

(1999) 06 KAR CK 0053

In the Karnataka High Court

Case No : Writ Petition No"s. 18654 to 18659 of 1999

Narayan Parameshwar Naik and Others

APPELLANT

Vs

Deputy Commissioner, Karwar, Uttara Kannada District and
Others

RESPONDENT

Date of Decision : 08-06-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Land Reforms Act, 1961 — Section 44
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain
Lands) Act, 1978 — Section 3, 4, 4 (2), 5

Citation : (2002) ILR (Kar) 2259 : (1999) 6 KarLJ 244

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

**Advocate : Sri Ganapathi S. Shastri, for the Appellant; Sri V. Jayaram,
Government Advocate, for the Respondent**

Judgement

1. By these petitions, the petitioners have sought quashing of the orders as mentioned in relief clause (1) by issue of writ of certiorari in proceedings mentioned in detail in the relief clause. Orders are dated 31-5-1999 and 27-3-1999 with reference to each of the petitions and it may also be mentioned here that these writ petitions, as mentioned in the petitions, raises common question of fact and law. The petitions have been filed jointly after paying separate Court fee. That the petitioners, as per allegations of paragraphs 1 to 6, purchased the respective land as mentioned in respective paragraphs from the grantees of the land who were conferred, according to the petitioners, occupancy rights under the Karnataka Land Reforms Act. The Tribunal had conferred occupancy rights on different dates namely 6-11-1978 and 11-12-1987. In case of 3rd petitioner the occupancy rights was given on 30-11-1981 and the like.

2. According to the petitioners' case, the petitioners purchased the land from the grantees of occupancy rights in the land in case of petitioner 1 vide sale deed dated 6-2-1997. In case of 2nd petitioner, 2nd petitioner purchased the land vide

sale deed dated 8-11-1996, while 3rd petitioner purchased vide sale deed dated 14-7-1997 and 4th petitioner purchased the land vide registered sale deed dated 8-5-1997. Petitioners 5 and 6, according to the petitioners, purchased the land vide registered sale deeds dated 5-2-1997. There is no dispute that the grantees of occupancy rights are their transferors of the land in favour of the petitioners, all belonging to Scheduled Caste.

3. According to the petitioners' case, the transfer had been made after expiry of the fifteen years period of bar against the transfer. In proceedings under Sections 4 and 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, show-cause notices were issued to the petitioners. They filed objections and thereafter by the orders impugned namely vide orders dated 27-3-1999, the Assistant Commissioner declared the transfers to be null and void being in breach and in violation of provisions of sub-section (2) of Section 4 of the Karnataka Act 2 of 1979. The Assistant Commissioner directed possession of the land to be restored to the grantees i.e., to be taken from the petitioners and to be restored to the grantees or their legal representatives. Feeling aggrieved from the order of the Assistant Commissioner in these cases, the present petitioners filed the appeals before the Deputy Commissioner and the Deputy Commissioner vide order dated 31-5-1999 (Annexure-G, H, I, J, K, L, M and N) dismissed the respective appeals. It may be mentioned here that Annexure-A to F are copies of the orders passed by the Assistant Commissioner in respective cases which have been affirmed by the Deputy Commissioner by his order dated 31-5-1999, copies of which are Annexure-G to M. Feeling aggrieved from these orders, the petitioners have come up before this Court by petitions under Articles 226 and 227 of the Constitution of India.

4. The learned Counsel for the petitioners contended that the grantees were occupancy tenants of the land and even though they were Scheduled Caste persons, they were not entitled to the protection of the Act i.e., the Karnataka Act 2 of 1979. He further contended that transfers having been made after the expiry of the prohibitory period, the transfers have been illegally declared to be null and void and the Assistant Commissioner had no jurisdiction to so declare those transfers to be null and void.

5. These contentions of the learned Counsel for the petitioners have been hotly contested by the learned Government Counsel Sri V. Jayaram who had taken notice on behalf of respondents 1 to 4. The learned Government Counsel contended that in view of Section 44 the lands in which the petitioners were tenants prior to coming into force of the Act, those lands u/s 44 of the Karnataka Land Reforms Act stood vested in the Government and under the Act the lands were granted to them with new rights and these lands are to be taken as granted by the Government under the Karnataka Land Reforms Act. The learned Government Counsel contended the grantees being Scheduled Caste persons, their lands were covered by the expression "land granted" as used in the

definition clause Section 3(b) of Act 2 of 1979. The learned Government Counsel further contended that the Act did apply to these cases. The learned Government Counsel further contended that the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act 2 of 1979 is a special law and it is social welfare legislation enacted for the welfare of the people belonging to downtrodden namely Scheduled Castes and Scheduled Tribes. It is a special law which will prevail over the general law. He submitted that Section 4(1) and 4(2) are very clear. Section 4(1), learned Government Counsel contends, declares any transfer of granted land notwithstanding anything in any law, agreement, contract or instrument, such transfer of granted land made either before or after the commencement of this Act, if is in contravention of the terms of the grant of such land or is in contravention of law providing for such grant or in contravention of sub-section (2) of Section 4 of Act 2 of 1979, has been declared to be void and no rights will follow, and sub-section (2) creates a bar against making of transfer of granted land as well as against acquiring by transfer of a granted land except in cases where transfer has been made with the previous permission of the State Government. The learned Government Counsel contended that it is not the case of the petitioners that they have obtained the permission of the State Government. The transfers in the present cases are of the period after 1979. The transfers have been made in 1996-1997. So the authorities below have rightly held the transfers to be null and void u/s 4(1) and there is no need to interfere with the orders impugned and petitions have got no force.

6. I have applied my mind to the contentions raised by the learned Counsel for the parties.

I find much force in the contentions made by the learned Government Counsel. The expression "granted land" has been defined in Section 3, clause (b) of Karnataka Act 2 of 1979. It reads as under:

"Section 3(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 persons 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".

A reading of this definition per se reveals that the word "granted" has to be construed according to the situation. It refers to the land that has been granted to the person belonging to Scheduled Caste or Scheduled Tribe or allotted or granted to such persons under relevant law including Land Reforms. Under Land Reforms Act Section 44 of the Act is the vesting provision whereunder the land has been vested in the Government. Sub-section (1) of Section 44 reads as under:--

"Section 44. Vesting of land in the State Government.-

(1) All lands held by or in the possession of tenants (including tenants against whom a decree or order for eviction or a certificate for resumption is made or issued) immediately prior to the date of commencement of the Amendment Act, other than lands held by them under leases permitted u/s 5, shall, with effect on and from the said date, stand transferred to and vest in the State Government".

So the effect of this section is that all lands held or in possession of the tenants immediately before the commencement of the Amendment Act 1 of 1974 did stand vested in the Government and the State. Exception is only provided with respect to lands held under leases permitted u/s 5. It is not their case that leases u/s 5 were permitted to the grantees. So these lands held by the tenants in whose favour occupancy rights have been granted, stood vested in the Government thereunder new rights were granted and the transferors were none else but the persons who were granted land with occupancy rights. But right and title of ownership did vest in the Government and did not remain with the previous proprietor. As such, in my opinion, even if the occupancy rights were granted in favour of the transferors who were the persons belonging to Scheduled Caste, they were to be treated as persons to whom lands were granted for the purpose of the Act. Section 4 of the Act declares all transfers of the granted land, irrespective of any provisions in any law, agreement, contract or instrument to the contrary, even if made either before or after the commencement of the Act and if such transfer is in contravention of either of the terms of the grant of such land or is in contravention of the law providing for such grant, or is in contravention of sub-section (2) of Section 4, then such transfer has been declared to be null and void and ineffective. Section 4(1) provides that no right, title or interest in such land shall be conveyed nor shall be deemed to have ever been conveyed by such transfer. The fiction of deeming clause has also been made that even if there has been a previous transfer made earlier to the enforcement of the Act, but as it is in contravention of either the provisions of the terms of grant or law relating to such grant or in contravention of sub-section (2) of Section 4 of the Act, it is not effective and is null and void. No rights or interest or title shall be deemed to have ever been conveyed or passed. That sub-section (2) of Section 4 of the Act is prospective. It bars transfer of the granted land by the grantee as well as acquisition by transfer of such land by any person except with the permission of the State Government. If the transfer has been made without seeking permission and if transfer has been made after coming into force of the Act, then such transfer under sub-section (1) has been declared to be void and null and ineffective.

In this view of the matter, in my opinion, as transfer in these cases were made in 1996 or 1997 i.e., subsequent to coming into force of the Karnataka Act 2 of 1979, and without obtaining the permission of State Government earlier to making thereof, the transfers were rightly held to be void and orders u/s 5(1) have been rightly passed. No jurisdictional or other error of law has been shown. The petitions having been devoid of merits are hereby dismissed.