

(2000) 05 KAR CK 0023

In the Karnataka High Court

Case No : Writ Petition No. 445 of 2000 connected with Writ Appeal No. 446 of 2000

Eranna

APPELLANT

Vs

The Deputy Commissioner, Chitradurga District, Chitradurga
and others

RESPONDENT

Date of Decision : 21-05-2000

Acts Referred:

Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 4, 4 (2), 5

Citation : (2001) ILR (Kar) 3136 : (2001) 4 KarLJ 371

Hon'ble Judges : Manjula Chellur, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Sri B.M. Siddappa, for the Appellant; Sri A. Nagarajappa, A.G.A., for the Respondent

Judgement

G.C. Bharuka, J.—The writ petitioner in W.P. No. 41542 of 1999 has preferred this appeal against the order of the learned Single Judge dated 24-11-1999, by which he has dismissed the said writ petition.

2. The controversy raised, in the present appeal is in respect of land measuring 2 acres 38 guntas in Sy. No. 80/8 of Chitranayakanahalli, Thalaku Hobli, Challakere Taluk. Admittedly, this land was granted to one Thippaiah S/o. Mallaiah, who belonged to Adi Karnataka caste, which is a Scheduled Caste. The grant was made in the year 1963 with the condition that it shall not be alienated for a period of 15 years from the date of grant.

3. Under registered sale deed dated 29-10-1987, the appellant put-chased the above said land and consequently came in possession of the same. It is not in dispute that the land in question was sold by the grantee to the appellant without seeking previous permission of the Government as required u/s 4(2) of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (in short, the "Act") which had already come into force

with effect from 5-1-1979.

4. When the above facts came to the notice of the Tahsildar, he reported the matter to the Assistant Commissioner under his letter dated 28-3-1987 for resumption of the land under the provisions of the Act. The Assistant Commissioner after giving notice to the appellant and hearing him passed the order dated 28-3-1988 (Annexure-A) declaring transfer of the land in question as null and void and directed for resumption in favour of the original grantee. The appeal preferred by the appellant before the Deputy Commissioner was dismissed by order dated 7-7-1999 (Annexure-B). The writ petition filed against the orders of the Assistant Commissioner and Deputy Commissioner has also failed.

5. Sri B.M, Siddappa, learned Counsel for the appellant, has assailed the impugned order passed by the Assistant Commissioner and the Deputy Commissioner by contending firstly that since the appellant had purchased the land after expiry of the period of non-alienation, therefore the purchase was from an absolute owner, therefore Section 4 of the Act cannot have any play. Secondly, that even if the transfer can be held to be void, since he has remained in possession of the land for more than 12 years from the date of transfer, he has perfected his title by adverse possession and therefore the authorities had acted illegally in passing the order of resumption. Mr. Siddappa's last submission is that since action has been initiated after unreasonably long period, therefore as well, the impugned orders cannot be sustained. In support of his submission, he has placed reliance on the judgment of this Court, in the case of Venkatagiriappa and Others Vs. State of Karnataka, .

6. The constitutional validity of the Act was upheld by the Supreme Court in the case of Manchegowda and Others Vs. State of Karnataka and Others, . In para 11 of the report, it has been held that.-

"It is quite clear that the condition regarding prohibition of transfer of granted land had been introduced in the interest of the grantees for the purposes of upkeep of the grants and for preventing the economically dominant sections of the community from depriving the grantees who belong to the weaker sections of the people of their enjoyment and possession of these lands and for safeguarding their interests against any exploitation by the richer sections in regard to the enjoyment and possession of these lands granted essentially for their benefit. As the statement of objects and reasons indicates, this prohibition on transfer of granted land has not proved to be a sufficiently strong safeguard in the matter of preserving grants in the hands of the grantees belonging to the Scheduled Castes and Scheduled Tribes; and, in violation of the prohibition on transfer of the granted land, transfers of such lands on a large scale to the serious detriment of the interests of these poorer sections of the people belonging to the Scheduled Castes and Scheduled Tribes had taken place. In view of this unfortunate experience the legislature in its wisdom and in pursuance of its declared policy of safeguarding, protecting and improving the conditions of these

weaker sections of the community, thought it fit to bring about this change in the legal position by providing that any such transfer except in terms of the provisions of the Act will be null and void and not merely voidable".

7. Now for weighing the correctness of the contentions made on behalf of the appellant we need to refer to the statutory provisions contained in the Act.

8. Section 3(1)(b), (d) and (e) defines respectively the words "granted land", "Scheduled Castes and Scheduled Tribes" and transfer". These definitions are being extracted hereunder-

"Section 3(1)(b) "Granted land" means any land granted by the Government to a person belonging to any of the Scheduled Castes or the Scheduled Tribes and includes land allotted or granted to such persons under the relevant law for the time being in force relating to agrarian reforms or land ceilings or abolition of inams, other than that relating to hereditary offices or rights and the word "granted" shall be construed accordingly;

(d) "Scheduled Castes and Scheduled Tribes" shall have the meanings respectively assigned to them in the Constitution.

(e) "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".

9. Section 4 of the Act provides for prohibition of transfer of granted lands. It reads thus.-

"4. "Prohibition of transfer of granted lands.-

(1) 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.

(2) No person shall, after the commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government.

(3) The provisions of sub-sections (1) and (2) shall apply also to the sale of any land in execution of a decree or order of a Civil Court or of any award or order of any other authority".

10. Section 5 of the Act empowers the Assistant Commissioner to resume and restitute the granted lands. It reads thus.-

"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 reasonably 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".

11. So far as the first ground raised on behalf of the appellant is concerned, it is quite clear from Section 4(2) that even if the granted lands are transferred after the completion of the non-alienation period, it will be void if the same has been effected without obtaining the previous permission of the Government. In the present case, admittedly, no such permission was obtained. Therefore, the sale in question is per se null and void.

12. So far as the second ground of assailment is concerned, the appellant had entered upon the land with the permission of the grantee and under the colour of validly acquired ownership. Therefore, he has no right to raise a plea of adverse possession, which if accepted will also be defective of the legislative intendment and the policy underlying in the Act.

13. Coming to the last ground, the question of unreasonable delay in initiating the resumption proceedings could arise only if shown as of fact that the statutory authorities despite having knowledge of voidness of the transaction are found to be guilty of laches which in law has created any vested right in favour of the transferee to remain on the land. But at no stage of the proceedings any plea to the above effect had been raised by the appellants. Therefore, this ground also fails.

14. Accordingly, the appeals are dismissed.