

(2005) 08 KAR CK 0048
In the Karnataka High Court
Case No : Writ Petition No. 8723 of 2004

Muniyappa

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 30-08-2005

Acts Referred:

Karnataka Land Grant Rules, 1969 — Rule 9, 9 (1)
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 11, 3 (c), 4 (2)

Citation : (2006) 1 KCCR 9

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

Bench : Single Bench

Advocate : T.S. Amar Kumar, for Lawyers Inc, for the Appellant; Bharamagouda B. Goudar, High Court Government Pleader for Respondents 1 to 3, B.A. Raviraj, A.S. Bellary and C.R. Rajagopal for Respondent 4, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—Writ petition at the instance of a person in whose favour had been granted an extent of 4 acres of land in Sy. No. 21 (New No. 79), situated at Poojaganahalli village, Kasaba Hobli, Devanahalli taluk, as a person belonging to Scheduled Caste community, in terms of grant order dated 15.6.1979. It is such land that the Petitioner had transferred in terms of the sale deed dated 16.10.1994 in favour of the fourth Respondent .

2. Petitioner applied to the Assistant Commissioner invoking the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 [for short, the Act] contending that the transaction is to be invalidated in terms of the provisions of Sub-section (1) of Section 4 of the Act, as prior permission under Sub-section (2) of Section 4 of the Act had not been obtained. The Assistant Commissioner issued notice to the fourth Respondent , held an enquiry and accepting the version of the applicant-Petitioner allowed the application.

3. The fourth Respondent being aggrieved, preferred an appeal to the Deputy

Commissioner, and the Deputy Commissioner in terms of his order dated 29.3.2003 allowed the appeal and remanded the matter to the Assistant Commissioner with certain directions with regard to the requirements, particularly on examining the contention on behalf of the purchaser that before the transaction, the grantee having sought for and obtained the permission for the purpose of Sub-section (2) of Section 4 of the Act from the Tahsildar and whether than (sic that) can hold good for ensuring compliance of the requirement of law etc.

4. When the matter came back to the Assistant Commissioner, the Assistant Commissioner was of the view that the permission granted by the Tahsildar itself was sufficient to fulfil the requirement of provisions of Sub-section (2) of Section 4 of the Act; that the Respondent in the application while did not dispute that the grantee was a person belonging to Scheduled Caste community, the order dated 18.2.1992 obtained from the Tahsildar granting permission as had been on factual verification found to be in existence and there appears to be a controversy on this aspect earlier and as even the applicant himself had indicated that he is ready and willing to act on such permission and in the totality of the circumstances, the Assistant Commissioner dismissed the application.

5. This time, the Petitioner-applicant was aggrieved and he carried the matter to the Deputy Commissioner by way of appeal, but the Deputy Commissioner also having dismissed the appeal, purporting to follow the ruling of this Court in the case of Ganteppa D. v. Peerappa, ILR 1998 Kar SN 81, the grantee is before this Court by way of this writ petition.

6. Writ petition was admitted and notices had been ordered to the Respondent s. While Sri T.S. Amar Kumar is appearing for the Petitioner, Fourth Respondent - purchaser is represented by Sri B.A. Raviraj, and the statutory authorities - Respondents 1 to 3 - are represented by Sri Bharamagouda B. Goudar, learned Government Pleader. I have heard the learned Counsel for the parties.

7. Submission of Sri T.S. Amar Kumar, learned Counsel appearing for the Petitioner, is that the authorities have grossly erred in accepting the stand of the purchaser-fourth Respondent that the transaction is one which is not coming under the web of Sub-section (1) of Section 4 of the Act; that the permission granted by the Tahsildar under Sub-section (2) of Section 4 of the Act is not a permission as contemplated under the Act; that it is only the government which can grant permission of this nature and as the Tahsildar, being not the competent authority, passed such orders for the purpose of Sub-section (2) Section 4 of the Act, the transaction is hit by the provisions of Sub-section (1) of Section 4 of the Act and as such it is to be invalidated, but the authorities have erred in holding that the transaction is valid in view of the permission granted by the Tahsildar.

8. In this regard, learned Counsel for the Petitioner also points out that the reliance placed by the Deputy Commissioner to dismiss the appeal and to uphold the order of the Assistant Commissioner, on the decision of this Court in

Ganteppa's case, is totally inapt; that the situation is entirely different and at any rate this Court having not examined the scope of the relevant statutory provisions viz., Sub-section (2) of Section 4 of the Act in that decision, and virtually the order proceeding without any discussion with reference to Sub-section (2) of Section 4 of the Act, it cannot be construed as an authority for the purpose of deciding the case involving such questions, and even if it is to be assumed for the sake of that the decision in any way indirectly refers to the requirements etc., it should be construed as a decision rendered per incuriam the statutory provisions viz., Sub-section (2) of Section 4 of the Act and as the requirement of the Section has not been noticed at all, and on the other hand what has been noticed is only the competence of the Tahsildar under the Karnataka Land Revenue Act [for short, KLR Act] and the Karnataka Land Grant Rules [for short, the Rules], as the Tahsildar is one to grant the land, he can also be the authority to impose a condition or relax a condition and also one to grant permission for sale of the land. Learned Counsel for the Petitioner submits that such logic cannot hold good on the present case for the reason that the examination in the said decision was in the context of the provisions of the Rules and the powers of the authority granting land under such provisions, but the examination now is in the context of Section 4 of the Act, particularly the provisions of Sub-section (1) of Section 4 of the Act. Learned Counsel for the Petitioner submits that the requirement as is stipulated under Sub-section (2) of Section 4 of the Act is a requirement statutorily stipulated and has also been held mandatory and has to be strictly complied with and cannot be relaxed by referring to other provisions, more so the Rules and regulations of other enactments.

9. In this regard, learned Counsel for the Petitioner has also drawn my attention to the decision of this Court in the case of Yellappa v. Secretary, Government of Karnataka ILR 1997 Kar 2019, wherein a condition that had been imposed by the government for the purpose of granting permission to the grantee to sell the land stipulating 50% of the market value to be paid in favour of the State Government as one not contemplated under Sub-section (2) of Section 4 of the Act and where the learned Single Judge dealing with such a contention had sustained the condition by reference to Rule 9(1) of the Rules.

10. It is a situation where the Court while noticing that the permission itself was by the government as contemplated and was examining the condition also imposed by the government, which was not under Sub-section (2) of Section 4 of the Act, but stipulated by Rule 9 of the Rules. This decision may not be of any direct impact and assistance either to the advantage of the Petitioner or to support the contention on behalf of the fourth Respondent or as understood by the Deputy Commissioner.

11. Further submission of learned Counsel for the Petitioner is that when once there was no valid permission in the eye of law, as contemplated under Sub-section (2) of Section 4 of the Act before the transaction, which was in the year

1994 and after coming into force of the Act, the transaction is hit and that in the present case there being no dispute on the question that the grant was in favour of a person belonging to Scheduled Caste community, the orders of the Assistant Commissioner and the Deputy Commissioner should be set aside and the transaction held to be null and void on the operation of Sub-section (1) of Section 4 of the Act, and accordingly a consequential direction to be issued to the Assistant Commissioner to give effect to this legal position, as no further enquiry is contemplated for such purpose.

12. Writ petition is stoutly opposed by the fourth Respondent . Elaborate statement of objections has been filed and several contentions are urged to support the orders passed by the authorities and for dismissal of the writ petition.

13. Sri B.A. Raviraj, learned Counsel for the fourth Respondent vehemently submits that it is not as though there is no permission at all; that the Tahsildar, who is very much part of the government and a functionary of the government had on an application in terms of the provisions of Sub-section (2) of Section 4 of the Act had granted such permission and if so, such permission could be taken to be a permission as is required under Sub-section (2) of Section 4 of the Act and in the light of such permission, it cannot be held that the transaction can be voided under the provisions of Sub-section (1) of Section 4 of the Act. It is alternatively contended that if the Tahsildar is not the competent authority, he should have forwarded the application seeking for such permission to the proper authority who can grant such permission, but the Tahsildar himself disposed of the application and therefore it cannot be put against the fourth Respondent , who is a bona fide purchaser for a valuable consideration and particularly when the intention of the grantee was to transfer the land and therefore he sought for permission to transfer the land in the light of the provisions of Section 4 of the Act and such permission was accorded by the Tahsildar, the very authority who had granted the land in favour of the grantee. Learned Counsel for the fourth Respondent further submits that the permission by the Tahsildar, who is the very granting authority, should be held to be a sufficient permission even for the compliance of the requirement of Sub-section (2) of Section 4 of the Act. It is also further submission of the learned Counsel for the fourth Respondent that the Tahsildar had issued such an endorsement way back in the year 1992 in terms of the order dated 18.2.1992 itself; that the parties have acted on that; that the grantee, who was an illiterate person, could not understand the technical or legal implications involved in the permission of this nature and at any rate the transaction having taken place more than 21/2 years after the permission, that should not be put against the purchaser to invalidate the transaction at this late point of time and therefore the orders passed by the authorities do not call for interference in exercise of writ jurisdiction. In support of the submission, the learned Counsel for the fourth Respondent draws the attention of the Court to the developments in the matter viz., that the sale transaction had been confirmed or ratified by the grantee as well as his son in terms of Annexures-R-4 and R-5, copies of deeds produced along with the statement of objections on

behalf of the fourth Respondent .

14. One another submission on behalf of the fourth Respondent is that once the matter had been remanded, the parties themselves had arrived at a settlement and as such the matter was not seriously pursued before the Assistant Commissioner on remand, but as virtually the Petitioner having gone back on that and had pressed the application and the Assistant Commissioner nevertheless taking note of the development has rightly rejected the application and therefore does not call for interference at this point of time.

15. One more contention urged by the learned Counsel for the fourth Respondent is that the land in question has been converted into non-agricultural use and it is being used so and therefore the matter should not be interfered with at this point of time nor the matter should be remanded.

16. The other submission on behalf of the fourth Respondent is that the matter had not been properly enquired into at all on remand by the Deputy Commissioner and even if it is to be held that the permission as granted by the Tahsildar cannot be one in terms of the provisions of Sub-section (2) of Section 4 of the Act, the matter should nevertheless be remanded to the Assistant Commissioner for proper enquiry, as the proceedings has not been notified to other person, who has purchased the property from the fourth Respondent and that the fourth Respondent himself is not in possession of the land and some other purchaser is in possession of the property and therefore fresh enquiry is necessary even at this point of time.

17. Learned Counsel for the Petitioner countered such contention by drawing the attention of the Court of the scheme of the Act that the only revenue authorities referred to under the Act viz., the Assistant Commissioner for holding an enquiry in respect of the application and the Deputy Commissioner as the appellate authority; that except for these two revenue authorities, no other functionary is referred to in the Act and there is no role contemplated or assigned to the Tahsildar under the Act and the Tahsildar can never act as an independent authority; that the permission contemplated under Sub-section (2) of Section 4 of the Act is only by the government has been defined as "Government of Karnataka" in the definition Section 3(c) of the Act; that the definition "Government of Karnataka" cannot be the Tahsildar, as is sought to be contended, and at any rate as the Tahsildar had no authority or competence to act in the manner as contemplated in Sub-section (2) of Section 4 of the Act, the permission/endorsement issued by the Tahsildar is of no consequence in law to make good the requirements of Sub-section (2) of Section 4 of the Act.

18. With regard to the further enquiry, learned Counsel for the Petitioner has submitted that at the time when the proceedings were initiated by the Petitioner, it was the fourth Respondent who was in possession of the land and he has been rightly arrayed as the Respondent and there is no scope for the enquiry to be enlarged by adding more parties even if it is necessary to remand the matter for

further enquiry etc.; that the direction should be issued for concluding the proceedings and to give effect to invalidation of the transaction by follow up action etc., by the Assistant Commissioner.

19. Sri Bharamagouda B. Goudar, learned Government Pleader has placed the records before the Court. Learned Government Pleader submits that the Tahsildar cannot be understood to be an authority as is referred to in Section 3(c) of the Act; that the Tahsildar though may be an officer of the Government does not become "government" by himself nor is the Tahsildar authorized for the purpose of Sub-section (2) of Section 4 of the Act.

20. The question that mainly arises for consideration in this writ petition is whether the permission which if had been issued by the Tahsildar as in the present case can be a compliance for the purpose of fulfilling the requirement of Sub-section (2) of Section 4 of the Act. Section 4(2) reads thus:

4. Prohibition of Transfer of Granted Lands: (1) xxx

(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.

21. A reading of the provisions of the Act indicates that the permission is only by the government and not by any other authority. In fact it cannot even be even by the Assistant Commissioner or the Deputy Commissioner who are the statutory functionaries under the Act itself. Tahsildar, who is a subordinate officer even to the Assistant Commissioner definitely has no role to play for the purpose of Sub-section (2) of Section 4 of the Act. Permission issued by the Tahsildar has no consequence for the purpose of the Act. It may be a good argument to contend that the Tahsildar who is the authority to grant the land under the provisions of the Rules and the KLR Act, if has given the permission to alienate the land or has relaxed some of the conditions and if so permitted under those provisions, definitely that can rescue the transaction of the nature, but such a comparison or logic will not be apt for the present purpose, inasmuch as the requirement is not as under the provisions Rules or the KLR Act but precisely as provided under the Act viz., under Sub-section (2) of Section 4 of the Act. Anything less than the permission of the government is a non-compliance for the purpose of the Act.

22. Though the Deputy Commissioner has placed reliance on the decision of this Court in the case of Ganteppa (supra), for affirming the order of the Assistant Commissioner, the decision, in my view, is of no consequence, nor can be concluded as an authority for the situation where a transaction is sought to be invalidated for the specific reason that permission under Sub-section (2) of Section 4 of the Act was not obtained properly. The discussion in the said order of the learned Judge proceeds in the context of the provisions of the Land Grant Rules. An argument of this nature may hold good even by calling in aid the provisions of General Clauses Act as an authority to grant or pass order will also have the power to withdraw, modify or annul such orders, but the situation in the present case, the requirement is not either under the very grant order or the

provisions of the Land Grant Rules or the Land Revenue Act, but under the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibitions of Transfer of Certain Lands) Act, 1978. The provisions of the Act has a definite purpose and object to ensure that the lands which had been granted in favour of persons belonging to Scheduled Caste/Tribe community which they have lost by subsequent transfer are restored to them by invalidating the sale transactions. So far as the transfer prior to the Act came into force are concerned, the conditions of the grant themselves are of significance, as the transactions are voided if the transfer is in violation of the condition of the grant itself or statutorily imposed on the grant order, but in so far as the transaction which took place after the Act came into force, it is totally governed by the provisions of Sub-section (2) of Section 4 of the Act viz., requirement of obtaining prior permission and in the absence, the transaction being invalidated. The only condition or requirement for operation of Sub-section (1) of Section 4 of the Act for non-compliance of Sub-section (2) of Section 4 of the Act is that the land should be a granted land as contemplated under the Act. Once that is fulfilled, then it is only a prior permission from the government which alone can save a transfer of such granted land in favour of any other person after the Act has come into force. If that is the situation, the transfer will necessarily be invalidated.

23. In the circumstance, it has to be held that the decision of this Court in case of Ganteppa (*supra*) referred to and relied upon by the Deputy Commissioner definitely cannot be an authority for the purpose of understanding the scope of the provisions of Section 4 of the Act.

24. In so far as the contention of the learned Counsel for the fourth Respondent that the land in question has been subsequently converted for non-agricultural purpose and therefore the matter should not be interfered with, is concerned, the Act does not make any distinction vis-a-vis a land with which subsequently converted or have been continued to remain for agricultural purpose. Assuming for argument's sake that the land is no more available for agricultural operation because of subsequent acquisition, even in such a situation it has been held that the original grantee becomes entitled to receive the compensation and if this is the position even in a case where the land itself is required for a public purpose, it can only be a fortiori so in the case of a private transaction. That apart, in view of the provisions of Section 11 of the Act, the provisions of the Act have an overriding effect on all other inconstant statutory provisions also and the development of the nature of conversion for non-agricultural use on the volition of the purchaser cannot come in the way of the statutory provisions of that Act operating and the functionary under the Act - Assistant Commissioner - giving effect to the provisions of the Act as contemplated u/s of the Act. The argument does not further the case of fourth Respondent for avoiding the scrutiny into the orders of the authorities or even for sustaining the orders.

25. Accordingly, while I accept the submissions urged on behalf of the Petitioner that the authorities are clearly in error in holding that the transaction was saved;

that the authorities have fallen into error in understanding the scope of Sub-section (2) of Section 4 of the Act, it is hereby ruled that for the purpose of complying the requirement of Sub-section (2) of Section 4 of the Act, it is only the permission of the government which alone can be taken to be the compliance and not any other permission or endorsement issued by any other authority. It is no doubt true that the government acts through its secretaries who are human agencies or ministers, who exercise power of the government, but, even for such purpose, there are clearly laid procedures and rules viz., that the Government Business Rules and if there is such authorization in terms of the said Rules, if a person was authorized, he can definitely issue the permission and not by each and every authority.

26. That part, it is required to hold the enquiry by the Assistant Commissioner by issuing notice to the person who is in possession of the land in question as on the date of holding of such enquiry, and that having been complied with by the authorities, by issuing notice to the fourth Respondent and the fourth Respondent also having participated in the proceedings and having contested the matter, there is no requirement to add the further purchaser as a party in the course of the enquiry.

27. In the result, this writ petition is allowed and the orders passed by the Assistant Commissioner as well as the Deputy Commissioner vide Annexures-A and B are set aside. I am of the view that the matter requires to be remanded to the Assistant Commissioner for applying the law and to proceed further from the admitted factual position viz., the grant is in favour of a person belonging to Scheduled Caste community, and proceed to pass further orders in terms of the provisions of the Act. It is hereby directed that the Assistant Commissioner shall conclude the proceedings within a period of four months from the date of receipt of a copy of this order. Rule made absolute.