

**(1991) 11 KAR CK 0030**  
**In the Karnataka High Court**  
**Case No : W.P. No. 13281/1986**

Lingegowda (Dead) by L.Rs. and Others APPELLANT  
Vs  
Deputy Commissioner, Chickmagalur and Others RESPONDENT

**Date of Decision :** 08-11-1991

**Acts Referred:**

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

**Citation :** (1991) 3 KarLJ 1

**Hon'ble Judges :** M. Ramakrishna, J

## **Judgement**

1. The petitioner in this writ petition under Articles 226 and 227 of the Constitution has called in question the legality and correctness of the orders, Annexures-A and B, made by the Assistant Commissioner and the Deputy Commissioner, respondents-2 and 1 herein respectively.

2.4 acres of land in Sy. No. 7 of Anninadadike village, Chickmagalur Taluk and District, was granted to respondent-4-Rangaiah by the competent authority under the Mysore Land Grant Rules by an order dated 26-4-1952 subject to certain condition regarding alienation.

3. It is not in dispute that there was a decree in O.S. No. 400 of 1956 against the grantee and the decree-holder executed the decree in Ex.No. 15 of 1959. Consequently, the land was put in public auction and the petitioner was the highest bidder in the auction sale. So the sale was confirmed on him by the Court by an order dated 12-6-1959. Since then the petitioner has been in possession and enjoyment thereof.

4. After the coming into force of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 ("the Act" for short), on the application made by the original grantee for reliefs under Sections 4 and 5 of the Act, the Assistant Commissioner notified both parties, held an enquiry and passed an order as per Annexure-A declaring the alienation in favour of the petitioner as void and directing restoration of the land in favour of the original

grantee.

5. Aggrieved by the said order, the petitioner preferred an appeal before the Deputy Commissioner, respondent-1 herein, who dismissed the appeal, affirming the view taken by the Assistant Commissioner. Hence this petition.

6. Sri Kaleemulla Sheriff, learned counsel for the petitioner, urged two contentions. His first contention is that the Act has no application to the case since the petitioner has purchased the land in public auction held by the order of the Court. The next contention is that the petitioner being in continuous possession of the land right from the date of sale, has perfected his title by adverse possession. Thus he contended that the impugned orders were liable to be quashed.

7. Both the contentions fail for the following reasons. To appreciate the first contention, it is necessary to refer to Section 4 of the Act. It reads:

"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 ever 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.

(3) The provisions of sub-sections (1) and (2) shall apply also to the sale of any land in execution of a decree or order of a Civil Court or of any award or order of any other authority."

(emphasis supplied)

To make the matter more clear, it is also necessary to read the definition of the word "transfer" occurring in clause (e) of sub-section (1) of Section 3 of the Act. It says:

"(e)"transfer" means a sale, gift, exchange, mortgage (with or without possession), lease or any other transaction not being a partition among members of a family or a testamentary disposition and includes the creation of a charge or an agreement to sell, exchange, mortgage or lease or enter into any other transaction."

8. From the conjoint reading of the above provisions, it is abundantly made clear that even sale of the granted land by the Court in public auction is prohibited and such a sale would amount to transfer of granted land in contravention of the terms of the grant of such land. In the instant case, as already pointed out, there was a Court sale held in public auction of the land in question in which the petitioner being the highest bidder, the sale was confirmed in his favour by the Court. Such a sale is clearly hit by the provisions of the Act.

9. In this connection, it is already necessary to extract Section 11 of the Act. It reads:

"11. Act to override other laws.-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom, usage or contract or any decree or order of a Court, Tribunal or other authority."

(emphasis supplied)

10. Considering the effect of this section, the Division Bench of this Court in *Bhagi Hengsu v Rocky Lasrado*, 1990(3) Kar. L.J. 575: ILR 1991 Kar. 2375, has held as follows:

"By a perusal of Section 11 of the Act, it is undoubtedly clear that the provisions of that section will have overriding effect over all other enactments. Therefore, the view that Rule 29-A validates the alienations made to persons other than SC/ST also, is incorrect and improper. On the other hand, in view of Section 11 of the Act which will have overriding effect over all other enactments, Rule 29-A must yield to it."

11. Thus, even the sale of granted land through Court auction is liable to be declared as null and void under Section 4 of the Act. The authorities below have rightly done so. I see no reason to interfere with their action. Thus, the first contention fails.

12. Admittedly, the sale in favour of the petitioner has been confirmed on 12-6-1959. To claim the benefit of adverse possession as against the State, one must be in continuous possession of the land for a period of 30 years before the commencement of the Act, as held by the Supreme Court in *Sunkara Rajya Lakshmi v State of Karnataka*, ILR 1987 Kar. 2076. In the instant case, the petitioner has not completed 30 years of long and continuous possession of the land before the commencement of the Act. Therefore, question of perfecting his title by adverse possession does not arise.

10. No other contention is urged.

11. In the result, this petition fails and is dismissed. No costs.

12. Sri Thimmegowda, learned High Court Government Pleader, is permitted to file his memo of appearance for respondents-1 to 3 in two weeks.