

(2013) 08 KAR CK 0022

In the Karnataka High Court

Case No : Writ Petition No. 26894 of 2012 (SC/ST)

Sri K. Mohan Reddy

APPELLANT

Vs

State of Karnataka, The Deputy Commissioner, The Assistant
Commissioner and Smt. C. Madhu

RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 5, 5A

Citation : (2013) 08 KAR CK 0022

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : A. Madhusudhana Rao, for the Appellant; M.G. Anjana Murthy, HCGP for R1 to R3 and Smt. Sumithra, for R4, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—Petitioner purchased the land in dispute under a registered sale deed dated 14.10.2004 executed by Doomappa and 11 others vide Annexure-A. Respondent No. 4 claiming to be grand-daughter of Balappa, the grantee of the land, filed an application under S. 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, (for short "the Act") vide Annexure-C, before the 3rd respondent, to declare the said sale deed as null and void and for resumption of land free from all encumbrances and for restoration. In response to the notice issued by the 3rd respondent, the petitioner filed statement of objections, as at Annexure-D. The 3rd respondent upon examination of the record of the case rejected the application, finding that the alienation of the land in dispute has taken place more than 30 years prior to coming into force of the Act and that the provisions of the Act are not attracted. An order as at Annexure-E was passed dismissing the application on 06.08.2008. Feeling aggrieved, the petitioner filed an appeal under S. 5A of the Act before the 2nd respondent vide Annexure-F. To the appeal memorandum, statement of objection vide Annexure-G was filed. The 2nd

respondent having formed an opinion in the first instance, that there is no denial of fact that the appellant belonged to scheduled caste, having perused the record and by making a reference to the decision in the case of Bheemanna vs. Deputy Commissioner, Chitradurga and others, ILR 2010 Kar 2011, held, that in the instant case, the land was granted during the year 1938 subject to non-alienation condition for ever and the land having been alienated under a sale deed dated 10.05.1948 and resold the land on 13.05.1959 and the property having been subsequently sold on 14.10.2004, all the sale deeds are null and void and hence, purchaser had not derived any right, title or interest on the land in question. As a result, the order passed by the Assistant Commissioner challenged in the appeal was set aside and the land was ordered to be resumed to the Government free from all encumbrances and for restoration in favour of the original grantee or his legal heirs, as per an order dated 02.07.2012 vide Annexure-H. Feeling aggrieved, the petitioner-purchaser of the property has filed this writ petition. Sri. A. Madhusudhana Rao, learned advocate for the petitioner contended that finding recorded by the 2nd respondent in the order, as at Annexure-H is perverse and illegal. Learned counsel by taking me through the record of the case and placing reliance on certain decisions submitted that the impugned order is arbitrary, illegal and hence, warrants interference. The decisions which the learned counsel placed reliance are:

- 1) Sri Ramachandrappa Vs. State of Karnataka and Others, others.
- 2) 1993 (3) KLJ 346 (DB), V. Muniswamy Vs. Deputy Commissioner, Kolar and others.
- 3) K.P. Ravindra Reddy Vs. State of Karnataka and Others,
- 4) Manchegowda and Others Vs. State of Karnataka and Others,
- 5) K.T. Huchegowda Vs. Deputy Commissioner and Others, others.
- 6) Shanthakumar Vs. The Deputy Commissioner and Others,
- 7) AIR 1962 Mysore 253 (V 49 C 79), Mohammed Isak Saheb and others vs. Najaniddin Shamansaheb Mulia and others.
- 8) A. Krishnappa Vs. Thimmarayappa (Deceased) by L.Rs and Others,
- 9) The Karnataka Wakf Board Vs. State of Karnataka and others,
- 10) Mariyappa Vs. Dr. N. Thimmarayappa and Others,

2. Mrs. Sumithra, learned advocate for the 4th respondent, on the other hand submitted that in the facts and circumstances of the case, the 2nd respondent is justified in allowing the appeal and in passing the order vide Annexure-H and thereby declaring the sale deed, as at Annexure-A as null and void and in directing resumption of the property to the Government free from all encumbrances and for its restoration in favour of the LRs. of the original grantee.

3. Sri M.G. Anjanamurthy, learned HCGP made submissions in support of the

conclusion arrived at by the 2nd respondent in the order as at Annexure-H and sought dismissal of the writ petition.

4. Perused the writ record. In view of the rival contentions, the point for consideration is whether the impugned order, as at Annexure-H is perverse, arbitrary and illegal?

5. Petitioner purchased the land in dispute from Doomappa and others under a registered sale deed dated 14.10.2004. The 4th respondent filed an application under S. 5 of the Act before the 3rd respondent, to declare the said sale deed as null and void and for grant of consequential reliefs. In the statement of objections filed to the said application vide Annexure-D, the averments made in para Nos. 3, 4, 6 and 8 of the application were denied as false. That apart it was stated as follows:

In view of the fact that the Petitioner has not produced the Original Grant Certificate and the Original Genealogical Tree, she has miserably failed to establish that she belongs to schedule caste/schedule tribe community and that she is one of the descendants of the Original Grantee, much more so, in view of the fact that the Petitioner has not produced any succession certificate issued by the competent authority. The Petition of the Petitioner is liable to be dismissed on this count alone.

Likewise in view of the fact that the Petitioner has not produced the Original Grant Certificate and thereby this authority would not be in a position to come to a conclusion that whether the Grant in favour of the Original Grantee is for upset price, free grant or for reduced upset price, and the Petition of the Petitioner is liable to be dismissed on this count.

Likewise in view of the fact that the Petitioner has not produced the Original Grant Certificate and thereby this authority would not be in a position to come to a conclusion that whether the land was sold in violation of the terms of the Grant or not, and the Petition of the Petitioner is liable to be dismissed on this count alone.

6. The 3rd respondent without conducting enquiry in the manner provided under Rule 3(5) of the Act passed an order dated 06.08.2008 and dismissed the application vide Annexure-E. The applicant having filed an appeal vide Annexure-F before the 2nd respondent, the statement of objections vide Annexure-G was filed before the Appellate Authority. The said statement of objections amongst other contained the following pleadings:-

In view of the fact that the Appellant has not produced the Original Grant Certificate and the Original Genealogical Tree, she has miserably failed to establish that she belongs to schedule caste/schedule tribe community and that she is one of the descendants of the Original Grantee, much more so, in view of the fact that the appellant has not produced any succession certificate issued by the competent authority. The appeal of the appellant is liable to be dismissed on

this count alone.

7. The 2nd respondent while passing the impugned order by stating that he has carefully examined the records and considered the contentions put forth on both the sides, has observed as follows:

In the first instance, there is denial of fact that the appellant belonged to scheduled caste.

Despite specific denial in the statement of objections filed before the respondents 2 and 3, noticed supra, the 2nd respondent has assumed that there is no denial of fact that the appellant belongs to scheduled caste. No enquiry was held in terms of the Rule 3(5) by the 3rd respondent. Indisputably, no enquiry was conducted even by the Appellate Authority-2nd respondent. Still, a finding, noticed supra, has been recorded, which is perverse and illegal.

8. Though, number of contentions has been raised in the statement of objections filed before the respondents 2 and 3, without considering the same in accordance with law, the 2nd respondent has passed the impugned order. The findings recorded by the 2nd respondent, in the order at Annexure-H, having no support based on the record of an enquiry conducted, has to be termed as perverse, arbitrary and illegal. Hence, the impugned order, as at Annexure-H is unsustainable. The 3rd respondent having passed the order, as at Annexure-E, without holding any enquiry i.e., in the manner provided under Rule 3(5) of the Rules, the same also warrants interference.

In the result, writ petition is allowed and the order passed by the 2nd respondent, as at Annexure-H and also the order passed by the 3rd respondent, impugned in the appeal filed before the 2nd respondent, as at Annexure-E, are quashed. Consequently, the case is remanded to 3rd respondent, to hold an enquiry in the manner provided under Rule 3(5), by granting reasonable opportunity to both the parties to adduce evidence and thereafter pass order on the application, as at Annexure-C, filed by the 4th respondent herein.

Both the parties are directed to appear before the 3rd respondent on 24.08.2013 and receive orders.

The 3rd respondent is directed to decide the case expeditiously and before 31.12.2013.

Contentions of both the parties are left open for consideration.

No costs.