
(2014) 11 KAR CK 0321

In the Karnataka High Court

Case No : Writ Petition No. 52671 of 2014 (KLR-RR-SUR)

Mahadevamma

APPELLANT

Vs

Deena Seva Asharma and Others

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Karnataka Village Officers Abolition Act, 1961 — Section 5, 7
Transfer of Property Act, 1882 — Section 34

Citation : (2015) 2 KarLJ 405

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : P.D. Surana, Advocates for the Appellant; Kiran Kumar, Additional Government Advocate, Deshraj, P. Changalaraya Reddy and Madhukar J.V.S., Advocates for the Respondent

Judgement

B.V. Nagarathna, J.—Petitioner has assailed order dated 1-8-2014 passed in proceeding No. RRT(S) CR:188/2011-12 on the file of respondent 4-Deputy Commissioner, Bangalore Urban District, Bangalore (Annexure-F to the writ petition). The relevant facts of the case are that petitioner's mother Smt. Botamma alias Sanna Yellamma and Sri Sanna Yellappa were regranted certain lands under the provisions of Karnataka Village Offices Abolition Act, 1961 (hereinafter referred to as "the Act" for the sake of brevity) along with Sanna Yellappa. The lands were regranted to them as said lands were Thoti Inam Service Lands. The regrant was made in respect of lands bearing Sy. Nos. 1,6, 29, 33 and 53 of Volagerehalli Village and Sy. No. 8 of Sonnenahalli Village. In this writ petition the controversy is with regard to Sy. No. 53 measuring 1 acre 1 gunta at Volagerahalli Village (hereinafter referred to as "land in question" for the sake of convenience). The regrant order was passed in the year 1970. Subsequently, the regrantees alienated the land in question i.e., Sy. No. 53 measuring 1 acre 1 gunta in favour of respondent 1 under a registered sale deed dated 17-4-1972. Thereafter, respondent 1 sold the said extent of land to two persons, namely, Errol Mathias and Lynette Mathias on 28-6-1972 by registered

sale deed. It is also on record that on 20-5-1983, there was a registered deed of cancellation executed by the latter two persons in favour of respondent 1. Thereafter, respondent 1 sought for re-entry of their name in the revenue records, which was permitted by the Revenue Authorities.

2. When the matter stood thus, petitioner herein approached the jurisdictional Tahsildar, with regard to annulling alienation made by them in respect of Sy. Nos. 1, 6, 29, 33 as well as 53 of Valagerahalli Village and Sy. No. 8 of Sonnenahalli Village. Significantly, respondent 1 herein who was the alienee of Sy. No. 53, the land in question, was not arrayed as a respondent in that proceeding. By order dated 18-2-1992, the Tahsildar held that the application filed by the petitioners were allowed. Being aggrieved by that order some of the respondents before the Tahsildar filed MA No. 25 of 1993 before the learned District Judge at Bangalore. By judgment dated 31-10-2003, the appeal was dismissed. That judgment was assailed in W.P. No. 3219 of 2005 before this Court and on 12-7-2005 the said writ petition was also dismissed. As against that order SLP No. 23562 of 2005 was filed before the Hon"ble Supreme Court on 11-3-2010. The Hon"ble Supreme Court also dismissed the said SLP.

3. Thereafter, the petitioner herein sought for entry of her name in the revenue records and by the order dated 17-12-2011 passed by the Deputy Commissioner, Bangalore Urban District, the request made by the petitioner was granted in respect of the land in question also. That order was challenged by respondent 1 in W.P. No. 1062 of 2012 before this Court. By order dated 2-7-2012 this Court quashed order dated 17-12-2011 and remanded the matter to respondent 4-Deputy Commissioner for reconsideration and kept open all contentions on both sides. Pursuant to order dated 2-7-2012, respondent 4-Deputy Commissioner has passed the impugned order on 1-8-2014. By that order the Deputy Commissioner has stated that the name of respondent 1 herein must be entered in respect of the land in question. That order is assailed by the petitioner herein in this writ petition.

4. I have heard learned Counsel for petitioner and learned Counsel for respondent 1, who appears on Caveat as also the learned Additional Government Advocate appearing for respondents 4 and 5 on advance notice and perused the material on record.

5. During the course of submissions, learned Counsel for petitioner contended that there is no dispute that Sy. No. 53, the land in question, was one of the items regranted to the regrantees, one of whom is predecessor of the petitioner herein and it is also not in dispute that on 17-4-1972 the land in question was sold to respondent 1. He however, contended that the said alienation was not acted upon and possession continued to remain with the petitioner also there was no permission obtained from the concerned authorities before alienation in favour of respondent 1 and therefore, under Section 7 of the Act, petitioner was empowered to get the said alienation annulled and seek eviction of the alienee and in that context petitioner had approached the Tahsildar, who passed

Annexure-A order. He would contend that Annexure-A order has been upheld and it is pursuant to that order petitioner made an application before the concerned authority for re-entry of her name in the revenue records including RTC, inter alia, in respect of the land in question and the Revenue Authorities had rightly entered her name. It was further contended that the respondent 1 who had purchased the land from the petitioner, had alienated the land to two other persons, who later had cancelled the said alienation under registered deed of cancellation dated 20-5-1987. That cancellation has no legal effect and therefore, respondent 1 on the basis of the cancellation could not have sought title of the land in question or entry of their name in the revenue records. He also contended that the respondent 1 had no locus standi to maintain the application to enter its name on the basis of the cancellation deed executed by the two alienees of respondent 1. He contended that there are any number of judgments of this Court, wherein it has been categorically stated that cancellation of sale deed by a purchaser does not re-confer title to the vendor of an immovable property and that the only way a sale deed could be annulled is by a decree of cancellation passed by a Competent Court of law. One of the judgments referred to by the learned Counsel for petitioner is in the case of Sri K. Raju Vs. Bangalore Development Authority, . He therefore contended that impugned order may be quashed and name of the petitioner be re-entered in the revenue records including RTC.

6. Per contra, learned Counsel for respondent 1-Caveator would contend that petitioner admits regrant of the land in question as well as the alienation made to respondent 1 on 17-4-1972. That alienation did not require any prior permission to be obtained from the concerned authorities as Section 5 of the Act with reference to permission came into effect only on the enforcement of Amendment Act of 1978 to the said Act. Drawing my attention to various orders passed by the authorities, this Court as well as Hon'ble Supreme Court, annexed to the writ petition, he contended that before Tahsildar the petitioner did not array respondent 1 as a party because there was no controversy with regard to alienation made by the petitioner to respondent 1 as that was before amendment made to the Act in the year 1978 which introduced a non-alienation clause for a period of 15 years but the land in question was illegally included by petitioner along with other survey numbers the alienation of which violated the non-alienation clause. He contended that the Tahsildar in his order at Annexure-A rightly observed about the alienation made by the petitioner to respondent 1 and therefore, the order of the Tahsildar is not binding on respondent 1 though, the land in question had been included by the petitioner in that proceedings. He also drew my attention to order passed by the learned District Judge in MA No. 25 of 1993, order of this Court and also order passed by Hon'ble Supreme Court and stated that these orders were in respect of Sy. Nos. 1 and 29 as those alienations were made subsequent to the amendment made to the Act and those alienations were annulled by the authorities concerned but those orders never concerned to Sy. No. 53, i.e., the land in question. He also would contend that once the

alienation had been made to the petitioner by the respondent 1, what transpired subsequently was not the concern of the petitioner. He therefore would contend that the impugned order does not call for any interference by this Court and that there is no merit in the writ petition.

7. Having heard the learned Counsel for parties and on perusal of the material on record it is noted that, inter alia, Sy. No. 53 measuring 1 acre 1 gunta i.e., the land in question was one of the items which was regranted to the predecessor of petitioner. It is also not in dispute that the said land was alienated to the respondent 1 by the petitioner on 27-4-1972. That alienation had been made prior to amendment made to the Act, which came about in the year 1978, to be precise, on 7-8-1978. So far as alienation made prior to that date are concerned the Full Bench of this Court in the case of Syed Bhasheer Ahamed and others Vs. State of Karnataka and others, , has held that alienations of service inam lands between 1-2-1963 and 7-8-1978 by the holder of the land or regrant is invalid, as there was no bar to alienation during that period.

8. The opinion of the Full Bench of this Court is to the effect that if the alienation of service inam land was made prior to the order of regrant then the alienee would have the benefit of regrant made subsequently based on the principles of feeding the grant by estoppel as enunciated in Section 34 of Transfer of Property Act, 1882. In fact, the Full Bench also considered alienations made after amendment made to the Act in the year 1978 and held that such alienation which were contrary to the amendment Act were void if they violated the non-alienation clause.

9. In the instant case, the alienation made to respondent 1 by the regrantees was on 17-4-1972 subsequent to the order of regrant and prior to amendment to the Act which was permissible under the provisions of the Act as at that point of time there was no bar to alienation of service inam lands. Significantly, sale deed dated 17-4-1972 in favour of respondent 1 has not been declared to be null and void by any Court of law. The fact that the sale deed by which alienation by regrantees to respondent 1 is still in force is a fact which has to be taken into consideration. It is not known as to on what basis the petitioner contends that the sale deed has not been acted upon. When once a registered instrument come into operation, then there is conveyance and transfer of title. It is based on its title to the land in question that respondent 1, thereafter alienated the land to two other persons. What respondent 1 would do with the land purchased by it cannot be a concern of the petitioner once there was an alienation of the land in question by petitioner to respondent 1. Further, contention of the learned Counsel for petitioner about locus standi of the respondent 1 to maintain the application or re-entry of its name in revenue record, is a contention which petitioner cannot raise at all, as the petitioner has in the first instance no locus standi to interfere with the Sy. No. 53, which is the land in question once it was alienated to respondent 1.

10. In that view of the matter, petitioner has no locus standi to challenge such

alienation made by respondent 1 to two other persons or the cancellation that has taken place subsequently. That is a matter between respondent 1 and two other persons. Based on the orders passed by the Tahsildar, learned District Judge, this Court as well as the Hon''ble Supreme Court, which are in respect of the Sy. Nos. 1 and 29, petitioner who had also included the land in question, namely, Sy. No. 53 in the proceedings seeking annulment of the alienation made in respect of the Sy. Nos. 1, 6, 29 and 33 of Valagerehalli Village and Sy. No. 8 of Sonnenahalli Village, is trying to enter her name in the revenue records. Although Sy. No. 53 was included in the proceedings before the Tahsildar, respondent 1 was not made party to that proceeding and these orders are not binding on respondent 1. In fact, petitioner approached the Tahsildar in respect of alienations made subsequent to amendment made to the Act in the year 1978 and not in respect of land in question earlier alienated by petitioner's predecessor to respondent 1 in the year 1972. The orders referred to by the learned Counsel for petitioner are all in respect of the alienation made subsequent to the amendment to the Act and not the alienation made by the petitioner to respondent 1 on 17-4-1972. That sale deed not having been annulled by any Court of law is still in operation binding on petitioner as well as respondent 1 and therefore, the petitioner subsequent to the judgment of the Hon''ble Supreme Court could not have sought for re-entry of her name insofar as Sy. No. 53 is concerned.

11. The Deputy Commissioner has rightly appreciated these aspects of the matter and has rightly held that the entry of petitioner's name in the revenue records in respect of land in question is not right and has held that the entry of the name of respondent 1 in the revenue records is correct. As already stated when once alienation was made by petitioner's predecessor to respondent 1, petitioner has no locus standi to contest the entry of respondent 1's name in the revenue records. In that view of the matter, impugned order does not call for any interference by this Court. Accordingly, the writ petition is dismissed.