

(2006) 06 KAR CK 0070
In the Karnataka High Court
Case No : Writ Petition No. 7200 of 2006

M. Pushpavathi

APPELLANT

Vs

Sri S. Papanna (since deceased represented by his L.Rs.
Sampangi and Others) and Others

RESPONDENT

Date of Decision : 20-06-2006

Acts Referred:

Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 3 (1), 4 (1), 4 (2), 5 A

Citation : (2006) 6 KarLJ 16 : (2006) 4 KCCR 197 SN

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

Bench : Single Bench

Advocate : Devhadass for G.K. Narasimha Murthy and M.V. Chandrashekara Reddy, for the Appellant; M.S. Nandeesh, for H.M. Somashekaraiah, for C/R1 and M.G. Anjanamurthy, HCGP for R2 to R4, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Petitioner is a person who has purchased a piece of agricultural land measuring an extent of 2 acres 18 guntas in survey No. 46 of Kaggalipura Village, Uttarahalli Hobli, Bangalore South Taluk under three different sale deeds dated 17-4-1995 registered on 23-8-1995 for a valuable consideration in terms of the sale deed executed by one Papanna who is no more and whose legal representatives figure as respondents in this writ petition.

2. Unfortunately, this transaction has run into rough waters as at the instance of the very vendor who had petitioned the Assistant Commissioner, Bangalore South Sub-Division seeking benefit under the provisions of the Karnataka Scheduled Caste & Scheduled Tribe [PTCL] Act, 1978 [for short the Act"] for invalidation of the sale transaction, resumption of the land and for restitution, the Assistant Commissioner had issued notice to the purchaser, held an enquiry and in terms of his order dated 27-4-2001 invalidated the sale transaction, directed resumption holding that the transfer was hit by the provisions of Section

4(1) of the Act for want of permission u/s 4(2) of the Act in terms of his order dated 29-4-2001 loopy at Annexure-J].

3. Petitioner being aggrieved had preferred an appeal u/s 5-A of the Act to the Deputy Commissioner and met with success as the Deputy Commissioner finding certain deficiencies in the order passed by the Assistant Commissioner on procedural aspects, remanded the matter to the Assistant Commissioner for fresh consideration and disposal in terms of the order dated 27-12-2002 [copy at Annexure-K].

4. It is thereafter the Assistant Commissioner held further enquiry proceedings and in terms of the order dated 29-11-2004 [copy at Annexure -L] after recording a finding that the land in question was a land granted in favour of persons belonging to scheduled caste community and it had been alienated subsequent to 1-1-1979 the date on which the Act came into force without prior permission of the Government and accordingly voided the transaction, directed resumption and restitution to the original grantee/ legal heirs.

5. Petitioner obviously being aggrieved had preferred an appeal to the Deputy Commissioner yet again, but in this round failed as the Deputy Commissioner in terms of the order dated 22-5-2006 [copy at Annexure-M] dismissed the appeal finding no occasion to interfere with the order passed by the Assistant Commissioner but on the other hand affirmed the findings therein and rejected all the contentions urged on behalf of the petitioner.

6. It is aggrieved by such orders, the present writ petition questioning the legality of the orders and the proceedings under the Act.

7. Submission of Sri. N. Devhadass, learned Senior Counsel appearing for the petitioner are based on many legal contentions.

8. It is firstly urged that the land in question had been one which was in unauthorised occupation of the grantee for a very long time and such unauthorised occupation came to be regularised in the year 1984 on collecting TT fine; that the grant was virtually one at an upset price and with a condition that the land should not be alienated for a period of 15 years etc.; that though the grant order recited a condition of non-alienation for a period of 15 years, that was of no consequence or not one that could have been imposed having regard to the fact that the grantee was in occupation of the land for a very long period and it was only regularisation of her unauthorised occupation in recognition of her past possession of the land and in such an event, the proceedings initiated by the Assistant Commissioner in the year 2001 by which time the grantee had enjoyed the land for a period beyond 30 years and had even otherwise perfected title against the Government itself is bad in law; that the authorities could not have taken any action for invalidation of the sale effected by the grantee as the grantee had acquired absolute and valid title by then and the transferee likewise gets a good title and not one which can be affected by the orders under the provisions of the Act passed by the statutory authorities.

9. It is further contended that even in terms of Rule-9 of the Karnataka Land Grant Rules, 1969, that the prohibitory period should be taken to be operating from the date the grantee was put in possession and not merely from the date of the grant or from the date of issue of saguvali chit and the law in this regard has been very well clarified by the division Bench of this Court in the case of H.M. Hanumantharaju and Ors. v. Stats of Karnataka and Anr. rendered on 23-8-2000 in W.A. No. 7406-13/1999 and if so the transfer being much beyond the period of 15 years from the date of the possession of the grantee in the land, the condition would not operate; that if there is no violation of any terms of the grant by effecting the transfer, the provisions of the Act are not attracted and therefore also the orders are not sustainable.

10. It is also contended in this regard that unless there is a clear violation of either the terms of the grant which is a violation that can be recognised in law or violation of the rules governing such grant, there cannot be any proceeding under the Act as in terms of the decision of this Court in the case of G.N. Vemareddy Vs. State of Karnataka and Others, and for this reason also the orders deserve to be quashed.

11. It is also urged that there was no proper enquiry held by the authorities below and particularly the manner of proceedings and the findings recorded by the Assistant Commissioner falls short of the norms and standards stipulated by the court for such proceedings in the case of Pedda Reddy Vs. State of Karnataka, and on applying the test laid down by this Court in Pedda Reddy's case, the orders fail and accordingly the matter warrants interference for remand to the authority for proper enquiry in terms of the guidelines laid down by this Court for fresh orders on merits.

12. One another contention urged on behalf of the petitioner is that the purchaser had effected vast improvements and the authorities should have taken note of these aspects and suitable compensation ought to have been awarded following the division Bench decision of this Court in the case of Durgamma v. The Deputy Commissioner rendered in W.A. No. 6487/2002 on 27-5-2004 and likewise by the Supreme Court in CIVIL APPEAL No. 11169/1997.

13. In this regard, it is vehemently urged that there is no proper application of mind on the part of the authorities in examining various legal contentions raised on behalf of the petitioner-purchaser and for this reason also the matter warrants interference.

14. I have heard Sri. M.S. Nandeesh, learned Counsel appearing for the respondent No. 1 - caveator i.e., the legal heirs of the original grantee.

15. Submission is that the authorities have held a proper enquiry; that a categorical finding has been recorded indicating that the land in question is a granted land; that there was no dispute at all that the grant was in favour of a person belonging to scheduled caste community and was under the Karnataka Land Grant Rules, 1969; that the grant order was followed up by issue of a

saguvali chit; that therefore the land was granted land within the meaning of the provisions of the Act and the only enquiry in such context is whether the sale which was after the Act came into force, was a sale that had been preceded by the permission of the Government and admittedly there being no permission, the authorities were left with no choice but to invalidate the sale transaction; that the orders were not only just but warranted and therefore no interference is called for.

16. The fact that the land in question had been granted in favour of a person belonging to scheduled caste community is not in dispute. Even assuming as contended by learned Senior Counsel for the petitioner the grant was by way of regularisation in the year 1984, it remains to be a granted land.

17. It is also not in dispute that such a grantee sold the land under three different sale deeds of the date 17-4-1995 and registered thereafter. These undisputed facts clearly demonstrate that the land granted in favour of a person belonging to scheduled caste community with certain conditions such as non-alienation for a period of 15 years had been transferred in violation of the very condition of the grant and without prior permission.

18. It is in such circumstances, learned Senior Counsel contended that the nature of the grant being one of regularisation of unauthorised occupation, it should not have been taken to be a granted land in the normal course and at any rate as one within the meaning of the expression as it occurs in Clause(b) of Section 3(1) which reads as under.

"(b) "granted land" means any land granted by the Government to a person belonging to any of the Scheduled Castes or the Scheduled Tribes and includes land allotted or granted to such person under the relevant law for the time being in force relating to agrarian reforms or land ceilings or abolition of inams, other than that relating to hereditary offices or rights and the word "granted" shall be construed accordingly.

19. The fact that the land had been granted due to the reason that it was earlier under unauthorised occupation of a person makes little difference for understanding the phrase "granted land" as referred to above. For understanding the expression "granted land" for the purpose of this Act is concerned, what matters is it should be one given by the Government to a person belonging to scheduled caste or scheduled tribe community. In fact, the definition clause travels beyond and includes such grants under other agrarian reforms also. Therefore, there is no escape from the conclusion that the land in question is a granted land and has been rightly recorded so in terms of the orders passed by the Assistant Commissioner and affirmed by the Deputy Commissioner.

20. The other argument that the grantee had enjoyed the land for a period of 30 years and therefore had prescribed title also does not advance the case of the petitioner for the reason that the invalidation of a sale transaction or transfer effected by such a grantee is because of the operation of the statutory provisions

of Section 4(1) of the Apt for want of permission u/s 4(2) of the Act. Irrespective of the nature of the grant in favour of a person belonging to scheduled caste/scheduled tribe community from the Government and irrespective of the conditions that might have been imposed under such a grant order, what matters after the Act has come into force is as to whether the transfer effected by such a grantee is one preceded by the permission of the Government. If the answer is "no" penal provisions necessarily operates and transfer is invalidated by operation of the statute by such statutory provisions. It can be noticed that the provisions of this Act have an overriding effect on other provisions and even transfers effected which are otherwise valid and legal are also caught within the mischief of Section 4(1) of the Act all such transfers are all voided irrespective of valid and clear title the transfer might have conveyed in favour of the transferee.

21. If even in a situation where the Government should have granted a land absolutely in favour of a person belonging to scheduled caste community with full rights etc., but the same is transferred after the Act has come into force without permission of the Government, in view of Section 4(1) of the Act, if such a transfer of the land which had been granted in absolute in favour of the grantee is invalidated, it is afortiori so in the case of a grant which may be after collecting a TT fine or an upset price for regularising the unauthorised occupation, as the grant is still a benefit/concession shown to the grantee by the grantor. Whether it is a regularisation of unauthorised occupation or not, it is nevertheless a grant by the Government in favour of a person belonging to scheduled caste community and therefore not only the Act is attracted but the provisions operate to the detriment of the transferee. Such is the position of the present petitioner.

22. Both the authorities having recorded a categorical finding that the land in question is a granted land within the meaning of the phrase as it occurs in Section 3(1)(b) of the Act; that the transaction of the year 1995 had not been preceded by the permission of the Government which resulted in transaction being voided, the transferred land has to be resumed to the State and restituted to the original grantee/legal heirs of the grantee. That precisely being the action taken by the authorities below, no exception can be taken to the orders passed by the authorities below.

23. With regard to the submission that suitable directions should be issued to the respondents to compensate the petitioner for the improvements effected, I am of the view that a writ of mandamus does not lie to compel any authority particularly as the statute does not provide for awarding such compensation. Assuming that in a case the division Bench of this Court or the Supreme Court does say that compensation should be awarded, that cannot be termed as law declared or a precedent to be followed.

24. Having regard to the object of the Act, I do not find it appropriate to mulct the legal heirs of the grantee with the liability to compensate such purchaser for the cost of improvements made etc.,. Therefore, the request for such direction is

rejected.

25. There is no illegality or irregularity apparent from the orders passed by the authorities below. No occasion for interference in the exercise of writ jurisdiction under Article 226/327 of the Constitution of India.

26. Writ petition is dismissed.