

(1991) 06 KAR CK 0036
In the Karnataka High Court
Case No : W.P. No. 3176/1986

Smt. Shivalingamma

APPELLANT

Vs

Special Deputy Commissioner and Others

RESPONDENT

Date of Decision : 21-06-1991

Acts Referred:

Karnataka Land Grant Rules, 1969 — Rule 43G
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 4

Citation : (1991) 2 KarLJ 421

Hon'ble Judges : M. Ramakrishna, J

Judgement

1. The petitioner in this writ petition has sought for quashing the orders (Annexures-C and D) made by the Assistant Commissioner and the Deputy Commissioner, respondents-2 and 1 herein, respectively.

2. A few facts that are necessary for the disposal of the writ petition are as follows:

Sy. No. 737 to the extent of 6 acres 35 guntas situate in the village Salur, Shikaripur Taluk, Shimoga District, came to be granted by way of confirmation of the grant under the provisions of the Karnataka Land Grant Rules then prevailing by the competent authority by an order dated 30-10-1963 subject to certain conditions. That order was made in favour of Chakkadi Ramappa, respondent-3 herein, belonging to Scheduled Caste. It is stated by the petitioner that the land in question was offered as security for the loan borrowed by Chakkadi Ramappa. Thereafter, there was a decree made by the Court in respect of the borrowed amount. Subsequently, on 6-10-1967 there was a Court sale of the land wherein the petitioner's husband purchased it and ever since then he and thereafter the petitioner having got the land in a partition has been in possession and enjoyment of the same.

3. After the coming into force of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 ("the Act" for short),

Chikkadi Ramappa approached the Assistant Commissioner with an application for granting the benefits under Sections 4 and 5 of the Act. His case was that the land granted in his favour came to be sold in contravention of the condition of the grant and therefore he was entitled for the restoration of the granted land in terms of Section 5 of the Act.

4. The Assistant Commissioner having notified both parties, held an enquiry and passed the impugned order (Annexure-C) by which he held that the granted land having been sold in contravention of the condition of the grant, the alienation was void. Therefore, he directed restoration of the land.

5. As against the said order, the matter was taken up in appeal before the Deputy Commissioner, respondent-1 herein, who, having heard learned counsel on both sides, dismissed the appeal affirming the view taken by the Assistant Commissioner. Hence this petition.

6. The petitioner has taken a specific ground in the writ petition that Sy. No. 737 to the extent of 6 acres 35 guntas, subject matter of grant, was originally being cultivated by Chakkadi Ramappa as a lessee under the scheme launched by the State of Karnataka. Therefore, even before the grant of land in his favour, he was enjoying the leasehold rights of the land. With a view to demonstrate this aspect, lease deed (Annexure-B) has been produced. By a perusal of it, it is seen that as far back as on 2-2-1961 Chakkadi Ramappa leased this land in favour of Palakshappa, husband of the petitioner, for a period of five years under certain conditions. The contesting respondents does not dispute this document.

7. Now the question is whether Chakkadi Ramappa was cultivating the land in question enjoying the leasehold rights before it came to be granted in his favour under Land Grant Rules.

8. Sri Siddagangaiah, learned High Court Government Pleader, produced the original records. By a perusal of the records, it is seen that the competent authority in its proceedings No. LC 360/1960-61-SC 19/1963-64 passed an order confirming the leasehold rights with effect from 30-10-1963. This clearly goes to show that Chakkadi Ramappa must have been enjoying the leasehold rights of the land in question before it came to be granted in his favour by applying the Land Grant Rules. This is demonstrated by Annexure-B inasmuch as, as far back as on 2-2-1961 the land in question came to be leased (sublease) in favour of Palakshappa for a period of five years under certain conditions. Therefore, it is clear that before the grant made on 30-10-1963 in favour of Chakkadi Ramappa, he must have been enjoying the land under the scheme known as "Grow More Food" launched by the State Government. Thus, he was enjoying the leasehold rights of the land in question before the said land came to be granted to him in accordance with law.

9. Another question that arises for consideration is whether Rule 43-G is applicable in a case like this for the purpose of understanding the imposition of condition. In similar set of facts arising in the case of Shivanna v State of

Karnataka & Others, 1989(1) Kar. L.J. 294, while dealing with the very question, I have held as follows:

"Having regard to the language employed in Rule 43-J, it is clear that a lessee will have a right to seek for confirmation under the above Rule without there being any condition attached to the order of confirmation. In other words, the condition under Rule 43-G cannot be applied for the purpose of confirmation as required by Rule 43-J. This aspect of the matter has been lost sight of by both the Assistant Commissioner and the Deputy Commissioner in this case. Therefore, the contention of Sri Veerabhadrappe must be accepted and if that is accepted, then only 2 acres 36 guntas out of 4 acres 4 guntas must be held to be the granted land for the purpose of applying Sections 4 and 5 of the Act. To this extent, the impugned orders of both the authorities deserve to be modified."

10. This view of mine came to be approved by a Division Bench of this Court in Smt. Siddamma v Chikkegowda and Others, 1991(1) Kar. L.J. 210. Therefore, following the rulings of this Court, I must hold that the conclusion reached by the Assistant Commissioner that there was contravention of the condition of the grant and therefore Sections 4 and 5 were attracted, cannot be sustained. The view taken by the Deputy Commissioner in appeal endorsing the view taken by the Assistant Commissioner also cannot be sustained.

11. In the result, I make the following:

ORDER

This writ petition is allowed. The impugned orders (Annexures-C and D) are hereby quashed. However, the matter is remitted to the Assistant Commissioner, Sagar Sub-Division, Sagar, to reconsider the matter on the above point, which was not urged before the authorities below, afresh, in accordance with law and in the light of the observations made above, after affording an opportunity to both parties of being heard, within a period of three months from the date of receipt of this order. No costs.