

(1991) 08 KAR CK 0029
In the Karnataka High Court
Case No : W.P. No. 13126/1990

Shivayya Mallikarjunaiah Mysore

APPELLANT

Vs

Assistant Commissioner, Sirsi and Others

RESPONDENT

Date of Decision : 22-08-1991

Acts Referred:

Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 4
Mysore Land Grant (Amendment) Rules, 1960 — Rule 43G

Citation : (1991) 3 KarLJ 38

Hon'ble Judges : M. Ramakrishna, J

Judgement

1. In this writ petition, the petitioner has challenged the Orders made by the Assistant Commissioner at Annexure "A" and that of the Deputy Commissioner at Annexure "B". He has sought for quashing the same for the reasons set out in the petition. The facts that are necessary for the disposal of the writ petition are as follows:

11-27-00 in Sy. No. 50 situated in the village Kyasankeri Mundgod Taluk, Uttara Kannada, came to be granted by the competent authority in favour of Kalawwa mother-in-law of respondent-3 during the year 1952-53 under the Erstwhile Bombay Land Grant Rules (hereinafter referred to as "Rules") subject to certain conditions.

2. It is stated that as there was breach of conditions imposed in the grant, the competent authority cancelled the grant and forfeited land in favour of the Government in the year 1959 and again there was an Order in the same year regranteeing the land in question in favour of Peerappa under what is known as Impartible Tenure System. Thus, a saguvali chit was issued afresh on 1-9-1961 so as to enable Peerappa to cultivate the land in terms of the grant.

4. While so enjoying the land by the grantee Peerappa, he sold the granted land in favour of Gundappa Mallikarjunaiah Mysore by a registered sale deed dated 13-6-1972, for valuable consideration. It is submitted that ever since the date of

sale of land made in favour of Gundappa, he was enjoying the granted land.

5. Subsequently, the said Gundappa Mallikarjunaiah Mysore died on 22-8-1982 leaving behind his Legal Representative, Shivayya Mallikarjunaiah Mysore, petitioner herein.

6. After the coming into force of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as "Act"), Fakirawwa widow of deceased Peerappa, the original grantee, approached the Assistant Commissioner, Sirsi Sub-Division, seeking for benefits under Sections 4 and 5 of the Act. Her case was that the granted land was sold by her husband-grantee in contravention of the condition of the grant and that therefore, she would be entitled for the restoration of the granted land, in terms of Section 5 of the Act.

7. The Assistant Commissioner issued notices to both parties, held an enquiry after providing opportunity to both parties to put forward their case and passed the impugned order, Annexure-A dated 6-5-1985 by which he allowed the application of Fakirawwa and declared the sale of granted land as null and void. He directed restoration of the granted land in favour of respondent No. 3.

8. Aggrieved by this order of the Assistant Commissioner, the petitioner filed an appeal before the Deputy Commissioner, Karwar, under Section 5(A) of the Act. The learned Deputy Commissioner having heard learned counsel on both sides dismissed the appeal by the impugned order, Annexure "B" dated 2-2-1990. Hence, this petition.

9. Sri Ravi S. Sabhahit, learned counsel for the petitioner, who took me through the impugned orders urged the following two points in support of the writ petition:

Though the grant made on 26-8-1947 in favour of Kalawwa, mother of Peerappa, was cancelled in the year, 1959 owing to breach of condition, there was regrantee, in favour of Peerappa in the same year, in respect of the same land; therefore, the authority regranted the land could not have imposed fresh conditions regarding alienation. The condition imposed under the earlier grant prohibiting alienation for 20 years was continued and hence the alienation in favour of the petitioner's brother was after the prohibitory period, when the date of earlier grant was reckoned. Thus he submitted that the impugned orders made by the authorities-below annulling the alienation in question were unsustainable.

10. I do not see any substance in the submission of Sri Subhahit. Undisputedly, the grant made in favour of Peerappa's mother Kalawwa was cancelled in the year 1959. Thereafter, of course, in the same year, the competent authority once again granted the same land not to Kalawwa but to Peerappa, husband of respondent No. 3. Therefore, it is a fresh grant. I fail to understand how the condition imposed under the grant made in favour of Kalawwa in 1947 can be tacked on to the grant subsequently made in 1961 in favour of Peerappa,

altogether a different person. Since it is a fresh grant made in 1961, when the Mysore Land Grant (Amendment) Rules, 1960 (the "Rules" for short) were already holding the field, the granting authority is bound to follow the said rules and impose such conditions as are provided thereunder in the grant of lands. In the instant case, the authorities-below have rightly done so.

11. Now the question is what is the period of non-alienation and whether there is any contravention of the condition of the grant made in favour of Peerappa.

12. To consider the said question, it is necessary to read the condition provided under the rules. The relevant rule is 43-G which provides:

"43-G. Grant of lands under the preceding rules shall be subject to the following conditions: (1) In the case of grant of lands to applicants belonging to the Scheduled Castes and Scheduled Tribes and to other applicants, who are unable to pay the occupancy price on account of poverty, the occupancy price may be waived upto rupees Two hundred and the balance recovered in three annual instalment.

xxx xxx xxx (4) Where the grant is made free of cost or when the grant is made at a price less than the full market value the grant shall be subject to the condition that the land shall not be alienated for a period of fifteen years from the date of the grantee taking possession of the land.

xxx xxx xxx

13. According to the said rule, the period of non-alienation of a granted land is 15 years, if the grant is free of cost or at a price which is less than the full market value. It is not the case of the petitioner that the grant in the present case was made at a price which is equivalent to market value. Therefore it is free grant in which case, the grantee is prohibited from alienating the land for a period of 15 years. In the instant case, the land was sold admittedly within that period of 15 years. Therefore, there is a contravention of the condition of the grant, when contravention is proved, it naturally attracts Section 4 of the Act which enjoins declaration of such alienation as null and void. The authorities-below are perfectly justified in doing so. I do not see any good ground to interfere with their orders impugned herein at Annexures-A and B.

14. No other ground is urged.

15. In the result, this petition fails and is dismissed. No costs.