(2010) 10 KAR CK 0099

In the Karnataka High Court

Case No : Writ Petition 4197 of 2009

Caffeine Holidays India Pvt. Ltd. APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 23-10-2010

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 128, 129, 136 (2), 136 (3)

Citation : (2010) 10 KAR CK 0099

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : B.N. Krishna Bhat, for the Appellant; Ramachandra R. Naik, GP, for the Respondent

Judgement

Huluvadi G. Ramesh, J.—Petitioners have sought for quashing the order of the Tahsildar, Chikmagalur in MR 10/2007-08 dated 14.11.2007 - annexure B; order of the Assistant Commissioner, Chikmagalur dated 11.6.2008 - annexure C and the order of the Deputy Commissioner, Chikmagalur in Revision 20/2008-09 on 2.12.2008 - annexure D.

2. Petitioner is a Company owing about 9.29 acres (plantation/coffee land) in Sy. No. 18 situate in Inam Dattatreya Peeta Village, Chikmagalur Taluk, Jagara Hobli, purchased as per the schedule under the registered sale deed dated 21.9.2007 - annexure A for valuable consideration of Rs. 16 lakhs. After registration, an application was made for change of mutation entries in the joint name of the Petitioners. The Tahsildar, Chikmagalur by order dated 14.11.2007 rejected the claim for change of mutation against which in the appeal preferred before the Assistant Commissioner as per Section 136(2) of the Karnataka Land Revenue Act, 1964 in RA 92/2007-08, the order of the Tahsildar rejecting the application came to be confirmed as at annexure C. Thereafter, revision was preferred u/s 136(3) of the Act to the Deputy Commissioner, who also in turn, dismissed the revision on 2.12.2008 - annexure D. Hence, this petition.

3. Heard the counsel representing the parties.

4. According to the Petitioners counsel, without application of mind the Tahsildar, the Assistant Commissioner and the Deputy Commissioner rejected the claim of the Petitioners who, by virtue of the registered sale deed, are in lawful possession having purchased the same from the original kathedar - Challappa. The revenue authorities ought to have made entries in the mutation register. The Deputy Commissioner has no jurisdiction to decide the question of title of the Petitioners having regard to the facts and circumstances of the case. Non entering of the names of the Petitioners has deprived their right and there is no dispute regarding title to the property belonging to the Petitioners.

5. In the statement of objections filed, it is stated, the entire village is Dattatreya Peeta inam village and the land coming under its jurisdiction are inam lands. The katha of the land in question stood in the name of one Syed Peer Mohammed Shakadri, Vahivatdar of the Dattatreya Peetha. After the coming into force of the Inams Abolition Act, all inam lands vested with the government as such, the same required re-grant from the competent authority. The Vahivatdar viz., Syed Peer Mohammed Shakadri without obtaining the re-grant order, has sold the land in question to one Challappa. On his death, the land stood in the name of his wife Smt. Madhavi. In turn, she sold the property in favour of the Petitioners. Since the land in question is an inam land, in the absence of re-grant from the competent authority, the 3rd Respondent on noticing the same, has rejected the application filed by the Petitioners by order dated 14.11.2007. Aggrieved by the same, the appeal preferred by the Petitioners before the 2nd Respondent also came to be rejected and so also the revision before the Deputy Commissioner. As the land in question, being inam land, vested with the government and it was sold without obtaining re-grant, the impugned orders passed by the revenue authorities are in accordance with law and do not call for interference.

6. Petitioners counsel has relied upon a decision in Muneer Ahamed Vs. V.K. Babu and Another, wherein it is held, it is not open to the Corporation to adjudicate the title to the property on the ground that the earlier transactions were not fully supported by valid title deeds to the property. Issuing katha is only an executive act and it is well settled that mere transfer of katha in favour of a person, body or Corporation would not confer any title in favour of such person. It only evidences possession of the property and is only relevant document to support the title of the parties to the property in question. Once it is established that the statutory obligation u/s 114(3) of the Act is discharged, the Corporation is bound to issue the khatha in discharge of its duties.

7. Learned Counsel has also relied upon the decision in Holiyappa Vs. The Deputy Tahsildar, Guledgud and Others, wherein referring to Section 128 and 129 of the Karnataka Land Revenue Act, 1964, it is held, there is a statutory duty on the revenue authorities to effect change of mutation in respect of the right acquired by a registered sale deed without reporting the same to him.

8. Relying upon the said decisions, learned Counsel contended, in view of the ratio laid down, it is a mechanical duty on the part of the revenue authorities to

make entries without probing into the title and, making mutation entries and issuance of katha is only in pursuance of the registered sale deed. The act of the Respondent authorities in rejecting the same is non-est and liable to be set aside.

9. Per contra, Government Pleader submitted that the land in question is a Datta Peeta inam land. After the enactment of the Inams Abolition Act, as per the provisions, there has to be a re-grant on such application being filed and only after the re-grant, the title over the land which has vested with the government, passes to the last holder. In the absence of any such application being filed and in the absence of any re-grant, question of conveying the property by way of sale by the Vahivatdar is illegal and does not confer any title much less a right.

10. In the case on hand, admittedly even as per the Petitioners, property in question is an inam land. Whether the original vahivatdar applied for re-grant or not is not made clear by the Petitioners. If such re-grant is made on such application being filed, then necessarily the property would be conveyed by way of alienation or sale by the holder of the property as a grantee, subject to the grant and grant conditions. In the present case, except a bald statement in the petition that the property has been purchased from the wife of the original kathedar, nothing is made available by the Petitioners. In the circumstances, it is rather difficult to issue a writ of mandamus or a writ of certiorari to quash the impugned orders passed by the revenue authorities as, mere conveyance by way of sale deed without there being title or right over the property does not confer any right. However, if the Petitioners are able to produce any material to show that the original vahivatdar, after the Act came in to force, had applied for re-grant and there was an order of re-grant and, if any condition is there as to non-alienation and if the property is sold only after such non-alienation period is over, and if there is validity as to conveying the property, then only on such confirmation the Respondent authorities would act upon to make entries in the mutation and issue katha.

11. Although the ratio laid down in the above said decisions makes a provision for entry in the revenue records and for change of katha based on the sale deed, in the case on hand it is not a case of sale deed simplicitor by conveying the property from the vendor to the vendee. The property in question being the subject matter of inam, after the coming in to force of the Act when the property has vested in the government, whether it has been re-granted to the original holder or not is not made clear. As observed above, if such documents are available to the Petitioners, on securing the same the Petitioners can very well approach the Tahsildar once again for effecting necessary entries in the revenue records.

12. With the above observation, petition is disposed of.

