

(1991) 08 KAR CK 0039
In the Karnataka High Court
Case No : W.P. No. 17513/1991

Smt. Gowramma and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 13-08-1991

Acts Referred:

Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 4

Citation : (1991) 3 KarLJ 499

Hon'ble Judges : M. Ramakrishna, J

Judgement

The petitioners in this petition under Articles 226 and 227 of the Constitution of India have made the following prayer:

"a Writ of certiorari or writ or order or direction of appropriate nature, quashing the order dated 23-10-1990 passed in case No. STL 48/1989-90, Annexure-A on the file of the Assistant Commissioner, Mandya Sub-Division, Mandya (II respondent) and consequently issue;

b. Writ of certiorari, or writ or order or direction of appropriate nature, declaring the sale deed dated 21-4-1989 executed by the respondent No. 5 in favour of the 4th respondent as void and inoperative;

c. Writ of certiorari or writ or order or direction of appropriate nature, quashing the saguvali chit dated 5-11-1973;

d. Writ or order or direction of appropriate nature granting such other relief or reliefs that this Honourable Court deems fit to grant in the circumstances of the case in the interest of justice."

2. The facts of the case, briefly stated, are as follows: 1 Acre 20 guntas of land in Sy. No. 34 of Gowdagere Village, Malavalli Taluk, Mandya District, came to be granted in favour of M.H. Lingaiah, husband of the 5th respondent Smt. Hoovamma by the competent authority applying the Karnataka Land Grant Rules, subject to certain conditions. It is seen from the observations of the Assistant

Commissioner that the land in question came to be granted in Proceedings No. R. 14/144/LR 49-36/1953. However, by a perusal of the certified copy of the saguvali chit produced at Annexure-B, it is seen that it came to be issued in favour of the grantee on 5-11-1973.

3. Again, it is not in dispute that by a registered sale deed dated 21-4-1989, the granted land came to be sold in favour of 4th respondent G.L. Basavanna for valuable consideration.

4. 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 the "Act"), an application was presented by the petitioners herein in which a request was made to the Assistant Commissioner, Mandya Sub-Division, Mandya, to take cognizance of the sale of the granted land and to declare the same as void.

5. The Assistant Commissioner having notified both the parties and having considered the evidence on record-both oral and documentary-passed an order as per Annexure-A, dated 23-10-1990. In the operative portion of the order, he held as follows:

It is this Order that is called in question in this petition.

6. The case of the petitioners is that they were cultivating Sy. No. 192 adjoining the land in Sy. No. 34 of Gowdagere Village for some time. It is stated that Sy. No. 34 at that point of time was a gomal land. Either by mistaken impression or by misconception, the petitioners began to cultivate this land (Sy. No. 34) as well. These petitioners had been in possession of this land along with Sy. No. 192.

7. It is stated that, while granting the land in question in favour of the husband of the 5th respondent, the authorities, who built up the records, prepared a sketch wrongly showing that 1 acre 20 guntas was available for grant in Sy. No. 34. Accordingly, that land came to be granted in favour of M.H. Lingaiah. The case of the petitioners is that Block No. 5, a portion of Sy. No. 34, had been under their cultivation for quite some time. The authorities failed to appreciate this aspect when the land in question came to be granted in favour of the grantee.

8. Sri M.S. Purushothama Rao, learned counsel for the petitioners submitted that though the land in question (Sy. No. 34) was granted in favour of Lingaiah, the husband of 5th respondent, as far back as in the year 1953, the saguvali chit came to be issued only in the year 1973, when grantee was not put in possession of this very land (1 acre 20 guntas of granted land). Thus, inspite of the issuance of the saguvali chit in the year 1973 in favour of the grantee, he was not put in possession of the land in question. On the other hand, the petitioners continued to cultivate the land in question along with Sy. No. 192.

9. The legal contention urged by Sri M.S. Purushothama Rao, learned counsel for the petitioners, to attack the impugned order Annexure-B is that as the granted

land came to be sold within the prohibiting period of 20 years from the date of saguvali chit, Sections 4 and 5 of the Act were attracted.

10. Before considering this legal contention urged by the learned counsel, it is better to refer to the factual position disclosed in the impugned order or the Assistant Commissioner.

11. The Assistant Commissioner has stated in the operative portion of the order that though the authority granted the land somewhere in the year 1953, saguvali chit came to be issued on 5-11-1973. Referring to the condition imposed in the saguvali chit the learned Assistant Commissioner held that the non-alienation period was 15 years that the sale of granted land had taken place on 21-4-1989 which was beyond the period of 15 years and that therefore Sections 4 and 5 of the Act could not be attracted as there was no breach of condition of the grant. In that view of the matter, the prayer of the applicants/petitioners was rejected.

12. In the course of the argument, Sri M.S. Purushothama Rao has not been able to convince me that the observations made by the Assistant Commissioner referring to the factual position were either incorrect or improper. On the other hand, the contention is that the consideration of the non-alienation clause by the Assistant Commissioner referring to the saguvali chit and the conclusion reached by him thereon are improper. I do not see any force in the submission of Sri Purushothama Rao.

13. Now the question is, what is the date-whether it is of grant of saguvali chit-that has to be taken into consideration to construe the prohibitory period.

14. This Court in *Laxmamma v State of Karnataka*, 1983(1) Kar. L.J. 417 has considered the similar question and held that, by an order granting a land, the grantee does not get title of the land unless and until saguvali chit is issued to him pursuant to the grant and for all purposes the date of saguvali chit has to be taken into consideration.

15. Keeping in view the above decision, we have to refer to the rule prevalent as on the date of saguvali chit issued here on 5-11-1973. Rule 9 of Land Grant Rules, 1969, which was in operation on that date, reads:

"9. Conditions of grant: The grant of lands under these Rules (for agricultural purposes) shall be subject to the following conditions namely:

(i) the grantee shall not alienate the land for a period of fifteen years from the date of taking possession xxxxx"

From the above rule, it is clear that the grantee is prohibited from alienating the land for a period of 15 years from the date of taking possession. In this case, it is from 5-11-1973. So, it is clear that the sale has taken place on 21-4-1989 i.e., beyond the period of 15 years prohibition. Therefore, the Assistant Commissioner is right in holding as above. I do not find any good ground to interfere with his conclusion.

16. It is the case of the petitioners that they continued to be in possession of the land even after grant. They have not produced any evidence in support of the said contention. Assuming for the purpose of argument that they are continuing in possession of the land, they are in unauthorised possession. However, it is made clear here that it is for them to establish before the authorities concerned that they are continuing in possession even after grant and therefore they are entitled for regularisation of their possession.

17. In the result, this writ petition fails and is dismissed at the stage of admission without notice to the respondents.

No costs.