

A STATE OF KARNATAKA AND ANR. ETC.

v.

ELIZABETH MAYNE AND ANR. ETC.

April 8, 1976

B [A. N. RAY, C.J., M. H. BEG AND JASWANT SINGH, JJ.]

Redemption of the tree growth on "Bane" lands by "Wargadars" or their transferees/successors in possession—Rights of redemption—The Coorg Land and Revenue Regulations 1899, Section 97 and the Karnataka Forest Rules 1969 Rule 137 Karnataka Land Revenue Act 1967, s. 75—Scope of.

C "Bane lands" are forest lands granted for the service of the "Warg", holding rice fields to which they are allotted to be held, free of revenue, for grazing, leaf manure/firewood and for timber required in the Warg, capable of being alienated only along with the Warg lands u/s 97 of the Coorg Land and Revenue Regulations 1899, which is in *pari materia* with Rule 151 A and B made under the Indian Forest Rules 1954. The holders of the Bane Land had the right to redeem the trees standing on such Bane lands subject to the payment of seignorage etc. Under Rule 137 of the Karnataka Forest Rules 1969, effective from 1st March 1969, redemption of the growth on "Bane lands" was allowed on payment of 50% of the value of the timber. Rule 137 was however deleted w.e.f. 15th January 1974.

D The various appellants who were holders of "Bane Lands" challenged, under Art. 226, the orders of the Forest authorities demanding full value of the timber sought to be "redeemed" by them contending that (i) they had vested right to redeem the trees on Bane lands on payment of 50% of the value of timber under the Coorg Land and Revenue Regulations of 1899 and (ii) Section 75 of the Karnataka Land Revenue Act, 1964 vested in them an absolute right in respect of the trees on Bane lands and the Government therefore had no right even to demand 50% of the value. All the writs were accepted by the Mysore High Court following its earlier decision in I.L.R. (Karnataka) 1975 Vol. 25, p. 443 (*Ramaraju Naidu v. Divl. Forest Officer*) holding that the Rules conferred a right on the holders of Bane lands to redeem the trees standing on such lands on payment of 50% of the value of the timber to the State along with other incidental charges. The court did not express any opinion whether the State had no right to demand 50% of the value under the Karnataka Land Revenue Act of 1964. Allowing the State appeal against I.L.R. (Karnataka) 1975 Vol. 25 page 443 the Division Bench held [in *State of Karnataka v. Ramaraju Naidu* I.L.R. (Karnataka) 1975 Vol. 25 p. 1361] that (i) the Bane holders had no proprietary right to the soil of Bane Land and to the trees standing thereon but only limited privilege to collect grass leaves timber etc. for domestic purposes (ii) Even after s. 75(1) of the Karnataka Land Revenue Act was enacted the Bane holders did not become holders or occupants as defined in the Act and ownership of trees did not accrue to them and (iii) Section 79 of the Karnataka Land Revenue Act which preserved the preexisting privileges of Bane holders has no application to Bane lands. Keeping 15-1-74, the date of deletion of Rule 137 of the Karnataka Forest Rules 1969, the Division Bench, however, directed that (1) the respondents who deposited before 15th January 1974, 50% of the value of timber as determined by the Forest Officer could be granted permits to cut and remove timber, with liberty to the Forest Officer to recover and any differential amount between the 50% of the actual value of timber and amount paid on the basis of prior determination and (ii) those respondents who have made applications under rule 137 before 15th January 1974, but not deposited the amount could also be granted permits on deposit of 50% of the value of timber.

H Dismissing the State appeals, by certificate, the court

HELD : (1) The learned single judge in ILR (Karnataka) 1975 Vol. 25 p. 443 rightly did not express any view on the second question as to whether

the Bane Land holders could ask for removal of trees without payment full of value u/s 75 of the Karnataka Land Revenue Act, 1964. [1091A]

Ramaraju Naidu v. Divl. Forest Officer I.L.R. (Karnataka) 1975, Vol. 25 p. 443 (partly affirmed).

(ii) The directions given by the Division Bench are explicable because of 15th January 1974 being taken as the dividing line with regard to persons who made payments and persons who did not make payment consequent upon the repeal of Rule 137 of the Karnataka Forest Rules, 1969. [1091F]

[Their Lordships left open to the parties to urge their rival contentions on the questions of the nature and terms of Bane lands and rights, if in future, there will be any dispute between them, in view of their making it clear that the observations and opinions of the High Court Division Bench should not operate as *res judicata*]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1867-1924, 1952 of 1975 and 9 to 66 of 1976.

From the Judgments and orders dated the 18-4-75, 28-4-75 and 27-5-75 of the Mysore (Karnataka) High Court in Writ Appeal Nos. 1034-1039/74 and 116 to 143/75, 951-74, 922-923/74, 32/75, 1035 of 1974 and 976 to 1033/74 respectively.

L. N. Sinha, Sol. General in C.A. No. 1891 and 1952 for the appellants in C.As. 1867-1924 and Respondent in CA 1952/75 and *K. S. Puttaswamy*, 1st Addl. Government Advocate (In Cas. 1867-1924 and 1952/75) *B. R. G. K. Achar*.

S. G. Sundaraswamy, *K. S. Gourishanker* and *K. N. Bhatt* for the Appellants in C.As. 1952/75 and Respondents in C.A. 1891/75.

L. N. Sinha, Sol. General in (CA 9) *K. S. Puttaswamy*, Asstt. Addl. Government Advocate, *Narayan Netter* and *B. R. G. K. Achar* for the Appellants in C.As. 9 to 66 of 1976.

S. V. Gupte (In CA 1890/75), *S. S. Javali* and *B. P. Singh* for Respondents in C.As. 1875 to 79, 1882-83 1885, 1887-90, 1893, 1895, 1897, 1902-08, 1909, 1910, 1912, 1914, 1917, 1920, 1923-24/75 and for R. 2 in C.As. 1867, 1874, 1880-81, 1884, 1889-1901, 1903 1906-07 and 1921/75 and for Respondent in Appeals Nos. 9, 13-18, 20, 21, 39-44, 54, 56, 58, 60-63 and for Respondent No. 1 in Cas. 19, 22-23, 37, 43, 46, 51, 55, 59, 65 and Respondent No. 2 in C.As. 38 of 1975.

The Judgment of the Court was delivered by

RAY, C.J. These appeals are by certificate from the judgment dated 18 April, 1975 of the High Court of Karnataka.

The respondents were the petitioners in the High Court. The respondents are either holders of Bane lands in the District of Coorg or holders of such lands who purchased timber standing on them from such holders.

The respondents in the High Court asked for writ directing the Divisional Forest Officer of the State to issue permits to the respondents to remove trees standing on Bane lands as particularised in the petition.

A The Divisional Forest Officer refused permits to the respondents to cut trees and remove timber. The two grounds on which the respondents challenged the order of refusal are these. First, the respondents claimed a vested right to redeem the trees on Bane lands on payment of 50 per cent of the value of timber under Coorg Land and Revenue Regulation of 1899 and the rules framed thereunder. Second

B the respondents claimed that, by section 75 of the Karnataka Land Revenue Act, 1964, an absolute right was conferred on them in respect of trees on Bane lands and the Government have no right even to demand 50 per cent of the value.

C The learned Single Judge referred to the provisions of Coorg Land and Revenue Regulation of 1899 and in particular rule 97 thereof. The learned Single Judge came to the conclusion that rules conferred a right on the holders of Bane land to redeem the trees standing on such Bane lands. He also held that under the rules, the respondents were required to pay 50 per cent of the value of the timber to the State along with other incidental charges.

D The contention of the State that the Coorg Land and Revenue Regulation, 1899 was repealed and, therefore, the respondents had no right under those Regulations to remove timber was repelled by the learned Single Judge. The learned Judge held that section 202 of the Karnataka Land Revenue Act of 1964 did not affect the right acquired by the holders of Bane lands in spite of repeal of the Coorg Land and Revenue Regulation of 1899. In this view of the matter, the learned Single Judge did not consider it necessary to express any opinion on the second contention of the respondents whether under

E section 75 of the Karnataka Land Revenue Act of 1964, the State had no right to demand 50 per cent of the value.

F The Division Bench on appeal held that the respondents could be divided into two categories. As to the first category, the Division Bench in sub-paragraph (1) of paragraph 59 of the judgment said that those who deposited before 15 January, 1974, 50 per cent of the value of timber as determined by the Divisional Forest Officer, could be granted permits to cut and remove timber. If there was any difference between the 50 per cent of the actual value of timber and the amount paid on the basis of determination by the Divisional Forest Officer, the Divisional Forest Officer would recover the difference as mentioned in the said paragraph 59(1).

G In sub-paragraph (2) of paragraph 59, the Division Bench dealt with respondents who did not fall within category 1, but made applications before 15 January, 1974.

H The Solicitor General appearing for the State with his usual fairness said that he did not want to take up time of the Court in going into the merits of the appeals. He accepted the conclusions of the High Court in paragraph 59 of the judgment. The result is that the conclusions of the High Court in paragraph 59 are affirmed.

The matter, however, does not end there because counsel for the respondents submitted that the Division Bench went into the nature and tenure of Bane lands and expressed views which are not correct

and which in any event were not necessary for the purpose of the present case. A

The learned Single Judge rightly did not express any view on the second question as to whether the Bane land holders could ask for removal of trees without payment of full value. The Division Bench, however, in paragraphs 16 and 20 dealt with the legal position of Bane lands prior to 1 November, 1899, in paragraph 30 on the legal position between 1 November 1899 and 1 April 1964 and in paragraphs 36 and 43 on the legal position after 1 April 1964. The Division Bench of the High Court in paragraphs 17 and 19 of the judgment dealt with Bane and Kumki lands and equated the same. B

It may be stated here that one of the respondents—Consolidated Coffee Ltd., also filed an appeal from the judgment of the High Court. The Solicitor General contended that the Consolidated Coffee Ltd. was not competent to file an appeal because the company had obtained relief and could not, therefore, attack the judgment. C

Having heard the Solicitor General and counsel for the respondents, we are of opinion that the course adopted by the learned Single Judge was correct. The Division Bench of the High Court need not have gone into the question on the nature and tenure of Bane lands and expressed opinion on rights of the parties. These observations were not necessary. D

We, therefore, hold that we affirm the conclusions of the Division Bench of High Court as stated in paragraph 59 of the judgment and make it clear that the observations and opinions expressed by the Division Bench on the nature and tenure of Bane lands and rights of the parties will not bind the parties on these questions in future. It will be open to both parties, namely, the appellants and respondents to urge their rival contentions on these questions if in future there will be any dispute between the parties. E

The directions given by the Division Bench in paragraph 59 of the judgment will be followed by the parties. The directions are explicable because of 15 January 1974 being taken as the dividing line with regard to persons who made payment and persons who did not make payment consequent upon the repeal of Rule 137 of the Karnataka Forest Rule, 1969. F

The appeals are dismissed. Parties will pay and bear their own costs.

S.R.

Appeals dismissed.