

(1998) 09 KAR CK 0023
In the Karnataka High Court
Case No : Writ Petition No 27612 of 1995

B. Mohammad

APPELLANT

Vs

Deputy Commissioner, Dakshina Kannada District, Mangalore
and Others

RESPONDENT

Date of Decision : 04-09-1998

Acts Referred:

Karnataka Land Grant (Amendment) Rules, 1974 — Rule 29A
Karnataka Land Revenue Act, 1964 — Section 197
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 11, 4

Citation : AIR 1999 Kar 196 : (1999) ILR (Kar) 634 : (1998) 6 KarLJ 30

Hon'ble Judges : V.P. Mohan Kumar, J;S.R. Venkatesha Murthy, J;Ashok Bhan, J

Bench : Full Bench

Advocate : Sri J.M. D'Cunha and Smt. M. Bhagya Lakshmi, for the Appellant;
Sri S.N. Aswathanarayan, High Court Govt. Pleader, for the Respondent

Judgement

V.P. Mohan Kumar, J.—On an apparent conflict between the views expressed by the Division Benches of the Court in Laxmamma v State of Karnataka and Others and in Smt. Bhagi Hengsu v Rocky Lasrado, this writ petition has been referred to a Larger Bench by Justice Tilhari to resolve the conflict after framing the following questions to be answered. Namely:

"(1) Whether in view of Sections 4 and 11 of the Karnataka Act No. 2 of 1979, Rule 29-A introduced in the Karnataka Land Grant Rules stands obliterated from the backdate (retrospectively) and is to be deemed to have stood obliterated and ineffective, namely, it stood obliterated from the date it was introduced and particularly, on the date when the transaction in question dated 22-3-1977, was entered into?

(2) Whether the transaction dated 22-3-1977, which was in breach of Rule 21 of the Board's Standing Order as operative on the date of the grant, that is, 25-6-1939, and can the conditions be deemed to be existing on the date, that is

the day transaction of sale was being entered into or the condition under Rule 21, is to be deemed to be inoperative on 22-3-1977, in view of Rule 29-A?

(3) What is the effect of Sections 4 and 11 of the Act, with reference to Rule 29-A, whether it has the effect of reviving those conditions which prohibited transfer of granted land in favour of any person, except the member of Scheduled Caste and Scheduled Tribe?"

2. The brief facts of the case are as follows:

10 cents of Government land situate in erstwhile Madras State was granted to a person belonging to Scheduled Caste under Rule 21 of the Rules framed under the Madras Board of Revenue Standing Orders on 24-6-1939. The said grant contained a clause which stated, inter alia, that an alienation of the granted land to any person other than to a member of the Scheduled caste or Tribe would invalidate the grant. The particular clause reads as follows:

"(12) That alienation of the land without the sanction of Government to anyone other than scheduled caste member shall invalidate the grant,"

3. On 7-1-1961 the said property was gifted by the grantee to his daughter also a member of the Scheduled Caste. Subsequently she transferred her rights on 22-3-1977 to a Mohammedan and by successive assignments it has come to vest with the petitioner on 19-2-1982. The first ever transfer to a person who did not belong to the Scheduled Caste took place in 1977. On 1-1-1979, the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 was brought into force. On the ground that the transfer of the land in favour of the petitioner is null and void, proceedings were initiated u/s 5 thereof to resume the land from the possession of the petitioner. The said proceedings have culminated in the impugned orders.

4. After the framing of the Mysore Land Grant Rules in 1968 u/s 197 of the Karnataka Land Revenue Act, 1964, the above said Rules framed under the Madras Board Standing Orders stood repealed.

5. Rule 40 thereof stated as under:

"40. Repeal and Savings.--All rules corresponding to the foregoing rules in force in Bombay area, Coorg District, Hyderabad area, Madras area and Mysore area are hereby repealed:

Provided that the repeal shall not affect-

(a) the previous operation of any rule so repealed or anything duly done or suffered thereunder;

(b) any right, privilege, obligation or liability acquired, accrued or incurred under any rule so repealed;

(c) any penalty, forfeiture or punishment incurred in respect of any breach of or any offence committed against any rule so repealed; or

(d) any investigation or legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid and any legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if such rule had not been repealed;

Provided further that subject to the preceding proviso anything done or any action taken (including any notification, order, instruction, or direction issued) under any such rule shall be deemed to have been done or taken under the corresponding provision of these rules and shall continue to be in force accordingly, unless and until superseded by anything done or any action taken under the Act or these rules, as the case may be."

6. Therefore, by operation of the said Rule, de hors any clause in the deed of grant, if the statute governing the grant of land and repealed under the said Rule 40 conferred any qualified or otherwise right on the grantee to alienate or transfer of the granted land, then it was interpreted that by virtue of Rule 40 the said right was saved.

7. At this stage, it may be apt to advert to in brief the prior statutory position as regards the right to alienate the granted land. In 1929 by order No. R.2122-81/L.R.368-28-5 dated 12th September, 1929, we find certain concessions being granted to persons belonging to depressed classes. (Depressed class as defined did not include all communities classified as Scheduled Caste/Tribe). The main concession in this behalf is what is contained in regard to subsequent transfers. It stated thus:

"With a view to speed up the disposal of darkhast and to prevent the possibility of interested parties exploiting the ignorant members of the Depressed Classes, the Deputy Commissioner, Chitaldurg District suggested the introduction of the system of granting lands to them on a "restricted tenure" on condition that the grantees should not alienate them without the permission of the Deputy Commissioner, and stated that this system was prevalent in certain parts of the Bombay Presidency. The Revenue Commissioner who was consulted in the matter is not in favour of introducing this innovation. He however states that according to the existing standing orders grants made to karnatakas are subject to the condition that the grantees should not alienate them for a period of 10 years, and that to further safeguard their interests the period may be raised suitably, if need be, upto a maximum limit of 20 years. Government agree with the views of the Revenue Commissioner, and direct that the first proposal be dropped and the period within which the lands should not be alienated be raised from 10 to 20 years".

8. This concession is seen repeated in the subsequent Government orders as well i.e., issued u/s 233 of the Mysore Land Revenue Code from time to time. Meanwhile, the Mysore Land Revenue Act, 1964 was enacted by the Legislature and in exercise of the powers conferred u/s 197 of the said Act, the Mysore Land

Grant Rules, 1968, referred to above, were framed. (A variation was made in relation to the period during which an alienation cannot be made). It did not touch upon any enabling condition, enabling to alienate the land to a member of the Scheduled Caste or Tribe. As stated, Rule 40 thereof saved the pre-existing rights and liabilities of a grantee.

9. Now, as far as erstwhile Madras area is concerned, which also formed part of Mysore State since 1956, Rule 41 of the Board Standing Order dealt with the restraint on alienation of the property granted to Scheduled Castes and Tribes in the following manner:

"Assignments whether of ordinary land or of valuable land in these areas will be subject to the condition that the lands shall not be alienated to any person (whether a member of the Scheduled Castes or not) in any manner, before the expiry of ten years from the date of the grant nor even thereafter except to other members of these castes".

10. No similar rules have been pointed out insofar as Bombay or Hyderabad areas are concerned prevailing prior to the framing of the consolidated 1968 Rules. The 1968 Rules were repealed and replaced the 1969 Rules which in its turn contained the following rule:

"30. Repeal and Savings.--The Karnataka Land Grant Rules, 1968 and Karnataka Land Revenue (Amendment) Rules, 1967 (Rule 93-A) are hereby repealed:

Provided that the repeal shall not affect:--

(a) the previous operation of any rule so repealed or anything duly done or suffered thereunder;

(b) any right, privilege, obligation or liability acquired, accrued or incurred under any rule so repealed;

(c) any penalty, forfeiture or punishment incurred in respect of any breach of or any offence committed against any rule so repealed; or

(d) any investigation or legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid and any legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if such rule had not been repealed:

Provided further that subject to the preceding provision anything done or any action taken (including any notification, order, instruction or direction issued), under any such rule shall be deemed to have been done or taken under the corresponding provision of these rules shall continue to be in force accordingly, unless and until superseded by anything done or any action taken under the Act or these, as the case may be".

11. The resultant position was, inter alia, that any right, privilege, obligation or

liability acquired, accrued or incurred under the respective Land Grant Rules or Orders still governed the respective grants.

12. Rule 41 of the Madras Rules alone, as stated earlier, indicates that a permission can be granted to alienate the land to the members of the Scheduled Caste and Tribe.

13. One thing that is clearly discernible from these rules, is that there is a statutory period fixed during which an alienee is precluded from effecting any alienation. The period varies when the grant relates to the weaker sections. The object seems to be that the beneficiary of the grant should enjoy the grant himself and he should not transfer the benefit to others, thus defeating the object of the grant.

14. While so, Rule 29-A had been incorporated in the Karnataka Land Grant (Amendment) Rules with effect from 17-10-1974. Since the dispute centres round the interpretation being placed to the said rule the same is extracted herein below for convenience:

"29-A. Certain conditions not to apply.--Notwithstanding anything contained in Rule 40 of the Karnataka Land Grant Rules, 1969, the provisions of any Rule (repealed by the said Rule), that the land granted shall not be alienated except to the members of the Scheduled Castes or Scheduled Tribes shall, with effect from the commencement of the Karnataka Land Grant (Amendment) Rules, 1974, cease to operate".

15. The reference here to 1969 Rules seems to be an error; because the 1969 Rules had only 30 Rules and Rule 30 is the repealing rule. On the contrary, Rule 40 of the 1968 Rules is the repealing rule. So on 17-9-1974, when Rule 29-A was introduced, it obviously intended to refer to the 1968 Rules, so as to make it clear that by the repeal referred to therein, such of the rights referred to in Rule 29-A are not saved.

16. Now the effect of the rule would be that wherever law in force or the deed of grant provided an enabling provision enabling the grantee without permission to alienate the granted land to a member of Scheduled Caste/Tribe then by virtue of the above said rule the said right stood abrogated.

17. The resultant position in the instant case would be that Clause 12 of the original grant stood thereafter re-written as hereunder:

"That all alienations of the land without the sanction of Government to any one [] shall invalidate the grant".

18. In other words, with Rule 29-A, the result was that no alienation can be effected to any one without sanction of the Government.

In this context there is a related development also material to be adverted to. Namely, the Legislature in 1978 had enacted the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, Act 2 of 1978

which came into force with effect from 1-1-1979. The Objects and Reasons of the Act stated as under:

The non-alienation clause contained in the existing land grant rules and the provisions for cancellation of grants where the land is alienated in contravention of the above said provisions are found not sufficient to help the Scheduled Castes and Scheduled Tribes grantees whose ignorance and poverty have been exploited by persons belonging to affluent and powerful sections to obtain sale or mortgage either for nominal consideration or for no consideration at all and they have become victims of circumstances. To fulfil the purpose of the grant, the land even if it has been alienated, should be restored to the original grantees or their heirs.

The Government of India has also been urging the State Governments to enact legislations to prevent alienation of lands granted to Scheduled Castes and Scheduled Tribes by Government on the lines of the model legislation prepared by it and circulated to the State Governments".

20. The various provisions of the Act have been legislated with this intention. Section 4 thereof prohibited transfer of granted land. The section stated as follows:

"4. Prohibition of transfer of granted lands.--(1) Notwithstanding anything in any law, agreement, contract or instrument, any transfer of granted land made either before or after the commencement of this Act, in contravention of the terms of the grant of such land or the law providing for such grant, or sub-section (2) shall be null and void and no right, title or interest in such land shall be conveyed nor be deemed ever to have conveyed by such transfer.

(2) No person shall, after the commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government.

(3) The provisions of sub-sections (1) and (2) shall apply also to the sale of any land in execution of a decree or order of a Civil Court or of any award or order of any other authority".

21. Sub-section (1) above saved all transfers made in terms of the grant or in accordance with law providing the grant. Coupled with Rule 40 adverted to above, all transfers made in accordance with the terms of grant or the rules stood saved. This law was given retrospective operation as well. The validity of the legislation stands upheld by the Supreme Court (see *Manchegowda and Others v State of Karnataka and Others*). Thus while Section 4(1) saved all alienations made in terms of the grant, Rule 29-A referred to above deleted one of the permitted clause under which a valid alienation could be made even without permission; but after Rule 29-A came into force that particular clause in the grant also stood abrogated.

22. Section 11 of the said Act declared an overriding effect to the legislation and stated as under:

"11. Act to override other laws.--The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom, usage or contract or any decree or order of a Court, Tribunal or other authority".

23. It means, all alienations contrary to the statute were declared null and void. But in effect, the consequence envisaged u/s 11 of the Act had already been given effect to with effect from 17-10-1974, by virtue of Rule 29-A of the Rules declaring all alienations without prior consent of the Government being declared invalid.

24. Now, the statutory scenario in relation to right to alienate the granted land by members of the Scheduled Caste/Tribe is as hereunder:

"(i) Alienation was permissible after the completion of specified period stipulated under the rule with sanction of the competent authority. This was upto 1-1-1979.

(ii) After 1-1-1979, all alienations in contravention of Section 4 of Act 2 of 1978 are null and void".

25. We will now proceed to consider the effect of Rule 29-A keeping the above in mind. Question relating to these aspects came up for consideration in Laxmamma's case, supra. The question that was directly considered was the scope and interpretation of the said Rule 29-A. After a detailed survey of various authorities their Lordships stated as hereunder:

"68. Re. Point No. III:--The Uniform Land Revenue Act of 1964 (Karnataka Act No.12 of 1964) enacted by the new State repealing the corresponding laws in the integrating areas, came into force on 1-4-1964. Under that Act, Government on 21-3-1968 framed the uniform Land Grant Rules called the Mysore Land Grant Rules of 1968 (hereinafter referred to as "the 1968 Rules"). Rule 40 of the 1968 Rules, corresponding to Section 6 of the General Clauses Act, repeals the Land Grant Rules that were in force in the integrating areas of the new State and saves the previous operation of the rules and the actions taken thereunder. As a result of the above, the conditions imposed in accordance with law in the erstwhile integrating areas and notably in the old Madras area to the effect that the lands should not be alienated except to members of SC/ST undoubtedly continued to be in force.

69. But, on 27-9-1974 Government framed Rule 29-A which reads thus:--

"29-A. Certain conditions not to apply.-- Notwithstanding anything contained in Rule 40 of the Karnataka Land Grant Rules, 1968, the provisions of any rule (repealed by the said rule), that the land granted shall not be alienated except to the members of the Scheduled Caste or Scheduled Tribe shall, with effect from the commencement of the Karnataka Land Grant (Amendment) Rules, 1974, cease to operate".

By virtue of clause (2) and Section 5 of the Karnataka General Clauses Act, this

rule came into force on 17-10-1974, on which day the notification was first published in the Karnataka Gazette.

70. Rule 29-A which opens with a non obstante clause, declares that the provisions of any Rules that provided that the land granted shall not be alienated except to the members of Scheduled Caste and Scheduled Tribe shall cease to operate from the date that rule comes into force. The language of the rule divorced from the context, provides for repealing the rules that provided for a prohibition of alienation only to members of SC/ST from 17-10-1974, though the corresponding rules in that behalf had earlier been repealed by the 1968 Rules itself.

71. Rule 29-A did not contemplate repealing a rule that had earlier been repealed, though that would be the textual meaning of the rule divorced from the context. A literal meaning defeating the purpose of framing the rule, cannot be placed and the Court must endeavour to ascertain the real intendment and object of framing the rule and place a construction that would achieve the object of framing the rule. On such a construction, we are of the opinion that in framing Rule 29-A, Government has provided to delete the conditions imposed in the grant certificates to the effect that lands granted to members SC/ST from the date that rule came into force i.e., from 17-10-1974. Even the learned Government Pleader appearing for the State supported this construction only.

72. On the above discussion, we hold that on and from 17-10-1974, the condition imposed in the grant certificates issued to members of SC/ST to the effect that they shall not be alienated to persons other than members of SC/ST stands deleted and any alienation made thereafter to persons other than SC/ST would be valid".

Doubts were raised in regard to the correctness of the following sentence occurring in paragraph 72, namely:

"...and any alienation made thereafter to persons other than SC/ST would be valid".

The decision thus added a third category, to the two categories referred to above. This, certainly did not fit into the scenario of legislation. (The word "thereafter" refers to 17-10-1974 the date on which the rule came into force).

26. Therefore, this aspect of the matter was again considered by a later Division Bench, namely, Smt. Bhagi Hengsu case, *supra*. And speaking for the Bench, my Lord the Chief Justice stated thus:

"15. The conclusion reached by the Division Bench interpreting Rule 29-A that the condition imposed in the certificates regarding alienation would not come in the way of transfers effected on and from 17-10-1974 and alienations made thereafter to persons other than SC/ST would be valid is incorrect. In this connection, it is necessary to extract Rule 29-A. It reads:

"29-A. Certain conditions not to apply.--Notwithstanding anything contained in Rule 40 of the Karnataka Land Grant Rules, 1969, the provisions of any Rule (repealed by the said Rule), that the land granted shall not be alienated except to the members of the Scheduled Castes or Scheduled Tribes shall, with effect from the commencement of the Karnataka Land Grant (Amendment) Rules, 1974, ceased to operate".

16. Unfortunately, while reaching the conclusion interpreting Rule 29-A as aforesaid, the Division Bench lost sight of Section 11 of the Act which is important to be considered at this juncture as it has overriding effect over all other enactments. It reads:

"11. Act to override other laws.--The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom, usage or contract or any decree or order of a Court, Tribunal or other authority".

17. Though in Laxmamma's case, supra, this section has been referred to, its effect has not been specifically considered by the Division Bench".

27. We are in respectful agreement with what is stated above. Perhaps, the Legislature noticed that under the cover of the clause enabling the grantees to alienate the lands to the members of the Scheduled Caste and Scheduled Tribe, the land was changing hands and it was reaching persons who were otherwise disqualified to receive the grant or to whom it was never intended to be granted. Now the Rule 29-A was incorporated in effect to prevent such transfers which defeats the object of the grant of the land and the legislation. The soul of the legislation is to see that the property granted to members of the Scheduled Caste or Tribe remained with them and are enjoyed by them. These lands are invariably given to landless people and when this object was defeated by recourse to the above said clause the legislature stepped in and introduced Rule 29-A; but if the judicial interpretation placed in Laxmamma's case, supra, were to be accepted, then the very mischief the legislature wanted to prevent is resurrected in that the land granted can be alienated between 17-10-1974 and 1-1- 1979 the date on which Act 2 of 1978 came into force without any restriction. We are of the view that nothing can be farther than this interpretation, from the intention of the Legislature.

28. Four rules are laid down in Heydon's case, in the matter of interpretation of statutes. They are:

1. What was the common law before the making of the Act;
2. What was the defect and mischief for which the common law did not provide;
3. What remedy the Parliament has resolved and appointed to cure the defect;
4. The true reason of the remedy.

29. These principles have gained acceptance in various judicial pronouncements.

The object of Rule 29-A has to be understood keeping in mind the abovesaid rules. Rule 29-A was enacted to prevent a specific mischief noticed by the Legislature. If, we follow what is stated in para 72 of Laxmamma's case, supra, then undoubtedly the object of Rule 29-A would be defeated. It was never the intention of the rule makers to permit a grantee of a government land to alienate the grant even to the members of the Scheduled Caste/Tribe on and after 17-10-1974. There was no statutory recognition of such right hitherto, and by means of the rule, such a condition imposed in any grant at the time of the grant was also done away with. The legislature was of the view that these grantees are members of the weaker sections of the society; that they are exploited classes; that special statutory protection is needed to safeguard their interest; that land was granted to landless people and if alienation is allowed unchecked, then the object of the very grant would be defeated; that these persons should not be persons without any land even to erect a homestead. Act 2 of 1979 and its precursor Rule 29-A were legislated with intention to achieve the above objects. Therefore, any interpretation to be placed to the rule should be to further the object of the legislation and to prevent any mischief being perpetuated by persons with vested interest.

30. Therefore, the opinion of the Bench in respect of the questions framed is as follows:

- (1) No; Rule 29-A is not deemed to have been obliterated from backdate (retrospectively) in view of Sections 4 and 11 of Karnataka Act 2 of 1979.
- (2) In view of Rule 29-A of the rule referred to supra, Clause 12 of the condition referred to above continued to exist as modified.
- (3) On and after 17-10-1974, i.e., the date with effect from which date Rule 29-A was introduced and till 1-1-1979 the date of coming into force of Act 2 of 1979 referred to above, all transactions were subject to the said Rule 29-A.

31. The result would be that the alienation in favour of the predecessor in interest of the petitioner i.e., on 22-3-1977 from the daughter of the grantee invalidated the grant by virtue of Clause 12 above. Therefore, that grantee could not have conveyed any title to the petitioner or to any of his predecessor. The resultant position is that the impugned proceedings initiated u/s 5 of Act 2 of 1979 have to be upheld. We are not adverting to the other authorities cited, in the light of the view taken by us.

The writ petition is accordingly dismissed.