

(1990) 08 KAR CK 0079
In the Karnataka High Court
Case No : W.P. No. 11699/1990

B.M. Hanumanthappa

APPELLANT

Vs

Deputy Commissioner, Shimoga and Others

RESPONDENT

Date of Decision : 13-08-1990

Acts Referred:

Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 3(1)(E)

Citation : (1990) 2 KarLJ 401

Hon'ble Judges : N. Y. Hanumanthappa, J

Judgement

Hanumanthappa, J.-The land measuring 1 acre in Survey No. 96 of Beeranahalli Village in Shimoga District came to be granted to the 3rd respondent imposing a condition that he shall not alienate the property for a period of 15 years. Within one year from the date of grant the 3rd respondent entered into an oral agreement with the petitioner for the sale of the property and on the basis of such oral agreement the petitioner was put in possession of the land. However, the grantee/3rd respondent realising the mistake committed by him and also taking benefit under the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as the Act) filed an application before the Assistant Commissioner for a declaration that the transaction is void and for restoration of the land in question to him. On the basis of the application filed by the 3rd respondent, the Assistant Commissioner passed an order declaring that the transaction as void and directing that the land should be restored to the 3rd respondent. The appeal preferred before the Deputy Commissioner against the order of the Assistant Commissioner came to be dismissed confirming the order of the Assistant Commissioner. Before the Deputy Commissioner the appellant, petitioner herein, took up the following contentions:

i) That the provisions of the Act could not have been made applicable to the petitioner on the ground that the land which is in possession and enjoyment of the petitioner is not the one granted to the 3rd respondent. According to him, he

came in possession of the land belonging to the government and he was in possession of the same for more than 20 years; and ii) To attract the provisions of the Act the person who seeks benefit under the Act shall establish that there was a transfer in the nature of sale, gift, mortgage, etc. But, in the instant case, no such transaction has taken place.

2. However, the Deputy Commissioner rejected the contentions raised by the petitioner and thus confirmed the order passed by the Assistant Commissioner. Challenging the said orders of the Deputy Commissioner and the Assistant Commissioner the petitioner has filed this writ petition.

3. The main grounds on which the learned counsel for the petitioner desires to attack the impugned orders are:

i) The authorities were not right in taking into consideration the submission made by the 3rd respondent that the petitioner is in unauthorised occupation and enjoyment of the land;

ii) The authorities erred in arriving at the conclusion that the provisions of the Act would be applicable to the land in question; and iii) The authorities did not take into consideration the effect of Section 3(1) (e) and Section 5(3) of the Act. If these two sections are clearly understood, the conclusion would have been that the Act has no application to the case on hand.

4. Whereas Sri. T.N. Raghupathi, learned counsel for the grantee/3rd respondent and Smt. Meena Ramachandra, learned High Court Government Pleader, submitted that none of the contentions raised by Sri. Rajagopal, learned counsel for the petitioner, has got any merit. According to them, in the similar circumstances, this Court, while interpreting Sections 3(1)(e) and 5(3) of the Act, in *Veeraswamy v Special Deputy Commissioner* (I.L.R. 1990 Kar. 1739) has held thus:

"From the above provisions, it is abundantly clear that even in the absence of an instrument of transfer of the granted land, a person found to be in possession of the granted land, shall be presumed that such person has come into possession of the land contrary to the condition of the grant. Therefore, such possession cannot be protected."

In addition to this, one more thing that should be noticed is the definition of the word "transfer" as given under Section 3(1)(e) of the Act wherein it is defined as follows:

""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."

When once it is said that there was a transaction by way of agreement to sell,

definitely Section 4(1) of the Act would be attracted. Section 4(1) of the Act reads as follows:

"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."

In addition, it is proper to clarify the effect of Section 5(3) of the Act. A reading of Section 5(3) of the Act makes it clear that "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." Therefore, if there is a transaction even by way of agreement of sale, then the transaction has to be held illegal and in such a case Section 4(1) of the Act will very well be attracted. Once the first ground goes against the petitioner, the second ground also has to be held against the petitioner, as it is not in dispute that the petitioner is in possession and enjoyment of the land. All that the petitioner says is that the land which is in his occupation is not the one granted to the 3rd respondent and It belongs to the Government. Even then, by virtue of Section 5(3) of the Act, in my view, if it is shown that a person is in possession of the land other than the one to which the land was granted, the inference shall be that such a person acquired the land by virtue of transfer. Even then Section 4(1) shall be made applicable. Thirdly, one thing which falsifies the case of the petitioner is that the entry in the R.T.C. in respect of the land in question is in the name of the petitioner. But, unless there was some sort of transfer between the petitioner and the 3rd respondent/grantee, definitely the revenue authorities would not have taken trouble in entering the name of the petitioner in the R.T.C. Therefore, I do not think that there is any merit in the contentions raised by the petitioner. On the other hand, the authorities below were justified in ordering that the land should be resorted to the 3rd respondent.

5. Regarding hardship, Sri Rajagopal, learned counsel for the petitioner, submits that his client may be given some time to harvest the crop raised by him and to remove the factory, etc. put up on the land in question. Sri Raghupathi, learned counsel for Respondent-3, rightly agreed to give some reasonable time. In view of the hardship pleaded by the petitioner, time upto the end of August, 1991, is granted to the petitioner to vacate the land in question and put the grantee/3rd respondent in possession of the same without any protest.

6. This writ petition is accordingly dismissed. No costs.

7. Smt. Meena Ramachandra, learned High Court Government Pleader, is permitted to file her memo of appearance for Respondents 1 and 2 within 4 weeks from today.

Writ Petition Dismissed.