

(2005) 08 KAR CK 0018
In the Karnataka High Court
Case No : Writ Petition No. 17937 of 2005

Bangarappa and Others

APPELLANT

Vs

The Special Deputy Commissioner and Others

RESPONDENT

Date of Decision : 03-08-2005

Acts Referred:

Karnataka Land Grant Rules, 1969 — Rule 29A
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 11, 3 (1) (e), 4 (1), 4 (2), 5

Citation : (2005) 6 KarLJ 467

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : C.B. Srinivasan and N. Bayya Reddy, for the Appellant;
Bharamagouda B. Goudar, High Court Government Pleader for Respondents-1
and 2, P.N. Nanja Reddy, for Caveator-Respondent-3, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ petition is by persons who claim that they are in possession of an extent of 2 acres of land in Survey No. 104 of Anantapura Village, Yelahanka Hobli, Bangalore North Taluk and who are aggrieved by the orders passed by the Assistant Commissioner which order came to be affirmed in appeal by the Deputy Commissioner under the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (for short, "the Act").

2. What is principally urged is that the provisions of the Act were not attracted at all to the situation in which the petitioners were placed; that the petitioners are claiming possession of the land from the year 1971; that there was no interference or disruption of possession and enjoyment of the land; that in respect of subject-matter land, the respondent 3 had instituted a suit in O.S. No. 88 of 2004 on the file of the Court of the Principal Civil Judge (Senior Division), Bangalore Rural District; that the suit continues to be pending and even during

such pendency of the suit itself, the respondent 3 had also filed an application under the provisions of the Act, contending that the land in question was a land which had been transferred by his mother in the year 1984 receiving consideration of Rs. 1,000/-; that therefore transaction was to be invalidated etc., and the Assistant Commissioner had erroneously allowed such an application and in the appeal the Deputy Commissioner compounded the error by holding that apart from the so-called transaction of the year 1984, even admittedly the petitioners being in possession of the land from the year 1971 which was a granted land and in view of the provisions of Section 5(3) read with Section 4(1) of the Act, action was warranted in terms of the order passed by the Assistant Commissioner and having dismissed the appeal, questioning the correctness of such orders, the present writ petition is filed.

3. Submission of Sri C.B. Srinivasan, learned Counsel appearing for the petitioners is that the authorities under the Act did not have an occasion to examine the matter; that it was a clear case of the petitioners that there was no transaction in the nature of "transfer" as defined u/s 3(l)(e) of the Act; that in the absence of a transfer which is a transfer within the meaning of this expression occurring u/s 3(l)(e) of the Act, the provisions of Section 4 of the Act are also not attracted, in which event, the authorities do not get any jurisdiction under the Act; that the entire exercise was an exercise not warranted in law; that the proceedings are required to be quashed.

4. Submission of the learned Counsel for the petitioners proceeds on the premise that the respondent 3 being aware of this position, had in the first instance, filed a civil suit praying for certain reliefs, but later on, had turned around and had preferred an application; that the authorities without appreciating the correct factual position or legal position, having allowed the same, it has become necessary to seek relief invoking writ jurisdiction of this Court.

5. Learned Counsel for the petitioners submits that the respondents were not able to show that there was any transaction either in the nature of an agreement of sale or an actual conveyance deed which could be termed as a transaction within the meaning of the word "transfer" u/s 3(l)(e) of the Act and if there is no transfer at all as contemplated under the provisions of the Act, nothing further can proceed under the provisions of the Act and therefore the orders are not authorised in law and call for being quashed.

6. Learned Counsel for the petitioners, while drawing the attention to the very pleadings of the respondent 3 in the suit, submits that the very case of the respondent 3 before the Civil Court was that the respondent 3 or his predecessors in title had not executed any document and had continued to be in possession and therefore had sought for declaration and recovery of possession and on such pleadings, it amounts to admission that there was no transaction in the nature of transfer as contemplated under the Act and therefore the authorities could not have acted upon the same.

7. A few undisputed facts are that the land in question is a land that had been granted in terms of the grant order dated 13-7-1962 in favour of one Pillappa, a person belonging to Scheduled Caste community with certain terms and conditions attached to the grant. Though the respondent 8 had contended in the plaint in O.S. No. 88 of 2004 that he was in possession etc., it was not as much disputed before the authorities or even before this Court that the petitioners are in possession of the land in question and that it has been ever since the year 1971. In fact, the action on the part of the authorities had proceeded on the premise that the petitioners are in possession of the granted land.

8. The Assistant Commissioner while entertaining the application and examining the same, held that the entries in the revenue records indicated the entries which were in the name of the original grantee-Pillappa ever since the grant, was altered in terms of M.R. No. 7 of 1988-89 in favour of the petitioners; that such alteration reflects the transfer of interest in the land after the Act had come into force; that the same being not preceded by permission as per the provisions of Section 4(2) of the Act, it should be set aside or invalidated and accordingly transfer of entry was held to be bad for being in violation of the provisions of Section 4 of the Act, directed that the land should be resumed free from all encumbrances and restored to the applicant-legal heir of the original grantee.

9. While passing the order, the Assistant Commissioner also noticed that the petitioners had contended that they were in possession of the land ever since the year 1971 and had therefore perfected their title by way of adverse possession, but rejected such claim for the reason that the petitioners had failed to produce any documentary evidence of their claim etc.

10. In the appeal before the Deputy Commissioner, while grant in favour of said Pillappa was not disputed by the petitioners, attention was drawn to the civil suit that had been filed by the respondent 3; that the grantee and his brother had negotiated during the year 1970 for the sale of the land in question in favour of the family members of the petitioners; that they had, in fact, received the entire sale consideration, but had failed to execute any document by way of conveyance deed and in such a situation, the petitioners were left with no other alternative, but to forcibly enter possession of the suit land and had started cultivation on their own and to the knowledge of the respondent 3 and his predecessor in title, i.e., Piliappa, the grantee; that thereafter they had not been disturbed with their possession of the land and as the grantee or any persons claiming under the grantee had not executed any conveyance deed, there was no transfer in the eye of law as contemplated under the meaning of word "transfer" occurring in Section 3(l)(e) of the Act and therefore the provisions of the Act are not attracted.

11. The version of the respondent 3 that there was an agreement for sale by his mother and such a document had been executed was also disputed. The emphatic stand was that there was no transaction in the nature of transfer as contemplated under the provisions of the Act. The Deputy Commissioner

examined such contentions in the light of the version put forth on behalf of the respondent 3, namely, that the wife of the original grantee had executed a sale agreement in respect of the suit land in the year 1984 after receiving a sum of Rs. 1,000/- and had handed over possession etc., and the petitioners having taken possession under such an agreement, the transaction was one within the meaning of the word "transfer" occurring in the Act and therefore action by the Assistant Commissioner is justified.

12. The Deputy Commissioner had on a detailed examination of these things, examined not merely the factual position, but also the legal position. The Deputy Commissioner found, as a matter of fact, that the petitioners were in actual possession of the land in question; that this land was a land which had been granted in favour of one Pillappa, a person belonging to Scheduled Caste community by the Government in terms of the grant order dated 13-7-1962; that even as per the version of the petitioners themselves, they had got into possession of this land in the year 1971 and had continued to enjoy the land ever since and that the revenue entries in respect of the land had been altered in terms of M.R. No. 7 of 1988-89. The Deputy Commissioner proceeded on such premise and found that in either view of the matter, the possession of the petitioners in respect of the granted land cannot be sustained, but on the other hand, was required to be held illegal and the land resumed and restored to the grantee. The Deputy Commissioner's analysis was that if the version of the petitioners that they are in possession since the year 1971 is to be taken, in terms of the provisions of Section 5(3) of the Act, the presumption arises that such possession is through a transfer which is null and void in terms of the provisions of Section 4(1) of the Act and calling for action u/s 5 of the Act. Section 5(3) of the Act reads as under:

"5. Resumption and restitution of granted lands.-(1) and

(2) x x x x

(3) For the purposes of this section, where any granted land is in the possession of a person, other than the original grantee or his legal heir, it shall be presumed until the contrary is proved, that such person has acquired the land by a transfer which is null and void under the provisions of sub-section (1) of Section 4".

13. The Deputy Commissioner also observed that if it is to be taken as transfer later, in the sense, parting of possession either under the oral agreement as pleaded by the respondent 3 in the year 1984 or even in terms of the revenue entries of the year 1988-89, both being an event subsequent to the Act having come into force i.e., after 1-1-1979 is a transfer of the land without obtaining prior permission as contemplated u/s 4(2) of the Act and therefore was required to be declared as null and void. In this view of the matter, the Deputy Commissioner held that action as had been taken by the Assistant Commissioner was justified, warranted no interference and accordingly dismissed the appeal. It is against such orders, the present writ petition is filed.

14. submission of Sri Nanja Reddy, learned Counsel for the respondent 3, on the contrary, is that the institution of the suit by the respondent 3 is of no consequence; that the provisions of the Act operate independently; that even assuming a suit had been filed, it does not come in the way of the statutory functionaries under the Act, to take necessary action as is mandated in law; that the Assistant Commissioner was justified in taking action and the Deputy Commissioner has rightly dismissed the appeal; that no interference is warranted in the exercise of writ jurisdiction and the writ petition deserves to be dismissed.

15. It is also the submission of Sri Nanja Reddy, learned Counsel for respondent 3 that both on the admitted case of the petitioners, the petitioners or their ancestors had received full consideration even during the year 1970 and had taken forcible possession which amounts to transfer of the land in question though not under a deed of conveyance, a transfer for consideration orally in the absence of a deed and the petitioners and their ancestors being in possession pursuant to the same, even such transaction is a "transfer" within the meaning of the expression "transfer" u/s 3(l)(e) of the Act as the nature of transfer that has been described in the definition clause of transfer is not exhaustive but is only illustrative as indicated in the words "or any other transaction". Section 3(l)(e) reads as under:

"3. Definitions.-(1) x x x x

(e) "Transfer" means a sale, gift, exchange, mortgage (with or without possession), lease or any other transaction not being a partition among members of a family or a testamentary disposition and includes the creation of a charge or an agreement to sell, exchange, mortgage or lease or enter into any other transaction".

16. Learned Counsel for the respondent .3 therefore submits that even the oral transfer of the year 1971 or the subsequent one when the wife of the grantee received Rs. 1,000/- in the year 1984 and parted with the possession under an agreement is also a transaction coming within the residuary situation contemplated in the phrase "or any other transaction" and therefore it is clearly a transfer within the meaning of Section 3(l)(e) of the Act, in which event, the other consequence will have to follow automatically.

17. In support of such submission, learned Counsel for respondent 3 relies on a Single Bench decision of this Court in the case of Siddalingiah Vs. State of Karnataka, .

18. The Act is a piece of social welfare legislation. The provisions of the Act are quite drastic on the purchasers. The object of the Act is to invalidate all such transfers which had taken place in violation of the terms of the grant prior to the Act coming into force and after the Act had come into force in violation of Section 4(2) of the Act, i.e., without prior permission from the Government. The Act mandates that once a transaction is invalidated, it is the duty of the authorities to summarily evict the person in possession by dispossessing him, resume

possession to the State and restore it to the grantee or legal heirs of the grantee. Till all this action is completed on the part of the authorities, their duty under the provisions of the Act is not over and the object is not achieved. The provisions of the Act have also been held to be constitutional as the challenge to the validity of the enactment was repelled by the Courts. The ultimate object is to ensure that possession of the land is restored to the grantee or his legal heirs by dispossessing any other person in possession of such granted land. The meaning to be attributed to the words and phrases occurring in the Act should necessarily take their colour from the object of the Act, intention of the legislation and the manner in which the provisions are sought to be implemented. In addition, Section 5(3) of the Act, by fiction of law deems that any person who is found in possession of such a granted land, being not a person claiming under the grantee himself, is deemed to have acquired interest in the land through a transfer which is a transfer hit by the provisions of Section 4(1) of the Act. Of course, the presumption is a rebuttable one on the contrary being proved.

19. It is in the context of such legal provisions, Sri C.B. Srinivasan, learned Counsel for the petitioners has urged that though no doubt because of the possession of the land by the petitioners, the presumption u/s 5(3) of the Act arises, but as it is a rebuttable presumption and in terms of the very pleadings on the part of the respondent 3 in the suit instituted before the Civil Court, the presumption is rebutted, in the sense, there is an admission on the part of the respondent 3 that there was no conveyance of any interest on the part of the grantee or his legal heir and therefore there was no transfer at all and in which event the provisions of the Act is again not attracted.

20. I am afraid, the submission is not acceptable as it is only begging the question. It is only because there is no transaction of the nature of a transfer as indicated, law has created a fiction that the mere possession of the granted land by a third person is sufficient to presume that it was under a transfer void or voidable in terms of Section 4(1) of the Act. Such a presumption if at all can be rebutted only on the person in possession proving his possession or sustaining his possession by tracing the source or the authority of such possession which is not hit by the provisions of Section 4 of the Act. It is an aspect which has to be proved independently by the person in possession and by production of such positive evidence or material. It cannot be a matter of argument or with reference to a plea that such position is made good in get over the presumption or rebut the presumption created u/s 5(3) of the Act. So long as any third person is in possession of a granted land and such possession is not saved even in terms of the provisions of the very Act, the authorities are required to give effect to the provisions of the Act for dispossessing such a person from the land in question, resume it to the State and restore the possession to the grantee or his legal heir.

21. Though the contention that the petitioners have also prescribed title by way of adverse possession is sought to be raised and had been raised before the authorities also, the plea of adverse possession is made good if and only if the

purchaser or the person claiming right, title and interest is in possession of the land; that such possession is without interruption, hindrance adverse to the interest of the transferor, as also the Government, for a continuous period of 30 years even before the Act came into force and not otherwise. The land undisputedly was owned by the Government and had been granted subject to various conditions; that such a grant amounted to a limited transfer and the Government continued to retain interest for resumption etc., and therefore the plea of adverse possession is made good only if such enjoyment is for a continuous duration of 30 years or more even before the Act came into force. Once the Act has come into force, in view of the provisions of Section 11 of the Act, nothing can be added thereafter for computing the duration of adverse possession as gets arrested at this point of time, though in reality and on facts, the person may be continuing in possession. In the present case, admittedly, the possession of the petitioners being from the year 1971 and period of 30 years or not even 12 years having elapsed before the Act coming into force, the plea of adverse possession cannot be availed at all for the benefit of the petitioners.

22. Sri C.B. Srinivasan, learned Counsel for the petitioners placing reliance on the Single Bench decision of this Court in the case of V. Nanjappa Vs. State of Karnataka and Others, which in turn had placed reliance on a Division Bench judgment of this Court in the case of Laxmamma and etc., etc. Vs. State of Karnataka and Others, submits that in the light of the interpretation placed on Rule 29-A of the Karnataka Land Grant Rules, which had been introduced by way of amendment from the year 1974 and applying the principle, it should be held that the present transfer assuming it to be so under the provisions of the Act should be saved as the petitioners-purchasers are also persons belonging to Scheduled Caste community and for some time in the interregnum between the date of the Act coming into force, the Land Grant Rules and the amendment, such transfer in favour of Scheduled Caste persons were saved as they were not in violation of the terms of the grant and therefore submits that the petitioners also being persons belonging to Scheduled Caste community, the benefit should be extended for saving the transaction.

23. In the first instance, submission of this nature cannot be put forth when the petition is being examined in the exercise of writ jurisdiction and a plea cannot be added for the first time. But, more importantly, the ratio in the decision of the Single Bench or the Division Bench is not attracted to the facts of the case, inasmuch as, the validity of the transaction i.e., the transfer is dependent on the violation or otherwise of the terms of the grant which are the conditions or the terms as it prevailed at the time of the grant, namely, in the year 1962. Subsequent amendment to such rule or conditions are of no consequence as the examination for the purpose of deciding as to whether the transfer was one attracting the provisions of Section 4(1) of the Act was in the light of the conditions that had been imposed on the grant itself and as to whether there was any violation of such conditions for the transfer. Therefore, the learned Counsel cannot seek extension of any benefit on the strength of the ratio of the decision

laid down by the Division Bench of this Court in Laxmamma's case.

24. In the result, I do not find any need or occasion to interfere with the orders passed by the authorities below who have properly applied the provisions of the Act and for the purpose for which the Legislature has enacted or made the law.

25. Writ petition is dismissed without rule being issued.