to be conducted. The High Court directed initiating proceedings under Sections 82 and 83 of the Act. Hence these appeals.

We shall first consider the question regarding the non-compliance with the provisions of the Act in purchasing the land in question. Section 79A of the Act debar certain persons whose annual income is not less than Rs. 2 lakhs from acquiring the land, while Section 79B of the Act prohibits holding of agricultural land by a person other than a person cultivating land personally or not lawful for educational, religious or charitable institutions or society or trust or a company or co-operative

society or body of individuals and associations to hold land. Section 80 of the Act prohibits transfer of land in favour of non-agriculturists. The High Court is of the view that the second appellant acquired the land claiming to be an agriculturist ostensibly for his personal cultivation but really for the benefit of the first appellant which is a company which cannot hold land under provisions of the Act.

By an order made on 3.7.1997, the State Government granted exemption under Section 109 of the Act from the applicability of Sections 63, 79A, 79B and 80 of the Act on certain terms and conditions mentioned therein. In the view of the High Court, the exemption is of no avail since it has been granted subsequent to the event of sale. The High Court felt that the scheme of the provisions of Sections 79A and 80 of the Act is such that the moment a transaction takes place which is in contravention of the provisions of the Act, the land will vest in the Government and, therefore, the prior exemption is necessary in the case. Where a person acquires a land in contravention of Section 79A of the Act, proceedings are contemplated under Section 79(4) of the Act and it is only after receipt of declaration and particulars thereof, the Tahsildar can, by a notification, declare that with effect from the date as may be specified in the notification such land shall stand transferred to and vest in the State Government free from all encumbrances and from the date specified in the notification, so that the Deputy Commissioner may take possession of such land in the manner as may be prescribed. Where the land is held in contravention of Section 79B of the Act, the Tahsildar will have to hold an enquiry after obtaining a declaration and declare that such land shall vest in the State Government free from all encumbrances and take possession thereof in the prescribed manner. If there is any contravention of Section 80 of the Act in the matter of transfer of land to non-agriculturists, appropriate proceedings will have to be taken up under that provision. Therefore, the land does not immediately vest on the transaction being entered into because an enquiry has to be held as to the contravention of the provisions of the Act and thereafter an appropriate order is made. In the present case, as noticed by the High Court, no such proceedings have been initiated under any of the provisions. Therefore, in the writ petition a direction was sought for and issued for action being taken under those provisions.

Section 109 of the Act confers power on the State Government to grant exemption in regard to a land in any area from the provisions of Sections 63, 79A, 79B and 80 of the Act to be used for industrial purposes, educational institutions, places of worship, a housing project or horticulture including floriculture or an agro based industry. Further, the Government has also the power even in the absence of such purposes to grant exemption in public interest. If the aspect that it is not with reference to any particular person or transaction such exemption is granted but it is with reference to a land such exemption is granted is borne in mind the interpretation and application of law becomes clear. It may be that such exemption could be granted before the acquisition of the land or thereafter when it is actually sought to be put to those particular uses, which are enumerated under Section 109 of the Act. Therefore, once we come to the conclusion that the Government has powers to grant exemption from the operation of the provisions of Sections 63, 79A, 79B and 80 of the Act and those provisions will be out of place insofar as the land in question is concerned, the examination by the High Court as to whether there has been contravention of the provisions thereof was totally uncalled for. The High Court need not have embarked on the investigation as to whether the sale is in contravention of the provisions of the Act and ought to have held that those provisions are not applicable in the case of the land in question in view of the exemption granted. Thus the finding recorded by the High Court in this regard is set aside.

During the pendency of the proceedings in this Court, several affidavits have been filed by the parties but the affidavit filed by appellant

No.1 is to the effect that the china clay processing unit of the appellant is not carrying out any activity due to litigation and the machinery and equipment have been temporarily shifted elsewhere to save them from corrosion. It is stated that they have obtained all the approvals already and they will carry out the same after the disposal of this matter. Fact remains that the unit is not commissioned as yet. In the affidavit filed on behalf of the State of Karnataka it is stated that the No Objection Certificates issued by the Karnataka State Pollution Control Board in the year 1997 and the Chief Inspectorate of Factories and Boilers in the year 1999 are being withdrawn and steps in that regard are being initiated. In the affidavit filed by respondent No. 12 on behalf of the Union of India, it is alleged that a plantation has been raised by the Karnataka Forest Department in the year 1986-87 in continuation block of Survey Nos. 23, 30 and 47 of Varakodu village and subsequently the land was purchased by the second appellant by registered deed dated 22.2.1997 and thus out of 7 acres and 19 guntas of land comprised in Survey No.23 owned by the second appellant approximately 2 acres of land are covered under Acacia plantation raised during 1986-87 by the Karnataka Forest Department. It is also stated therein that the land in question is surrounded by acacia plantation raised during 1986-87 by the Karnataka Forest Department in Survey Nos. 23, 30, 42 and 47 of Varakodu Village which is part of Varakodu Reserve Forest Block I and Block II and that area was finally notified under notification dated 27.10.1994 as Varakodu Reserve Forest Block under Section 17 of the Karnataka Forest Act, 1963 and as per that notification there is no right over any roads in this Reserve Forest Block. While raising plantations during 1986-87 only inspection path was left inside this reserve forest block, just for inspection purpose and not as a road for general public

Under these circumstances, the earlier clearances obtained by the appellants may not be of any use to them and now that the unit has not been functioning and fresh clearances will have to be obtained, we do not express any opinion on these aspects at this stage of the proceedings. It is open to the appellants to work out their rights just as the right is open to the respondents to oppose to the establishment of the unit in the area. When the Departments advert to these aspects, the provisions of the various enactments protecting the environment and ecology shall be taken note of and it is only after appropriate enquiry or assessment due clearances shall be given in accordance with law.

Subject to setting aside the finding in relation to the contravention of the provisions of the Act, the other aspects considered in the judgment of the High Court have become unnecessary for consideration and the contentions in regard to the same are kept open. Respondent Nos. 1 to 12 shall make fresh assessment of the matter uninfluenced by the decision of the High Court as indicated above in the event the appellants approach them for any of the clearances. The appeals shall stand disposed of in the terms stated above. No costs.

...J.
[S. RAJENDRA BABU]

...J.
[DORAISWAMY RAJU]

OCTOBER 12, 2001.