

(2004) 11 KAR CK 0009
In the Karnataka High Court
Case No : Writ Petition No. 26946 of 2004

K.R. Sathyanarayana Shetty

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 09-11-2004

Acts Referred:

Mysore Land Revenue Code, 1888 — Section 43 (1), 43 (5)

Citation : (2005) 1 KarLJ 398 : (2004) 4 KCCR 2939

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

Bench : Single Bench

Advocate : S.S. Guttal, for the Appellant; M.G. Anjana Murthy, High Court Government Advocate for Respondents-1 and 2, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—Petitioner is a purchaser of a land granted in favour of a person belonging to Lambani community in terms of a grant order dated 3-3-1955, it is such a land which the petitioner has purchased in the year 1968 through a sale deed executed by the grantee on 23-4-1968.

2. In respect of this transaction the legal heir of the original grantee one Sri Kuber Naika, 3rd respondent in this writ petition, claiming to be the grandson of the original grantee moved the Assistant Commissioner, Davanagere Sub-Division, Davanagere, for action under the provisions of Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978. The Assistant Commissioner registered the application, held an enquiry and passed an order dated 28-10-2002 inter alia holding that the applicant belongs to Scheduled Caste community; that the applicant had produced necessary evidence in this regard; that he is the grandson of the original grantee Sri Boodi Naika; that the land had been granted in favour of Sri Boodi Naika by the Government in terms of the grant order dated 3-3-1955; that neither party had produced any material to indicate the terms of the grant and it is such a land that had been sold by the said Sri Boodi Naika in the year 1968. The Assistant Commissioner further held that in respect of the lands granted between the

period 4-8-1953 to 6-7-1966, prohibition from alienation for a period of 20 years was being imposed and as such the sale in the year 1968 was in violation and the provisions of the Act are attracted. Accordingly, invalidated the sale transaction and directed resumption of the land in favour of the State and restore it to the legal heirs of the original grantee.

3. The appeal preferred by the aggrieved purchaser/petitioner also came to be dismissed by the Deputy Commissioner in terms of the order dated 18-6-2004 as in his view the order passed by the Assistant Commissioner was just and proper and there was no occasion for interference in appeal. It is aggrieved by these two orders the present writ petition is filed by the purchaser.

4. Sri Guttal, learned Counsel for the petitioner has raised two-fold contentions. It is firstly urged that the land in question which had been granted to the grandfather of the 3rd respondent, who belonged to Lambani community cannot be taken to be the land which had been granted in favour of a person belonging to scheduled Caste community. Learned Counsel submits that this is so because the Lambani community came to be recognised as a Scheduled caste only by way of an amendment to the Presidential order in terms of amendment Act 108 of 1976, a copy of which is produced as Annexure-C and therefore, it cannot be taken to be that the grant was in favour of a person belonging to scheduled caste community. Learned Counsel in this regard places reliance on an unreported decision of this Court in Mahalingappa v. Assistant Commissioner and Ors., W.A. No. 2807 of 1991, DD: 7-11-1995

5. The second contention urged by Sri Guttal, learned Counsel for the petitioner is that there is no finding recorded by the Assistant Commissioner that the land in question had been a free grant; that if the land had been granted on collecting an upset price equivalent to the market value, no condition could have been imposed and as such in the absence of a finding that it was a free grant, the authorities could not have assumed jurisdiction under the Act. In this regard, learned Counsel has placed reliance on a decision of the Division Bench of this Court in Pedda Reddy Vs. State of Karnataka, .

6. Sri Anjana Murthy, learned High Court Government Pleader on whom an advance copy of the writ petition had been served and who had been directed to take notice on behalf of respondents 1 and 2 submits that the contentions urged on behalf of the petitioner are not tenable; that Lambani community is a community which figures in the Schedule to the Presidential order dated 10th August, 1950; that Banjara or Lambani community has been specifically included as a community in the schedule to this Order, that it is applicable to the entire State of Mysore. Learned High Court Government Pleader further submits that in the light of a clear finding that the original grantee as well as the applicant belonged to the Lambani community itself, it is inevitable; that the grant was in favour of a person belonging to scheduled caste.

7. Even with regard to the other contention, it is the submission of the learned

High Court Government Pleader that in terms of Rule 43(1) and (5) of the Rules under Mysore Land Revenue Code, which governs such grants during the relevant period, the period of non-alienation imposed on such grant was 20 years; that having been noticed by the Assistant Commissioner, the sale transaction was invalidated as being in violation of the condition, that the decision of the Assistant Commissioner is just and proper and the writ petition deserves to be dismissed.

8. With regard to the first contention urged on behalf of the petitioner, it is clear that Banjara or Lambani community is a community which figures in the schedule to the Presidential Order of the year 1950 itself. In the light of this there is no escape that the grant was in favour of a person belonging to the scheduled caste community. In the decision of the Division Bench in Mahalingappa's case cited above, which is relied upon by Sri Guttal, learned Counsel for the petitioner, the Division Bench proceeded on the premise that the Banjara and Lambani communities are one which come within the purview of the scheduled caste on the basis of the Karnataka Government notification dated 8-8-1983. The Division Bench as well as the learned Single Judge, against whose order the appeal was before the Division Bench proceeded on the premise that the Banjara and Lambani community is included in the State of Karnataka as a scheduled caste community only in terms of the Government Notification published in Karnataka Gazette on 9-8-1983. The Division Bench also proceeded on the premise that the learned Single Judge had observed in his judgment that the community Banjara and Lambani are declared and comes within the purview of the scheduled caste by virtue of a notification published in the Karnataka Gazette on 9-8-1983. The orders of the Assistant Commissioner and Deputy Commissioner were silent as to whether the grantee belonged to scheduled caste community or tribe. It was in the light of such finding given and the law as was understood by the learned Single Judge, the Division Bench found occasion to hold that the grantee was not one belonging to scheduled caste community on the date of the grant. It was not brought to the notice of the Division Bench of this Court that Banjara or Lambani is a community which figures in the schedule to the Presidential order of the year 1950 itself. May be in terms of the Presidential Order of the 1950, Lambani is a community recognised as a scheduled caste in the areas covered by the then Mysore State and the amending Act of the year 1983 in terms of the Karnataka Gazette notification dated 9-8-1983, has the effect of extending the application of the Presidential notification to other areas which form part of the State of Karnataka in the year 1983. In the present case the land in question is in area which was part of the State of Mysore even in the year 1950.

9. The decision was rendered in ignorance of the Presidential Order and is per incuriam. In the light of the Presidential Order dated 10th August, 1950 Banjara or Lambani figuring in the schedule to the Presidential Order as a community in this schedule, the grant inevitably is in favour of a person belonging to the scheduled caste. There is a clear finding by the Assistant Commissioner that the

grant was in favour of a person belonging to Lambani Community. The first contention urged on behalf of the petitioner does not succeed.

10. With regard to the second contention that there is no finding by the authorities as to whether the grant was a free grant or on collecting an upset price, the Assistant Commissioner has recorded a finding that grants in favour of scheduled caste persons were saddled with a condition that it should not be alienated for a period of 20 years. The grant being in favour of a person belonging to scheduled caste community, the grant is always inevitably at a concessional price. The first Rs. 200/- of the upset price being waived and balance being allowed to be collected in installments, if any. Any grant which is not a grant after collecting the full market price of the land in question is a concessional grant attracting the conditions under the Rules under Mysore Land Revenue Code. The land in question being a grant in favour of a person belonging to scheduled caste, it is not at an upset price equivalent to market price and inevitably it attracts the condition in the Code. The concession in respect of grants made in favour of scheduled caste persons is to be found in terms of Rule 43(8) of the Rules under Mysore Land Revenue Code as it existed on the relevant time in terms of the notification dated 4th August, 1953. The relevant Rule reads as under:-

"43(8) The grant of lands under Sub-rules (1) and (5) to persons belonging to Depressed Classes for an upset price or reduced upset price and to poor persons not owning any land shall be subject to the condition that the land granted shall not be alienated for a period of twenty years from the date of the grant and the grantees shall also execute much a likas in the form prescribed by Government:

Provided that such land may be accepted as security for loans obtained from Government or from a Co-operative Society for the purpose of improving the land. "Alienation made contrary to this rule shall result in summary resumption of the land so granted and such land shall vest in Government free of all encumbrances and neither the grantee nor the alienee shall be eligible for any compensation".

11. Accordingly, the sale being in violation of this condition, the provisions of the Act are attracted. In the circumstances the contention that there is no finding as regards the grant being a free grant or at an upset price does not advance the case of the petitioner to quash the orders of the Assistant Commissioner and Deputy Commissioner. It is significant to note that in the light of the relevant statutory provisions and in the light of the finding that the grant was in favour of a person belonging to scheduled caste, the grant is either a free grant or at a concessional price and never at an upset price equivalent to the market price. Second contention also fails.

12. In the circumstances, there is no occasion for this Court to interfere with the orders passed by the authorities below, which only advances the object of the Act and to give effect to the provisions of the Act. No error or illegality is found in

these orders. Writ petition is dismissed.