

(2011) 01 KAR CK 0227

In the Karnataka High Court

Case No : Writ Petition No. 2511 of 2010 (SC/ST) A/w Misc.W. No's. 9472 and 9473 of 2010 In Writ Petition No. 2511 of 2010 (SC/ST)

D. Rudrappa

APPELLANT

Vs

The Special Deputy Commissioner Bangalore Dist.,
Bangalore, The Assistant Commissioner Bangalore North Sub-
Division Bangalore, Sri Ramesh and Sri Nagappa (Since
Deceased) R/By LRs.(A) Smt Puttamma, B) Sri N Rajanna
and C) Sri Pillappa

RESPONDENT

Date of Decision : 27-01-2011

Acts Referred:

Constitution of India, 1950 — Article 227
Karnataka Land Revenue Act, 1964 — Section 33, 34
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 5

Citation : (2011) 01 KAR CK 0227

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

Bench : Single Bench

Advocate : R. Chandrashekar, for M/s. Law Park Assts, for the Appellant; R Omkumar, AGA for R1 and R2; Sri K Abhinav and Sri C Nagesh, for C/R3; R4(A) to R4(C) are served, for the Respondent

Final Decision : Dismissed

Judgement

1. Writ proceedings under Article 227 of the Constitution of India is not an appeal proceeding. Proceedings under the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 [for short, the Act], particularly an application u/s 5 of the Act before the Assistant Commissioner are not in the nature of a suit and adversary proceedings between claimants and a person claiming interest in a land which is sought to be made subject matter of proceedings u/s 5 of the Act.

2. The Act is a piece of welfare legislation ushered in by the legislature to provide protection to persons belonging to socially deprived and exploited classes. It is to

ameliorate their living conditions, grants are being made even from the time prior to our country attaining independence, granting of agricultural lands in their favour, so that they can cultivate such agricultural lands and have a source for their sustenance.

3. It is because of the historical reality that such persons were being used as bonded agricultural labourers and it is to relieve them of such bonding and exploitation while agricultural lands were being granted, it would not serve the purpose, as out of ignorance or innocence or sheer gullibility or because of their other habits, such persons would inevitably lose granted lands by selling or otherwise parting possession of the lands granted in favour of persons who always had an eye on such lands and who wanted to exploit the gullibility of such persons.

4. It is in this background, the Act was enacted to ensure that the transactions in respect of granted land in favour of persons belonging scheduled caste/tribe community, earlier known as deprived classes, were voided and lands got back to the state government, which, in fact, originally belonging to the state only and as far as possible restituted to the original grantees or to their legal heirs, if the originally grantees were not available.

5. A proceeding of this nature while can be at the instance of an interested legal heir of a grantee or the original grantee, it is also the duty of the Assistant Commissioner - the original authority under the Act -even to initiate proceedings sua motu to hold an enquiry about the alienation of land granted in favour of a person belonging to SC/ST community and after issue notice to persons in occupation etc., take necessary action as per law, pass appropriate orders.

6. While the Assistant Commissioner acting as an inquiring authority does make a declaration of the invalidation of sale transaction that might have taken place earlier, it is more in the nature of a ministerial act, the transaction is voided by operation of law and not because of the Assistant Commissioner in the first instance or even the Deputy Commissioner as appellate authority does so. Orders passed by Assistant Commissioner or Deputy Commissioner, as the case may be, are only for leaving a record and in writing the legal position that has already taken place in terms of the statutory provisions under the Act, the moment this Act came into force. Transactions prior to the Act coming into force get voided if they are caught within the mischief of a sale in violation of terms of grant expressed or incorporated statutorily and transactions subsequent to the Act coming into force, in addition, got voided if it is not accompanied by prior permission granted by the state government.

7. In an enquiry of this nature, examining the quality of the orders passed by the authorities under the Act, examining the findings on the touchstone of law of evidence as applied in adversary proceedings like, in a civil court, does not arise.

8. Even proceedings of Section 33 of the Karnataka Land Revenue Act, 1964 [for short, KLR Act] providing for a mode of enquiry in determining the question that

may arise under the KLR Act, providing for a formal enquiry u/s 33 of the Act, a summary enquiry u/s 34 of the KLR Act are also ipso facto attracted while holding proceedings under the Act.

9. Section 5 of the Act, reading as under:

5. Resumption and restitution of granted lands:

(1) Where, on application by any interested person or on information given in writing by any person or suo motu, and after such enquiry as he deems necessary, the Assistant Commissioner is satisfied that the transfer of any granted land is null and void under Sub-section (1) of Section 4, he may:

(a) by order take possession of such land after evicting all persons in possession thereof in such manner as may be prescribed:

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard;

(b) restore such land to the original grantee or his legal heir. Where it is not reasonable practicable to restore the land to such grantee or legal heir, such land shall be deemed to have vested in the Government free from all encumbrances. The Government may grant such land to a person belonging to any of the Scheduled Castes or Scheduled Tribes in accordance with the rules relating to grant of land.

(1-A) After an enquiry referred to in Sub-section (1) the Assistant Commissioner may, if he is satisfied that transfer of any granted land is not null and void pass an order accordingly.

(2) Subject to the orders of the Deputy Commissioner u/s 5-A, any order passed under Sub-sections (1) and (1-A) shall be final and shall not be questioned in any court of law and no injunction shall be granted by any court in respect of any proceeding taken or about to be taken by the Assistant Commissioner in pursuance of any power conferred by or under this Act.

(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.

itself provides for regulating the procedure before the Assistant Commissioner and while no mode of enquiry is contemplated, the proviso to Sub-section (1) ensures that the principles of natural justice are complied. Sub-section (2) of Section 5 of the Act ensures that the orders passed by the authorities under the Act in so far they relate to granted land etc., became final and not amenable to the jurisdiction of civil court. Sub-section (3) incorporates a very salient principle keeping in view the object and purpose of the Act and the background in which the law is made that if the grantee or his/her legal heirs are persons are

incapable of placing necessary and relevant material before the authorities, while a suo motu enquiry if indicates that the subject land was a land which had been granted by the government and in favour of a person belonging to SC/ST community and is found in possession of other persons, a presumption in law is created for voiding the sale transaction, under which, such persons found in possession claiming right, title and interest to the land and the burden is heavy upon the person in possession who is other than a person belonging to SC/ST community or even the grantee or his/her legal heirs, to make good that subject land is saved in favour of such a person and the transaction is not voided for any reason.

10. Such is the potency of the proceedings of Section 5 of the Act and the enquiry held before the Assistant Commissioner in the first instance or the appellate order passed by the Deputy Commissioner in an appeal u/s 5A of the Act, which, again, is an order which can be treated on par with an order to be passed by the Assistant Commissioner u/s 5, if are to be examined by this Court in the exercise of judicial review of administrative action or quasi-judicial order, whether under Article 226 of the Constitution of India or jurisdiction in superintending over the tribunals under Article 227 of the Constitution of India, the examination can only be on the touchstone of Section 5 of the Act and not on the basis of decisions or judgments rendered ion the context of other statutory provisions.

11. It is particularly so for the reason that the provisions of the Act are expressly made to prevail over the other laws in terms of Section 11 of the Act, reading as under:

11. Act to override other laws - The provision of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom, usage or contract or any decree or order of a Court, Tribunal or other Authority.

12. The present writ petition relates to one such enquiry initiated before the Assistant Commissioner by the third Respondent herein, which did not result in any positive order in his favour in terms of the order dated 25-11-2008 [copy at Annexure-B to the writ petition], but in the further appeal to the Deputy Commissioner u/s 5A of the Act, the Deputy Commissioner, in terms of his order dated 16-10-2010 [copy at Annexure-C to the writ petition], found merit in the appeal, accepted the appeal, set aside the order passed by the Assistant Commissioner, annulled the sale transaction and directed resumption of the land to the state and restoration to the third Respondent.

13. It is this order of the Deputy Commissioner which is questioned in this writ petition and very firmly and strongly on the ground that the Deputy Commissioner has without any material on record even without holding a proper enquiry, even without calling for the original grant records, has, on flimsy or irrelevant material, reversed the finding of the Assistant Commissioner; that the

order passed by the Deputy Commissioner is not sustainable; that it should be set aside and the matter remanded to the Deputy Commissioner for a proper disposal of the appeal before him.

14. Such is the very spirited submissions made by Sri R. Chandrashekar, Learned Counsel for the Petitioner.

15. However, the order is defended by Sri R. Ornkumar, learned AGA, appearing for Respondents 1 and 2 and Sri C. Nagesh for Sri K. Abhinav Anand, Learned Counsel for third Respondent, even though not as vociferous as submitted by Learned Counsel for the Petitioner, at least with reference to the material found in the record of the Deputy Commissioner.

16. Sri Chandrashekar, Learned Counsel for the Petitioner, has drawn my attention to the last paragraph in page 4 of the order passed by the Deputy Commissioner to submit that the only reason on which the Deputy Commissioner reversed the order of the Assistant Commissioner is on the basis of some material sought to be placed by the third Respondent before him while related to the subject land of 2 acres in Sy No. 176 of Bagalur village, Jala hobli, Bangalore north taluk, the application itself was in respect of two acres of land in Sy No. 177, that had been originally granted to one Venkataramanaiah grandfather of third Respondent. It is, therefore, submits that the order of the Deputy Commissioner can never be sustained.

17. It is also submitted that when the Petitioner had strongly disputed that the grant was in favour of a person belonging to SC community at all and without a proper verification, if the Deputy Commissioner proceeds to resume that the provisions of the Act applies, that is nothing short of perversity and therefore the order is not sustainable.

18. In support of such submission, Learned Counsel for the Petitioner has placed very strong reliance on the judgment of a Division Bench of this Court in the case of Pedda Reddy Vs. State of Karnataka, , which has been followed in a good number of subsequent decisions of this Court and also drawn my attention to the decision of a Single Bench in the case of Smt. Chowdamma Vs. The Special Deputy Commissioner and Others, , wherein it is held that unless proper findings are recorded by the Assistant Commissioner to indicate the basic facts for attracting the provisions of the Act, mere proceeding under the Act by itself cannot result in order for annulling an earlier sale transaction and for resumption of land.

19. Reliance is also placed on another single Bench decision of this Court in the case of B.A. Hasanahba and Others Vs. State of Karnataka and Others, to submit that the manner of enquiry before the Assistant Commissioner and even before the Deputy Commissioner falls short of the criterion indicated in this order of this Court.

20. While no doubt the judgments and orders of this Court are of this nature, but

when such judgments and orders are cited as having a binding precedent, it becomes inevitable for the court to ascertain as to what ratio that is involved or what has evolved in such judgment which is required to be followed in other similar cases. Every finding and stray observations or emphatic assertion in any order or judgment of the court does not constitute a ratio of the judgment. To constitute ratio of judgment, the question should have become an issue between the parties in an adversary litigation. Parties should have gone to trial on that issue. A finding recorded appreciating evidence before the court and applying the legal principle which is relevant to the facts and a decision rendered applying that legal principle and that legal principle alone constitute a ratio and a declaration of law in general nature, which has to be followed by courts of coordinate or subordinate jurisdiction, when similar questions arose before such courts. In the absence of any one of these ingredients, it is not ratio nor can it become a precedent that too a binding precedent.

21. In the first instance, proceedings u/s 5 of the Act are not in the nature of an adversary proceeding. Lawyers and judges immersed in the practice and procedure before civil court guided by CPC and conversant with judgment and orders by courts in the context of Code of Civil Procedure, particularly the concept of res judicata, as found in Section 11 of CPC being guiding factor in all civil proceedings. Inevitably by instinct and training, trying to apply such procedure in all other proceedings and judgments rendered in the context of adversary civil litigations interpreting provisions of CPC always weigh heavily on their minds.

22. Many a times, the special statutory provisions, specific statutory provisions incorporated in special legislation, the instant Act one being such case, are lost sight of and general procedure and judgments rendered in the context of interpretation of general laws wielded their influence more often than not to result in a legally incorrect approach.

23. I have bestowed my attention to the judgments and orders cited at the Bar. In none of these judgments or orders, the provisions of Section 5 as it prevail in the statute book have been examined. Nature of enquiry before the Assistant Commissioner while undoubtedly should conform to the requirements of adhering to principles of natural justice, thereafter there is nothing more, discussed about the purpose or object of the Act and the Section.

24. It is no doubt true that the phrase "satisfaction of Assistant Commissioner" cannot be interpreted as one giving a blank cheque in favour of the Assistant Commissioner to run amok with power or to pass orders to his whims and fancy. It is definitely regulated by the object and purpose of the Act and the purpose of the enquiry in particular is to find out as to whether the subject land was a granted land and if so in favour of a person belonging to SC community.

25. While conditions imposed at the time of granting lands are also very relevant, conditions enumerated in the grant order by themselves are not the end or

exhaustive. Nor so the decision. Conditions statutorily always have an overriding effect and these conditions must prevail. In a given case it can only be supplementary to the statutory conditions. It can be supplementary only so long as it advances the object of the Act and the provisions of the legislation and if it is derogatory, it is only the statutory conditions that prevail.

26. Two questions raised by the Learned Counsel for the Petitioner in the present case are that the Deputy Commissioner has committed error in law by applying the material or evidence placed by the third Respondent in respect of land in Sy No. 176, but the subject land which is a land in Sy No. 176. Though this argument is advanced very vociferously, the Petitioner is a person claiming right, title and interest in an extent of 2 acres of land under sale deed dated 21-2-2006 [copy at Annexure-A to the writ petition], Sy No. mentioned in this sale transaction is Sy No. 453. Boundaries in this survey number is the subject land tally with the description of boundaries in another sale transaction of the year 1970, which is related to Sy No. 177 Block-III. The reference to Sy No. 176 while though is made in the order of the Deputy Commissioner to submit that the material in respect of Sy No. 176 could not have been used to render a finding in respect of land in Sy No. 177, submission of Sri Nagesh, Learned Counsel for third Respondent is that the third Respondent had placed material before the Deputy Commissioner in his appeal, a copy of which is produced as Annexure-R3-A to the statement of objections filed on behalf of third Respondent, which is an extract of the register of darkhast land for cultivation, maintained in the revenue department in form No. 46, wherein it is indicated that an extent of 2 acres of land had been granted to one Venkataramanaiah, who claims to be the grandfather of third Respondent, and in whose favour the land had been granted.

27. The register at entry No. 53-54 while does contain the name of Venkataramanaiah, in column No. 3, survey number is mentioned as 379 and in the endorsement made at column 17, 2 acres of land out of Sy No. 176 of Bagalur village, granted under DD Rules to several persons as per the endorsement dated 1-3-1954 and here the name of the said Venkataramanaiah figures as third person amongst nine persons.

28. It is based on this, submission is made that the subject land is a granted land and to correlate this grant of 2 acres of land to said Venkataramanaiah claiming to be in Sy No. 453, my attention is drawn to Annexure-R-B -an extract of record of rights - and occurring at S1 No. 453 in the name of Venkataramanaiah as per podi No. 153/158 and the survey number is renumbered as 453.

29. It is, therefore, submitted that the subject land was granted in favour of said Venkataramnaiah, which in turn had been sold by him during his life time in the year 1970 in favour of one Nagappa - fourth Respondent herein, represented by his legal representatives is the very land which had been originally granted in favour of said Venkataramanaiah, as even in terms of the sale deed of the year 2006, the Petitioner has purchased only this land from the said Nagappa.

30. It is, therefore, submitted that irrespective of the mentioning of survey number, either in the order of the Assistant Commissioner or Deputy Commissioner, the identity of the subject land which has been purchased by the Petitioner to an extent of 2 acres is the very land which had been granted in favour of Venkataramanaiah -grandfather of third Respondent.

31. Sri Omkumar, learned AGA, on his part, submits that the order of the Deputy Commissioner is correct; that he has looked into all relevant records and the order should be sustained. However, learned AGA draws my attention to Sub-section (3) of Section 5 of the Act and says that the burden is cast on the person who is found in possession of the granted land to prove that the possession is statutorily saved under which such a person is in possession and the transaction is not voided.

32. Learned Counsel for the Respondents 1, 2 and 3 also draw my attention to the caste certificate produced by the third Respondent before the authorities to submit that even the third Respondent belongs to Adi Karnataka community so also the original grantee Venkataramanaiah.

33. However, Sri Chandrashekar, Learned Counsel for the Petitioner, has disputed even this aspect relating to the original grantee either belonging to scheduled caste or third Respondent being a legal heir of the original grantee and even the identify of the land, particularly the confusion of Sy No. 176 and 1977 looming large.

34. Jurisdiction under Article 227 of the Constitution of India is not one for correcting a finding of fact recorded by the authorities. Nor to record a new finding of fact, unless a perversity is demonstrated on the face of the record that finding of fact is never disturbed by the High Court in a proceeding under Article 227 of the Constitution of India.

35. All judgments relied upon and referred to by the Learned Counsel for the Petitioner have not made any reference to either the procedure contemplated u/s 5 or the very significance of special provision of Sub-section (3) of Section 5.

36. In the instant case, there was sufficient material before the Deputy Commissioner to indicate that the land was a government land granted in favour of one Venkataramanaiah in a darkhast proceedings and that he is a person belonging to scheduled caste community. In such background and in a proceeding of this nature, which is essentially only one u/s 5 of the Act, in an appeal u/s 5A of the Act before the Deputy Commissioner acting as an appellate authority, presumption under Sub-section (3) of Section 5 of the Act strongly operates against the Petitioner, who is a person found in possession of a granted land and the manner in which the source of title was acquired in the year 2006 i.e. after the provisions of the Act had come into force.

37. Vendors of the Petitioner have very conveniently described the land as their ancestral property. Whereas the very recital in the sale deed refers to an earlier

transaction in favour of the predecessor of vendors of the Petitioners and executed in his favour by the said grantee Venkataramanaiah, which very clearly puts the Petitioner on notice that he is transacting or purchasing a land that had been originally possessed, owned or held by the said Venkataramanaiah. If the Petitioner had not made any enquiries and has bravely ventured into the sale transaction ignoring the staring facts acting like an ostrich burying its head in the soil, the Petitioner himself has to blame for the eventualities and in this case because of the operation of law, the transaction of the year 2006 gets automatically voided, so also his vendors' sale deed of the year 1970, in terms of Sub-section (3) of Section 5 of the Act. No material is placed by the Petitioner nor any effort made by him to get out of the statutory presumption.

38. In a situation of this nature, law takes its toll and it is inevitable that a purchaser of this nature, loses the land to the state government and as to whether the third Respondent is the legal heir of the original grantee and can be restored with the land or if not, it is to be granted to any other deserving member of SC/ST community is a matter for further enquiry and as is rightly observed by the Deputy Commissioner, that will not come in the way of law operating, as there is ample and more material on record to indicate that the subject land was a land granted in favour of a person belonging to scheduled caste community and had been sold in violation of the conditions imposed statutorily in terms of Rule 43(8) of Rules under Karnataka Land Revenue Code, 1888 as at the relevant point of time, the condition statutorily imposed on such grant was a prohibition for alienation for a period of 20 years. That provision operates in terms of Section 4 of the Act and inevitably the result is the land goes back to the state government and the intermediate transactions are all voided and based on such factual position, it is to be restored to the legal heir of the original grantee.

39. In the wake of such inevitable legal position, mere fact whether by extent or otherwise, the column mentioned the subject land as one in Sy No. 177 or the Assistant Commissioner or the Deputy Commissioner also proceeded on the basis of Sy No. 177, but the Deputy Commissioner relied upon material in respect of Sy No. 176 to arrive at a conclusion, it is correlating to current Sy No. 453 and therefore allows the application, that is the correct order, though not necessarily by giving proper or correct reasons and if ultimately, the Deputy Commissioner acting as an appellate authority has stumbled to the right conclusion, inevitably the conclusion to be arrived at law and there is no need or scope for this Court interfere in such order on technicalities and on such other aspects to set aside the order and to remand the matter for one more round of enquiry or hearing before the appellate authority, as that will be clearly in derogative to the object and purpose of the Act. No need for such a course of action and it is for this reason the passionate plea of Learned Counsel for the Petitioner for setting aside the order and remanding the matter to the appellate authority for fresh hearing is rejected. I find no merit in the petition to interfere and the writ petition is, therefore, dismissed.

40. Though the matter is listed for hearing on interlocutory application filed by the third Respondent, it is not necessary for this Court to pass orders on such applications, as the main writ petition is being dismissed and as to who should receive what amount is a matter which has to be decided independently depending upon the further implementation of the order of the Deputy Commissioner. It is, however, observed and directed that if such subject land has already been acquired by the state government for any public purpose, the compensation payable should be retained by the acquiring authority and to be disbursed only in favour of such person who is found to be entitled to in terms of the effectuation of the order passed by the Deputy Commissioner in appeal. Learned AGA is directed to ensure that a copy of this order is also communicated to the acquiring authority and the authority abides by this order.

41. In the result, Misc W Nos. 9472 and 9473 of 2010 and the writ petition are dismissed.