

**(2011) 01 KAR CK 0228**

**In the Karnataka High Court**

**Case No : Writ Petition No. 10734 of 2008 (SC/ST)**

Sri Gopi

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

---

**Date of Decision : 14-01-2011**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 3 (1), 4, 4 (2), 5, 5 A

**Citation : (2011) 01 KAR CK 0228**

**Hon'ble Judges : D.V. Shylehdra Kumar, J**

**Bench : Single Bench**

**Advocate : A. Madhusudhaha Rao, for the Appellant; R. Om Kumar, AGA for R1 to R3 and Sri Nikilesh Rao for M/S. Indus Law For C/R5, for the Respondent**

---

**Judgement**

1. Writ petition by a legal heir, son of one Chinnappa who had been granted an extent of 1 acre of land in Sy. No. 97 of Bukkasagara Village, Jigani Hobli, Anekal Taluk, Bangalore in terms of a saguvali chit No. LND. 178/77-78 dated 3.2.1979 (copy produced as Annexure-C to the petition) and as a person belonging to scheduled caste community with a condition that the land should not be alienated for over.
2. However, the subject land appears to have been sold by the grantee as par sale deed dated 22.6.1995 in favour of 4th Respondent.
3. The 4th Respondent in turn appears to have sold the very land in favour of 5th Respondent as per further sale transaction dated 24.05.2003. The 5th Respondent claims to be in possession of the subject land.
4. Petitioner had approached the Asst. Commissioner, Bangalore South Sub-Division, Bangalore, by filing an application u/s 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, (for short "the Act"), praying for invalidation of the sale transaction and for restoration of the land in his favour, for the reason that his father had sold the

land contrary to the terms of the grant The Asst. Commissioner who though has held enquiry and has heard the parties i.e., the writ Petitioner and Respondents 4 and 5 in this petition viz., first purchaser in the year 1995 and the second purchaser in the year 2003, who is claiming interest under the 5th Respondent in this petition and though the Asst. Commissioner looked into the copy of the saguvali chit register and though notices had been issued to both Respondent Nos. 4 and 5 being the transferees of land in the years 1995 and 2003 respectively and the 5th Respondent being the person presently in possession of the land in question and was represented by counsel and had filed his written statement of objections, etc., the Asst. Commissioner very strangely and shockingly has accepted the contention put forth on behalf of the 5th Respondent to the effect that the Petitioner has no documentary evidence to show that the land in question was granted in favour of his father as a person belonging to scheduled casts community and as he was unable to ascertain as to whether it was a grant in favour of scheduled caste person under a reduced upset price or free of cost and as the land was sold after the non-alienation period had expired, held that the terms of the provisions of the Act do not get attracted and the application came to be dismissed placing reliance on the decision of State of Karnataka v. Bhoomi Reddy and Ors. rendered in W.A. No. 2142/1992 and further placing reliance on another decision of this Court Krishnamurthy Vs. The Deputy Commissioner and Others, and holding that the applicant/Petitioner having produced the copy of saguvali chit and not land grant order, which would have enabled the authority to look into the nature of the grant condition etc., etc., and being of the view that the extract of the saguvali chit register in itself was not sufficient for giving a finding in favour of the applicant and in the absence of any land grant records, he had no choice but to conclude that the Petitioner has utterly failed to produce documents in support of his claim and therefore, dropped the proceedings in terms of his order dated 13.6.2006, copy produced as Annexure-D to the petition.

5. The aggrieved Petitioner thereafter appealed to the Deputy Commissioner u/s 5A of the Act. The result was no different as the Deputy Commissioner exercising his appellate power, though records that he has carefully examined the records and considered the contentions put forth on both the sides has confined his examination to the records relating to the application and as had been built up by the Asst. Commissioner while exercising power u/s 5 of the Act and confining his examination to the extract of the saguvali chit register, which had been produced by the Petitioner and making out a twiddle dump and twiddle Dee of the entry therein and also observing that the Tahsildar, Anekal Taluk, has not furnished the original grant records and therefore agreed with the view taken by the Asst. Commissioner in the absence of the grant order, and holding that on the basis of the saguvali chit alone, cannot examine the correctness of the appellate order required for the purpose and purporting to follow the decision of this Court in Pedda Reddy Vs. State of Karnataka, and Nagendrappa and Anr. v. Deputy Commissioner and Ors. reported in 2002 KAR 2670 found no reason to

interfere with the order of the Asst. Commissioner and dismissed the appeal.

6. It is aggrieved by these orders the present writ petition. Petition was admitted on 19.9.2008 by issue of rule. Respondents 1 to 3 are represented by Sri R. Om Kumar, learned AGA and the 5th Respondent is represented by Sri Nikilesh Rao on behalf of M/s. Indus Law.

7. The matter has come up for orders regarding fresh notice to 4th Respondent etc. Fourth Respondent being only a person, who had purchased the land in question in the year 1995 and having in turn sold it to the present 5th Respondent and the 5th Respondent being represented, appearance or non-appearance of the 4th Respondent is not of much consequence and as the notice has not elicited any response, it has to be presumed that the 4th Respondent has no interest in the matter.

8. I have heard Sri. Madhusudan Rao, Learned Counsel for the Petitioner. Mr. Om Kumar, Learned Counsel for Respondent Nos. 1 to 3 and Sri. Nikilesh Rao, Learned Counsel appearing for caveator - 5th Respondent.

9. Mr. Madhusudan Rao, Learned Counsel for the Petitioner points out that the authorities under the Act have totally misread the judgments of this Court and to hold that the Petitioner had produced only the copy of saguvali chit register and not the grant order and therefore the application for setting aside should be rejected; that it was the duty on the part of the authorities to have verified the original records and by not doing so and merely dismissing the application is nothing short of acting against the purport and intent of the legislature purpose; that there is violation on the part of the Asst. Commissioner while exercising power u/s 5 of the Act and an equal failure on the part of the Deputy Commissioner while exercising appellate power u/s 5A of the Act and therefore the impugned orders are bad in law.

10. Mr. Madhusudan Rao, Learned Counsel for the Petitioner has drawn my attention to Annexures F and G orders passed by the very authorities in respect of a similar application and in respect of a portion of the very survey number granted in favour of another person under the very grant order, wherein the authorities have found it proper, not only for invalidating the sale transactions but also resuming the land and restoring it to the legal heir of the original grantee, but making a distinction in the case of the Petitioner and arriving at a different conclusion is nothing short of a perversity on the part of the authorities.

11. Mr R. Om Kumar, learned AGA points out that it is not as though the records were not available, but they are found to be in a torn and dilapidated condition.

12. Mr. Nilkilesh Rao, Learned Counsel appearing for the 5th Respondent on his part would submit that if the authorities could have bestowed a better attention to the application assuming that the matter warrants such examination, at the best it could be remanded, but with the available material as the authorities found no scope and held that the provisions of the Act are not attracted was

justified in dismissing the application as well as the appeal and therefore, no need to disturb the orders impugned.

13. I have perused the coders sought for quashing in this petition and considered the submissions made at the Bar.

14. The Karnataka Scheduled Castes and Scheduled Tribes (Inhibition of transfer of Certain Lands) Act, 1978, is a piece of social welfare legislation enacted by the Karnataka Assembly for the main and sole purpose of protecting the interests of persons belonging to scheduled caste and scheduled tribe community and the State Government taking note of the social backwardness, deprivation and the penury conditions in which they live has been granting agricultural lands to them so that they can themselves cultivate the lands for their own benefit, eke out their livelihood and lead an independent dignified life. Though such has been the approach of the government, in fact even prior to our country attaining independence, unfortunately such grants had never worked out to their advantage for the reason that the grantees were so very ignorant, innocent and gullible persons in the society, others were taking advantage of their sheer poverty and ignorance and members of the affluent class were managing to get such lands transferred to them and many a times even without paying proper consideration, and the very object and purpose to provide to such persons sustenance in their lives, was being defeated and it was in the wake of such experience, the Karnataka legislature thought it fit and proper to legislate The Act" to ensure that such transactions relating to lands granted in favour of scheduled caste and scheduled tribe persons if had been transferred in violation of the conditions of grants prior to the act coming into force and later if were transferred without taking prior permission from the Government, the land to be resumed to the government and restored to the grantee or the legal heirs of the original grantee which is the avowed object of the Act and it is for this purpose, provisions of Section 5 finds a place in the Act and reads as under:-

Section 5. Resumption and Restitution of Granted Lands:

(1) Where, on application by arty interested person or on information given in writing by any person or sua motu, and after such enquiry as he deems necessary, the Asst. Commissioner is satisfied that the transfer of any granted land is null and void under Sub-section (1) of Section, 4 he may:

(a) by order take possession of such land after evicting all persons in possession thereof in such manner as may be prescribed;

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being hear;

(b) restore such land to the original grantee or his legal heir. Where it is not reasonable practicable to restore the land to such grantee or legal heir, such land shall be deemed to have vested in the Government free from all encumbrances. The Government may grant such land to a person belonging to any of the

Scheduled Castes or Scheduled Tribes in accordance with the rules relating to grant of land.

15. While prohibition is confined to Section 4 of the Act, the manner of enquiry proceedings and action to be taken is provided for u/s 5 of the Act.

16. It is clear on a reading of Sub-section (1) of Section 3 that the Assistant Commissioner who acts as the original authority for holding an enquiry for arriving at a conclusion as to whether the provisions of the Act are attracted and if so what action is warranted, as to whether such action can be initiated can act either on an application made by the interested persons or even on information given, not necessarily by a person claiming interest in the land or even suo motu and therefore, an enquiry has to be held and as the interest of the purchaser/a can be affected naturally opportunity of hearing must be given to such persons.

17. While it is true, that a bona fide transferee having purchased the land in violation of the condition will always feel aggrieved by an order passed by the Asst. Commissioner invalidating the sale transaction, the Asst. Commissioner has no choice but to go about this exercise and is bound to give effect to the legislative provisions and discharge the duty of the Asst. Commissioner who has been empowered to hold the enquiry to look into all aspects of the matter and arrive at a proper conclusion for the implementation of the provisions of the Act.

18. The enquiry is only as to whether the subject land was one granted by the Government and in favour of a person who belonged to a scheduled caste/scheduled tribe community and as to whether such a land had been transferred in violation of the conditions of grant, if the transfer had taken place before the Act came into force and if the transfer is after the Act has come into force, if it is a transfer after obtaining the prior permission, the present case, the grant itself being subsequent to the Act coming into force w.e.f. 1.1.1979 and the grant being on 3.2.1979, it is obviously a grant subsequent to the Act having come into force and whether or not the conditions of the grant are violated or not and even assuming as submitted by Sri Nikilesh Rao, Learned Counsel for 5th Respondent that the condition of non-alienation was for a period of 15 years and the sale transaction had taken place after the expiry of 15 years, it is nevertheless hit by provisions of Sub-section (2) of Section 4 of the Act reads as under:

4. Prohibition of transfer of granted lands.-

(1) Notwithstanding anything in any law, agreement, contract or instrument, any transfer of granted land made either before or after the commencement of this Act, in contravention of the terms of the grant of such land or the Jaw providing for such grant, or Sub-section (2) shall be null and void and no right, tike or interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer.

(2) No person shall, after the commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government

(3) The provisions of Sub-sections (1) and (3) shall apply also to the state of any land in execution of a decree or order of a civil court or of any award or order of any other authority and this is as obvious as day light

19. But as rightly pointed out by Sri R. Om Kumar, learned AGA Sub-section (3) of Section 5 of the Act casts a burden on any person, who is in possession to prove that the transaction is otherwise not hit by the provisions of the Act, but till then the presumption has to be that it is a transfer which is null and void in terms of provisions of Sub-section (1) of Section 4 of the Act.

20. It is rather surprising and shocking to see the most casual and irresponsible manner in which the statutory functionaries have gone about their statutory duty. In the first instance, the Asst. Commissioner in a slip shod manner has whittled down the benefits conferred under the Act on persons like the Petitioner and has ordered that as the applicant is not in a position to produce the records or prove the nature of the grant etc., his request should be rejected.

21. The certified copy of the saguvali chit extract produced by the Petitioner before the Asst. Commissioner was more than enough to ring a bell in the mind of the Asst. Commissioner and to compel him to perform his duty of holding a proper enquiry, securing the records of the Tahsildar but instead to say that it is not forthcoming is nothing short of another evasive act on the part of the Asst. Commissioner and a clear case of dereliction of duty as the Tahsildar is only a subordinate officer and it was the duty of the Asst. Commissioner to have summoned the records from the Tahsildar and if he has not done so and takes umbrage under his failure of his duty as an excuse to dismiss the application, it is nothing short of a gross dereliction of his duty, but also a perversity, in passing an order on such premise.

22. When such is the conduct rather, misconduct on the part of the Asst. Commissioner, if was the bounden duty of the part of the Deputy Commissioner exercising appellate power to examine the validity and justification of the order passed by the Assistant Commissioner.

23. But unfortunately, the Deputy Commissioner is unable to see beyond the order of the Asst. Commissioner and takes shelter to affirm the order on the pretext or the lame excuse of the Tahsildar not forwarding the record and has affirmed the order the Asst. Commissioner, being of the view that the appeal has to be dismissed.

24. The Deputy Commissioner acting as an appellate authority failed to see or understand the provisions of the Act; that the Asst. Commissioner has been conferred with suo motu powers to go into such transaction and he was duty bound to annul the sale transaction in terms of the statutory provisions and resume the land to the State Government and restore it to the original grantee or his legal heirs. Such is not the conduct or exercise of power by either the Asst. Commissioner or the view taken by the Deputy Commissioner while exercising the appellate power.

25. It is not as though the statutory functionaries are not worldwide or not familiar with such situations as they deal with such matters day in and day out and therefore while should know the prevailing legal position and also about the existence/availability of the records which is a matter well within their knowledge.

26. The manner in which reliance is placed by the Asst. Commissioner and the Deputy Commissioner on several decisions, which are totally not applicable to the facts of the present case is another give away about the bona fides and manner of functioning on the part of the Authorities only to dismiss the application Both the authorities have thoroughly failed in their duties and have conducted themselves in gross dereliction of duty and have virtually defeated the purpose and object of the Act, and their conduct leaves much to be desired.

27. The only inference that can be drawn in the facts and circumstances of this case is that they have obviously acted on considerations other than merits of the matter and the statutory provisions)

28. The legislative object is sought to be parted with or prevented by the action of the Asst. Commissioner and Deputy Commissioner; that it is to be pointed out that it is not the Asst. Commissioner or the Deputy Commissioner, who grants the land in the sense by the invalidation of the sale transaction and restituting it to the original grantee or the legal heirs of the original grantee, but it is the statute which achieves this position and the Asst. Commissioner and the Deputy Commissioner being the statutory functionaries cannot function independent of the legislative enactment and its provisions. The Deputy Commissioner who acts as an appellate authority u/s 5(A) of the Act is exercising appellate power, which is co-extensive with that of the original authority but also has thoroughly failed in his duty in this regard.

29. Normally such matters are, after being set aside or quashing the orders sent back to the authorities and in the present case though Mr. Nikilesh Rao, Learned Counsel for the 5th Respondent has sought for such a prayer and has submitted to this effect, I do not find any need or justification to remand this matter as the material on record was quite enough or sufficient to hold that the sale transaction is inevitably hit by the provisions of Section 4 of the Act.

30. There was no dispute that it is a grant of the year 1979 and if the orders produced by the Petitioner at Annexures F and G are any indication to hold that it is a granted land and with the certificate produced as issued by the Tahsildar himself that his father is a person belonging to scheduled caste community, nothing more is required for passing a proper order under the provisions of the Act only to record the legal position viz., that is whether the transaction is void in terms of Sub-section (1) of Section 4 of the Act or is in violation of Sub-section (2) of Section 4 of the Act. It is not as though the purchaser had pleaded that they had obtained prior permission from the competent authority for purchasing the land. Whether or not there was a condition of non-alienation of 15 years only and even assuming the sale transaction is after the expiry of 15 years that

question recedes to the background and is not of much consequence. It is the statutory violation, as contemplated in Sub-section (2) of Section 4 of the Act which operates and the transaction is rendered null and void by the operation of the law, which position the statutory authorities, are bound to record and give effect to in terms of the mandate of the Act.

31. Writ petition is allowed levying exemplary costs of Rs. 10,000/- on each of the Respondents and insofar as Respondents 2 and 3 are concerned it is directed that it shall be personally recovered from the persons who had passed the orders at Annexures-D and E. A record of the observations and the remarks passed by this Court as against Respondents 2 and 3, shall be kept in their confidential records. Costs of Rs. 10,000/- to be paid by Respondents 2, 3 and 5 to be deposited before this Court within four weeks from today failing which the registry is directed to issue a certificate in favour of the Petitioner to enable the Petitioner to recover the amount from each of these Respondents as though it is a decree passed by the Civil Court or as an arrears of land revenue. If the costs is deposited, it is open to the Petitioner to withdraw the same through his counsel.

32. Mr. R. Omkumar, learned AGA drawing attention of the Court to Section 9 of the Act submits that the Respondents 2 and 3 are entitled to protection provided under this statutory provision and therefore there is no need to impose costs personally on Respondent Nos. 2 and 3 nor to pass any strictures. The provisions of Section 9 of the Act read as follows:

Section 9: Protection of Action Taken In Good Faith:

(1) No suit, prosecution or other legal proceedings shall lie against any person or officer for anything which is, in good faith done or intended to be done in pursuance of this Act or any rules made there under.

(2) No suit or other legal proceedings shall lie against the Government for any damage caused or likely to be caused or for any injury suffered or likely to be suffered by virtue of any provision of this Act or for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made there under.

While it is true that judicial review is only for examining an action taken by the administrative or quasi judicial authority and while this Court is exercising jurisdiction under Articles 226 and 227 of the Constitution of India and when prerogative writs are issued in terms of Article 226 of the Constitution of India for quashing illegal, arbitrary, unconstitutional orders and orders suffering from gross procedural irregularity for issue of appropriate writs, this Court also in a petition under Article 227 of the Constitution of India examines the orders passed by Asst. Commissioner and the Deputy Commissioner acting as quasi judicial functionaries while exercising statutory power under Sections 5 and 5A of the Act respectively within the scope of judicial review of administrative action and it is for this purpose such matters reach this Court in writ jurisdiction for



examination of such orders. While the examination is confined to the quality of the orders as to whether any illegality or irregularity is committed in the course of passing orders impugned, I find in the present case, not matter a gross dereliction of duty but an act leading to an abdication of jurisdiction conferred in the authorities as the object of the Act conferring such jurisdiction on the Asst. Commissioner is to be exercised for achieving the object of the Act and the manner in which the Asst. Commissioner has ignored the material on record and has gone about searching a material which could have been easily traceable in the record, but taking shelter or umbrage under the excuse of applicant not placing records or the Tahsildar not forwarding this office record is nothing short of a mala fide conduct on the part of the Asst. Commissioner. What interest of a statutory functionary is protected in terms of the provisions of Section 9 of the Act is only the action taken in good faith and I have no hesitation in holding that the order passed by the Asst. Commissioner in terms of Annexures D is not an action taken in good faith, but otherwise and it is therefore, the Asst. Commissioner does not get the protection of Section 9 of the Act.

33. The situation is no different in the case of Deputy Commissioner, who has equally- failed in the performance of his duties while exercising the appellate jurisdiction for the proper purpose and while he was the competent authority who should have corrected the order of the Asst. Commissioner, if he had gone wrong, but instead the Deputy Commissioner repeats the very same mistake which in itself was a mala fide action, is nothing short of perpetrating the misdeeds and mis conduct of the Assistant Commissioner with a mala fide conduct and also committing the same act, the manner in which the Appellate Authority has disposed of the matters, while leaves much to be desired, no other inference can be drawn even in the case of the Deputy Commissioner other than the one inferred in the case of the Asst. Commissioner and therefore, the Appellate Authority also does not get the protection of Section 9 of the Act and the submission made by Sri R. Omkumar, learned AGA appearing for the Respondents 1 to 3, that their interest should be protected cannot be accepted and is therefore, rejected.

34. The legal position is thus and therefore, the orders impugned in this writ petition are quashed by issue of a writ of certiorari, the statutory legal position of the transaction getting voided in terms of Sub-section (2) of Section 4 of the Act is hereby accorded and the Asst. Commissioner is directed to take further action in accordance with Clauses (a) and (b) of Sub-section (1) of Section 3 of the Act

Rule made absolute.