

(2013) 08 KAR CK 0135

In the Karnataka High Court

Case No : Writ Petition No's. 43990-43991 of 2012 (SC/ST)

Smt. Jayamma and Others

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 5, 5-A (1A)
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Rules, 1979 — Rule 3, 3(5)

Citation : (2013) 08 KAR CK 0135

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

Bench : Single Bench

Advocate : A. Madhusudhana Rao, for the Appellant; M.G. Anjanamurthy, for R1 and R2, Sri. Rajeswara P.N., for R3 to R8 and Sri. P.V. Chandrashekar, for R9, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—Land bearing Sy.No. 7 (old)., new Sy. No. 72, measuring 3 acres situated at B.K. Palya, Jala Hobli, Bangalore North Taluk, according to the petitioners was sold in a public auction by the Government in favour of Munishamappa son of late Sadappa and a certificate dated 31.12.1944 was issued by the competent authority. Said Munishamappa sold one acre out of the said land on 15.01.1948 in favour of Kadirappa and another one acre of land in favour of one Narayanappa. That on 28.07.1948, Munishamappa sold remaining one acre of land in favour of Kadirappa, who, thus became owner of 2 acres of land. Said Kadirappa sold on 20.08.1952, two acres of land in favour of Smt. Muniyamma, who in turn sold the said land on 24.10.1961 in favour of B. Narayana, who sold the same in favour of Kadirappa on 07.10.1977. Petitioner No. 5 purchased one acre of land from the LRs., of Kadirappa on 31.07.1986. LRs., of Kadirappa sold, out of the remaining property, i.e., one acre of land on 04.04.1991 in favour of Mariyappa, the husband of the petitioner No. 1.

Munishamappa, husband of respondent No. 3 filed an application under S. 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1979 (for short "the Act") before the Assistant Commissioner, Bangalore North Sub-Division, to declare the sale transactions in respect of the said land as null and void, for resumption of the land free from all encumbrances and for restoration in his favour. On 21.03.2011, 2nd respondent rejected the application vide an order, as at Annexure-K. Feeling aggrieved, respondents 3 to 8, claiming to be the LR's., of the deceased Munishamappa having preferred an appeal under S. 5-A (1A) of the Act, the 1st respondent having allowed the appeal on 09.10.2012 vide an order, as at Annexure-L, these writ petitions have been filed to quash the said orders. The land in dispute has been acquired and the 9th respondent has passed the award. In the circumstances, when the matter gets finally decided, the person/s whose rights get upheld, will be entitled to the payment of the determined compensation amount.

2. Sri A. Madhusudhana Rao, learned advocate for the petitioners, by filing a memo dated 24.07.2013 and producing copy of saguvali chit dated 31.12.1944 issued in favour of Munishamappa, the predecessor-in-title of respondents 3 to 8 by placing reliance on the decision in the case of B.K. Muniraju Vs. State of Karnataka and Others, firstly, contended that the impugned order is arbitrary and illegal. Secondly, record having not been produced before the Assistant Commissioner to establish that the land in dispute was granted to a person belonging to scheduled caste or scheduled tribe and that there being no condition regarding non-alienation and as on the date of alleged grant, Munishamappa, who belonged to "Nayaka" community, having not been declared as scheduled tribe, findings recorded by the 1st respondent in the impugned order as at Annexure-K is perverse and illegal. Thirdly, the 2nd respondent having dropped the proceeding's, 1st respondent without appreciating the record of the case and without considering the matter in accordance with law having passed the order, as at Annexure-L, which being arbitrary, is unsustainable. Fourthly, the proceeding having been initiated before the Assistant Commissioner, after lapse of few decades, the same is untenable being contrary to the decision of the Apex Court rendered in SLP No. 3131/2007. Fifthly, the first transfer having taken on 15.01.1948 and more than 30 years period having elapsed as on the date the Act came into force i.e., 01.01.1979, plea having been raised before the respondents 1 and 2, that the petitioners have perfected their title by way of adverse possession, both the authorities have failed to consider the plea of adverse possession. Lastly, the Assistant Commissioner having not conducted enquiry in the manner provided under Rule 3(5), the 1st respondent has erred in allowing the appeal. Reliance was placed on certain decisions in support of the contentions.

3. Sri M.G. Anjanamurthy, learned HCGP, contended that the 1st respondent has decided the appeal in accordance with law and hence, no interference with the impugned order is warranted.

4. Sri Rajeswara P.N., learned advocate appearing for the respondents 3 to 8, by taking me through the record of the case, submitted that the 1st respondent is justified in allowing the appeal. Learned counsel submitted that the plea of adverse possession has no merit and even otherwise, there being voluminous evidence in support of the conclusion arrived at by the 1st respondent, the impugned order is justifiable.

5. Sri. P.V. Chandrashekar, learned advocate for respondent No. 9, submitted that the land in dispute having been acquired and not being available for resumption and restoration, the 9th respondent would pay the amount of compensation to the person, who may be held entitled to the same.

6. Indisputably, the Assistant Commissioner has not conducted enquiry in terms of Rule 3(5) of the Rules. Statement of objections having been filed by the petitioners to the application filed by Munishamappa i.e., in case No. K.SC.ST/13/2009-10, the said authority has not decided the case by following the procedure stipulated under Rule 3 of Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Rules, 1979. Both the parties ought to have been granted opportunity to lead evidence, since, the Assistant Commissioner while passing the order, as at Annexure-L, has found that "the saguvali chit is not clear, whether the land was granted at an upset price or in a public auction, since, there is no specific mention by deleting unconcerned entries." The copy of the saguvali chit dated 31.12.1944 issued to Munishamappa, the predecessor-in-title of respondent Nos. 3 to 8, produced along with a memo dated 24.07.2013 shows that unconcerned entries therein have not been deleted. Had the Assistant Commissioner conducted enquiry as per Rule 3(5) and thereafter, decided the case, the 1st respondent could have considered the record of the case and passed the order in Appeal No. K.SC.ST(A)71/2011-12. Without any evidence being placed on record by the parties, finding recorded in the appeal by the 1st respondent that "it would be relevant to mention that 5.10.00 cannot be construed as an upset price or reduced price and it is also not market price" is perverse, illegal and hence, the impugned order cannot be sustained. There being denial of reasonable opportunity to both the parties in the proceedings before the Assistant Commissioner i.e., to place evidence in support of their respective cases, both the orders being vitiated and being unsustainable, it is unnecessary to record findings on the grounds raised in the writ petitions and the contentions urged by the learned counsels/advocates for the parties, since, the matter is required to be considered and decided afresh by the fact finding authority Assistant Commissioner.

In the result, writ petitions are allowed and the impugned orders, as at Annexures-K and L, passed by the Assistant Commissioner and the Deputy Commissioner are quashed. The case is remanded to the Assistant Commissioner, Bangalore North Sub-Division, Bangalore for consideration and decision afresh, by keeping in view the observations made supra. The Assistant

Commissioner shall grant reasonable opportunity to the parties to place their evidence on record then decide the application.

The land in dispute having been acquired and award passed, the compensation amount shall be payable to the person in terms of the decision that may be rendered in the matter, by the Assistant Commissioner, when it becomes final. The respondent is directed to invest the award amount in Fixed Deposit in a Nationalized Bank, initially for a period of one year and to renew the deposit, in case the matter does not attain finality. The deposited amount with accumulated interest shall be payable to the person, whose rights may be ultimately upheld in the lawfully conducted proceedings by the jurisdictional authorities.

Both the parties are directed to appear before the Assistant Commissioner, Bangalore North Sub-Division, on 24.08.2013 and receive orders. The Assistant Commissioner is directed to decide the matter before 31.12.2013.

Contentions of both the parties are left open for consideration and decision.

No costs.

IA.No. 1/2013 does not survive for consideration.