Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.4150-4163 OF 2013

NI PRA CHANNABASAVA DESHIKENDRA SWAMIGALU MATADHIPATHIGALU KANNADA MUTT ...APPELLANT

VERSUS

C.P. KAVEERAMMA & ORS. ...RESPONDENTS

J U D G M E N T

Fakkir Mohamed Ibrahim Kalifulla, J.

1. Unsuccessful appellant in the Writ Appeal before the Division Bench of the High Court of Karnataka at Bangalore is the appellant before us. This appeal is directed against the common judgment in W.A. Nos. 1936/2005 (LR) along with W.A. Nos. 1941/2005, 1946/2005 and 2202 of 2005(LR). The appellant is a religious Mutt called '*Kannada* Mutt'. Land of 197 acres was granted as Jagir to the Mutt in Survey Nos. 9, 10, 12 and 13 of Bettegeri village, Ammathy Hobli, Virajpet Taluk, Coorg District in the year 1809 by the then Ruler of Kodagu, Sri Veerarajendra Wodeyar. By a mortgage deed dated 1.3.1955, the predecessor of present Mathadhipathi stated to have mortgaged possession of

175.60 acres out of 197 acres of lands in favour of the predecessor-in-title of the present contesting respondents. By yet another mortgage deed dated 5.4.1967, a second mortgage deed in favour of the very same parties in respect of 17 acres of land was stated to have been made. The mortgages were made for a period of 99 years.

2. Be that as it may, on 18.5.1978, Karnataka Certain *Inams* Abolition Act, 1977 (hereinafter called as the "1977 Act") came into force and the effective date was 01.03.1974. By virtue of Section 4(2)(b) of the 1977 Act all *Inams* that were existing on that date stood abolished with effect from 01.03.1974, namely, the effective date. After the coming into force of the 1977 Act, the Mutt filed an application on 25.6.1987 for grant of occupancy rights in respect of the entire lands. By order dated 11.02.1993, the appellant's application was allowed by the Land Tribunal. The respondents, based on the rights flowing from the mortgage deeds, also claimed occupancy rights on the ground that they were the tenants of the land in question. Their application was rejected. There was a challenge at

the instance of the respondents to the grant of occupancy rights in favour of the appellant, as well as, the rejection of their rights in W.P.No.6379/1993. The Writ petition was allowed by the learned Single Judge and the grant of occupancy rights in favour of the appellant was set aside. The appellant filed Writ Appeal No. 5689/1997 and the respondent also challenged the very same order by filing Writ Appeal No. 5816/1997.

3. The appeal filed by the appellant was allowed and the order of the Learned Single Judge was set aside and the order of the learned Tribunal granting occupancy rights in favour of the appellant was restored. The respondents' Writ Appeal was dismissed. It is relevant to note that the said order of the Division Bench was not challenged further by the respondents and, thereby, grant of occupancy rights in favour of the appellant was confirmed. Subsequently, Form No.2 - Certificate was also issued in favour of the appellant on 15.4.2000 representing the Mutt.

4. By virtue of Section 3(2) of the 1977 Act, the words and expressions used, but not defined in the 1977 Act, shall have the meaning assigned to them under the Act or the Karnataka Land Reforms Act, 1961. Under Section 11, the procedure for registration as an occupant has been set out, which states that every person entitled to be registered as an occupant under the 1977 Act, should make an application to the Tribunal constituted under the Karnataka Land Reforms Act, 1961 on or before 31st day of March, 1991 and that the said application should be disposed of by the Tribunal as if it is an application made under that Act. Under Section 41(2) of the Karnataka Land Reforms Act, 1961, the procedure has been prescribed as to how a landlord should obtain the possession of any land, dwelling house or site held by a tenant, except under the order of the *Tehsildar* by making application under the prescribed format. Under Section 126 of the 1961 Act, it is specified that for the removal of doubts, it was declared that provisions of the 1961 Act, insofar as they confer any rights or impose obligations on tenants and landlords, shall be applicable to tenants holding lands in the *Inam* and other

alienated villages or lands including tenants referred to in Section 8 of the Village offices' Abolition Act, 1961, subject to the provisions of the 1977 Act and to landlords and *Inamdar* holding in such villages or lands. Section 130 of the 1961 Act empowers the *Tehsildar* concerned to summarily evict any person unauthorizedly occupying or wrongfully in possession of any land and also to make such orders as regards to the disposal of such land, as it deems fit. Section 132 of the 1961 Act bars the jurisdiction of other Courts to settle, decide or deal with any question, which is by or under the 1961 Act required to be settled, decided or dealt with by the authorities concerned.

5. The appellant approached the *Tehsildar* of Virajpet Taluk alleging that the respondents were in unauthorised possession and having regard to the coming into force of 1977 Act w.e.f. 1.3.1974 and the order of the Land Tribunal dated 11.2.1993, they are liable to be evicted and the possession to be handed over to the appellant. By order dated 28.8.2004, the *Tehsildar* allowed the appellant's application and directed eviction of the respondents. Based on the said order, the appellant was put in possession by

the *Mahazar*, drawn by Revenue Inspector of Ammathy Hobli on 31.8.2004. The handing over of the possession of the lands in question was effected in the presence of the *Tehsildar* Virajpet Taluk, Hosur circle and the Panchayatdars.

6. The respondents challenged the said order of the *Tehsildar* in Writ Petition No.36175/2004 & 36529-32/2004. The Single Judge among other issues, considered the question about the jurisdiction of the *Tehsildar* and held that the Tribunal under the Land Revenue Act had jurisdiction over the lands in question and that the *Tehsildar* was entitled to consider the application of the appellant filed in Form No.5. However, the Learned Judge found that there were serious irregularities in the matter of passing of the order by the *Tehsildar* and consequently, while setting aside the order of the *Tehsildar*, directed re-delivery of possession to the respondents pending final orders and further directed the *Tehsildar* to consider the case afresh on merits and take an independent decision in accordance with law after hearing the parties and pass

orders within four months from the date of the order of the Learned Judge, which was dated 1.2.2005.

7. The appellant preferred appeals against the said order in Writ Appeal Nos.1946-48/2005, which were considered by the Division Bench along with Writ Appeal Nos.1936-40/2005 and 1941-45/2005. The Division Bench passed orders on 12.9.2007 holding that the provisions of the Land Reforms Act were not applicable to the case on hand and, therefore, exercise of jurisdiction by the *Tehsildar* under the provisions of Land Reforms Act, was bad in law and without jurisdiction. The order of the *Tehsildar* was set aside and consequently the order of the Learned Single Judge was also set aside. The appellant preferred Civil Appeal Nos.1040-53/2009 against the said common order of the Division Bench dated 12.9.2007. The Civil Appeals were allowed by this Court by order dated 13.2.2009.

8. In the said Civil Appeals, contentions were raised on behalf of the respondents by relying upon Section 43 of the Transfer of Property Act, apart from contending that the

respondents were entitled to rely upon the mortgage executed in their favour in the year 1955 and 1967. It was also contended that by virtue of Section 10 of 1977 Act, the respondents were entitled to rely upon the mortgage granted in their favour by the appellant Mutt. While allowing the Civil Appeals and setting aside the order of the Division Bench, this Court considered all the above submissions raised on behalf of the respondents and rejected them. It was lastly pleaded before this Court that apart from Section 43 of the Transfer of Property Act and Section 4(2)(b) of the 1977 Act, there were other submissions made by the respondents, which were not considered by the High Court. Taking note of the above submissions made on behalf of the respondents, even while allowing the Civil Appeals and without expressing any opinion about the acceptability of any such stand, the judgment of the Division Bench was set aside and the matter was remitted back to the High Court for fresh consideration making it clear that the issue relating to the applicability of Section 43 stood closed by virtue of the judgment.

9. It is in the abovesaid background, the present impugned order of the Division Bench dated 15.6.2009, has been passed wherein, the Division Bench proceeded to examine the following two issues, namely:

> "1. Whether an *Inamdar* who has been granted occupancy rights under the *Inam* Abolition Act can invoke Section 41 to recover possession from a person who is not a tenant of the land in question?
>
> 2. Whether the order passed by the *Tahsildar* is sustainable on merits?"

10. While dealing with the above issues, the Division Bench proceeded to hold that Section 41 of the Karnataka Land Reforms Act, which prescribed the procedure for taking possession, was not applicable, inasmuch as, the jural relationship of landlord and tenant between the appellant and respondents did not exist. While dealing with Section 126 of the Land Reforms Act, the Division Bench took the view that the said provision can have no application to a case where rights of a mortgagee in possession were prevailing. In the light of the above conclusion, the Division Bench held that Section 130 of the

Land Reforms Act for summary eviction of any person in unauthorised occupation, cannot also be invoked. Ultimately, on Point No.2, the Division Bench taking note of the serious irregularities committed by the *Tehsildar* in passing the order took the view that such order came to be passed by the *Tehsildar* by manipulating proceedings and, therefore, set aside the order of the *Tehsildar* and also held that no remand was called for. The appeals filed by the appellant were dismissed and the appeal filed by the respondent was allowed. The application of the appellant filed in Form No.5 under the Land Reforms Act, was rejected as not maintainable. The Division Bench also imposed costs to be paid by the *Tehsildar* in the sum of Rs. 10,000/- to the respondents.

11. We heard Mr. S.M. Chandrashekhar, learned senior counsel for the appellant and Mr. P. Vishwanatha Shetty, learned senior counsel for the respondents. We also perused the earlier orders passed by this Court by which the matter was remitted back to the Division Bench to consider some of the submissions other than what were earlier made and covered by the orders of this Court.

12. The main grievance of the appellant was that after securing occupancy rights under the provisions of the 1977 Act, since by virtue of Section 4(2)(b), all encumbrances created prior to coming into force of the Act having been extinguished statutorily, and the lands having been vested with the State, free from all encumbrances before the grant of occupancy rights in favour of the appellant, no further right could have existed in favour of the respondents, in order to make a claim based on the mortgages of the year 1955 and 1967. Apart from the said claim in all other respects, there was no right in the respondents since their claim for occupancy right was rejected as early as on 11.2.1993, when the said rights of the appellant came to be crystallized by the said date under the provisions of the 1977 Act. Though the said order was challenged by the respondents, the challenge was not accepted and thereby, the issue became concluded once and for all. Thereafter, the only other question to be considered was as to how the said crystallized rights of the appellant under the provisions of the 1977 Act, is to be worked out for restoring its possession in the lands in question. Though the appellant

stated to have invoked Section 41 of the Land Reforms Act to work out its remedy for getting possession, when it came to the question of ascertaining the jurisdiction of the *Tehsildar* to examine the claim of the appellant for restoring possession, the respondents once again projected their claim based on the mortgages of the year 1955 and 1967 and further stated that the respondents were neither a tenant, nor can they be held to be in unauthorised possession, in order to invoke Section 130 of the Land Reforms Act.

13. In the earlier round of litigation, these very issues were examined by both the Learned Single Judge as well as by the Division Bench of the High Court. As noted by us earlier, the learned single Judge rejected the stand of the respondents about the lack of jurisdiction of the *Tehsildar* but nonetheless, set aside the order of the *Tehsildar* on the sole ground that there was serious malpractice in the passing of the ultimate order, directing handing over of the possession. The learned Judge, therefore, set aside that part of the order and remitted the matter back for passing

fresh orders. However, the Division Bench proceeded to hold that the *Tehsildar* lacked jurisdiction since the rights of the respondents as mortgagee, prescribed a different status for the respondents and consequently the invocation of Section 41 or Section 130 of the Land Reforms Act, could not have been invoked. It was at that stage, the issue came to be considered by this Court in Civil Appeal Nos.1040-1053/2009 in the order dated 13.2.2009.

14. The substantial issues dealt with by the Division Bench in its earlier order dated 12.9.2007, which examined the question of jurisdiction of the *Tehsildar,* while considering the claim of the respondents based on Section 43 of the Transfer of Property Act; based on concept 'feeding the grant by estoppel', accepted the stand of the respondents. At that junction, this Court found that by virtue of Section 4(2)(b) of the 1977 Act, the said submission based on Section 43 of the Transfer of Property Act, by relying upon the mortgages of the year 1955 and 1967, cannot survive. Even the submission based on Section 10 of the 1977 Act was also rejected. Though what exactly were the other

submissions which were not considered by the Division Bench were not specifically noted, in our considered view, there could not have been any submission relating to the jurisdiction of the *Tehsildar'* for working out or implementing the grant of occupancy rights granted in favour of the appellant, by order dated 11.2.1993. In that context, the power of the *Tehsildar* to invoke Section 130 of the Land Reforms Act for granting the relief cannot be held to be not sustainable. Unfortunately, after the remand, we find that by framing the two issues in the order impugned in these appeals, which have been extracted in the earlier part of our order, the Division Bench proceeded to reopen the very same questions, which were already dealt with in substratum in the earlier judgment of this Court dated 13.2.2009. When once this Court held that Section 43 of the Transfer of Property Act could not come to the aid of the respondents, any right based on the mortgages of the year 1955 and 1967 no longer survived for consideration. Since Section 10 of the 1977 Act was also held to be not applicable to the case of the respondents, the only other question which could have been examined in all

probabilities was one relating to the manner in which the earlier order came to be passed by the *Tehsildar,* which was found to be not properly done as held by the Learned Single Judge in order dated 01.02.2005 in the Writ Petitions, which disclosed that there were certain serious irregularities or malpractices in the passing of the order by the *Tehsildar* dated 28.8.2004 and the consequential *Mahazar* dated 31.8.2004. In fact, the Learned Single Judge rightly set aside the above orders of the *Tehsildar* on that ground and remitted the matter back to the *Tehsildar* for passing fresh orders in accordance with law.

15. We are convinced that in the light of our above conclusions, it will have to be held that the continued possession of the respondents after the grant of occupancy rights in favour of the appellant in the order dated 11.2.1993, should be construed as unauthorized and there was every right in the appellant to invoke the protection of the Land Reforms Act for the purpose of working out its remedy by taking recourse to law for implementing the order dated 11.2.1993.

16. In this context, it will be worthwhile to refer to the decision of this Court reported in **Mohammad Swalleh & Ors. V. IIIrd Addl. District Judge, Meerut & Anr.** -AIR 1988 SC 94. In paragraph 7 while dealing with a converse case, this court held as under:

> "7. It was contended before the High Court that no appeal lay from the decision of the Prescribed Authority to the District Judge. The High Court accepted this contention. The High Court finally held that though the appeal laid before the District Judge, the order of the Prescribed Authority was invalid and was rightly set aside by the District Judge. On that ground the High Court declined to interfere with the order of the learned District Judge. It is true that there has been some technical breach because if there is no appeal maintainable before the learned District Judge, in the appeal before the learned District Judge, the same could not be set aside. But the High Court was exercising its jurisdiction under Art.226 of the Constitution. The High Court had come to the conclusion that the order of the Prescribed Authority was invalid and improper. The High Court itself could have set it aside. Therefore, in the facts and circumstances of the case justice has been done though, as mentioned hereinbefore, technically the appellant had a point that the order of the District Judge was illegal and improper. <u>If we reiterate the order of the High Court as it is setting aside the order of the Prescribed Authority in exercise of the jurisdiction under Art.226 of the Constitution then no exception can be taken</u>. As mentioned hereinbefore, justice has been done and as the improper order of the Prescribed Authority has been set aside, no objection can be taken."

17. Applying the above said principle, we are also convinced that the appellant by invoking the extraordinary jurisdiction of the High Court under Article 226 can seek for passing a justiciable order.

18. Having regard to our above conclusion based on the earlier order dated 13.2.2009 and the limited scope of consideration directed to be made, while remitting the matter back to the Division Bench, the present order of the Division Bench cannot be sustained. We also hold that the *Tehsildar*, had every jurisdiction to deal with application of the appellant for working out its remedy based on the grant of occupancy rights in its favour in the proceeding dated 11.2.1993, which has become final and conclusive. Since it was extensively pointed out by the learned Single Judge in the order dated 1.2.2005, as well as in the present impugned order highlighting the malpractices indulged in by the *Tehsildar*, while passing the order directing possession in favour of the appellant and while upholding the order of the learned Single Judge referred to above, the order of remand passed by the learned Single Judge stands

restored. We, however, make it clear that the only issue which can be examined by the *Tehsildar* can be with regard to the claim of the appellant for restoring possession based on the grant of occupancy rights in its favour, by the proceeding dated 11.2.1993. It is further made clear that this order of remand to the *Tehsildar,* shall not entitle the respondents to raise any issue relating to the jurisdiction of the *Tehsildar*, in particular, based on the mortgages of the year 1955 and 1967.

19. The appeals stand allowed with the above directions. In light of the fact that the issue is pending for nearly two decades, we direct the *Tehsildar* to hear the parties and after giving due opportunity to put forth their submissions, pass final orders in accordance with law expeditiously, preferably within three months from the date of receipt of copy of this order.

.....J.
[Dr. B.S. Chauhan]

.....J.
[Fakkir Mohamed Ibrahim Kalifulla]

New Delhi;
May 06, 2013