

(2013) 12 KAR CK 0498

In the Karnataka High Court

Case No : Writ Petition No"s. 930-931 of 2012 (SC/ST)

B.M. Reddy (Basani Mathyas Reddy) and B. Premnath Reddy **APPELLANT**

Vs

The Special Deputy Commissioner and Others **RESPONDENT**

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0498

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Jayakumar S. Patil for Sri J. Sudhakar, in W.P. Nos. 930-931/2012 SC/ST and Sri. S.G. Parthasarathy, for P1, Sri G.M. Srinivasa, for P2 A-D in W.P. Nos. 47347-49/2011 SC/ST, for the Appellant; Shwetha Krishnappa, HCGP FOR R1 and 2 Sri K. Varaprasad, for R3(A) and (B), Sri G.M. Srinivas, for R6 (A-D), Sri Ganapathi Bhat, for M/s. Kumar and Bhat for R10 in W.P. Nos. 930-931/2012 (SC/ST) and Smt. Shwetha Krishnappa, HCGP FOR R1 and 2 Sri K. Varaprasad, for C/R3 (A) and (B) Sri Jayakumar S. Patil for R5 and R8), for the Respondent

Final Decision : Allowed

Judgement

B.S. Patil, J.—Learned Government Pleader takes notice for respondents 1 and 2. In W.P. Nos. 930-31/12, petitioner No. 1 has purchased 1 acre 10 guntas of land comprised in Sy. No. 13 under a registered sale deed dated 05.07.2004. The 2nd petitioner has purchased 25 guntas of land out of the same survey number by a registered sale deed dated 06.12.2005. Both the sale deeds are produced at Annexures-A and B.

2. Petitioners in W.P. Nos. 47347-349/11 claim to be the purchasers of an extent of 2 acres 10 guntas of land out of the land in Sy. No. 13 which totally measured 5 acres 24 guntas. Both these matters are taken up together for consideration as the challenge made in these writ petitions are to the same order passed by the Special Deputy Commissioner, Bangalore District in case No. SCST(A) 165/2008-09.

3. Petitioners in W.P. Nos. 47347-349/11 are respondents in W.P. Nos.

930-931/12. Hence, the main arguments of the parties are heard in W.P. Nos. 930-931/12.

4. Dispute leading to these writ petitions has arisen on account of the claim made by late Gangappa - respondent No. 3 and Sanjeevaiah - respondent No. 3(b) in W.P. Nos. 930-31/2011 claiming resumption and restoration of the land bearing Sy. No. 13 measuring 5 acres 24 guntas under the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (for short "the Act"). The said application was made during the year 2007 before the Assistant Commissioner, Bangalore Sub-Division, Bangalore. The same was registered in case No. KSCST 91/07-08.

5. The Assistant Commissioner after holding an enquiry found that the land in question was granted on 03.05.1947 and the saguvali chit was issued on 24.07.1947. The Assistant Commissioner also recorded a finding that the original grantee sold the property on 31.07.1947 by way of a registered sale deed. Following the judgment of the Division Bench of this Court in W.A. No. 1512/93, the Assistant Commissioner found that the purchasers had perfected their title by adverse possession having regard to the lapse of more than 30 years from the date of sale till the date of coming into force of the Act on 01.01.1979. He, therefore, rejected the application filed by the grantees. Aggrieved by this order, the grantees Gangappa and Sanjeevaiah preferred an appeal before the Deputy Commissioner.

6. The Deputy Commissioner by his order dated 07.10.2011 has allowed the appeal setting aside the order passed by the Assistant Commissioner and directing restoration of the land. It is this order that is challenged in this writ petition.

7. Sri Gangappa, having died, his legal representatives are on record as respondents 3(a) and 3(b). Sri. Sanjeevaiah respondent No. 3(b) had already appeared before the Deputy Commissioner. Both of them are present before the Court. They are represented by Sri. K. Varaprasad, learned counsel in both the writ petitions.

8. Petitioners who are the subsequent purchasers of the land and the respondent's - grantees through their respective counsel submit that both parties have entered into a compromise to put at rest the long standing controversy between them and the compromise petition which is duly signed by both parties may be accepted and the writ petitions may be allowed setting aside the order passed by the Deputy Commissioner in terms of the compromise and the memorandum of understanding which is said to have been arrived at subsequently towards full and final settlement of the claim of respondents 3(a) and 3(b). Respondents 3(a) and 3(b) have agreed to receive a total sum of Rs. 75,00,000/- and give up their claim. The said amount is paid/payable by petitioners 1 and 2. It is further stated by the parties and their learned counsel that a sum of Rs. 25,00,000/- has been paid and the remaining amount of Rs.

50,00,000/- will be paid by way of cheque.

9. Respondent No. 7 - Prabhakar in W.P. Nos. 930-931/12 though served has remained unrepresented. It is submitted at the bar that he has sold the property in favour of respondents 8 and 9. He is not a party to the compromise entered into. The property has changed hands in respect of several purchasers. Ultimately, petitioners have purchased the same as per the registered sale deeds referred to above.

10. As the respondents - grantees cannot be permitted to barter away their rights by way of compromise, keeping in mind the nature of rights conferred on them by the legislation, which is intended to clothe the grantees with the benefit of resumption and restoration of land. They cannot give up their rights by receiving money. Whatever be the arrangement made between them, this Court is required to examine the matter on merits.

11. Hence, I have heard the learned counsel for the parties on merits.

12. It is not in dispute that the grant was made on 03.05.1947 and the saguvali chit was issued on 24.07.1947. The Assistant Commissioner has examined the materials on record. He has rightly come to the conclusion by following the judgment rendered by the Division Bench of this Court in W.A. No. 1512/93 disposed of on 12.07.1993 in the case of Muniswamy Vs. Deputy Commissioner, . It is laid down in the said judgment that only those transfers of lands by schedule castes persons which have taken place on or before 01.01.1949, that is, where transferees have completed adverse possession prior to 01.01.1979 would be saved from the sweep of the Act and all other transactions would be liable to answer the requirements of the Act and would fall through on the anvil of the Act, on the conditions precedent to Section 4 being attracted.

13. In paragraph No. 5 of the said judgment, after referring to the judgment of the Apex Court on the point, the Division Bench has observed as under:

If a transferee of land covered by the sweep of the Act had completed adverse possession for a period of 30 years prior to the date of coming into force of the Act then only he would not be touched. All other transfers, otherwise voidable, but falling within Section 4(1) of the Act would be liable to be proceeded with under the Act.

On a conjoint reading of the aforesaid decision, it must be held that only those transfers of lands by schedule castes persons which have taken place on or before 01.01.1949, that is, when transfers have completed adverse possession prior to 01.01.1979 would be saved from the sweep of the Act. All other transactions would be liable to answer the requirements of the Act and would fall through on the anvil of the Act, on the conditions precedent to Section 4 being attracted.

14. In the instant case, grantees sold the land in the year 1947. As on the date the Act came into force, the purchasers had completed 30 years of continuous

possession of the granted land. Therefore, the Assistant Commissioner was right and justified in holding that the purchasers had perfected their title by adverse possession and that the grantees had lost their rights. Unfortunately, the Deputy Commissioner in his order glosses over this important aspect. He does not refer to the reasons assigned by the Assistant Commissioner based on the judgment of the Division Bench with regard to the purchasers having perfected their title by adverse possession. He has simply proceeded on the basis of the understanding of the provisions contained u/s 4(2) of the Act as dealt with in *Bhemanna Vs. Deputy Commissioner, Chitradurga District and Others*, . He has held that as the land granted in favour of Munihanumaiah had been alienated within two months from the date of grant in violation of the non-alienation condition, the sale made was null and void as per Section 4(1) of the Act. He further points out that the subsequent sales made in favour of the present petitioners after the Act came into force on 01.01.1979 were in violation of Section 4(2) of the Act. He has not considered the effect of the finding recorded by the Assistant Commissioner regarding the perfection of title by adverse possession.

15. The judgment of the Division Bench makes it very clear that if the land was sold prior to 01.01.1949, then those transfers of lands by persons belonging to schedule castes would be saved when transferees have completed adverse possession prior to 01.01.1979. In the instant case, the sale has taken place prior to 01.01.1949, to be precise on 31.07.1947. Therefore, the transferees / purchasers have completed adverse possession prior to 01.01.1979. In addition, it is contended by the petitioners that the application by the grantees was filed in the year 2007 after lapse of nearly 27 years and that such delayed application cannot be entertained. It is therefore contended that in order to avoid any further litigation in the matter, parties have compromised the dispute.

16. I have held that the order passed by the Assistant Commissioner does not suffer from any illegality and that the Deputy commissioner has committed apparent error in ignoring the findings recorded by the Assistant Commissioner which were based on the judgment of the Division Bench. Though such a contention regarding adverse possession was raised by the present petitioners before him, as is also apparent from the order passed by the Deputy Commissioner, he has not referred to the same. Hence, I am of the view that the respondents - grantees have no case on merits and the order passed by the Assistant Commissioner deserves to be sustained while setting aside the order passed by the Deputy Commissioner.

17. At the same time, as the parties have arrived at a compromise, keeping in mind the interest of the grantees and at the request made by the learned counsel for the grantees, the terms of the said compromise are placed on record. W.P. Nos. 930-931/12 are allowed. The impugned order passed by the Deputy Commissioner is set aside. The order of the Assistant Commissioner is confirmed. The terms of the compromise shall be part of the record. Since the impugned

order passed by the Deputy Commissioner is set aside in these writ petitions, the other writ petitions bearing

W.P. Nos. 47347-349/11 are also disposed of in terms of this order.

Learned Government Pleader is permitted to file memo of appearance within three weeks.