

(2004) 02 KAR CK 0028
In the Karnataka High Court
Case No : Writ Petition No. 50438 of 2003

M. Munikenchappa

APPELLANT

Vs

The Special Deputy Commissioner and Others

RESPONDENT

Date of Decision : 03-02-2004

Acts Referred:

Karnataka Deputy Scheduled Castes and Schedules Tribes (Prohibition of Transfer of certain Lands) Act, 1978 — Section 3 (1) (b), 5
Karnataka Land Reforms Act, 1961 — Section 77 A

Citation : (2004) 3 KarLJ 579 : (2004) 2 KCCR 1025

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

Bench : Single Bench

Advocate : S. Vishwajith Shetty and Sri Mallikarjuna, for the Appellant; M.G. Anjanamurthy, High Court Government Pleader for Respondents-1 and 2, R. Manjunath and Company for Caveator- Respondent-4, Subba Rao and Company for Caveator-Respondent-5, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Petitioner is a person who had filed an application under the provisions of Section 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 ("the Act" for short), claiming to be a legal heir of an original grantee namely, one Mr. Doddamuniswamy, a person belonging to Scheduled Caste and who had been granted an extent of four acres of land in Survey No. 107 (Present Sy. No. 163) of Pattandur Agrahara of K.R. Puram Hobli, Bangalore East Taluk.

2. The land in question appears to have been sold by the said Doddamuniswamy on 23-10-1967 in favour of one Era Reddy, who in turn had sold it to others and ultimately is now traceable in the hands of respondents 4 to 6. The petitioner requested the Assistant Commissioner to invalidate the transactions as being in violation of the terms of the grant and for restoration of the land to the petitioner. The Assistant Commissioner who had issued notice of the application and who had held an enquiry, was of the view that the land in question cannot be

termed as a "granted land" within the meaning of Section 3(1)(b) of the Act and accordingly rejected the application. The appeal preferred to the Deputy Commissioner, also having been dismissed by an order dated 3-11-2003 (copy at Annexure-A), petitioner has approached this Court.

3. The authorities below were of the view that the land in question was not a granted land for the reason that the land had been originally granted to the grandfather of the petitioner by an order dated 3-2-1962 passed by the Special Deputy Commissioner for Inams Abolition under the provisions of Section 5 of the Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 ("the Inams Abolition Act" for short). The authorities also found that the order was not one granting any land in favour of the petitioner's grandfather who in fact had sought for conferment of occupancy rights as an applicant and as a permanent tenant and it was only this right that the Special Deputy Commissioner had confirmed and that the land which was already in possession of the petitioner's grandfather continued to remain so under this order also. The Assistant Commissioner, by following the ruling of this Court rendered in the case of Mohammed Jaffar and Another Vs. State of Karnataka and Others, and applying the same held that the transaction sought to be invalidated was not one attracting the provisions of the Act.

4. Sri Viswajith Shetty, learned Counsel appearing for the petitioner has contended that if one looks at the definition of "granted land" under the Act, it is obvious that it includes lands granted even in the context of the provisions of agrarian reforms or abolition of inams and the present land being granted to the grandfather of the petitioner in the context of the abolition of inams under the provisions of the Inams Abolition Act, it should be necessarily held to be a granted land within the meaning of Section 3(1)(b) of the Act and if so, the authorities below were wrong in rejecting the application of the petitioner at the there should holding that the provisions of the Act are not applicable.

5. The alternate submission of the learned Counsel for the petitioner is that the order passed by the Special Deputy Commissioner on 3-2-1962 can be construed as an order akin to an order that can be passed by a Deputy Commissioner in exercise of his functions u/s 77-A of the Karnataka Land Reforms Act and if so, on the ratio of the law laid down by a Full Bench of this Court in the case of Mohammed Jaffar's, supra, a land of this nature should be held as a land which comes within the meaning of "granted land" as it occurs in Section 3(1)(b) of the Act and if so, on such reasoning also, the orders passed by the authorities below is not sustainable and they are required to be quashed and the matter remanded to the Assistant Commissioner for a proper consideration.

6. Sri K. Subba Rao, learned Senior Counsel appearing on behalf of respondents 3 to 5 on the other hand submits that the orders passed by the authorities below is perfectly valid in law, it calls for no interference; that the view that the land in question is not a "granted land" is fully justified not only applying the law as declared by the Full Bench of this Court (Mohammed Jaffar's case) referred to

above, but also the factual situation that prevails in the present case.

7. It is also of significant to note that the authorities below were of the view that the land in question is not a "granted land" applying the principles of the decision laid down in a Full Bench of this Court in Mohammed Jaffar's case, supra. The submission of Sri Subba Rao, learned Senior Counsel is that the Full Bench of this Court had in Mohammed Jaffar's case, supra, held that the lands which come within the meaning of "granted land", when granted in the context of the other enactments namely, the Land Reforms Act, the Inams Abolition Act etc., are such lands which, under the provisions of the respective enactments, had absolutely vested in the State and in turn, had been granted to any other person.

8. It is submitted that in the present case, the land in question had not vested in the State absolutely, but that under the provisions of the Mysore (Personal and Miscellaneous) Inams Abolition Act, it is only such rights of the inamdar which the inamdar had in the land that were extinguished and vested in the State and the vesting was always subject to the rights of a tenant who had such rights in the land, independent of the rights of the inamdar. In this regard, learned Counsel has drawn my specific attention to the provisions of Sections 3(1)(d), 3(1)(e) and 3(1)(k) of the Inams Abolition Act, which read as under:-

"3. Consequence of the vesting of an inam in the State.--(1) When the notification under Sub-section (4) of Section 1 in respect of any inam has been published in the Karnataka Gazette, then notwithstanding anything contained in any contract, grant or other instrument or in any other law for the time being in force, with effect on and from the date of vesting, and save as otherwise expressly provided in this Act, the following consequences shall ensure, namely:-

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(d) all rents and land revenue including cesses and royalties accruing in respect of lands comprised in such inam on or after the date of vesting shall be payable to the State and not to the inamdar and any payment made in contravention of this clause shall not be valid;

(e) all arrears of revenue, whether as jodi, quiet-rent, or khayamgutta and cesses, remaining lawfully due on the date of vesting in respect of any such inam shall after such date continue to be recoverable from the inamdar by whom they were payable and may, without prejudice to any other mode of recovery, be realised by the deduction of the amount of such arrears and cess from the compensation money payable to such inamdar under this Act;

XXX XXX XXX

(k) Kadim tenants, permanent tenants and quasi-permanent tenants in the inam and persons holding under them and holders of minor mams shall, as against the Government, be entitled only to such rights and privileges and be subject to such conditions as are provided for by or under this Act; and any other rights and

privileges which may have accrued to them in the inam before the date of vesting against the inamdar shall cease and determine and shall not be enforceable against the Government or such inamdar".

9. Learned Counsel has also drawn my attention to the provisions of Section 10(3)(b) of the Act wherein an absolute vesting in favour of the State occurs only on a default on the part of a tenant or a person who has a right to be registered as an occupant and has not availed of that right within the permitted time. Section 10(3)(b) of the reads as under.--

"10(3)(b) Where no application is made within the period specified in Clause (a), the right of any person to be registered as an occupant shall stand extinguished and the land shall vest in the State absolutely, such land shall be disposed of in accordance with the rules relating to grant of lands".

10. On a conjoint reading of the provisions of Sections 3(1)(a), 3(1)(d), 3(1)(e) and 3(1)(k) of the Inams Abolition Act with the provisions of Section 10(3)(b) of the Act, it becomes clear that the absolute vesting in the State occurs only when a person who is entitled to be registered as an occupant, has not sought for the same and on his default, the land vests in the State absolutely and not otherwise. Sri Subba Rao submits that in the present case the person in occupation of the land namely, the grandfather of the petitioner, had in fact made an application u/s 5 of the Inams Abolitions Act for the very purpose of registering him as an occupant and it is this order dated 3-2-1962 under which the Special Deputy Commissioner has registered certain occupancy rights in favour of the petitioner's grandfather and as such an order of this nature cannot be characterised as a grant order or the land "a granted land" within the meaning of Section 3(1)(b) of the Act.

11. The land in question was the subject-matter of the order of the Special Deputy Commissioner exercising his jurisdiction u/s 5 of the Act. An order of this nature is one passed for recognising a pre-existing right of a person who is already in possession. The Special Deputy Commissioner virtually functions as a Tribunal for such purposes which is very similar to the functions of a Land Tribunal under the provisions of the Karnataka Land Reforms Act. In the decision of this Court referred to above, a Full Bench of this Court having taken a view that even in respect of lands for which occupancy rights are conferred u/s 48-A of the Karnataka Land Reforms Act and by the Land Tribunal, such a land cannot be construed as a "granted land" under the provisions of Section 3(1)(b) of the Act. The present situation is not much different and accordingly I am of the view that the subject land which was also the subject-matter of the order dated 3-2-1962 passed by the Special Deputy Commissioner and in exercise of his powers u/s 5 of the Inams Abolition Act, cannot be construed as a "granted land" within the meaning of this phrase occurring in Section 3(1)(b) of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978.

12. In this view of the matter, the orders passed by the Assistant Commissioner and confirmed by the Deputy Commissioner, does not suffer from any illegality or infirmity calling for interference at the hands of this Court. I am unable to accept the submissions canvassed on behalf of the petitioner and the petition deserves to be dismissed.

13. Accordingly, this writ petition is dismissed.