

(1998) 07 KAR CK 0105
In the Karnataka High Court
Case No : Writ Petition No. 18297 of 1998

Smt. Pullamma

APPELLANT

Vs

Smt. Padmavathi and Others

RESPONDENT

Date of Decision : 23-07-1998

Acts Referred:

Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 5
Mysore Land Revenue (Amendment) Rules, 1960 — Rule 43-G (4)

Citation : (1999) 3 KarLJ 571

Hon'ble Judges : Mohamed Anwar, J

Bench : Single Bench

Advocate : Sri S.V. Prakash, for the Appellant; Sri Sampath Anand Shetty and Sri Siddagangaiah, Government Pleader, for the Respondent

Judgement

1. Heard.

2. The petitioner is the purchaser of the land in question granted by the Government under dharkasth on 13-9-1962 to one Baiyanna who was admittedly a member of Woddara community. That land was purchased by the petitioner from the grantee on 26-10-1970. Subsequently, the grantee died.

3. After the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 ("the Act" for short) came into force with effect from 1-1-1979, the grantee's daughter-in-law, who is respondent 1, made an application to respondent 3 seeking resumption of the land u/s 5 of the Act on the ground that the same had been alienated to the petitioner-purchaser in breach of the non-alienation condition which was attached to the grant prohibiting its transfer for a period of 15 years from the date of grant.

4. On enquiry, respondent 3 passes the order at Annexure-A dated 22-8-1997 holding the said sale null and void and directing petitioner's eviction from the land for its resumption to respondent 1. Petitioner's appeal against Annexure-A order before respondent 2-Deputy Commissioner was also dismissed by his order

Annexure-B dated 9-6-1998.

5. The petitioner now prays to quash the orders at Annexure-A and B as they are illegal and without jurisdiction. It was maintained by Mr. S.V. Prakash, learned Counsel for petitioner that the grantee was originally a person of Andhra Pradesh where his Woddara community was not a community belonging to the Scheduled Caste. Admittedly, in the State of Karnataka Woddara Community belongs to Scheduled Caste. Mr. Prakash argued that when the grantee was not a member of Scheduled Caste in the State of his origin, he was not entitled to reap the benefit of the grant being a member of Scheduled Caste in the State of Karnataka. Reliance was sought to be placed by him on the decision of Supreme Court in *Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others*, . The xerox copy of the Central Government Notification No. BD. 16014/1 of 1982-SC and BCD dated 6th August, 1984 was also produced by him to support his contention. By the said notification of the Central Government necessary clarifications were issued from the Ministry of Home Affairs, New Delhi, to all the competent authorities stating that the SC/ST persons on migration from the State of his origin to another State will not lose his status as SC/ST, but he will be entitled to the concession/benefits admissible to the SC/ST from the State of his origin and not from the State where he has migrated. The Supreme Court in the case of *Afarri Chandrashekar Rao*, *supra*, has also simply reiterated the same clarification.

6. In this case, the case of the grantee is otherwise. Admittedly, he was not a member of the Scheduled Caste in the State of his origin i.e., Andhra Pradesh, but his Woddara Community in the State of Karnataka is declared as a community belonging to the Scheduled Caste. Therefore, the question in the instant case is that whether as a member of Scheduled Caste in the State of Karnataka, could be deprived of the concessions/benefits admissible to the Scheduled Caste in this State, merely because his community was not declared as the Scheduled Caste in the State of his origin. The benefits/concessions go with the grant made as they attached as such grant. The granted land in question lies in the State of Karnataka and it was granted to the said grantee by the Government of Karnataka under the Land Grant Rules governing the grant of lands to the members of Scheduled Castes and Scheduled Tribes. I do not find any good reason to hold that as a member of the Scheduled Caste in the State of Karnataka where he was granted the said land treating him as such, he could be deprived of such concessions and benefits. Had it been the case that his community was not declared as belonging to Scheduled Caste in the State of Karnataka, though in the State of his origin he belonged to the Scheduled Caste was so declared, in that event the said Central Government notification and the ruling of the Supreme Court in the case of *Mom Chandrashekar Rao*, *supra*, would have become applicable. That being not the situation obtainable in the case on hand, they do not support the case of petitioner.

7. It is not in dispute that the grant of land to the said grantee Baiyanna in

September 1962 was regulated by Mysore Land Revenue Amendment Rules, 1960, published by Government Notification No. RD 4 LAD 1960, Bangalore, dated 10th May, 1960. The relevant provision imposing ban on transfer of granted land is contained in sub-rule (4) of Rule 43-G. The material portion of this rule is extracted below:

"43-G.--Lands under the proceeding rules shall be subject to the following rules.--

(1)XXX XXX XXX. (2)xxx xxx xxx. (3)xxx xxx xxx. (4) Where the grant is made free of cost, or is made at a price which is less than the full market value, the grant shall be subject to the condition that the land shall not be alienated for a period of fifteen years from the date of the grantee taking possession of the land, after the grant:

Provided that such land may be alienated with the previous sanction of the Government and subject to such conditions as the Government may specify, if the Government is of the opinion that the circumstances of any case, it is just and reasonable to permit such alienation either for purposes of acquiring some other land or for any other purpose."

A plain reading of the sub-rule (4) of Rule 43-G makes it clear that for its applicability the following requirements will have to be fulfilled: (1) That the grant of the land was made free of cost, or (2) that the grant was made at a price which was less than the full market value, when either of the two conditions is satisfied, the starting point of time for computation of non-alienation period of 15 years commences from the date of the grantee taking actual possession of the land and not from the date of grant.

8. Therefore, the material question for consideration would be whether the land was granted to the said grantee free of cost or at a price which was less than its full prevailing market value. According to Assistant Commissioner, the land was granted to Baiyanna free of cost (vide his observation at para 2). He has drawn this inference merely on the basis of the amount of Rs. 28.30/- that indicated in the relevant saguvali chit as collected from the grantee. The Assistant Commissioner has concluded that, that amount was in respect of the fees for survey operation and division of the land. But, Deputy Commissioner in his impugned order has observed that out of the occupancy price for which the land was granted to the grantee a sum of Rs. 200/- was waived since the grantee was a member belonging to the Scheduled Caste. This power to waive the occupancy price upto Rs. 200/- was available to the granting authority under Rule 43-G(1). Therefore, the said observation of the Deputy Commissioner clearly indicates that the land was granted to the grantee for certain price out of which Rs. 200/- was waived by the granting authority. If the grant was made for upset price representing full market value of the land, then also Rule 43-G(4) prohibiting alienation of the granted land for a specified period would not be applicable. But, neither of the authorities below has based its conclusion on the original revenue record relating to the grant of land such as grant order, mutation entries in the

mutation register or the entries in the record of rights. Therefore, their impugned orders are liable to be quashed for want of definite finding of the Assistant Commissioner on the material point whether the grant of the land was made to the grantee free of cost or at a price which was less than its full prevailing market value so as to make sub-rule (4) of Rule 43-G applicable to the sale of land by the grantee.

9. Hence, the petition is allowed. The impugned orders at Annexure-A and B passed by respondent 3 and respondent 2 respectively, are quashed. The matter is remitted to respondent 3-Assistant Commissioner with a direction to hold fresh enquiry, record his finding on the points stated hereinabove and then to pass fresh order in accordance with law after giving opportunity of hearing to both sides.