

(1996) 07 KAR CK 0088
In the Karnataka High Court
Case No : Writ Petition 19663 of 1994

N. Kempanna

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 01-07-1996

Acts Referred:

Constitution of India, 1950 — Article 227
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 4 (1)

Citation : (1997) ILR (Kar) 1114

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : Viswanath, for the Appellant; M. Siddagangaiah, HCGP for R-1 to 3 and A.G. Shivanna, for R-4, for the Respondent

Final Decision : Dismissed

Judgement

P. Vishwanatha Shetty, J.—Though this petition is posted for preliminary hearing in "B Group", with the consent of Learned Counsel for the parties, it is taken up for final hearing and disposed of by this order.

2. In this petition, the petitioner has prayed for quashing Order dated 27.10.1993, a copy of which has been produced as Annexure-D, passed by the second respondent confirming Order dated 31.3.1990, a copy of which has been produced as Annexure-C, passed by the third respondent declaring the sale of land measuring 2 acres in Survey No. 109/33 situated at Andrahalli village, Chennarayapatna Hobli, Devanahalli Taluk, Bangalore District, made by one Muniveerappa in favour of the petitioner as null and void and further directing that the 4th respondent should be put in possession of the said land.

3. Sri Vishwanath, Learned Counsel for the petitioner, submitted that the orders impugned are illegal and suffer from errors apparent on the face of the record inasmuch as the orders impugned came to be passed without considering the plea of adverse possession raised by the petitioner in respect of the land in

question. According to the Learned Counsel, the land in question was sold by the 4th respondent to one Muniveerappa by means of a registered sale deed dated 16.8.1961 and thereafter, from the said Muniveerappa, the petitioner has purchased the land in question by means of a registered sale deed dated 8th February 1963 and ever since the date of purchase, the petitioner has been in continuous and uninterrupted possession of the said land and, therefore, the petitioner having perfected his title by adverse possession in respect of the land in question, the sale of the land in question could not have been declared as null and void under the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as "the Act"). It is also vehemently contended by the Learned Counsel for the petitioner that the petitioner was not heard by the third respondent before passing the impugned order Annexure-C. The Learned Counsel further submitted that the land in question was acquired for the purpose of the Defence by the State during the pendency of the appeal before the second respondent and, therefore, the direction given by the second respondent directing the petitioner to hand over possession of the land in question is required to be declared as illegal and the entire proceedings initiated by the second respondent is required to be quashed as the land in question is not available to be handed over to the 4th respondent.

4. Sri A.G. Shivanna, learned Counsel for the 4th respondent, and Sri M. Siddagangaiah, learned High Court Government Pleader appearing for respondents 1 to 3, supported the orders impugned. They submitted that the orders impugned do not suffer from any infirmities and that this is not a fit case for interference by this Court in exercise of the jurisdiction under Article 227 of the Constitution of India. They further submitted that the petitioner did not raise the plea of adverse possession before the third respondent and therefore there was no occasion for the third respondent to consider the same. According to them, the claim for adverse possession is purely a question of fact and the petitioner having failed to raise the said plea before the third respondent, cannot be allowed to urge the said plea before this Court on the ground that the said plea was urged by the petitioner before the Appellate Authority. Further, they submitted that even the plea of adverse possession raised before the appellate Authority and before the Court, does not constitute the plea of adverse possession as the petitioner has failed to plead crucial facts which constitute adverse possession. They also submitted that though the land in question is not available for putting the 4th respondent in possession, the 4th respondent, who is entitled to secure possession of the land in question, is entitled to receive compensation from the State as the said land is not available for delivery of possession of that land to the 4th respondent.

5. I do not find any merit in this petition. As rightly pointed out by the Learned Counsel for the 4th respondent, Sri A.G. Shivanna, and the learned Government Pleader, the petitioner cannot now be permitted to urge the said plea regarding adverse possession before the second respondent in the appeal. Whether the

petitioner has perfected his title by adverse possession or not, is purely a question of fact. It is required to be pleaded and established on evidence. 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. Further, I am of the view that the plea of adverse possession raised by the petitioner before the Appellate Authority also cannot be treated as plea of adverse possession as the petitioner has failed to set out crucial facts regarding the claim of adverse possession made by him. Both the Authorities have concurrently found that the land in question came to be sold in violation of the terms of the grant. I do not find any justification to differ from the said finding in exercise of my jurisdiction under Article 227 of the Constitution of India. Further, in Writ Petition No. 11493/1992" decided on 27th June 1996, following the Division Bench decision of this Court in RUDRAPPA v. SPECIAL DEPUTY COMMISSIONER 2. W.A. 1210/87 dt 17.6.1996 I have taken the view while considering the similar grant that in respect of the grants made, which are hedged with several conditions, the period to claim adverse possession is 30 years and not 12 years from the date of the purchase till the date of the Act coming into force. Therefore, admittedly, even if the plea of adverse possession is considered, the petitioner not having been in continuous and uninterrupted possession for a period of over 30 years from the date of the purchase till the date of coming into force of the Act, he cannot claim that he has perfected his title in respect of the land in question by way of adverse possession.

6. I am also unable to accept the submission of the learned Counsel for the petitioner that since the land in question has been acquired for the purpose of Defence by the State, the orders impugned are liable to be quashed. Sub-section (1) of Section 4 of the provides that if a granted land is sold in violation of either the terms of the grant or the law providing for grant, such sale shall be null and void and no right, title or interest shall be conveyed nor be deemed ever to have been conveyed by such transfer to the purchaser. However, the Assistant Commissioner is conferred with the power to decide the question whether the transfer of the land came to be made in contravention of the terms of the grant or the law providing for such grant. If the Assistant Commissioner is satisfied on such enquiry that the transfer of the land has been made either in contravention of the grant or the law providing for grant, he is required to declare the transfer as null and void. Since I have accepted the finding recorded by respondents 2 and 3 that the land in question came to be sold in violation of the terms of the grant," the order impugned passed by the third respondent, which has been confirmed by the second respondent, holding that the land in question came to be sold in violation of the terms of the grant, is unassailable and not liable to be quashed by this Court.

7. In so far as the direction given by the third respondent to give possession of the land in question to the 4th respondent is concerned, admittedly the land in

question has now been acquired by the State for the purpose of Defence and therefore the land is not available for the purpose of delivery of possession to the 4th respondent. Since the land is not available, that does not mean that the orders impugned are liable to be quashed on that ground, as contended by the learned Counsel for the petitioner, and the 4th respondent, who is entitled to secure possession of the land as a consequence of the declaration that the sale of the land in question made by the 4th respondent is null and void, can be deprived of the benefit of the provisions of the Act. Under these circumstances, it must be held that the 4th respondent, who is deprived of his right to secure possession of the land and enjoy the said land as its absolute owner, is entitled for the award of payment of compensation payable for the said land. The petitioner, who has lost his title in view of the declaration that the sale of the land in question is null and void, cannot have any grievance on that account. Therefore, I make the following:

ORDER

8. The Writ Petition is dismissed without issuing Rule. It is made that clear that if the land in question has been acquired by the State, the 4th respondent is entitled for compensation to be paid for the land in question.

9. Sri M. Siddagangaiah, learned High Court Government Pleader, is permitted to file his memo of appearance within four weeks from to-day.