STATE OF MYSORE & ANR. A

v.

M. M. THAMMAIAH & ANR.

May 2, 1974

[M. H. BEG AND Y. V. CHANDRACHUD, JJ.]

Mysore Land Revenue Act, 1964—*Rules for Classifiers issued under Regulation I of* 1899—*Rule* 10—*Whether contains an express order reserving right of Government to the trees on Bane lands.* B

Appellant No. 1 sold certain soft wood trees standing on his lands consisting partly of Bane lands for a consideration and asked the Divisional Forest Officer for the issue of a permit in the name of the buyer permitting him to cut and remove the timber. The Divisionl Forest Officer informed appellant no. 1 that the Bane lands held by him were not redeemed and that no permission could be granted for cutting and removing the timber unless the timber value was paid. In a petition under Art 226 of the Constitution the appellant challenged the constitutional validity of rule 137 of Mysore Forest Rules, 1969 and contended that the rule was inconsistant with provisions of s. 75(1) of the Mysore Land Revenue Act, 1964. The High Court upheld the validity of the rule but held that the appellant was liable to pay timber value of only such trees as were in existence at the time of the Survey Settlement of 1910. It further held that rule 10 of the rules for classifiers contains an express reservation of the trees standing on Bane lands in favour of the State Government. C D

On the question whether rule 10 of the Rules for Classifiers contains an express reservation of trees standing on Bane lands in favour of the State Government.

HELD : Rule 10 of the Rules for Classifiers does not contain an express order reserving the right of the State Government to the trees growing on Bane lands within the meaning of s. 75(1) of the Mysore Land Revenue Act, 1964. Rule 10 is a part of the rules meant for the guidance of classifiers for implementing the impending survey settlement. The rules called "Rules for Classifiers" contain instructions as to how the classifiers should conduct themselves in making the survey settlement. [426F-H] E

The second paragraph of the explanation to rule 10 by its very language refers to a state of affairs that is assumed to exist and does not contain any express order or declaration regarding the reservation of trees in favour of the Government. The very nature and context of the Rules for Classifiers would show that they could not possibly concern themselves with a matter regulating the vesting of a substantive right like the right of the State Government to the trees upon Bane lands. At best rule 10 could be said to refer to a historical fact. [427C-D] F

[Rule 137 was deleted during the pendency of the appeal. The question as regards the validity of the rule is now academic.] [428C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1721 of 1971 and 1000 of 1972. G

Appeals by certificate from the judgment and order dated the 18th March, 1971 of the Mysore High Court in W.P. 6394 of 1969.

S. S. Javali, K. S. Gouri Shankar and *B. P. Singh*, for the appellants.

R. N. Byra Reddy, Karnataka (in C.A. No. 1721/71 only) and M. *Veerappa*, for the respondents. H

G. B. Pai, C. S. Rao and *P. C. Bhartari*, for the intervener.

A

The Judgment of the Court was delivered by

CHANDRACHUD, J. These are two cross-appeals by certificate granted by the High Court of Mysore under Article 133(1)(b) of the Constitution and they arise out of its judgment dated March 18, 1971 in Writ Petition 6394 of 1969. Civil Appeal 1000 of 1972 is filed by two persons called M. M. Thammaiah and B. M. Kariappa (herein B called the appellants), against the State of Mysore and the Divisional Forest Officer, South Coorg Division, Hunsur, Mysore (herein called the respondents). Civil Appeal 1721 of 1971 is filed by the State of Mysore and the Divisional Forest Officer.

Appellant No. 1, M. M. Thammaiah, is the holder of immovable properties consisting partly of "Bane lands", situate at Nemmale in C the district of Coorg. On October 17, 1968 he sold certain soft-wood trees standing on his lands to appellant 2 for a sum of Rs. 20,000. On September 23, 1969 he made an application to respondent 2, the Divisional Forest Officer, for the issue of a permit in the name of appellant No. 2 allowing him to cut and remove the timber. Respondent 2 informed appellant No. 1 that the Bane lands held by him were not redeemed and that no permission could be granted for cut- D ting and removing the timber unless the timber value was paid under Rule 137 of the Mysore Forest Rules of 1969.

Aggrieved by this order the appellant filed a petition in the High Court of Mysore under Article 226 of the Constitution challenging the constitutionality of Rule 137 of the Mysore Forest Rules. They contended that the Rule was violative of Article 19(1)(f) and Article 31 E of the Constitution, that it was inconsistent with the provisions of section 75(1) of the Mysore Land Revenue Act, 1964 and that it was beyond the rule making powers conferred by the Mysore Forest Act, 1963. By that petition the appellants prayed that a direction be given to respondent 2 to issue in favour of appellant No. 2 the permit asked for.

F

The High Court of Mysore upheld the validity of Rule 137 but it took the view that the appellants were liable to pay the timber value of only such trees as were in existence at the time of the Survey Settlement of 1910. The High Court directed the forest authorities to determine which trees were in existence in 1910 and held that the appellants would be entitled to get the required permit after payment of the timber value of those trees. Both parties were partly hurt by the G judgment of the High Court and they have therefore filed these two cross-appeals. The contention of the appellants is that they are entitled to the permit to cut and remove the timber without payment of any timber value at all while the contention of the State Government is that no distinction can be made as between trees existing in 1910 and those which came into existence later and therefore the appellants are liable to pay the timber value of the trees before being permitted H to cut and remove the timber.

The lands in question were granted to appellant No. 1 by the Raja of Coorg and are situated in the village of Nemmale, Virajpet Taluk,

which was once a part of the princely State of Coorg. Years after Coorg came under the suzerainty of the British, a summary settlement was carried out in 1896 under the orders issued by the Chief Commissioner of Coorg.

The Coorg Land and Revenue Regulation came into force in 1899 (Regulation I-A of 1899). Rule 97 (1-A) of the Rules issued under the Coorg Land Revenue Rules provided, *inter alia,* that the holder of Bane land who has not paid timber value when the grant was made would enjoy the personal usufruct of the trees growing upon the land for the purpose for which the grant was made. Further, the trees growing on the land were not to be cut or removed for any other purpose without the permission of the Assistant Commissioner and without prior payment of timber value. Such payment was called 'Seignorage' for redemption of timber.

The term 'Bane land' is not defined in the Coorg Land and Revenue Regulation, 1899 but it would appear from the Explanation contained in Chapter V of the Coorg Settlement Report, 1910 that a considerable area of forest lands which was deemed necessary for grazing and leaf manure and for providing firewood timber for agricultural purposes was allotted by the Rajas for each 'Warg'. Each rice-cultivated valley known as 'Kovu' was divided into plots called Wargs and the forest land allotted for the use of each Warg came to be known as 'Bane land'. Ordinarily, the Bane land was not intended to be brought under cultivation.

On October 9, 1906 sanction was accorded by the Government for the re-settlement of survey and a notification was accordingly issued under Rule 49 of Regulation I of 1899. In January, 1908 Rules were issued for the guidance of 'Classifiers' for implementation of the re-settlement scheme. These Rules can be found in Appendix B to the letter dated February 18, 1910 written by Gustav Haller, Settlement Officer, Coorg, to the Secretary to the Chief Commissioner of Coorg. Rule 10 which is directly in point reads thus :

> "*Rule* 10.—The following terms are at present used for lands held for coffee cultivation :—
>
> (a) Unalienated banes (jamma, sagu, jodi, jaghir, umbli) of which ten acres may be cultivated free of assessment.
>
> *Explanation.*—These banes are still attached to their wet lands, and have been obtained by the owners prior to 21st May, 1886. Cultivation not exceeding ten acres is exempted from assessment. But there are a few exceptional cases, (i) Europeans who own such banes cannot claim this privilege, (ii) a few Native coffee planters have also been debarred from this privilege. As long as the bane is uncultivated no assessment can be levied.
>
> The owner of such bane has the exclusive right of cutting and felling without any charge for his own domestic and agricultural requirements in the village in which the *warg* is

A situated, all wood and timber on his bane, except sandalwood, which remains the property of Government. But he has no right to cut or fell timber for sale or barter, or for the use of any one but his own household servants, or to remove it into another village even for his own use without permission of the Commissioner. Firewood may be removed to another village under a pass granted by the Forest Officer."

B

On the enactment of the Constitution in 1950, Coorg became a Part 'C' State and on November 1, 1956 it became a part of the new State of Mysore (now Karnataka). The existing laws continued to be in force in the Coorg area until the enactment of uniform laws in the new State of Mysore.

C The Mysore legislature enacted the Mysore Forest Act, 5 of 1964, "to consolidate and amend the law relating to forests and forest produce in the State of Mysore." Section 102 of that Act empowers the State Government to make rules to carry out all or any of the purposes of the Forest Act. After the commencement of that Act the Mysore Forest Rules were promulgated by the State Government in 1969. Rule 137 which is impugned by the appellants is in these terms :

D

"137. Redemption of trees in Bane lands in Coorg District—

(1) No holder of Bane lands who has not paid the timber value when the grant was made or subsequently, shall cut or remove any tree or timber or any other material obtained from such tree for purposes other than those for E which the Bane land was assigned, i.e., for the service of the wet land attached to the Bane land for their *bona fide* domestic use.

(2) Holders of Bane lands intending to redeem the trees except sandalwood on such Bane lands, either fully or partially, may do so either by payment of the timber value F or by permitting the Forest Department to extract and dispose of the trees."

On April 1, 1964 the Mysore legislature enacted the Mysore Land Revenue Act, 12 of 1964, "to consolidate and amend the law relating to land and the land revenue administration in the State of Mysore". Section 202 of that Act provides for the repeal of enactments specified in the Schedule, in which is included the Coorg Land and Revenue G Regulation I of 1899. Section 75 of the Land Revenue Act which has an important bearing on the case provides for the right to trees in villages in which survey settlement has been introduced.

Learned counsel for the appellants urges that by virtue of the provisions contained in section 75(1) of the Mysore Land Revenue Act, 1964 appellant No. 1 must be deemed to have become the owner of H trees standing on the Bane lands and therefore the Divisional Forest Officer has no right under Rule 137 of the Mysore Forest Rules, 1969 to ask for the payment of the timber value of the trees before they

can be cut and removed. This argument requires an examination of the terms of section 75(1) which reads thus :

> "75. *Right to trees in villages, to which survey settlement has been introduced.*—(1) In any village or portions of a village if the original survey settlement has been completed before the commencement of this Act, the right of the State Government to all trees in any land, except trees reserved by the State Government or by any Survey Officer, whether by express order made at or about the time of such settlement or by notification made and published at or any time after such settlement shall be deemed to have been conceded to the occupant."

This provision, in our opinion, admits of no doubt or difficulty. The condition precedent to the application of section 75(1) is admittedly satisfied in this case because in regard to the village of Nemmale where the Bane lands of the 1st appellant are situated, the original survey settlement was completed before April 1, 1964 when the Mysore Land Revenue Act came into force.

By section 75(1) the right of the State Government to all trees in any land shall be deemed to have been conceded to the occupant except in regard to trees reserved by the State Government or by any Survey Officer either by an express order made at or about the time of such settlement or by a notification made and published at or any time after such settlement.

The first question which then arises is whether there is an express order made at or about the time of the original survey settlement by which the right to trees standing on Bane lands was reserved by the State Government or by any Survey Officer. The High Court has held that Rule 10 of the Rules for Classifiers contained in Appendix B to the Coorg Settlement Report, 1910 contains an express reservation of the trees standing on Bane lands in favour of the State Government. Learned counsel appearing for the State of Mysore has also placed strong reliance on Rule 10 in support of the State's contention that the particular trees are vested in it.

We find it difficult to agree that Rule 10 can be read as an 'express order' reserving the right of the State Government to the trees, within the meaning of section 75(1) of the Mysore Land Revenue Act, 1964. Rule 10 is a part of the Rules meant for the guidance of Classifiers for implementing the impending survey settlement. The Rules called "Rules for Classifiers" contain instructions as to how the Classifiers should conduct themselves in making the survey settlement. For example, Rule 1 says that "Such classifier will take up a village which will be assigned to him by the Settlement Officer and will work in it until it is completed." Rule 2 enjoins the Classifiers to have with them the village map, the latest jamabandi register, the crop inspection registers and the mutation register at the time of making the survey. Rule 3 requires the Classifiers to "post in a conspicuous place of the village a copy of the Chief Commissioner's Notification announcing

A that the settlement operations have begun." By Rule 4 the classification of wet lands is to be taken up first and for that purpose various details are required to be entered in Form A. Rule 5 contains instructions as to how the Classifiers should fill up that Form. Rules 6, 7 and 8 contain instructions regarding the inquiries which the Classifiers must make at the time of survey settlement. By Rule 9 the Classifiers are required to attend to the work in regard to coffee plantations after B completing the work in regard to the wet lands.

Then comes Rule 10 which begins with the recital : "The following terms are at present used for lands held for coffee cultivation". Clause (a) of the Rule refers to 'unalienated banes' and the Explanation to that clause contains information about such *banes*. The second paragraph of the Explanation on which the State relies in support of its C alleged right to the trees, by its very language refers to a state of affairs that is assumed to exist and does not contain any express order or declaration regarding the reservation of trees in favour of the Government. The very nature and context of the 'Rules for Classifiers' would show that they could not possibly concern themselves with a matter regulating the vesting of a substantive right like the right of the State Government to the trees on Bane lands. At best, Rule 10 may D be said to refer to a historical fact.

The learned Advocate-General of Karnatka who appeared in this appeal at a later stage was not able to support the decision of the High Court on the construction of Rule 10. But he argued that (1) Appellant No. 1, not being an occupant, cannot claim the benefit of section 75(1) of the Mysore Land Revenue Act, 1964; (2) that, concededly E owners of Bane lands like appellant No. 1 had no right to the trees growing thereon until April 1, 1964 when the Act of 1964 came into force and section 75(1) is not intended to confer on holders of Bane lands a right or privilege not enjoyed by them till then; (3) that sections 75(1) and 79(2) of the Act of 1964 must be read together and so read they show that only certain privileges enjoyed by holders of Bane lands were saved by that Act; and (4) that, in any event, Rule F 97 (1-A) of the Rules issued under the Coorg Land and Revenue Regulations I of 1899 is either in the nature of an express order or a notification within the meaning of section 75(1) of the Act of 1964, by which the right of the State Government to the trees growing on Bane lands was reserved.

G These arguments have been controverted by Mr. Javali on behalf of the appellants and by Mr. Pai on behalf of the interveners. In the present state of the record it is not possible to entertain and examine the submissions of the Advocate-General. But that is not entirely the fault of the State Government. The writ petition filed by the appellants in the High Court is utterly sketchy and inadequate. They have not made averments necessary for a proper understanding of their case, H they have not disclosed the source and authority of the claim made by appellant No. 1 to the trees and they have not traced the history of the right which appellant No. 1 claims in the writ petition. The State Government by its counter-affidavit in the High Court rested content

with formal denials of the appellants' claim though, it is true, there was not much to deny or traverse. The writ petition raised important questions affecting the right of the State Government to trees standing on vast tracts of forest areas and it ought to have shown a greater concern for those rights. The upshot of the matter is that there is no material on the record to enable us to decide the contentions raised by the parties except the one relating to the construction of Rule 10 of the Rules for Classifiers.

We may also indicate that the only relief sought by the appellants by their writ petition is that Rule 137 of the Mysore Forest Rules, 1969 be struck down as it infringes Article 19(1)(f) and Article 31 of the Constitution and is inconsistent with section 75(1) of the Mysore Land Revenue Act, 1964. That rule was deleted, during the pendency of this appeal, by the Karnataka Forest (Amendment) Rules, 1973 notified on January 15, 1974. In spite of the deletion of the Rule, the appellants did not seek the permission of this Court to amend the writ petition. The only relief sought by the appellants has thus become infructuous.

In these circumstances, we have decided to relegate the parties to such remedies as they may be advised to adopt for the vindication of their rights. Our judgment will conclude the question regarding the interpretation of Rule 10 of the Rules for Classifiers only. That rule does not contain an 'express order" reserving the right of the State Government to the trees growing on Bane lands, within the meaning of section 75(1) of the Mysore Land Revenue Act, 1964.

Accordingly, we set aside the judgment of the High Court on the construction of Rule 10 and since, apart from the validity of Rule 137 of the Mysore Forest Rules 1969, that is the only question decided by the High Court we allow the appeal. The question as regards the validity of Rule 137 is now academic as the rule has been deleted. In the circumstances of the case there will be no order as to costs. Parties will be at liberty to agitate the other questions in such proceedings as they may be advised to take.

P.B.R. *Appeal allowed.*