

(2011) 07 KAR CK 0108
In the Karnataka High Court
Case No : Writ Petition No. 21371 of 2011

Gangaramappa

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 11-07-2011

Acts Referred:

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

Citation : (2012) 1 KarLJ 487

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

Bench : Single Bench

Advocate : M. Jaiprakash Reddy, for the Appellant; R. Omkumar, AGA for R 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra kumar, J.—Revenue officials in the Karnataka State Government are a law unto themselves, they have absolutely no regard or respect for law, leave alone having the commitment for passing orders in consonance with the statutory provisions. An Asst. Commissioner is a statutory functionary because of his office who is required to function as the first authority to hold an enquiry and to resume the lands which had been granted in favour of persons belonging to depressed classes the scheduled caste/scheduled tribe communities, if such land had either been sold in violation of the terms of the conditions of the grant before the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, (for short "the Act") coming into force or thereafter apart from the violation, if the land is sold without obtaining the prior permission of the State Government as contemplated in Sub-section (2) of Section 4 of the Act.

2. One such land being in an extent of 2 acres located in Old Sy. No. 33, New Sy. No. 99/3 situate at Kamasetty Halli village Chikkaballapur Taluk presently Chikkaballapur District, which had been granted in favour of one Narasappa alias

Narasiga in the year 1937 to be precise on 4.12.1937 as per a darkasth proceedings grant order No. AKDR:07/1935-36 with certain conditions regarding alienation of the subject land to others, though had been retained by the said Narasiga for a fairly long time had been sold in favour of the 5th Respondent in this writ petition, a person by name S.A. Khuddus as per sale deed dated 15.9.1995. The said S.A. Khuddus in turn appears to have sold the very land in favour of the present writ Petitioner as per sale transaction dated 31.7.2004.

3. It is the version of the Petitioner that thereafter writ Petitioner is in possession and enjoyment of the subject land, but his peace and tranquility was disturbed by the son of the original grantee or his legal heir - the 4th Respondent who it appears had moved the Asst. Commissioner of Chikkaballapur Sub-Division, by filing a petition/application u/s 5 of the Act seeking resumption of the land to the State and for restoration to him, being a legal heir of the original grantee and on the premise the transactions are not sustainable in law etc.

4. The Asst. Commissioner held an enquiry. Heard the writ Petitioner and also the applicant and the first purchaser S.A. Khuddus, though was a party not participated in the proceedings, passed an order rejecting the application of the 4th Respondent legal heir of the original grantee, though had noticed all factual aspects very correctly being under the impression that the condition imposed under the grant order was only non-alienation for a period of 10 years and therefore, the transaction of the year 1995 and the subsequent transaction cannot be said to be in violation of this condition and accordingly dismissed the application by order dated 8.06.2009 (copy produced as Annexure A to the petition).

5. The aggrieved legal heir of the original grantee appealed to the Deputy Commissioner invoking Section 5A of the Act. The Deputy Commissioner caused notice to the parties and in the absence of response on the part of the Respondents has proceeded to dispose of the appeal as per his order dated 18.8.2010 (copy produced as Annexure C to the Petition) holding that the Asst. Commissioner has committed an error in law in totally ignoring the provisions of Sub-section (2) of Section 4 of the Act; that the sale transaction being one after the Act had come into force and in the absence of prior permission by the Government, the sale gets voided in terms of the provisions of the Act and therefore, set aside the order passed by the Asst. Commissioner, but nevertheless has remanded the matter to the Asst. Commissioner, may be for the Asst. Commissioner to enrich himself in the second round also, as such is the reputation of these revenue officials and the reputation of the Asst. Commissioners and the Deputy Commissioners. The Deputy Commissioner has failed in his duty in a proper disposal of the appeal.

6. The remand orders are passed without noticing the scope of a remand order and no doubt the revenue official like the Deputy Commissioner may not be fully conversant with the judicial proceedings and what should be remand and what should be disposal of the appeal conclusively, but nevertheless has acted without

bona fides, to have been convinced to pass such orders either to abdicate their responsibility or on other considerations that too, to look into the precise merits of the matter. The subsequent purchaser claiming to be aggrieved by this order has presented this writ petition.

7. Appearing on behalf of the writ Petitioner submission of Sri. Jaiprakash Reddy, Respondent is that when the Asst. Commissioner had rightly passed the order rejecting the application of the 4th Respondent for action u/s 5 of the Act, the Deputy Commissioner should not have interfered with such a proper and correct order and more so, without giving a proper opportunity to the writ Petitioner to defend the matter before the Deputy Commissioner in the appeal preferred by the 4th Respondent. It is therefore, submitted that the impugned order at Annexure C should be set aside and affirms the order passed by the Asst. Commissioner.

8. Mr. R. Omkumar, learned AGA who has been favored with an advance copy of the writ petition, stoutly defends the order passed by the Deputy Commissioner in appeal by drawing attention to Sub-section (2) of Section 4 of the Act and there being no dispute that such a prior permission had not been obtained by the purchaser. However, learned AGA also submits that the remand order passed by the Deputy Commissioner may also be justified as it appears the Asst. Commissioner had not conducted proper enquiry u/s 5 of the Act and had simply disposed the matter on the assumption that the Act is not applicable.

9. It is rather unfortunate that higher revenue officials like the Asst. Commissioners and the Deputy Commissioners who have been conferred with statutory powers under the Act continue to remain inactive feigning ignorance of statutory powers and duties under the Act providing for resumption. They alone are enabled under the Act for achieving the object of the Act and to pass proper orders sustainable in accordance with the statutory provisions.

10. The Asst. Commissioners and the Deputy Commissioners are revenue officials well versed not only with the revenue laws such as Karnataka Land Revenue Act, but also with the provisions of the PTCL Act. Day in and day out they deal with such matters and it is virtually impossible to attribute either lack of understanding of the provisions of this Act or to assume their ignorance about these statutory provisions. But on the other hand, remain blissfully inactive till an interested person provokes or prods them into some action!

11. Submission of either Sri. Jaiprakash Reddy, Learned Counsel for the Petitioner to the effect that the order passed by the Deputy Commissioner should be set aside and the order passed by the Asst. Commissioner should be allowed or even the submission of Sri. R. Omkumar, learned AGA for the Respondents 1 to 3 to the effect that the remand order was justified as the Asst. Commissioner had not properly enquired into u/s 5 of the Act, in my considered view are both not acceptable. I say so, for the reason that the concept of enquiry and the concept of principles of natural justice are all misunderstood concepts in our

administrative set up and unfortunately even while such matters are subject to judicial review of administrative action and orders, more importance is given to such procedures than looking into the substance of the matter without bestowing attention to the question as to whether the situation really warrants interference on the substance of the matter. Here is an enactment which is enacted to provide certain facilities or benefits in favour of the scheduled castes/scheduled tribes persons and the enactment is brought into effect by the legislature to ensure that such persons depressed class persons who had been granted lands, if have lost such lands by ignorance or by the machinations of powerful, rich purchasers or even for any other reason, in violation of the terms of the conditions of the grant, such transactions should be invalidated and the subject land be restored to the grantee or to the legal heirs of the original grantee. When such is the object and purpose of the Act, an enquiry u/s 5 of the Act is primarily for the purpose the first authority, the Asst. Commissioner being convinced that the transaction is one which attracts the provisions of Section 4 of the Act which achieves this purpose in law, by voiding the sale transaction or any transfer in violation of the conditions. It is not because the Asst. Commissioner holds an enquiry and records a finding that the transaction gets voided, but it is by the operation of law and the Asst. Commissioner is only to be satisfied of that the fact situation, was one to lead to this legal consequence, and if so record the same and proceed further for the resumption of the land to the state by dispossessing the purchaser in occupation of the land.

12. In the present situation, there is absolutely no dispute with regard to the fact situation viz., the first transaction in respect of a granted land was in the year 1995 much later to the act coming into force, if so, unless the transaction is accompanied by a prior permission as contemplated u/s 4(2) of the Act, which reads as under:

4. Prohibition of transfer of granted lands:

(1)xxxxx....xxxx

(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.

the sale gets voided by the operation of law.

13. It is a tell-tale story and no enquiry etc., is required, but in fact the object of the enquiry under the Act, particularly, u/s 5 of the Act is only to ascertain as to the person who is in possession of the land claimed u/s 5 of the Act as such sale gets voided and for the purpose of giving an opportunity to such a person before resuming the land to the State and to restore it to the legal heirs of the original grantee.

14. With the person who is in possession being ascertained, Petitioner claiming, to be such a person and also claiming such possession to be due to the sale transaction of the year 2004 and in turn the vendor himself claiming ownership

under another sale transaction of the year 1995, these transactions obviously get voided under the provisions of Section 4 of the Act itself being transactions subsequent to the Act coming into force and not with the prior permission of the state government the duty of the Asst. Commissioner was only to record this position and to resume the land to the State and restore it in favour of the legal heir of the original grantee. Here is an Asst. Commissioner who feigns ignorance of the law and totally bypasses the statutory provisions of Sub-section (2) of Section 4 of the Act, but calls in aid an irrelevant circular not applicable to the facts to reject the application filed by the son of the original grantee.

15. The action of the Asst. Commissioner is nothing short of one totally lacking bona fides and even may be one acting for other considerations.

16. In a situation of this nature, the Deputy Commissioner whose duty it is to act for correction of this wrong order of the Asst. Commissioner, sitting in appeal not only to set right the matter, but also to ensure that the purpose of the Act is effectuated as the power of the Deputy Commissioner is co-extensive with that of the original authority, but choosing to remanded the matter to the Asst. Commissioner for one more round of enquiry is yet again a dereliction of duty on his part also.

17. A remand order cannot be passed merely because of the power being vested with the appellate authority, but it should be only when it is really justified in the facts and circumstances of a given case and not otherwise. The present facts and legal position was not one to pass a remand order as is passed by the Deputy Commissioner, but one warranting the appeal to be allowed in its entirety by the Deputy Commissioner himself.

18. A perusal of the order passed by the Asst. Commissioner clearly indicates that the writ Petitioner was very much before the Asst. Commissioner and knew about the proceedings.

19. A copy of the order sheet produced by the writ Petitioner (Annexure B) noticing the matter had been taken up on not less than 5 occasions and notice had been issued. Such a person coming up before the High Court, pleading ignorance of the proceeding, for want of notice in a situation of the present nature, is only a person who wants to ensure that his possession is not disturbed, continue to remain in possession by the subject land for as long a period as possible, by calling in aid technicalities such as not serving notice, not giving an opportunity and such other aspects.

20. As is noticed the fact situation is not in dispute. The legal position is because of the operation of the law and the transaction of the year 1995 as well as the transaction of the year 2004 are both voided by operation of Section 4(2) of the Act and the duty of the Asst. Commissioner is only to resume the land to the State and restore it to the legal heirs of the original grantee. But in the present case, while the Asst. Commissioner has failed in this duty, by feigning ignorance of Sub-section (2) of Section 4 of the Act, the Deputy Commissioner has not

done any better by simply remanding the matter to the Asst. Commissioner for one more round of enquiry.

21. In such circumstances, I am of the view, that either order or both the orders are clearly wrong and in correct orders.

22. The legal position in this case being already noticed, the duty of the Asst. Commissioner is only to resume the land to the State and to restore it to the applicant/legal heir of the original grantee.

23. Therefore, the Asst. Commissioner is hereby directed to act for resumption of the land and to restitute it to the legal heir of the grantee. Writ petition ordered accordingly. As the said order is only in favour of the 4th Respondent who will be the only Respondent to contest the proceedings and with the State and the Statutory functionaries being represented, no need to keeps this matter pending only on the technicality of issuing notice on the Respondent. It should be borne in mind that several stages envisaged under our legal system and procedure is only to provide a proper opportunity to the concerned persons.

24. The only person to be affected by this order being the writ Petitioner and his counsel being heard and the affectation also not being because of any of the actions of the Respondents, per se, but because of operation of law which legal position is noticed in this order, this matter in my considered opinion should be disposed of here itself, to ensure that the provisions of the Act are given effect to and the purpose of the Act is achieved and the misery and hardship of persons in whose favour the benefit of the Act is sought to be conferred, is not continued any further.

25. In fact it was the duty of the Asst. Commissioner to have acted promptly, immediately on coming to know of such transactions, but the Asst. Commissioner did not.

26. The Appellate Authority whose duty it was to act properly keeping in view the provisions of the Act did not act in any better manner. But what takes the cake is the conduct of the Petitioner in filing this petition before the High Court, and by pleading ignorance and by feigning that he is affected by the order, only reflects our system of functioning.

27. It is rather unfortunate that such officers are in administration of our systems and function in such a manner even after 64 years of attaining independence though many social welfare measures are taken to safeguard the interest of persons belonging to depressed classes/scheduled castes and tribes.

28. Registrar - General is directed to forward a copy of this order to the Karnataka Lokayuktha for holding an enquiry against the Asst. Commissioner and the Deputy Commissioner concerned to ascertain the circumstances under which the impugned orders had come to be passed and after ascertaining the factual position, to take further necessary action, if they are otherwise found holding assets/properties disproportionate to their known sources.

Accordingly, this writ Petition is allowed.

Rule issued and made absolute.