

(2005) 09 KAR CK 0061

In the Karnataka High Court

Case No : Writ Petition No. 27704 of 2004

Smt. Muniakkayamma

APPELLANT

Vs

The Assistant Commissioner, Doddaballapur Sub-division and
Others

RESPONDENT

Date of Decision : 21-09-2005

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 95
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain
Lands) Act, 1978 — Section 3 (1) (b), 4 (1), 4 (2)

Citation : (2005) 4 KCCR 2953

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

Bench : Single Bench

Advocate : Suresh D. Deshpande, for the Appellant; Bharamagouda B. Goudar, High Court Government Pleader for Respondents 1 and 2, Rajanna, for Holla and Holla, Patil and Nettar for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—Writ Petition by the widow of a person to whom had been granted an extent of 3 acres of land in Sy. No. 6 of Kempathimmanahalli village, Kasaba Hobli, Devanahalli Taluk, as a person belonging to Scheduled Caste community, in terms of grant order dated 6.1.1969. It appears the writ Petitioner had sold this land in terms of the sale deed dated 19.2.2001 in favour of the third Respondent .

2. Writ Petitioner getting wise after the event had applied to the Assistant Commissioner invoking the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 [for short, the Act], inter alia, claiming that the land which had been originally granted in favour of her husband in terms of grant order dated 6.1.1969, for which saguvali chit was issued on 7.2.1969, which in fact had also been got converted into for non-agricultural use in terms of the permission dated 31.1.2000 granted by the Deputy Commissioner, had been thereafter sold in terms of the sale deed dated

19.2.2001; that "the transaction is to be invalidated in terms of the provisions of Sub-section (1) of Section 4 of the Act, as prior permission under Sub-section (2) of Section 4 of the Act had not been obtained and for resumption and restitution of the land.

3. The Assistant Commissioner issued notice to the third Respondent , held an enquiry and found that the applicant as well as her husband-grantee are persons belonging to Nayaka community, as evidenced by the caste certificate issued by the Tahsildar; that the land in question in fact had been granted under grow-more food scheme in terms of the saguvali chit dated 7.2.1969; that the record indicated collection of charges from the grantee at the rate of Rs. 10/- per acre and such land had been sought for conversion by application filed before the Deputy Commissioner, who had granted the permission in terms of the order dated 4.9.1996; that the period for conversion had been got extended up to 31.3.2000 and such land had been transferred on 19.2.2001 in terms of the sale deed in favour of the third Respondent .

4. On noticing such facts and circumstances, the Assistant Commissioner as being of the view that the land in question having lost its character as agricultural land and thereafter having been sold and particularly when the permission for conversion had been granted by the Deputy Commissioner who would have at that time examined the applicability or otherwise of the provisions of the Act also, and nevertheless having granted the permission was being also of the view that the subject land having been granted on collection of upset price, the application deserves to be rejected and accordingly dismissed the same in terms of his order dated 31.5.2002, a copy of which is produced at Annexure-B to the writ petition.

5. The third Respondent being aggrieved by the said order, preferred an appeal to the Deputy Commissioner, and the Deputy Commissioner on re-examination of the whole thing, though it was contended before him that the transaction was hit not because of the violation of any of the conditions under the grant order itself, but because of the non-compliance of the provisions of Sub-section (2) of Section 4 of the Act, nevertheless, being of the view that as the records indicated the land was one granted under the provisions of Rule 43-J of the Mysore Land Revenue (Amendment) Rules, 1960 [for short, the Rules] and the Full Bench decision of this Court in the case of Chikka Kukkegowda Vs. State of Karnataka and Others, wherein the Full Bench opined that in respect of grant made under Rule 43-J of the Rules, no condition could have been imposed as the very Rule did not provide for imposition of any such condition and therefore the provisions of the Act are not attracted, purporting to follow the opinion of the Full Bench, while upheld the order of the Assistant Commissioner dismissed the appeal.

6. It is against these orders, the aggrieved applicant-Petitioner has pursued the matter before this Court through this petition.

7. Though the matter had been listed for preliminary hearing in "B" group, the

case is taken up for disposal and Sri Suresh D. Deshpande, learned Counsel for the Petitioner and Sri Rajanna, learned Counsel appearing for the third Respondent have been heard at some length and also Sri Bharamagouda B. Goudar, learned Government Pleader appearing for the statutory authorities.

8. Submission of Sri Deshpande, learned Counsel appearing for the Petitioner, is that the authorities have totally missed the real issue that arose in the case; that the applicant had clearly indicated even in the application and in the argument before the authorities that the transaction was hit by non-compliance of the requirement of law viz., the grantee being required to obtain prior permission of the government in terms of the provisions of Sub-section (2) of Section 4 of the Act; that the transfer of land without permission amounts to violation in terms of Sub-section (1) of Section 4 of the Act; that this violation is of statutory provisions and not of any conditions or restrictions otherwise imposed while granting the land; that in a situation where the granted land is transferred after the Act has come into force, without prior permission of the government, the provisions of Sub-section (1) of Section 4 of the Act operates automatically and the transaction get voided irrespective of whether any conditions that had been imposed or could have been imposed under the relevant law governing such grant at the time of grant has been violated and even if the land had been granted on fixing and collecting an upset price, it is of no significance or of any bearing on the operation of the provisions of Sub-sections (1) and (2) of Section 4 of the Act; that the Deputy Commissioner was clearly in error in understanding the opinion of the Full Bench of this Court in the case of Chikka Kullegowda (supra), as one governing such a situation where violation is of the provisions of Sub-section (2) of Section 4 of the Act; that the Full Bench neither had occasion nor has considered the effect of transfer without obtaining the prior permission contemplated under Sub-section (2) of Section 4 of the Act and therefore the Full Bench decision was clearly not an authority and reliance thereof could not have been placed by the Deputy Commissioner to reject the appeal; and therefore the impugned orders are unsustainable in law and to be quashed and the matter remanded to the Assistant Commissioner for taking further action in accordance with the statutory provisions for resumption and restitution etc.

9. Sri Rajanna, learned Counsel for the third Respondent vehemently contended that the very provision of the Act is not attracted in the present case; that there being no condition at all under the grant order and the conditions that could have been imposed under the law governing such grants also being nil, as it is not in dispute that the grant was under Rule 43-J of the Rules under grow-more food scheme and therefore no condition can be imposed and if such a land is transferred, the Act itself is not attracted to the transaction in question; that this is the law authoritatively and emphatically laid down by the Full Bench of this Court in the case of Chikka Kullegowda (supra); that the authorities are very correct in following the ruling of this Court in terms of the decision of the Full Bench and therefore there is no scope for interference with the orders and the writ petition deserves to be dismissed.

10. It is also the alternative contention on behalf of the third Respondent that even as per the records and as found by the authorities, the land having been granted on collecting upset price, the transaction thereafter cannot be sought to be impeached on the ground of violation of any of the conditions or otherwise; that such proposition of law is also well settled in terms of the decision of this Court in the case of *A. Narasimhamurthy v. State of Karnataka* 2001 (2) KLJ 313; that under such circumstance also the impugned orders passed by the authorities can be fully justified and for this reason also, the writ petition deserves to be dismissed.

11. Sri Bharamagouda B. Goudar, learned Government Pleader appearing for the authorities fairly submits that the authorities though were made aware of the provisions of Sub-section (2) of Section 4 of the Act, have miserably failed in not applying their minds to this aspect of the matter; that the examination of the matter should have been in the context of the provisions of Section 4(2) of the Act and if done so, the result would have been otherwise; that the orders, on the face of them suffer from this lacuna and should be accorded the treatment that it deserves because of such defect.

12. I have carefully considered the rival submissions. In the present case, it is not in dispute that the land in question is a granted land within the meaning of Section 3(1)(b) of the Act. This is obvious because while even the purchasers do not dispute that it is a land which had been granted, but only under Rule 43-J of the Rules and though it was sought to be feebly contended by the learned Counsel for the third Respondent that the applicant had not made good her case that the land had been granted in favour of a person belonging to schedule caste; that the finding by the Assistant Commissioner clearly shows that the applicant had produced caste certificate indicating that she is a person belonging to Nayaka community as also her husband. Therefore, what emerges is that the land is undisputedly a granted land within the meaning of Section 3(1)(b) of the Act.

13. There is also no dispute that such a land came to be transferred under the sale deed dated 19.2.2001, a day much subsequent to the date on which the provisions of the Act had come into force.

14. An incidental development in the interregnum was that the grantee or his her had sought for permission u/s 95 of the KLR Act, 1964 from the Deputy Commissioner to divert the land for non-agricultural purpose and such permission had in fact been granted in the year 1996, because of which the Assistant Commissioner was of the view that this materially matter and therefore the provisions of the Act are not attracted and the application deserves to be dismissed. The Deputy Commissioner though did not give much credence to this aspect, but was more persuaded the contention on behalf of the Respondent that the transaction is not hit if the law as laid down by the Full Bench of this Court in the case of *Chikka Kullegowda* (supra) is to be applied and accordingly dismissed the appeal.

15. The conversion of the user of the land from agricultural to non-agricultural use by itself does not bring about any change so far as the character or the status of the land as a granted land within the meaning of Section 3(1)(b) of the Act, not as though the moment the Deputy Commissioner grants permission for conversion, the land ceased to be a granted land under the Act.

16. One another reason given by the Assistant Commissioner for rejection of the application is that the Deputy Commissioner having granted the permission for conversion, it should be presumed that a permission even in terms of Sub-section (2) of Section 4 is also granted, as the Deputy Commissioner would have occasion to examine the applicability or otherwise of the provisions of the Act, even at the time of grant a permission u/s 95 of the Karnataka Land Revenue Act, 1964 [for short, KLR Act] and therefore having given a permission by the Deputy Commissioner u/s 95 of the KLR Act, it is not proper to reject the application.

17. Unfortunately, though for the Deputy Commissioner might have commanding due deference from the Assistant Commissioner, because of their respective positions under the KLR Act, 1964, the legal position is not dependent on such assumption or presumptions. The Deputy Commissioner while acts as an authority for grant or refusing permission for conversion of agricultural land to non-agricultural purpose u/s 95 of the KLR Act, u/s 5-A of the Act, he is an authority he required to examine the question by applying the provisions of the Act. While it is possible that the Deputy Commissioner may use that as an input to grant or refuse permission for conversion, one way or the other, the mere development that earlier the Deputy Commissioner had permitted diversion of the user that by itself cannot be presumed or deemed to be a permission under Sub-section (2) of Section 4 of the Act. The permission under Sub-section (2) of Section 4 of the Act is one to be given by the government and not by the Deputy Commissioner either. At any rate a permission for conversion u/s 95 of the KLR Act granted by the Deputy Commissioner does not in one way or the other detract from the requirements of compliance with Sub-section (2) of Section 4 of the Act, which is a statutory requirement, noncompliance of which automatically follows in terms of Sub-section (1) of Section 4 of the Act. Section 4 of the Act reads thus:

4. Prohibition of Transfer of Granted Lands:

(1) Notwithstanding anything in any law, agreement, contract or instrument, any transfer of granted land made either before or after the commencement of this Act in contravention of the terms of the grant of such land or the law providing for such grant or Sub-section (2) shall be null and void and no right, title or interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer.

(2) No person shall, after the commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government.

(3) The provisions of Sub-sections (1) and (2) shall not apply to the sale of a land in execution of a decree or order of a Civil Court or of any award or order of any other authority.

For our purpose, what in law follows is if a person transfers or acquires any granted land without the previous permission of the government, notwithstanding anything in any law, agreement, instrument, contract etc. etc., such transfer of granted land made after the commencement of this Act in contravention of Sub-section (2) of Section 4 of the Act, shall be null and void and no right, title or interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer.

18. This is the legal position that emerges in terms of the statutory provisions on a combined reading of Sub-sections (1) and (2) of Section 4 of the Act. The present is a situation squarely governed by such legal/statutory provision. The opinion of the Full Bench on which great reliance was placed by the Deputy Commissioner as also the third Respondent, is not of much help for advancing the cause of the purchaser in the present case, inasmuch as the Full Bench was never seized of a question of this nature for examination. The question that had arisen and which has been answered before the Full Bench was in the context of invalidation of the transaction which had taken place before the Act came into force and on the premise that it was in violation of some of the conditions imposed under the grant order itself or as provided for under Rule 43-G of the Rules. The Full Bench on examination of such aspect was of the view that when no condition itself could have been imposed in respect of a granted land under Rule 43-J, particularly as a condition under Rule 43-J could work only in terms of the grant orders and such condition and which occurs prior to Rule 43-J and not extended to grants made under the provisions of the Rules according after Rule 43-G, particularly, Rule 43-J, being one such and under Rule 43-J, which was in fact only a confirmation of an earlier lease by granting the land without any condition, the transaction can never be said to be in violation of any of the condition in this context examined the effect of such transaction in the context of provisions of Sub-sections (1) and (2) of Section 4 of the Act and opined that if no conditions at all could have been imposed, quite naturally there is no violation of a non-existing condition, and if there is no violation of any condition, Sub-section (1) of Section 4 of the Act is also not attracted and therefore the Act itself is not applicable etc.

19. The Full Bench was never seized of the question as to what consequence will follow if there is a violation of the statutory provisions of Sub-section (2) of Section 4 of the Act, which is precisely the case in the present situation. The condition if at all can be read as one in respect of a granted land which is sought to be transferred after the Act had come into force, is the condition that is imposed statutorily by the Act of Legislature under Sub-section (2) of Section 4 of the Act itself and not by any grant Rules or the order of grant itself. There is no question of any one getting out of the consequence that can follow for

violation of a statutory provision if such consequences are provided in the very statute itself. There is no escape from the conclusion that the transaction of the year 2001 being one without obtaining prior permission as contemplated under Sub-section (2) of Section 4 of the Act is clearly rendered null and void in terms of Sub-section (1) of Section 4 of the Act, as extracted above. The authorities are clearly in error in rejecting the application and also in applying the decision of the Full Bench of this Court to the present facts and circumstances and rejecting the case as one governed by the ratio laid down by the Full Bench. The opinion of the Full Bench was not an authority or precedent for the proposition that even violation of Sub-section (2) of Section 4 of the Act cannot be examined nor that the provisions of the Act get attracted to such a situation.

20. The question as it arises in the present case did not arise for consideration nor the Full Bench has examined the case from such an angle. Though Sri Rajanna, learned Counsel for the third Respondent would vehemently urge that the Full Bench having opined and decided the case with reference to the provisions of Section 4 of the Act and Sub-section (2) of Section 4 of the Act being part of Section 4, the decision should be taken to be an authority should necessarily be followed and applied to, have no doubt, in my mind, that assuming that there are any such observations, at the best, it can be an observation not laying down any legal principle having been efficacy as a precedent and has a binding nature for proposition which did not arise, which was not considered and which was not answered. It is for this reason that I am unable to accept the submission of the learned Counsel for the third Respondent to dismiss the petition by holding the authorities are correct in applying the ratio of the case of the Full Bench in Chikka Kullegowda (*supra*) for deciding the present matter. That apart, the view of the Full Bench on this question has been held by the Supreme Court as not laying down the correct law [See 2005 (5) KLJ 304 - Guntaiah and Ors. v. Hambamma and Ors.].

21. In the result, this writ petition is allowed and the orders passed by the Assistant Commissioner as well as the Deputy Commissioner vide Annexures-B and C to the writ petition are set aside. However, the matter is remanded to the Assistant Commissioner to pass orders on the application of the Petitioner by applying the law as clarified in this order and to dispose of the matter expeditiously at any rate within a period of six months from today. Rule issued and made absolute.