

(1991) 11 KAR CK 0033
In the Karnataka High Court
Case No : W.P. No. 6935/1991

G. Gangappa (Dead) by L.R.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 19-11-1991

Acts Referred:

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

Citation : (1991) 4 KarLJ 246

Hon'ble Judges : M. Ramakrishna, J

Judgement

1. Petitioner-G. Gangappa was granted five acres of land in Survey No. 33 situated in Hale Rangapura Village, Chitradurga Taluk, by the competent authority, by an order made in proceedings No. DIS M4 DDR 65, dated 18-7-1950 under the Mysore Land Grant Rules subject to certain conditions. One such condition was that the grantee shall not alienate the granted land for a period of ten years. The saguvali chit came to be issued on 12th August, 1950. Thus, when the grantee-G. Gangappa was enjoying the granted land in terms of the said grant, the granted land came to be sold by a registered sale deed dated 6-2-1961 in favour of the 3rd respondent. It is stated that from the date of sale of the granted land respondent-3 has been in actual possession and enjoyment of the granted land.

2. After the coming into force of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (herein referred to as "the Act") the petitioner approached the Assistant Commissioner-2nd respondent herein seeking for the relief under the Act. His case was that the granted land having been sold in contravention of the condition of the grant, he was entitled for relief under Sections 4 and 5 of the Act.

3. The Assistant Commissioner-2nd respondent having notified both the parties held an enquiry and passed the impugned order at Annexure-A, dated 23-7-1981 as follows:

Thus, he rejected the application of the petitioner observing that there was no contravention of the condition of grant.

4. Later on, the petitioner aggrieved by this order approached the Deputy Commissioner in appeal in Appeal No. SC PTL (A) 6/1987-88 challenging the correctness of this order. The learned Deputy Commissioner, allowed the appeal in reversal of the order of the Assistant Commissioner granting relief in favour of the petitioner. Aggrieved by the order of the Deputy Commissioner at Annexure-B the purchaser-3rd respondent approached this Court in W.P. No. 6377/1988 under Articles 226 and 227 of the Constitution of India, challenging the correctness of the order of the Deputy Commissioner. This Court by an order made on 8th September, 1989 allowed the writ petition and quashed the order of the Deputy Commissioner on the sole ground that he had no jurisdiction to entertain the appeal. Hence, this writ petition.

5. As to the delay in approaching this Court by the petitioner after disposing of the Writ Petition No. 6377/1988, in para 6 of the writ petition, cause is shown that as the petitioner was unwell after the disposal of the above writ petition and there was financial difficulties for him to approach this Court well in time, he filed this writ petition on 18th March, 1991.

6. I heard the learned counsel on both sides including the learned High Court Government Pleader appearing for the State.

7. I perused the certified copy of the saguvali chit issued in favour of the petitioner on 12th August, 1950. No doubt, in Column 8, the condition referring to the non-alienation clause, the period of 10 years is written in hand. In other words, the competent authority that issued the certificate of grant imposed clause of 10 years in this case. The Assistant Commissioner, the competent authority, failed to apply his mind to the correct statutory provisions inasmuch according to Rule 43(8) of the Mysore Land Grant Rules which was in force as on the date of the grant, prohibition was for ever. It reads:

"43(8). Occupancy granted to applicants belonging to depressed classes under Rule 43(5) above and those granted by Government free of upset price or reduced upset price to poor and landless people of other communities or to religious or charitable institutions shall not be alienated and the grantees shall execute Mutchalikas in the form prescribed by Government. This shall not, however, prevent lands granted to depressed classes under Rule 43(5) being accepted as security for any loan which they may wish to obtain from Government or from a Co-operative Society for the bona fide purposes of improving the land."

The above provisions of the Rule came to be relaxed for the first time by the notification issued by the State of Mysore on 4-8-1953 by which sub-rule (8) came to be amended for the first time, providing 20 years non-alienation in place of total ban. Instead of referring to the correct position of law that governed the grant of land, the Assistant Commissioner made a two-sentence order by which

he rejected the application of the petitioner.

8. It is well settled that when there is variation of period of non-alienation between the saguvali chit and the provisions of law governing the grant, the law prevails (see *Laxmamma v State of Karnataka and Others*, 1983(1) Kar. L.J. 417). Since, according to Rule 43(8) prevailing when the land was granted, there was a prohibition for ever, the alienation made in favour of respondent-3 must have been declared as null and void. The Assistant Commissioner having failed to do so, his order is liable to be quashed.

9. The next question is whether the grantee was a person belonging to the Scheduled Castes. By a perusal of the certified copy of the saguvali chit, it is made clear that the very grant made in favour of the petitioner was under the scheme for granting land in favour of persons belonging to Scheduled Castes and Scheduled Tribes. Therefore, the granting authority having been satisfied that Gangappa-petitioner herein did belong to Scheduled Castes, granted him the land in question. In that view the petitioner would be entitled for the relief under the provisions of the Act. Under these circumstances, the writ petition has to be allowed. It is accordingly allowed. The impugned order of the Assistant Commissioner, Annexure-A is quashed. In terms of Sections 4 and 5 of the Act, sale of granted land made in favour of third respondent on 6-2-1961 is declared as null and void. Besides, the petitioner shall be entitled for restoration of granted land in accordance with law. Ordered accordingly. No costs.

10. Before parting with this case, learned counsel for third respondent submitted that respondent-3 has been enjoying the granted land by virtue of the interim order, that therefore he had grown certain crops this year, that the crops would be ready for harvesting by the end of this year and that therefore, the Assistant Commissioner may be directed to permit the 3rd respondent to harvest the standing crops. Since the submission being fair and based upon the equities in favour of the petitioner, and this submission having not been opposed by the learned counsel for the petitioner, I must accept this submission. I accordingly, direct the Assistant Commissioner to permit respondent-3 to harvest the standing crops by the end of January 1992.

Sri Thimma Gowda, learned High Court Government Pleader is permitted to file his memo of appearance within four weeks.