

(1999) 06 KAR CK 0039

In the Karnataka High Court

Case No : Writ Petition No's. 8281 and 8297 of 1998

G.S. Shanthappa

APPELLANT

Vs

Special Deputy Commissioner, Bangalore District and Others

RESPONDENT

Date of Decision : 17-06-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 4, 5
Mysore Land Grant Rules, 1968 — Rule 43J

Citation : AIR 2000 Kar 138 : (1999) 6 KarLJ 439

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri Mahesh R. Uppin, for the Appellant; Sri V. Jayaram, Government Advocate, Sri K.G. Narayanaswamy for Sri B. Srinivasa Gowda, for the Respondent

Judgement

1. By these petitions, each petitioner has challenged orders at Annexure-B and C to these writ petitions, namely orders dated 5-5-1997, passed by the Special Deputy Commissioner in SC/ST (Appeal) 10/96-97 and in case No. SC/ST (Appeal) No. 9/96-97.

2. The facts of the case in brief are that by order dated 16-2-1967, the land bearing Block No. 35 measuring 1 acre and Block No. 36 measuring 1 acre 10 guntas of Sy. No. 1 of Jarakabande Kaval, Bangalore, were granted in favour of the original respondents 3 and 4 for reduced upset price when, reduced upset price, I mean to say that, upset price was fixed at Rs. 500/- per acre, but in relaxation given under Rule 42, as the grantees belonged to Bhovi Community being classified as the Scheduled Caste, a sum of Rs. 200/- out of Rs. 600/- was waived and grant was made at the rate of Rs. 300/- per acre. It means original upset price was determined to be Rs. 500/- but relaxation and reduction was given in favour of the grantees being of Scheduled Caste and only Rs. 300/- were taken towards that price and, so it is reduced upset price or relaxed upset price.

According to the petitioner in the grant certificate or the Saguvali Chit, no condition was mentioned regarding prohibition against alienation of granted land for a specified period, I mean to say that, there was no condition prohibiting the alienation of granted land mentioned in the grant certificate or Saguvali Chit.

The grantees by sale deeds dated 9th July, 1976 alienated by sale, the said lands in favour of the petitioner and, according to petitioner, petitioner was put in actual possession of the land, no doubt petitioner's case is that, he thereafter carried on developments, etc.

3. The applications under Sections 4 and 5 of Karnataka Act 2 of 1979 were made by respondents 3 and 4, on record of these writ petitions and they prayed before the Assistant Commissioner to set aside the sales, as according to the respondents, the sales were got done by fraud. The Assistant Commissioner rejected the said applications by order dated 4-8-1980.

The said order having been challenged in this Court by a writ petition, then this Court by order dated 18-11-1982, remanded the matter to the Assistant Commissioner after setting aside the said order for redetermination.

The Assistant Commissioner, again passed an order on 22-7-1991 rejecting the respondents' applications under Sections 4 and 5 of Karnataka Act 2 of 1979.

4. Respondents 3 and 4, again filed Writ Petition No. 18838 of 1991, challenging the said order and this Court vide order dated 3-1-1995, opined that the present respondents 3 and 4 had the remedy to go before the Deputy Commissioner by way of appeal and, so dismissed the writ petition and directed them to go and file the appeal. Appeal was heard by the Deputy Commissioner after being filed and the Deputy Commissioner by order dated 5-5-1997 allowed both the appeals vide Annexure-B and C to the writ petition.

Feeling aggrieved from the orders of the Deputy Commissioner dated 5-5-1997, Annexure-B and C, the petitioners have come up before this Court under Article 226 of the Constitution of India.

5. On notice being issued, respondents filed the counter- affidavit/statement of objections. No statement of objections has been filed on behalf of the respondents 1 and 2.

6. I have heard Sri Mahesh R. Uppin, learned Counsel for the petitioner for good length of time and Sri K.S. Narayanaswamy, learned Counsel for the respondents 3 and 4 and the learned Government Advocate Shri V, Jayaram.

It has been contended on behalf of the petitioner by the learned Counsel Sri Uppin that the Appellate Authority, that is, the Special Deputy Commissioner acted illegally in declaring the transfer or sale transaction dated 9th July, 1976 to be null and void and was not justified in directing the lands to be restored to the grantees.

Sri Uppin, contended that Rule 43(g) did not apply to the present case, instead

Rule 43(j) of 1960 Rules did apply. Sri Uppin submitted that, as mentioned in paragraph 1 of the writ petition, the land had been granted in favour of respondents 3 and 4 in 1934-35 temporarily, so Rule 43(j) could have applied. He further contended that the land had been acquired by the Government in the acquisition proceedings and it cannot be restored to the petitioner. Sri Uppin further contended that when the land cannot be restored, it is not practicable to restore the land and it stood vested to the Government and then Government can regrant. Sri Uppin has also submitted that the land was granted for upset price and no non-alienation condition could be attached to the grant.

These contentions of the learned Counsel for the petitioner have hotly been contested by respondents' Counsel. Learned Counsel for the respondents contended that Rule 43(j) cannot be made applicable, because it has never been proved or asserted nor shown that land was leased out in favour of 3rd and 4th respondents. He submitted that Rule 43(j) deals with an act relating to the agricultural land leased out by the competent authority to any person in cultivation before the commencement of the Mysore Lands (Amendment) Rules, 1960, therefore as the land had not been leased out and has not been shown to have been leased out earlier to commencement of Amending Rules, 1960, as contended by the learned Counsel, Rule 43(j) is not applicable, but Rule 43(g) will apply. He further contended that, as acquisition of land is concerned, then it is a matter for the State to have considered. State has not filed any such statement. That it does not intend that the downtrodden and depressed peoples should not be benefited or that they should be deprived of the benefit of the provisions of the Act. Learned Counsel for the respondents, contended that, really it appeared that this grant in 1967 was made under Rule 43(1) read with Rule 43(g). He also made reference to an earlier decision in the similar matter given by the Division Bench of this Court which the respondents, filed along with their statement of objections. That decision is given in the Writ Appeal No. 1638 of 1998 and he submitted that this decision applies with all force to the present case. He submitted that in that case, the decision of the Bench on merits has been maintained in the SLP case by the Supreme Court and that SLP has been dismissed and the learned Counsel invited my attention to Annexures-R4 and R5.

The learned Counsel for the respondents, further contended that the land had not been granted for the full market value, but the price which was less than the full market value, the upset price was fixed to be Rs. 500/- per acre, but relaxation of Rs. 200/- was given and Rs. 300/- was fixed and, therefore it was a grant for the price less than the full market value.

7. I have applied my mind to the contentions raised by the learned Counsel for the parties.

In 1934-35 what was the nature of the grant of the land, is nowhere clear, even petitioner does not assert that prior to commencement of 1960 Amendment Rules, the respondents were in possession of the land in question, as lessees themselves. The petitioner nowhere stated that respondents 3 and 4 were

lessees of the land and thereafter grant was made and, so it was a grant under Rule 43(j). Rule 43(j) is confined to the case, where the lessee is in possession of the land and had satisfactorily fulfilled the conditions of lease and later land is granted in his favour.

Rule 43(1) of 1960 Rules, confers power on the Government to make relaxation. It reads as under:

"Notwithstanding anything contained in the preceding rules, the Government may suo motu or on the recommendation of the Divisional Commissioner or the Deputy Commissioner, if it is of opinion that in the circumstances of any case or class of cases, it is just and reasonable to relax any of the foregoing provisions of these rules, it may by order direct such relaxation subject to such conditions, as may be specified in the order and thereupon the land may be granted in such a case in accordance with such directions".

8. The Government gave relaxation and then granted the land. Therefore the grant cannot be said to have been made under Rule 43(j). When grant had not been made under Rule 43(j), then definitely Rule 43(g) will apply. It is immaterial whether in the Saguvali Chit, the Tahsildar or the official concerned has not mentioned the condition which is contained in Rule 43(g) that the land which has been granted is a free grant or for a price less than the full market value, the grantee shall not alienate the land for 15 years will apply. A Departmental Babu cannot by his act, make or render the provisions of law or rules ineffective, the grant has to be governed by the rules operating on the date of the grant, so even if the deed did not contain any condition prohibiting alienation of granted land, Rule 43(g) did apply and as per this rule, it is provided that where grant is free or is made at a price which is less than the full market value the grant shall be subject to the condition that land shall not be alienated for a period of 15 years from the date of taking possession of the land after the grant. No doubt under the proviso to Rule 4 it is provided that with the previous sanction of the Government and subject to such conditions the Government may specify and on permission being granted by the Government, to alienate, such land may be alienated by the grantee, but without obtaining any previous permission in writing of the Government, grantee is and has not been entitled to make transfer of the land for 15 years. The transfer of the land in this case has been made by registered sale deed dated 9-7-1976, almost after 9 years of the date of grant.

9. It is not in dispute that the grantee had not been granted, nor did he obtain any permission by or from the Government, to transfer the granted land and it is also not in dispute that the transferee had also not obtained any permission from the State Government, to acquire by transfer the granted land from the grantee. In such a case the alienation being in breach of the condition of prohibition against alienation under Rule 43(g)(iv) the alienation made in favour of the present petitioner, under the provisions of the Act was null and void and it did not pass on any title to the subsequent purchaser acquiring land from the

purchaser.

10. It has been argued that land had been acquired by virtue of preliminary notifications dated 10-11-1977 and 30-8-1979 from whom possession had been acquired when it was with the transferee, that is petitioner, then petitioner could not furnish any title to the Government, as if he did not have. The deed of 1976 had been declared null and void.

11. Section 4 of the Act says notwithstanding anything in any law, agreement or contract or order, the alienation made either in breach of the terms of the grant or in breach of the law relating to grant or in violation of the provisions of sub-section (2) of Section 4 shall be null and void and deemed to be null and void and it shall not be deemed to pass on any title, right or interest to alienee in the land so alienated. The land had been Government land, when the land had been granted and grantee was in possession on behalf of the Government, so acquisition does not affect him and it is always possible to put the real grantee in possession, as is the intention of the legislation and, if it is, really not practicable, then land is to vest in the Government. Here the Deputy Commissioner has directed the land in question to be restored to possession of the grantee/his heir. Had it not been possible, the Deputy Commissioner himself would have recorded that finding. The petitioner's Counsel made efforts to urge that Appellate Authority ought to have ordered it vesting in favour of Government, and if it would have been so or is directed by this Court, petitioners, then could have appeared and asked for the said land being granted to the petitioners or asked for regularisation of their possession.

12. Writ jurisdiction of this Court is not meant for being exercised in such round about way to render the provisions of the Act nugatory, nor Court shall exercise powers in such way which would negate the intention of the legislature or the provisions meant for the benefit of the weaker sections of peoples.

Thus considered, in my opinion there is no error of law apparent nor is there any illegality on the part of the Appellate Authority, while passing the order.

When I so opine, I find support for my view from the view expressed by the Division Bench in its judgment dated 29th March, 1994 in Writ Appeal No. 1638 of 1998 decided by the Division consisting of Hon"ble Justice S. Rajendra Babu and Hon"ble S. Venkataraman, J., which judgment has been maintained in the special leave petitions, as the appeal against that view has been rejected by the Supreme Court. Thus considered, in my opinion, there are no merits in these petitions, both these writ petitions are disposed of and dismissed by one common judgment.