(2013) 12 KAR CK 0438

In the Karnataka High Court

Case No : Writ Petition No. 37576 of 2013 (KVOA)

D. Narayanaswamy APPELLANT

Vs

The State of Karnataka and Others RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0438

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : L. Narasimha Murthy for Sri. S.N. Ashwathanarayan, for the Appellant; T.L. Kiran Kumar, AGA for R1-3 and Sri. Santhosh S. Gogi, for R4-22), for the Respondent

Final Decision : Allowed

Judgement

B.V. Nagarathna, J.—Notice dated 17.06.2013 issued by the 3rd respondent-Tahsildar, Chintamani Taluk, Chikkaballapur District bearing No. HOA.CR.33/2012-13 is assailed in this Writ Petition. It is the case of the petitioner that land bearing Sy. No. 102 to an extent of 2 acres 17 guntas situated at Maddalahalli Village, Munganahalli Hobli, Chintamani Taluk was an Inam land attached to the office of Thoti. It was classified as a Thoti Inam land. The holders of the office had 1/4th share in the said land. They had jointly applied for grant of the aforesaid land. The 3rd respondent by his order dated 15.01.1982 regranted the land to the legal representatives of the applicants. A copy of the regrant order is produced at Annexure-A. It is the further case of the petitioner that respondents No. 4-22 had jointly executed a registered sale deed dated 01.03.1997 in favour of the petitioner after the expiration of non-alienation period of 15 years from the date of grant. A copy of the registered sale deed is produced at Annexure-B. It is the case of the petitioner that the alienation has been made subsequent to the regrant period in accordance with law and that there is no violation of terms of the grant. After the execution of the sale deed in favour of the petitioner, the revenue authorities effected mutation and changed the katha in the name of the petitioner and the petitioner''s name was recorded in the revenue records. The petitioner has been raising mange crop on the land in question and has improved the same. When the matter stood thus, the petitioner was surprised to receive a notice from the 3rd respondent authority dated 17.06.2013 issued u/s 7 of the Karnataka Village Officers Abolition Act stating that the petitioner was an unauthorized occupant as he had purchased the land within the period of non-alienation and therefore, an enquiry would have to be held in that regard. That notice is assailed in the Writ Petition. Also the cause for issuing the notice is representation made by respondents No. 6 and 9 dated 15.08.2012 to the Assistant Commissioner, Chickballapur Sub-Division, Chickballapur stating that there was a violation of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978. On considering the representation, the Assistant Commissioner held that the aforesaid Act was not violated and that an enquiry would have to be held with regard to any violation under the provisions of the Karnataka Village Officers Abolition Act, 1961. It is in that context that a direction was issued to the Tahsildar to issue a notice under the latter Act. Under these circumstances, impugned notice dated 17.06.2013 was issued to the petitioner which is assailed in this Writ Petition.

2. I have heard the learned Counsel for petitioner and learned Counsel for respondents No. 4 to 22 and learned AGA for respondents No. 1 to 3.

3. It is contended on behalf of the petitioner that the impugned notice is issued without jurisdiction inasmuch as there is no violation of Section 5 of the Karnataka Village Officers Abolition Act, 1961, as the regrant was made on 15.1.1982 and the sale in favour of the petitioner has been made on 01.03.1997 under a registered sale deed which is beyond the 15 year period of non-alienation. That there was no reason for respondents No. 6 and 9 to approach the Assistant Commissioner and hence, the impugned notice may be quashed.

4. Per contra, learned Counsel for respondents No. 4 to 22 on whose behalf Statement of Objections have been filed vehemently argued that the date of grant is not 15.01.1982 and it is 15.06.1982. That the sale in favour of the petitioner was within the non-alienation period and therefore, respondents 6 and 9 rightly approached the authorities for invalidation of the sale. Therefore, there is no merit in this Writ Petition.

5. Learned AGA appearing for respondents 1 to 3 states that the date of grant is 15.01.1982 and that the alienation is beyond the period of 15 years and therefore, the notice could not have been issued to the petitioner herein.

6. Having heard the learned Counsel for the parties and on perusal of the material on record, it is noted from Annexure-A that the order of grant is dated 15.01.1982. Sub-section 3 of Section 5 of the Karnataka Village Officers Abolition Act, 1961 states that the land granted under the Act cannot be alienated for a period of 15 years from the date of regrant. In the instant case, the sale made in

favour of the petitioner is on 01.03.1997 which is by a registered instrument, a copy of which is produced at Annexure-B. On perusal of the said document, it is noted that the date of regrant is mentioned as 15.01.1982. In fact Annexures-A and D are the documents to which respondents No. 4 to 22 place reliance upon. Merely because in the communication of the Assistant Commissioner at Annexure-D the date of grant is stated as 16.06.1982, that would not give any cause of action for respondents No. 4 to 22 to seek orders u/s 7 of the Karnataka Village Officers Abolition Act, 1961. In fact, the alienation has been made beyond the period of 15 years from the date of regrant as can be seen from the aforesaid dates. In that view of the matter, the Tahsildar had no jurisdiction to issue the impugned notice dated 17.06.2013 with regard to initiation of an enquiry under the provisions of the Karnataka Village Officers Abolition Act, 1961. Under the circumstances, the impugned notice dated 17.06.2013 as well as the communication dated 25.07.2012 (Annexures-E and D respectively) are quashed. Writ Petition is allowed in the aforesaid terms.

No costs.