**(2011) 05 KAR CK 0037**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 38245 of 2010

Smt. Akkayamma — APPELLANT

Vs

State of Karnataka and Others — RESPONDENT

**Date of Decision :** 30-05-2011

**Acts Referred:**
Mysore Land Revenue Code, 1888 — Section 43 (G) (4), 5 A

**Citation :** (2011) 5 KarLJ 435

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

**Bench :** Single Bench

**Advocate :** Rahama Thulla Shariff, for the Appellant; R. Om kumar, AGA for R1 to 4, for the Respondent

**Final Decision :** Dismissed

# Judgement

D.V. Shylendra Kumar, J.—Submission of Sri. Rahamathulla Shariff, learned Counsel for the Petitioner is that the order dated 27.1.2007 (copy produced as Annexure-A to the petition) passed by the Deputy Commissioner in exercise of his appellate power u/s 5A of the Act is in the first instance a bad order in law which is the opening submission of the learned Counsel even without prefacing this submission with the narration of relevant facts of the case to enable this Court to appreciate the submission.

2. Submission of Sri Rahamathulla Shariff is that the subject land measuring an extent of 2 acres in survey number 102/1 situated at Shidloghatta Taluk, Kasaba Hobli, Kothanur Village, purchased by the writ Petitioner way back in the year 1964 viz., a sale deed dated 23.12.1964 executed by one Byatappa a person belonging to the scheduled caste community was sold in an auction sale by the Government and purchased by the said Byatappa for a sale consideration of f Rs. 4,000/-which submission made by the learned Counsel is not supported by any material on record but is a desperate submission virtually, misleading this Court on facts and reliance placed on a judgment of the Supreme Court in the case of B.K. Muniraju v. State of Karnataka reported in AIR 2008 SC 1433 to support the

 

submission.

3. This decision has absolutely no application nor does it support the case of the Petitioner. I say so, for the reason that for making such submission Sri. Rahamathulla Shariff has drawn my attention to the copy of the saguvali chit which it appears had been issued in favour of the grantee, (copy produced as Annexure-C) in Form No. 1 and submits that the grantee had paid Rs. 4,000/- which is a misleading submission, whereas what amount had been paid by the grantee was only a sum off 40/- and that too by way of fee towards entries etc., and samurai chit dated 18.7.1963 does recite it and in all other respects it does recite that the land was granted subject to the condition of non-alienation for a period of 15 years. The confusion is, more because Form No. l incorporates in it all various possibilities of a government land being disposed of in favour of private persons, including by way of public auction sale, but that does not necessarily mean it is one sold in a public auction sale and this position is confirmed by a perusal of the copy of the sale deed dated 23.12.1964 under which the writ Petitioner claims title is executed by the said Byatappa in favour of the K. Muntvenkatappa, husband of the Petitioner which never mentions the source of title in favour of Byatappa as being the land purchased in a public auction sale. It is therefore, the submission is of no avail to question the order dated 27.1.2007 passed by the Deputy Commissioner, Kolar District, Kolar (copy produced as Annexure-A to the petition).

4. This writ petition while is hit by delay and laches and the explanation offered by Sri. Rahamathulla Shariff is that the writ Petitioner pursued the matter before the Asst Commissioner cannot be of any avail as it is obvious that the Asst. Commissioner can never sit in judgment over an order passed by a superior officer -the Deputy Commissioner, the Asst. Commissioner was only to resume the land to the State and restitute it to the legal heirs of the original grantee as per the provisions of the Act as a follow up measure pursuant to the dismissal of the appeal by Deputy Commissioner and even as directed by the Deputy Commissioner and therefore, the explanation offered is of no avail to the Petitioner.

5. Even the other submission made by the learned Counsel for the Petitioner viz., that the land being one granted under the "Grow More Food" scheme in terms of the provisions of Rule 43-J of the Mysore Land Revenue Code, 1888, and therefore, the provisions of Rule 43-G are not attracted in the wake of such position and to support this submission reliance is placed on a judgment of the Division Bench of this Court in the case of Smt. Siddamma v. Chikke Gowda and Ors. reported in 1991 (1) KAR.L.J. 210.

6. This decision also does not support the case of the Petitioner as the subject land is not one that might have been granted in favour of the said Byatappa as a person belonging to the depressed class under the "Grow More Pood" scheme. On the other hand, it has been recorded on the regular basis as evidenced in the saguvali chit (copy produced as Annexure-C to the petition) carrying with it a

 

condition of non-alienation for a period of 15 years as was then contemplated u/s 43(G)(4) of the rules and the statutory condition, is automatically incorporated into the grant order as per the saguvali chit.

7. This condition in fact demonstrates that both submissions made by the learned Counsel appearing on behalf of the Petitioner are incorrect that the subject land was neither purchased by the grantee in an auction sale for a sum of Rs. 4,000/- nor it was only a land granted for the limited period and thereafter in fact had been granted in favour of the grantee in the year 1963 i.e., 18.7.1963 as evidenced in the saguvali chit dated 22.6.1963 (grant order). As such the grant order is inevitably impressed with a condition of 15 years non-alienation, particularly, when it is one granted to a person belonging to scheduled caste about which there is no dispute and therefore, the first sale, transaction dated 23.12.1964 is inevitably a sales in violation of the terms of the grant and the provisions of the Act are very much attracted and the order passed by the Deputy Commissioner is only to recognise the legal position though the Asst. Commissioner had gone astray in the first instance in rejecting the application of the legal hens of the original grantee.

8. There is absolutely no need for interference, this writ petition is dismissed by mulcting the Petitioner with costs of Rs. 10,000/- for virtually misleading the court and asserting non-existing grounds. Cost of Rs. 10,000/- to be deposited within four weeks and the amount to be credited before this Court. Registrar (General) is directed to remit this amount to the credit of High Court Legal Cell to be utilized for extending legal aid for deserving poor litigants who approach the High Court for relief, failing which the registry is directed to issue certificate in favour of the Secretary, High Court Legal Services Committee, to realize this amount as though it is a decree passed by the Civil Court.