

(2013) 08 KAR CK 0150

In the Karnataka High Court

Case No : Writ Petition No. 27642 of 2012 (SC/ST)

Shri Kempanna

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer or Certain Lands) Rules, 1979 — Rule 3(5), 3(6)

Citation : (2013) 08 KAR CK 0150

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : Vivek S. Reddy for Sri H.V. Manjunatha, for the Appellant; M.G. Anjanamurthy, HCGP for R1 to R4 and Sri B.S. Banthia for Sri H.K. Revanasiddappa, for R7, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—Heard Sri Vivek S. Reddy, learned advocate for the petitioner, Sri M.G. Anjana Murthy, learned HCGP for respondents 1 to 4 and Mr. B.S. Banthia along with Mr. H.K. Revanasiddappa, learned advocates for respondent No. 7 and perused the writ petition record. An application filed by the petitioner under S. 5(1) of the Karnataka Act No. 2/1979 was registered as Case No. 111/2007-08 on the file of the Assistant Commissioner, Bangalore North Sub Division. In the said case, respondents 4 and 5 herein having entered appearance through their learned Advocates, filed statement of objections dated 13.2.2009. The Assistant Commissioner allowed the application on 26.4.2010 and declared that the sale transaction of the property in dispute as null and void and ordered for resumption of the property free from all encumbrances to the Government and for its restoration in favour of the grantee or his L.Rs. The property in dispute having been sold by the 5th respondent on 7.6.1999 in favour of the 7th respondent, Appeal No. 33/2010-11 was filed under S. 5-A of the Act before the Deputy Commissioner, Bangalore District, Bangalore. The Appellate Authority/Deputy Commissioner, following the decision in the case of

Ningappa Vs. Deputy Commissioner and others-C.A. 3131/2007 dated 14.7.2011 has allowed the appeal. Feeling aggrieved, the applicant has filed this writ petition.

2. Undeniably, the Assistant Commissioner did not conduct an enquiry in the manner provided under sub-rule (5) of Rule 3 of the Karnataka Scheduled Castes and Scheduled Tribes (Prevention of Transfer of Certain Lands) Rules, 1979. The decision dated 26.4.2010 was arrived at on the basis of the record of the case, which had been disputed by filing statement of objections. The procedure which the Assistant Commissioner has adopted is contrary to sub-rules (5) and (6) of Rule 3. Hence, the order passed by the Assistant Commissioner is arbitrary and vitiated. The Deputy Commissioner in order to allow the appeal, has derived support on the basis of the Judgment dated 14.7.2011 passed in C.A. 3131/2007 (Ningappa vs. Deputy Commissioner and others). The said decision was distinguished in the case of Sri. G.M. Venkatareddy Vs. The Deputy Commissioner, Kolar District, Kolar, The Assistant Commissioner, Kolar Sub-Division, Kolar and Sri. Kambojappa, The said Judgment has been upheld by the Apex Court in SLP No. 23874/2012 on 21.8.2012. Though several grounds have been raised in the appeal memorandum, the Deputy Commissioner has not adverted to same, but has decided the appeal based on the reasonable time factor as decided in the case of Ningappa, (supra). Since the decision in the case of Ningappa has been found to be not a binding precedent in the case of Venkata Reddy (supra) and with the dismissal of SLP No. 23874/2012 by the Apex Court, the view which the Deputy Commissioner has taken to allow the appeal vide Annexure-A is unjustified. Even otherwise, the order passed by the Assistant Commissioner being unsustainable for the reasons noticed supra, the appeal ought to have been allowed and the matter remanded to the original authority for decision in accordance with law. The order passed by the Appellate Authority, impugned in this writ petition being vitiated for non-consideration of the case on all the grounds and record of the case is liable to be quashed.

In the result, the writ petition is allowed and the orders passed by respondents 2 and 3, as at Annexures-A and C are quashed. The case is remanded to the Assistant Commissioner, Bangalore North Sub-Division, Bangalore for consideration afresh. Both the parties are directed to appear before the Assistant Commissioner on 24.8.2013 and receive further orders.

It is open to both the parties to adduce evidence, if any. The Assistant Commissioner is directed to decide the application before 31.01.2014.

Contentions of both the parties are kept open for consideration.

No costs.