

(2013) 06 KAR CK 0216
In the Karnataka High Court
Case No : W.A. No's. 92-93 of 2012 (SC/ST)

Sri. K.C. Yogesh and Sri. M. Gopalakrishna	APPELLANT
Vs	
State of Karnataka and Others	RESPONDENT

Date of Decision : 22-06-2013

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48A
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 4, 5

Citation : (2013) ILR (Kar) 5526

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

Bench : Division Bench

Advocate : N.R. Naik, for N.R. Naik and Associates, for the Appellant; B. Veerappa, AGA for R. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

B.V. Nagarathna, J.—These appeals are preferred against two separate orders of two learned Single Judges passed in separate writ petitions. Since the land in question involved in both the writ petitions is one and the same and the matter arises under the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as "PTCL Act" for the sake of brevity), these appeals have been heard together and are disposed of by this common judgment. In Writ Appeal Nos. 98-100/2012, the order dated 28.01.2011 passed in W.P. Nos. 2682-2684/2011 is assailed. By the said order, the learned Single Judge dismissed, the writ petition, affirming the order of the Deputy Commissioner, who had set aside the order of the Assistant Commissioner and had annulled the sale transaction and directed the resumption of the land by the State and restitution to the original grantee. Subsequently, the Tahsildar issued notice dated 02.12.2011 calling upon the purchaser of the land with regard to taking physical possession of the same and restoring it to the grantee. The said notice was issued u/s 3 of the PTCL Rules. The same was assailed in W.P. Nos. 45398-45399/2011. Learned Single

Judge by order dated 08.12.2011 dismissed the writ petitions. It is in this background that the two appeals have been filed.

2. Land measuring 5 acres 17 guntas in Sy. No. 66/2 of G. Shankaranahalli Village was granted to Hunya Naika, the grantee by an order of grant dated 09.02.1963. Out of the said extent, 4 acres of land was sold by the grantee in favour of Ganga Naika on 28.06.1970, by a registered sale deed. Out of the said extent of 4 acres, 2 acres 32 guntas of land was inurn sold by Ganga Naika to the appellants K.C. Yogesh and M. Gopalakrishna on 10.01.2000. The remaining land is said to continue to be with the grantee. On 01.01.1979, the PTCL Act was enforced. However, the purchaser of the land Ganga Naika made an application before the Land Tribunal at Arasikere Taluk, claiming occupancy rights u/s 48A of the Karnataka Land Reforms Act with regard to four acres. The said application was registered as LRF. 48/79-80. On receipt of notices from the Land Tribunal, the grantee/vendor of the land appeared and stated that the purchaser was entitled to occupancy rights to an extent of 2 acres 37 guntas. Accordingly, occupancy rights were granted in favour of Sri. Ganga Naika, the purchaser, by order dated 24.01.1981 passed by the Land Tribunal and subsequently, Form No. 10 was also issued. As already stated, Ganga Naika sold 2 acres 32 guntas in favour of K.C. Yogesh and M. Gopalakrishna in the year 2000.

3. When the matter stood thus, the grantee, Muniyanaika made an application before the Assistant Commissioner under the provisions of PTCL Act. It is the case of the subsequent purchasers that the grantee had sold 4 acres in Sy. No. 66/2 to Ganga Naika, but before the Land Tribunal, the grantee alleged that what was in possession of the purchaser Ganga Naika was only 2 acres 37 guntas and therefore, the Land Tribunal confirmed occupancy rights to that extent only and in respect of the balance land, which according to Ganga Naika, had also been purchased by him from the grantee, no occupancy right was granted. The application filed by the grantee before the Assistant Commissioner u/s 5 of the PTCL Act seeking restoration of the entire extent of 4 acres of land, which was sold by him. The said application was dismissed by order dated 30.06.2009. Against the said order, the grantee filed an appeal before the Deputy Commissioner, Hassan, who by order dated 23.11.2010 allowed the appeal and held that the transactions were in contravention of the PTCL Act and directed the Assistant Commissioner to take possession of the lands by way of resumption. Thereafter, notice on 02.12.2011 was issued. It is the order of the Deputy Commissioner and the notices that were assailed in two separate writ petitions as detailed above. Both the writ petitions have been dismissed, thereby holding that the grantee is entitled to resumption and restoration of the entire extent of land. Hence, the appeals have been preferred.

4. We have heard the learned counsel for the parties and perused the material on record.

5. The main contention of the counsel for the appellant/purchaser is that when the occupancy right has been granted by the Land Tribunal, the same cannot be

a subject matter arising under the PTCL Act. That, though initially the entire extent of land was sold by the grantee to the purchaser, Ganga Naika, in the proceedings before the Land Tribunal, the grantee falsely admitted that only 2 acres 37 guntas was sold, as a result, occupancy right was granted to the purchaser-Ganga Naika only to that extent and the balance land has remained with the grantee. Despite that the application was filed before the Assistant Commissioner u/s 5 of the PTCL Act seeking resumption and restoration of the entire extent of land. It was, therefore, contended that the orders passed by the Assistant Commissioner was justified and that the Deputy Commissioner was not right in holding that the transactions were in contravention of the PTCL Act. Therefore, the said order has to be set aside and the order of the Assistant Commissioner may be given effect to. It was also contended that the issuance of notice by the Tahsildar seeking possession of the land is in contravention of the Rules indicated under the PTCL Act and therefore, the orders passed in the writ petitions call for intervention in these appeals.

6. Per contra, learned Addl. Government Advocate supported the orders passed in the writ petitions by contending that the provisions of the PTCL Act override any other law and that in the instant case, having regard to the date of grant as well as the alienation made in contravention of the terms of the grant, the transactions are void and therefore, under the provisions of the PTCL Act, the grantee is entitled to resumption and restoration of the land. He, therefore, submitted that the appeals are bereft of any merit and hence, have to be dismissed.

7. Section 4 of the Act deals with prohibition of the transfer of granted lands while Section 5 speaks of resumption and restoration of granted land. The expression "granted land" is defined in 3(b) of the Act to mean as under:-

"any land granted by the Government to a person belonging to any of the Scheduled Castes or the Scheduled Tribes and 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 Inams, other than that relating to hereditary offices or rights and the word "granted" shall be construed accordingly" and the word transfer is defined as "a sale, gift, exchange, mortgage (with or without possession), lease or any other transaction not being a partition among members of a family or a testamentary disposition and includes the creation of a charge or an agreement to sell, exchange mortgage or lease or enter into any other transaction".

8. In *Sri. Manchegowda etc., Vs. State of Karnataka* (AIR 1984 SC 1151), it has been observed as follows:

Where the transferee acquires only a defensible title liable to be defeated in accordance with law, avoidance of such defensible title which still remains liable to be defeated in accordance with law at the date of commencement of the Act and recovery of possession of such granted land on the basis of the provisions

contained in Section 4 and Section 5 of the Act cannot be said to be constitutionally invalid and such a provision cannot be termed as unconscionable, unjust and arbitrary.

x x x

Transferees of granted lands with full knowledge of the legal position that the transfers made in their favour in contravention of the terms of grant or any law, rule or regulation governing such grant are liable to be defeated in law, cannot and do not have in law or equity, a genuine or real grievance that their defensible title in such granted lands so transferred is, in fact, being defeated and they are being dispossessed of such lands from which they were in law liable to be dispossessed by process of law.

9. Section 11 of the Act gives an overriding effect vis-?-vis anything inconsistent contained in any other law, which is in force or any decree or order of the court or other authority.

10. In the case of Thirtharama and others Vs. The State of Karnataka ILR 2011 Kar 1231, a Division Bench of this court has considered the definition of "granted land" in Section 3(1)(b) of the Act in the context of Section 4 as well as Section 11 of the Act and it is held that the grant of occupancy rights under the Karnataka Land Reforms Act, 1961 in respect of a "Granted Land" whose earlier lease or transfer was contrary to Section 4 of the Act would not give exemption to such land from the applicability of the PTCL Act. Therefore, any order passed by the Land Tribunal in the instant case, has no effect in the light of Section 11 of the PTCL Act and having regard to the object and purpose of the said Act.

11. In the instant case, the sale made by the grantee to the purchaser-Ganga Naika is not in dispute. It is also not in dispute that the said sale is in contravention of the PTCL Act. The application made by the purchaser for grant of occupancy rights before the Land Tribunal, it appears was only to get over the provisions of the PTCL Act, and thereby prohibit the grantee from making any claim u/s 5 of the PTCL Act. It is plausible that such an ingenious method of approaching the Land Tribunal was made to ensure that the grantee is prohibited from seeking relief under the provisions of the PTCL Act. The order of the Land Tribunal is, no doubt, prior to the orders passed under the PTCL Act. It is also plausible that the grantee was influenced to agree for grant of occupancy rights to an extent of 2 acres 37 guntas. However, that has not deterred the grantee from seeking resumption and restoration of the entire extent of 4 acres of land under the provisions of the PTCL Act. Therefore, in our view, the Assistant Commissioner was not right in rejecting the application made by the grantee by placing reliance on the grant of occupancy made by the Land Tribunal. The Deputy Commissioner has rightly held that the sale made by the grantee was in contravention of the provisions of the Act insofar as the entire extent of 4 acres is concerned. He has rightly come to the conclusion that the filing of the application before the Land Tribunal after enforcement of the PTCL Act seeking

grant of occupancy rights by the purchaser did not have the effect of the grantee seeking resumption and restoration of the land under the provisions of the PTCL Act. In fact, the stratagem adopted by the purchaser Ganga Naika in approaching the Land Tribunal after the enforcement of the PTCL Act is to be deprecated. Therefore, learned Single Judge was right in dismissing the writ petitions by upholding the order of the Deputy Commissioner.

12. In *O. Dyamappa v. Appanna Bhovi and others* (1997 (3) KLJ 683) in paragraph-15 of the judgment, the Division Bench has affirmed the view of a Single Bench in *Siddoji Rao vs. State of Karnataka and Others* (1983(1) Kar L.J. 478) to the effect that an order of the Land Tribunal stands overridden by the provisions of the PTCL Act. In the case of *Siddoji Rao*, a member of the scheduled caste was granted land with a stipulation that he should not alienate for 15 years but in violation of the same, he sold the land to a person who in turn leased the land to the petitioner therein. The said petitioner had obtained the occupancy rights under the Land Reforms Act by establishing that he was a tenant as on 01.03.1974. The grantee, on the enforcement of the PTCL Act made an application before the Assistant Commissioner seeking resumption and restoration of the granted land on the ground that the alienation made by him was void, which application was allowed and restoration of possession was ordered. The said order was assailed by the tenant. In those circumstances, this Court held that, Sections 4 and 11 give an overriding effect to the PTCL Act and the order of the Land Tribunal notwithstanding that, the Assistant Commissioner was right in declining the sale void and restored the possession to the grantee. The said position is squarely applicable to the present case. Consequently, the steps with regard to resumption and restoration of the land had to be taken. It is in that context, notice dated 02.12.2011 was issued by the Tahsildar, Arasikere Taluk, has been unsuccessfully assailed in the second writ petition filed by the subsequent purchasers. There are no grounds made out to hold that the said notice is not in accordance with law. The said notice is, in fact, a consequential step, pursuant to the order passed by the Deputy Commissioner which has been upheld by the learned Single Judge of this Court by order dated 28.01.2011. In fact, we have taken a similar view in *W.A. No. 15844/2011* disposed of on 08/06/2012. Consequently, both the appeals are without merit and are, accordingly dismissed. No costs.