

(1996) 08 KAR CK 0021

In the Karnataka High Court

Case No : Writ Petition No. 25226 of 1990 connected with Writ Petition No. 25607 of 1990

Motyappa

APPELLANT

Vs

The Deputy Commissioner, Shimoga and Another

RESPONDENT

Date of Decision : 01-08-1996

Acts Referred:

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

Citation : (1997) 5 KarLJ 574

Hon'ble Judges : P. Vishwanatha Shetty, J

Judgement

1. Since common questions of facts and law are involved in both these petitions, the same are taken up for final hearing and disposed of by this common order.

2. The petitioner in Writ Petition No. 25226 of 1990 is the purchaser of land measuring 5 acres 8 guntas in Survey No. 87, situated at Kunchanahalli, Shimoga Taluk and District. In this petition, he has prayed for quashing the order dated 28th May, 1990, passed by the 1st respondent, confirming the order, dated 23rd January, 1988, passed by the 2nd respondent. Copies of the orders passed by respondents-1 and 2 have been produced as Annexures-A and B respectively.

3. Writ Petition No. 25607 of 1990 is filed by the grantee challenging the orders Annexures-A and B, referred to above, to the extent the claim of the grantee-petitioner is rejected for restoration of possession. In this petition, he has prayed for a direction to the 1st respondent to restore possession of the land, which is the subject-matter of dispute in Writ Petition No. 25226 of 1990.

4. Sri M.R. Rajagopal, learned Counsel appearing for the petitioner in Writ Petition No. 25226 of 1990, submitted that the orders impugned suffer from errors apparent on the face of the records in as much as both respondents-1 and 2 have failed to consider that the land in question was not sold in violation of the terms of the law governing grant of the land in question, as the land in question came to be sold by the grantee's son after more than 20 years from the date of

grant. According to the learned Counsel, the land in question was granted on 24th July, 1956, and the same came to be sold by the grantee's son to the petitioner on 29th December, 1977, and under these circumstances, the sale deed dated 20th July, 1967, conveying his right, title and interest in respect of the land in question in favour of one Satyanarayana son of Chinnadasappa, cannot be taken into account while considering the question as to whether the sale of the land in question was made in violation of either the terms of grant or the law governing the grant. He further submitted that since the land in question was sold for an upset price, the grantee was prohibited from alienating the land in question only for a period of 10 years from the date of grant; and even if the sale deed dated 20th July, 1967, is to be taken into account, since the land in question was sold after expiry of a period of 10 years, there is not violation of the terms of grant.

5. Sri Siddagangaiah, learned Government Pleader, appearing for respondents and Sri H.S. Sureshappa Gowda, learned Counsel appearing for the petitioner in Writ Petition No. 25607 of 1990, submitted that there is no infirmity in the orders impugned, to the extent they declare that the sale of the land in question as null and void. However, they submitted that respondents-1 and 2 having rightly held that the sale of the land in question as null and void, have seriously erred in law in not directing that the possession of the said land should be handed over to the legal heir of the original grantee i.e. the petitioner in Writ Petition No. 25607 of 1990.

6. I am unable to accept the contentions of Sri M.R. Rajagopal, learned Counsel for the petitioner in Writ Petition No. 25226 of 1990. Section 4(1) of the Act provides that notwithstanding anything in any law, agreement, contract or instrument, any transfer of granted land made either before or after commencement of the 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. Sub-section (1) of Section 5 of the Act confers power on the Assistant Commissioner to declare the transfer of granted land as null and void, and further empowers him to take possession of such land after evicting all the persons in possession thereof and to direct handing over of possession of such land either to the grantee or his legal heirs. Therefore, the question that arises for consideration is whether the sale of land in question made on 20th July, 1967, was in contravention of either the terms of grant or the law governing the grant. If the sale of the land in question by means of the registered sale deed dated 20th July, 1967, was made in contravention of either the terms of grant or the law governing the grant, the Assistant Commissioner was entitled to declare the said sale as null and void and also entitled to take possession of the said land after evicting all the persons in possession of the said land and hand over possession of the same to the grantee or his legal heir.

7. In the present case, both the Assistant Commissioner and the Deputy

Commissioner have concurrently found that the land in question came to be sold in contravention of the terms of grant, and terms of the grant prohibited alienation of the land in question for a period of 15 years from the date of grant.

8. Rule 43(1)(d) of the Mysore Land Revenue Rules, (hereinafter referred to as "the Rules"), which governs the grant of land in question empowers the authorities to waive the upset price payable by the grantee up to Rs. 200/- , if the grantees are the persons belonging to either the Scheduled Castes or the Scheduled Tribes. Rule 43(8)(a)(i) of the rules provides that where the grant is made free of cost, the land granted shall not be alienated for a period of fifteen years from the date of the grant. It is relevant to point out that pursuant to the notice issued to the petitioner in Form No. II, as provided under sub-rule (3) of Rule 3 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Rules, though the petitioner had filed his objections, did not plead in his objection statement that the land in question was granted for an upset price and therefore, the grantee was prohibited from alienating the land in question for a period of 10 years only from the date of grant and not for a period of 15 years. The only plea raised by the petitioner was that there was no violation of the terms of the grant. Whether the land in question was granted free of cost or for upset price is purely a question of fact. Since the petitioner has failed to raise the said plea before the Assistant Commissioner and lead necessary evidence in support of the said plea, the petitioner cannot now be permitted to urge the said contention for the first time before this Court. Even otherwise, in view of the fact that the condition imposed in the Saguvali Chit that the land in question should not be alienated for a period of 15 years, having regard to the power conferred on the authorities to waive the upset price as stated above, it is reasonable to infer that the land in question was a free grant land.

9. Further, sub-section (3) of Section 5 of the Act provides that where any granted land is in the possession of a person, other than the original grantee or his legal heir, it shall be presumed, until the contrary is proved, that such person has acquired the land by a transfer which is null and void under the provisions of sub-section (1) of Section 4 of the Act. Therefore, the burden is on the petitioner to show that he has acquired the land in question by means of transfer, which is not null and void. Admittedly, the petitioner has failed to discharge the said burden. Therefore, I do not find any merit in the submission of Sri M.R. Rajagopal that the land in question was granted for upset price and even if the said deed dated 20th July, 1967, is to be taken into account, the sale was not made in violation of the rules governing the grant as the land in question came to be sold after a period of 10 years from the date of grant.

10. I also do not find any merit in the submissions of Sri M.R. Rajagopal that since the land in question came to be sold by the original grantee's son in the year 1977, there was no violation of either the terms of grant or the law governing the grant. Since the original grantee has sold the land in question in

the year 1967, as stated above, the original grantee's son could not have sold the said land to the petitioner in Writ Petition No. 25226 of 1990, by means of registered sale deed dated 29th December, 1977, as the original grantee's son had no right, title and interest in respect of the land in question. Further, the original grantee's son Sakrya Naika executed the sale deed dated 29th December, 1977, as power of attorney of one K.L. Venkateshappa. The petitioner has failed to establish the source of title of the said Venkateshappa, in respect of the land in question. Therefore, no value can be attached to the sale deed dated 29th December, 1977. Further, as per Section 4 of the Act, the first sale made after the grant has to be taken into consideration. Admittedly, in this case, the first sale of the land in question came to be made in the year 1967. Therefore, I am of the view that the petitioner cannot have any grievance against the orders impugned.

11. For the reasons stated above, Writ Petition No. 25226 of 1990 is liable to be dismissed.

12. So far as Writ Petition No. 25607 of 1990, filed by the original grantee's son is concerned, as rightly pointed out by Sri H.S. Sureshappa Gowda, learned Counsel for the petitioner, the order passed by the Assistant Commissioner and also the order passed by the Deputy Commissioner, to the extent they have failed to direct delivery of possession of the land in question to the petitioner, are required to be modified. The Assistant Commissioner has refused to pass an order directing delivery of possession of the land in question presumably on the ground that the original grantee's son (Sakrya Naika) has remained absent on the date of enquiry. The said approach of the Assistant Commissioner, which has also been affirmed by the Deputy Commissioner in the appeal, is totally erroneous in law and runs counter to the very object of the Act. It is relevant to point out that under sub-section (1) of Section 5 of the Act, power is conferred on the Assistant Commissioner to initiate proceedings and pass appropriate orders as provided under Section 5 of the Act, under three circumstances, namely, (i) on an application filed by an interested person; (ii) on an information given by any person; or (iii) suo motu. (emphasis supplied). Clauses (a) and (b) of sub-section (1) of Section 5 of the Act make it clear that once the sale transaction is declared as null and void by the Assistant Commissioner, the Assistant Commissioner is required to take possession of the land after evicting all the persons in possession of the said land and restore possession of such land to the original grantee or his legal heir. The object of the Act is to declare the sale of the lands made in violation of the terms of the grant as null and void and to restore possession of such lands to the original grantees or their legal heirs. Under these circumstances, I am of the view that the Assistant Commissioner has seriously erred in law in not passing an order directing restoration of possession of the land in question to the petitioner in this petition, on the ground that the petitioner was not present at the time of enquiry. While the power conferred on the Assistant Commission under Section 5 of the Act is quasi-judicial in nature, in my view, it does not give any discretion to the Assistant

Commissioner to refuse to give a direction for restoration of possession of the granted land either to the original grantee or his legal heirs, if they are available, on the ground that they were not present at the time of enquiry. It is only in case where it is not reasonably practicable to restore the land to such grantee or his legal heir, the land vests with the State Government free from all encumbrances. The provisions made under clause (b) of sub-section (1) of Section 5 of the Act to vest such land in the State Government where it is not reasonably practicable to restore such land to the grantee or his legal heir, clearly indicates that an attempt should be made by the authorities to trace the original grantee or his legal heir. It is only when such a grantee or his legal heir is not available to take possession of the land, the land vests with the State Government. This interpretation is required to be placed on Section 5 of the Act having regard to the object of the Act and keeping in mind the social and cultural background, illiteracy, poverty of the Scheduled Castes and Scheduled Tribes and the possibility of they being prevented from participating in the proceedings by the purchasers of such granted land.

13. For the reasons stated above, the orders impugned are required to be modified and a direction is to be given to the Assistant Commissioner (respondent 1 in Writ Petition No. 25607 of 1990) to restore possession of the land in question to the petitioner in Writ Petition No. 25607 of 1990.

14. Sri M.R. Rajagopal, learned Counsel appearing for the petitioner in Writ Petition No. 25226 of 1990 submits that the petitioner in the said writ petition is also a Scheduled Caste person, who is also poor and has raised crops on the land in question, and he may be given at least a year's time to hand over possession of the land in question to the petitioner in Writ Petition No. 25607 of 1990, without prejudice to the petitioner's right to prefer an appeal, if he so desires.

15. Having regard to the facts and circumstances of this case and also in view of the hardship pleaded by Sri M.R. Rajagopal, the petitioner in Writ Petition No. 25226 of 1990 is granted time to hand over possession of the land in question to the petitioner in Writ Petition No. 25607 of 1990 till 30th April, 1997, subject to the conditions set-out hereinbelow.

16. In the result, I make the following:

ORDER (1) Writ Petition No. 25226 of 1990 is dismissed and rule issued is discharged.

(2) Writ Petition No. 25607 of 1990 is allowed and rule issued is made absolute. Orders Annexures-A and B (vide Court's order dated 10-1-1997 "On being spoken to") are hereby quashed to the extent they direct that the land in question is resumed to the State Government.

(3) The Assistant Commissioner (respondent 1 in Writ Petition No. 25607 of 1990) is directed to restore possession of the land in question to the petitioner in Writ Petition No. 25607 of 1990, subject to the order made granting time to the

petitioner in Writ Petition No. 25226 of 1990.

(4) The petitioner in Writ Petition No. 25226 of 1990 is given time till 30th April, 1997, to hand over possession of the land in question to the petitioner in Writ Petition No. 25607 of 1990, subject to the condition that he shall file an affidavit before this Court within six weeks from today, undertaking to voluntarily hand over possession of the land in question to the petitioner in Writ Petition No. 25607 of 1990, on or before 30th April, 1997. If the petitioner in Writ Petition No. 25226 of 1990 fails to file such an affidavit within six weeks from to-day before this Court, the 2nd respondent in Writ Petition No. 25226 of 1990 is directed to enforce the orders impugned and see that the petitioner in Writ Petition No. 25607 of 1990 is put in possession of the land in question.

17. Sri M. Siddagangaiah, learned High Court Government Pleader, is given four weeks" time to file his memo of appearance.