

(2012) 01 KAR CK 0307

In the Karnataka High Court

Case No : W.A No. 15851 of 2011 (SC/ST)

Sri G. Sathyanarayana Raj

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 17-01-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 4 (1), 5 (1), 5 (3)
Karnataka Scheduled Casts and Scheduled Tribes (PTCL) Rules, 1979 — Rule 3 (3)

Citation : (2012) 01 KAR CK 0307

Hon'ble Judges : Vikramajit Sen, C.J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : A.S. Mahesha, for the Appellant; B. Veerappa, AGA for R1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, C.J.—By case No. LND. SCS. 11/2001-02, the petitioner (respondent No. 12 before us) initiated proceedings before the Assistant Commissioner for restoration of land bearing Sy. No. 192 admeasuring 4-00 acres in Maragal Village, Kasaba Hobli, Bangarpet Taluk. The Assistant Commissioner noted that the transaction between the petitioner and the respondents violated Section 4 (1) of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as the Act"). Accordingly, he ordered the eviction of the occupants of land in question u/s 5(1) of the said Act. The appellant before us appears to have purchased the land from Sri K.V. Anajanappa and K. Venktaramappa (respondents 1 and 2 before the Assistant Commissioner and respondents nos. 8 and 7 before us).

2. The appellant thereafter, filed an appeal before the Deputy Commissioner, Kolar in case No.RA/SC.ST/21/2004-05. This appeal came to be allowed on the grounds that the grantee of the Saguvali Chit i.e. petitioner-Venkateshappa had

paid a price of Rs. 195/- which reflected and corresponded to the upset price of the land. That being so, it was the opinion of the Deputy Commissioner vide orders dated 17.12.2008 that the land in question was freely transferable. The original grantee/petitioner-Sri Venkateshappa, thereupon filed a petition under Articles 226 and 227 of the Constitution praying for quashing of the impugned order dated 17.12.2008 passed by the Deputy Commissioner.

3. The learned Single Judge has noted that, the land was granted in favour of a person belonging to Scheduled Caste community vide Saguvali Chit issued on 05.07.1977. This grant contained a non-alienation clause for a period of 15 years. The transaction of sale between the petitioner-Venkateshappa with K.V. Venkataramappa and K.V. Anjanappa (respondents nos.7 & 8) took place within the said period of 15 years. We may clarify, the transaction was between the petitioner and above respondents on 29.09.1977 and further alienations have taken place. The learned Single Judge has also opined that the collection of Rs. 195/- could not possibly partake of the nature of an upset price.

4. We are in entire agreement with the learned Single Judge. The matter has been considered very recently by a Division Bench, in the cases, D. Kariyappa vs. Thimmabovi (Writ Appeal No. 2198/2011 DD 5.12.2011), Srinivas G vs. Harish Kumar (WA 15234/2011 DD 2.12.2011), Chandra Naik vs. State of Karnataka (WA No. 16380/2011 DD 10.11.2011). The Hon'ble Supreme Court has clarified in Chinde Gowda Vs. Puttamma, that, it is only the grantee who has locus standi to contend that a non-alienation clause in a Grant is unfair and illegal for the reason that the market price of the land has actually been paid. It is for these manifold consideration that we hold that subsequent purchaser has no locus standi to contend that upset price had been paid by the original grantee and therefore, the non-alienation Clause was liable to be struck down.

5. Infraction of Rule 3(3) of the Karnataka SC & ST (P.T.C.L.) Rules, 1979 is contended before us, which however has no substance. On the relevant date, when the proceeding had commenced before the Assistant Commissioner, the petitioner had arrayed the transferees in possession at the relevant time, as respondents. Subsequent alienations/sale/transfers of possession would not be required to be impleaded as such persons step into the shoes of their predecessors in interest. Furthermore, if such persons were to be formally impleaded by the original grantee, his interests and claims may be continuously delayed or jeopardized by subsequent alienations. It is for the subsequent parties to watch and protect their interests.

6. In the instant case, the proceedings before the Assistant Commissioner, commenced in the year 2001. The Assistant Commissioner passed orders on 18/12/2003. It is during the pendency of the proceeding before the Assistant Commissioner that the appellant and respondents No. 9 -7 purchased the lands from respondents No. 7 & 8. Before the Assistant Commissioner, the earlier purchasers namely, respondents No. 7 and 8 were arrayed as parties. They did not bring to the notice of the Assistant Commissioner that the land had been

alienated during the pendency of the proceedings before the said authority. On the other hand, the Assistant Commissioner has noted in his order that the Tahsildar, Bangarpet Taluk, by letter dated 24/11/2001 had submitted a proposal for initiating action under the Act. It has also come on record that the original grantee has sold the land in question under the sale deed dated 01/12/1977 to Papaiah Setty - respondent No.3 herein, who had in turn, sold the land to one Amaramma and to her sons, Balaram, Shama Raj and Rangappa, who are respondents 4 to 6 herein. Thereafter, Amaramma and her children had sold the land to respondents 7 and 8 herein, who were in possession and enjoyment of the land when the proceedings were initiated. Therefore, the contention of the appellant's counsel that as on the date of the order of the Assistant Commissioner, the appellant had not been heard is without any merit.

7. We are also not persuaded by the learned counsel for the appellant that A. Narasimhamurthy Vs. State of Karnataka and Others, advances his case. The learned Single Judge had to construe Rule 43-G of the Mysore Land Revenue (Amendment) Rules, 1960. It was in that context that it was opined that prohibition of alienation for a period or in perpetuity, could be imposed only where the grant was for a consideration which was less than the market price. Instead, analysing the extant law, a learned Single Judge in P. Surya Prakash vs. The Deputy Commissioner, Chikmagalur (2003 (4) KCCR 3064) has held that land granted for the upset price and not for the market price, upon alienation, would be null and void by virtue of conjoint operation of Sections 4 and 5 of the 1978 Act, even if the conveyance was to a member of the Scheduled Caste/ Scheduled Tribe. The second proposition in Narasimhamurthy's case (supra) that adverse possession has been made out does not appear to us to be correct. In the first place, no period of limitation has been prescribed in the 1978 Act. It is trite that a claim is not extinguished even where the statute bars the grant of relief after a certain period; therefore, in the absence of any prescription, the right remains alive. Furthermore, adverse possession, by its very nature, must be open and hostile to the person against whom it is sought to be claimed. It is inherently illogical to accept a claim for adverse possession in circumstances where the claimant essentially bases his title on a conveyance from a person against whom adverse possession is claimed. For example, a tenant may remain in possession for decades without end, but his tenure would not metamorphosise or transform into ownership by adverse possession.

8. We affirm the reasoning of the learned Single Judge in Mahalingappa vs. State of Karnataka - ILR 1998 KAR 67 SN. No. 47 at page 67. We also affirm the Single Bench decision in N.D. Rangappa Vs. Deputy Commissioner, Davangere and Others, .

9. It also appears to us that it is not open to the Court to conclude by assumptions/presumptions and surmises that the market price had been paid in respect of the granted land. Section 5(3) of the 1978 Act incorporates that where any granted land is in the possession of a person, other than the original grantee

or his legal heir, it shall be presumed, until the contrary is proved, that such person has acquired the land by a transfer which is null and void under the provisions of sub-section (1) of Section 4. Logically, therefore, it is indeed a heavy burden that has been placed on the shoulders of the vendee of a grantee i.e. to establish by cogent evidence that the subject conveyance is not null and void. This important aspect should not be lost sight of. There is no merit in the appeal. Dismissed.