

(2011) 06 KAR CK 0047
In the Karnataka High Court
Case No : Writ Petition No. 14713 of 2008

Sri Ganganna

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 13-06-2011

Acts Referred:

Constitution of India, 1950 — Article 227
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 5, 5 A

Citation : (2011) 4 KCCR 419 SN

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

Bench : Single Bench

Advocate : Aswathanarayana Reddy, for the Appellant; R.B. Sathyanarayana Singh, HCGP for R1-R2, Neelakantappa Pujar, for D.S. Malipatil, for R3, R4(A) and T. Kodandarama, for R6, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—This writ petition is typical example of misuse and abuse of judicial review of administrative action under Article 227 of the Constitution of India.

2. The unwilling purchasers of land granted in favour of persons belonging to scheduled caste community leave no effort and no stone unturned in getting over adverse orders suffered by them either before the Assistant Commissioner in the first instance in an enquiry u/s 5 of the Karnataka Scheduled Caste & Scheduled Tribe [Prohibition of Transfer of Certain Lands] Act, 1978 [for short "the Act"] or in further proceedings in an appeal u/s 5-A of the Act.

3. Writ jurisdiction has proved to be haven for purchasers, but it has proved to be hell for the poor grantees or legal heirs of the grantees who have been harassed, tormented and put to untold misery and ordeal to go through such legal proceedings which keeps going on unendingly and though the Act is a piece of socio welfare legislation ushered in by the legislature way back in the year

1979, benefits of the legislation is yet 1:0 reach the intended and if at all courts have played spoil sport in this in the name of judicial review of administrative action and the present writ petition is no exception.

4. Whatever may be the merits of the contentions that the writ Petitioner could urge before the Deputy Commissioner in an appeal that is pending before the Deputy Commissioner since the year 2008, the cause for the Petitioner jumping into the High Court was that an application seeking for stay of the order passed by the Assistant Commissioner invalidating the sale transaction executed by the grantee in the year 1969 had not been disposed of though the appeal and the applications were filed simultaneously on 20.9.2008 questioning the legality of the order passed by the Assistant Commissioner on 11.7.2008 and on such premise, the present writ petition was filed on 24.11.2008 seeking for the following reliefs:

Prayer

1) Issue a Writ of Mandamus/Order/ directions, directing the 1st Respondent to consider the Interlocutory application in LA. No. 1 for stay in PTCL [SC and ST] appeal No. 125/08-09 and to pass an order on LA. No. 1 Annexure-B";

II) Issue a Writ of Mandamus /Order/ direction, directing the Respondents No. 1 and 2 not to change the Kama of the land measuring 3 acres 2 guntas in a Sy. No. 68/2B situated at Baleveeranahallu Dasanapura Hobli, Bangalore North Taluk, in terms of the ordered dated 11/7/2008 passed in Appeal/Revision No. KSC.ST/56/05-06;

III) Issue any other Writ or Order/Direction as this Hon"ble Court deems fit in the facts and circumstances of the case, including the cost of this writ petition.

Interim Prayer

Pending disposal of the above writ petition this Hon"ble Court may be pleased to pass an order of stay, staying the operation and execution of the order dated 11/7/08 in Appeal/Revision in No. KSC ST/56/05-06. Passed by the Respondent No. 2 "vide Annexure-C" and to pass an order or direction directing the Respondent not to obstruct the physical possession and not to change the Revenue records in terms of the impugned order dated 11/7/08 passed in Appeal/Revision in No. KSC ST/56/05-06 in the interest of justice and equity.

5. This Court in terms of the order dated 2.12.2008 while directed issue of notice to Respondents 1 and 2 for whom the Government Advocate promptly took notice, also granted interim order as prayed for.

6. It is thereafter the Petitioner is finding it difficult to serve the Respondents in the writ petition and therefore the writ petition has not seen the end of the day.

7. While the writ Petitioner ventured to delete the name of Respondent No. 5 - earlier purchaser from the grantee and even when persons who had petitioned the Assistant Commissioner for restoration in their favour have been served and

represented by counsel Sri. Malipatil & Sri. Neelakantappa Pujar, Advocate appearing today before the court, non service of notice to legal heirs of deceased seventh Respondent - another intermediate purchaser has held up the proceedings before this Court.

8. persons like Respondent Nos. 3 and 4[a] for whose benefit the legislation has been enacted. The apprehension of the Petitioner for filing the writ petition, as per submission of Sri. Aswathanarayana Reddy, learned Counsel for the Petitioner, is that unless the impugned order of the Assistant Commissioner is stayed, the revenue entries may be mutated in the name of legal heirs of the original grantee and that will be to the detriment of interest of the Petitioner.

9. The question is not as to whether the revenue entries are mutated or not and even if the revenue entries are mutated, it will not be of any consequence as the order passed by the Assistant Commissioner is not an end in itself, but has to be given effect to and for such purpose, the subordinate revenue officials will have to put the person in possession on notice, hold an enquiry and take possession for resuming the land to the State and thereafter only the question of restitution etc., arises in favour of the legal heirs of the original grantee. Even assuming the revenue entries are mutated in the meanwhile that by itself will not be the end of the day.

10. Approaching this Court for issue of a writ of mandamus even within two months of filing an appeal before the Deputy Commissioner is nothing short of a misuse or abuse of the process of this Court and the writ Petitioner has very effectively achieved what could not have been otherwise achieved for prolonging the proceedings, to the agony and misery of Respondents 3 and 4(a).

11. This is a frivolous writ petition without any bonafides and is therefore dismissed levying cost of Rs. 10,000/- on the Petitioner irrespective of service of notice to legal heirs of deceased seventh Respondent or otherwise as their presence is of no significance or of any importance in the present proceedings.

12. However, the Deputy Commissioner to take note of the long pendency of the appeal and is therefore directed to dispose of the appeal within an outer limit of three months from today as requested by Sri. Satyanarayana Singh, learned Government Pleader appearing for Respondents 1 and 2.

13. Cost to be deposited within four weeks from today before this Court by the Petitioner, failing which the registry is directed to issue a certificate in favour of the Respondents 3 and 4[a], to realize this amount as though it is a decree passed by the civil court.

14. Cost is awarded in favour of Respondents 3 and 4[a] and Respondents 3 and 4[a] are permitted to withdraw the amount through their counsel.

15. Writ petition is dismissed with costs.