

(1997) 08 KAR CK 0030

In the Karnataka High Court

Case No : Writ Petition No. 32101 of 1995

Krishnappa and Another

APPELLANT

Vs

Deputy Commissioner, Bangalore Rural District, Bangalore
and Others

RESPONDENT

Date of Decision : 06-08-1997

Acts Referred:

Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 5
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer or Certain Lands) Rules, 1979 — Rule 43 (g) (4), 43J
Transfer of Property Act, 1882 — Section 116

Citation : (1998) 2 KarLJ 184

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri R. Chandranna, for the Appellant; Smt. Shantha Kumari, High Court Government Pleader, for the Respondent

Judgement

1. By this petition, petitioner has challenged orders dated 24th April, 1992, passed by the Assistant Commissioner in proceedings u/s 5 of Act 2 of 1979, whereby, the Assistant Commissioner has taken the view that the sale of the land by the grantees in favour of the transferees and predecessors of the present petitioner were null and void as the transfer of the sales have been in contravention of these conditions contained in the grant and so, ordered that the persons under them be evicted from the land and land be resumed.

2. Feeling aggrieved from the order of the Assistant Commissioner, the present petitioners, who are alienees of the grantees have come up in writ petition.

3. The facts of the case in the nutshell are: According to the petitioners, the land was granted on 13-5-1960, in favour of Chikkamuniga, 2 acres and in favour of Munishamappa alias Munishamy, 2 acres and in favour of Berikappa, 2 acres, that is, 6 acres of Sy. No. 70, of Village Ranganathapura. The possession of the land was taken by the grantees on 14-7-1960.

Petitioners" case was that the grant was a temporary grant for a period of 5 years. The grantees never got the re-grant or confirmation of the grant. The grantees, as per terms of the grant, had to deliver and surrender the possession to the State Government. The grantees made transfers of the land by deeds dated 8-12-1970, 3-6-1965, 1-9-1965 and 1-9-1967, in favour of Bachegowda and Maddurappa respectively. Petitioners have clearly stated that one of the conditions of lease was that the lease or grant of the land and possession of land so leased had to be surrendered to the Government.

4. Proceedings u/s 5 were taken u/s 4/5 of the Act 2 of 1979, by the Assistant Commissioner and after enquiry, the Assistant Commissioner, passed the order holding that the sale transactions to be void, and therefore, the persons, who were in possession of the lands through the alienees with reference to the alienation made by the grantees, were directed to be taken back and resumed by the Government.

5. Feeling aggrieved from the order of the Assistant Commissioner, dated 24th April, 1992, the present petitioners, who had purchased the lands from the alienees of the grantees filed the appeal and the Deputy Commissioner dismissed the appeals and confirmed the order of the Assistant Commissioner.

6. Having felt aggrieved from the order of the Deputy Commissioner, dismissing the appeals, namely, order dated 15-2-1995, the present petitioners have come before this Court.

7. I have heard Sri R. Chandranna, learned Counsel for the petitioner and Smt. Shantha Kumari, learned Government Pleader. The contentions of the petitioners" Counsel is that land had been granted temporarily for a period of 5 years to the grantees. They did not obtain any confirmation of possession after expiry of 5 years, no doubt they had to surrender the land, but as they had obtained the land temporarily under the grant, Rule 43(j) will apply and if Rule 43(j) applies, the non-alienation clause under Rule 43(g)(4) could not be made applicable.

8. The learned Counsel further contended that when at the time the transfers were made, the grantees were in possession not in the capacity as the grantees and therefore, the authorities could not declare the sale deeds to be null and void.

9. These contentions have been hotly contested by Smt. Shantha Kumari, the learned High Court Government Pleader.

10. I have applied my mind to the contentions made by Counsel for the parties. Rule 43(j), would have come into play, if only after expiry of 5 years land would have been granted again. Here, as the original grant had been there and under the grant, there were two conditions barring alienation and the other required the grantee to hand over and surrender possession on the expiry of the period of grant, but instead of complying with the conditions of the grant of handing over

possession, the grantee makes transfers, it means that the transfer that had been made in favour of the transferees referred to above, namely, by Bachegowda, Maddurappa and Jayaram, had been made by the three grantees, in violation of the condition of the grant under which they had to surrender the land. Therefore, the alienation was in violation of the grant. Apart from that, the possession, it may be said, Section 116 of the Transfer of Property Act, will apply. The grantee continued the possession of the land as grantee or of holding over subject to same conditions of the grant, even if the grantees were in possession of the land illegally after expiry of the grant, they had no right on the land to transfer and they could not transfer, their duty was to surrender the land when they have not sought confirmation and if they have made transfer vide the sale deeds of 8-12-1970, 3-6-1965 etc.. These sale deeds could definitely said to be in breach of the grant. In my opinion, as per language of Section 4 of the Act, the transfers were null and void and Section 5 proceedings were maintainable. Section 4 of the Act reads as under:

"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 over 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".

The use of words in terms "transfer of land made in contravention of the grant means, contravention of any of the terms, when transfer was made of the granted land in breach of the condition, as to the surrendering of the land, can also be said to be a transfer made in breach of the terms of grant and such a grant, Section 4 declares shall be null and void and no right or interest in such lands shall be deemed to have been conveyed to transferee by such transfers. That being the position, the petitioners could not acquire any title from Bachegowda, Maddurappa or even if these persons made transfer in favour of the petitioners, because these transferors themselves could not acquire any right or title therein, as no right or title did ever pass on and stood conveyed to Bachegowda. Therefore, in my opinion, as transfer made by the grantee in favour of the transferees, who made transfers in favour of the petitioner had been null and void, subsequent transfers made by them were also null and void and did not convey any title, right or interest to petitioner in granted land.

Thus considered, in my opinion, the orders impugned did not suffer from either jurisdictional error or error apparent on record and do not call for any interference. This writ petition is devoid of merits as such, this writ petition is dismissed as being devoid of merits.