

(2002) 06 KAR CK 0056
In the Karnataka High Court
Case No : Writ Petition No. 36310 of 1998

Sri. Abdul Haq Shamsuddin Saheb

APPELLANT

Vs

Deputy Commissioner and Others

RESPONDENT

Date of Decision : 06-06-2002

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 45, 45 (3), 58, 60
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 2 (b)

Citation : (2002) 3 KCCR 1908

Hon'ble Judges : S.R. Bannurmath, J

Bench : Single Bench

Advocate : N.S. Bhat, for R.B. Deshpande, for the Appellant; Shivaswamy, High Court Government Pleader for Respondents 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

S.R. Bannurmath, J.—Heard the learned Counsel for the Petitioner and the learned High Court Government Pleader for the State (Respondents 1 to 3).

2. Though the legal representatives of Respondent No. 4 are served, but have remained unrepresented. Since the matter is old and case is coming up regularly both in warning list and the regular hearing list, without further waiting for their appearance, with the assistance of learned High Court Government Pleader the matter is taken up for final consideration as it involves pure question of law.

3. The subject matter of the writ petition is an agricultural land bearing S.No. 285 measuring 11 guntas situated at Haladipur village in Honnavar Taluka. One Gouri d/o. Masti Mukri, now represented by the LR's. Respondents 4(a) to 4(g) was the tenant of the land in question.

4. After coming into force the Karnataka Land Reforms Act as amended by Act 1 of 1974 (hereinafter referred to as the K.L.R. Act) the said Gouri filed an application in Form No. 7 before the Land Tribunal for conferment of occupancy

rights. After holding due enquiry the Land Tribunal conferred the occupancy rights and subsequently on 21st June, 1981 occupancy certificate in Form 10 was also issued. In pursuance of the same mutation Entry No. 3790 also came to be effected. After the death of said Guari, one Masti Jatti succeeded to the estate (land) and on 9.8.1996 he sold the same in favour of the Petitioner. The Petitioner intimated the sale to the concerned Tahsildar for necessary changes in the revenue records.

5. At that stage thinking that the sale was in contravention of the Land Grant Rules and the provisions of Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act (hereinafter referred to as the K.P.T.C.L. Act), *Suo motu* proceedings were initiated for annulment of the sale and also for the resumption and restoration proceedings. On receipt of the notice the Petitioner appeared before the Assistant Commissioner and filed his detailed written objections *inter-alia* contending that he has purchased the land from its owner after the mandatory/prohibitory period of fifteen years as per the Karnataka Land Reforms Act, is over and as such the provisions of Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act are not attracted. It was also contended that since there was no grant in strict sense under any of the provisions of Land Revenue Act or Land Grant Rules etc., there is no question of applying the provisions of the Act.

6. The Assistant Commissioner by the impugned order dated 30th June, 1998 rejected the contention only on the ground that the original grantee belongs to Scheduled Caste/Scheduled Tribe and as the sale has taken place after coming into force of the Act, the sale is void and accordingly he set aside the sale and order for restoration. This order came to be affirmed by the Deputy Commissioner in the appeal filed by the Petitioner by the order dated 12th October, 1998. Challenging both these orders the present writ petition is filed.

7. The learned Counsel for the Petitioner vehemently contended that both the authorities have illegally and erroneously construed that there was a grant in favour of the fourth Respondent and only because he belonged to Scheduled Caste/Scheduled Tribe the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act are attracted. It is contended that since Gauri was conferred with occupancy rights under the provisions of the Karnataka Land Reforms Act, the same is not equal to the grants made under the Land Revenue Act. It is submitted that since objects of conferring occupancy rights and a grant of a land are totally different, the application of the provisions of Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act is illegal and liable to be set aside.

8. On the other hand the learned High Court Government Pleader argued in support of the impugned orders to contend that as the original grantee was also belonging to Scheduled Caste/Scheduled Tribe, the sale of land in dispute though conferred under Karnataka Land Reforms Act is illegal and attracts the provisions of Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of

Certain Lands) Act.

9. I have heard the learned Counsels at length and perused the provisions of Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act as well as the Karnataka Land Reforms Act.

10. In my view following question arises for consideration.

Whether conferment of occupancy rights under the provisions of Section 45 of the Karnataka Land Reforms Act to a tenant who incidentally happens to be belonging to is SC/ST is same as grant of land to SC/ST under the provisions of land grant rules?

And

Whether Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act also governs such conferment of occupancy rights?

In order to appreciate the rival contentions it is necessary to look into the aims and objects of both the Acts.

The aims and objects of the Karnataka Land Reforms Act, 1974 are "to enact the uniform law in the State of Karnataka relating to agrarian reforms, conferment of ownership on tenant.

This is a beneficial legislation for granting security of tenure to cultivating tenants of agricultural lands. As observed by the Honourable Supreme Court of India in the case of Srinivas Raghavachar v. The State reported in AIR 1987 SC 1578:

It is now well recognised by leading economists, everywhere that of absence of common ownership of land and in the existing system of economic relations is, the greatest incentive for maximum production of food is the feeling of identity and security which is possible only if the ownership of the land is with the tiller. It is obviously in recognition of this principle that landlordism" was sought to be totally dealt away with and by the Amending Act. If between a landlord who did not himself personally cultivated the land and a tenant who is cultivating the land, the legislature preferred the cultivating tenant.

11. In my view it is clear that intendment of the legislature in enacting the Karnataka Land Reforms Act was to confer occupancy/ownership rights on the tenant who is in possession and enjoyment of an agricultural land for number of years especially as on 1.3.1974.

12. If we peruse the various provisions of the Act it is clear that a right is created in the tenant to claim occupancy rights unlike the request or a mercy petition for grant of lands belonging to the government under various beneficial legislations like Land Grant Rules, under Land Revenue Act etc.

13. On the other hand, under the various enactments including Land Revenue Act, Land Grant Rules and the various notifications, taking into consideration the poverty, the illiteracy and living below normal conditions, various methods/

schemes were provided to uplift the depressed classes like belonging to SC/ST classes by granting them lands, either free of cost or at a very nominal price for personal cultivation. These grants were made with certain conditions like non-alienation either permanently or for a limited period. But thereafter it was noticed that the rich persons taking disadvantage of the poverty and illiteracy of these depressed people were getting the lands sold for a throwaway price. After much deliberation, that is how the present enactment - Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act has been brought forth to annul such illegal transactions.

14. On going through the grant provisions it is clear that on application/mercy petition from the needy person the authority would grant a land available with the government, of course provided the applicant fulfilled certain conditions.

15. The major difference between the two enactments is, whereas the grants of government lands is a discretionary power under land grant rules, but under the Karnataka Land Reforms Act it is a right given to a tenant to claim occupancy rights/ownership. A person claiming tenancy right may belong to any category whether belonging to oppressed or depressed classes or even belonging to superior caste unlike the person praying grant must necessarily belong to oppressed and depressed classes or SC/ST category as it is a condition precedent for such grant.

16. Further it is also to be noted that whereas the grant referred to under the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act is a grant of a land whereas under the Karnataka Land Reforms Act it is a conferment of occupancy rights.

It is to be noted under the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act Section 2(b) defines the word granted land as follows:

Granted land means any land granted by the Government to a person belonging to any of the Scheduled Castes or Scheduled Tribes and includes land allotted or granted to such persons under the relevant law for the time being in force relating to agrarian reforms or land ceilings or abolition of inams, other than that relating to hereditary offices or rights and the word "granted" shall be construed accordingly.

Thus in my view only those of the lands which have been granted by the Government only to a person belonging to any of the Scheduled Caste or Scheduled Tribe come within the purview of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act. That is to say, the land must have been granted to a person only because he belonged to the Scheduled Caste or Scheduled Tribe.

On considering even the dictionary meaning of the word "grant" it makes clear that it is a gift or a bestowing out of some consideration. In the present case the

grant of lands to the person belonging to the depressed classes is out of compassion and constitutional duty by the government to uplift these people. On the land the conferment of occupancy rights into the Karnataka Land Revenue Act is out of a right created by a statute. As such in my view the conferment of occupancy rights under the Karnataka Land Reforms Act cannot be same as the grant of lands to the depressed classes under various grant rules. It is also to be noted at this stage itself that under the both enactments there were restrictions placed for non-alienation. It is also to be seen that under the very Karnataka Land Reforms Act to be specific u/s 77, a power or jurisdiction similar to the Land Grant Rules is also given to the concerned authority for distribution of surplus lands with the government. These lands would be like lands in excess of ceiling limit prescribed, lands which are found to be tenanted and vested with the government but for which no application for conferment of occupancy rights is made or where tenant himself is found to be holding lands more than the prescribed a limit etc. It is to be noted that u/s 77 there is a specific reservation of the grant of lands namely 75 percent which are to be granted only to the persons belonging to Scheduled Caste/Scheduled Tribe category. Thus by making harmonious construction in my view only those of the lands which have been granted to any person belonging to Scheduled Caste or Scheduled Tribe whether under Land Revenue Act, Land Grant Rules or even u/s 77 of the Karnataka Land Reforms Act alone come within the purview of Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act. As stated earlier under the provisions of Karnataka Land Reforms Act any person whether he belongs to Scheduled Caste/Scheduled Tribe or not is entitled for conferment of occupancy rights but not so under the Land Grant Rules. In my view the conferment of occupancy rights is by way of a right given to a tenant the same cannot be equated to the grant made under the various beneficial legislations.

This is also clear by reading the latter portion of the definition clause of the word "granted land includes land allotted or granted to such person under the relevant law for the time being in force relating to agrarian reforms or land ceiling or abolition of the inams.

17. In my view the stress is on the word "such person". Here such person means person belonging to Scheduled Caste or Scheduled Tribe. As stated earlier it is only u/s 77 of the Karnataka Land Reforms Act the Government is entitled to dispose of surplus land as directed to be disposed of u/s 45(3), Section 58, Section 60 or the land vested in the State under Sections 79-A, 79-B to the persons belonging to Scheduled Caste or Scheduled Tribe. I am of the view that the alienation of such lands alone come within the purview of Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act and not the general category of lands that is to say for which occupancy rights have been granted to a tenant who incidentally also belong to Scheduled Caste or Scheduled Tribe.

18. This interpretation of mine can also be tested considering the different

criteria laid down under the Karnataka Land Reforms Act vis-a-vis the various grant rules/notifications etc. whereas under the Karnataka Land Reforms Act any person can claim occupancy rights provided he proves his tenancy in existence as on the appointed day that is 1st March, 1974, under the various grant rules he must belong to Scheduled Caste/Scheduled Tribe category having further particular requirements like income, holding etc. As such I am of the view that only those lands which have been granted to a Scheduled Caste/Scheduled Tribe u/s 77 of the Karnataka Land Reforms Act comes within the purview of Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act and not the lands in general for which occupancy rights have been conferred u/s 48 of the Karnataka Land Reforms Act, even if such tenant/person incidentally happens to be belonging to Scheduled Caste/Scheduled Tribe category.

19. It is also to be noted in this regard that for violation of conditions like non-cultivation or alienation of the lands for which occupancy rights have been conferred, the Karnataka Land Reforms Act itself provides necessary jurisdiction to their government to resume the lands and thereafter redistribute it u/s 77 to a person belonging to Scheduled Caste/Scheduled Tribe and other categories of persons mentioned therein. Taking into consideration all these aspects I am of the view that in the present case since occupancy rights u/s 48 of the Karnataka Land Reforms Act were granted to original Respondent No. 4, who incidentally happens to belonging to Scheduled Caste/Scheduled Tribe category, the impugned alienation in favour of the Petitioner does not come within the purview of Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act. As such the orders impugned off Assistant Commissioner and the Deputy Commissioner are without jurisdiction and hence liable to be quashed.

20. However it is made clear that if Respondent-4 or his LRs" have alienated the land in violation of condition of occupancy rights under the Karnataka Land Reforms Act it is open for the concerned authorities to take appropriate action as provided under the Karnataka Land Reforms Act if so advised.

In the result the writ petition is allowed. The Rule is made absolute. The impugned orders dated 30th June, 1998 passed by the Assistant Commissioner and the order dated 12th October, 1998 passed by the Deputy Commissioner are hereby quashed. In the facts and circumstances there shall be no costs.