
(1999) 07 KAR CK 0057

In the Karnataka High Court

Case No : Writ Petition No. 28392 of 1996

Sri. Lachama Naika and Another

APPELLANT

Vs

The Deputy Commissioner and Another

RESPONDENT

Date of Decision : 14-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2000) 1 KCCR 53

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : H.S. Sureshappa Gowda, for the Appellant; V. Jayaram Government Advocate, for Respondent 1 and 2 and Basava Prabhu S. Patil, for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

Hari Nath Tilhari, J.—This petition is directed against the order dated 15.6.1996 passed by the Deputy Commissioner, Shimoga District, Shimoga, in case No. SC/ST/44/1990-91 vide Annexure-"B" rejecting the order dated 3.10.1990 passed by the Assistant Commissioner, Shimoga Sub-Division, Shimoga, in PTCL.CR.21/1989-90 vide Annexure-A u/s 5(1) of the Karnataka Act No. 2 of 1979.

2. The grantee has come up before this Court challenging the order of the Deputy Commissioner. The grant in this case had been made on 30.9.1963 in respect of the land bearing Survey No. 86/1 measuring 4 acres situated at Dondragatta Village, Channagiri Taluk. The grantee had sold the land in question in favour of Sri. Parameshwarappa (Respondent No. 3 herein) by a registered sale deed dated 17.12.1966. There is no dispute that the grantee belongs to the Scheduled Castes. The proceedings were taken u/s 5 of Karnataka Act No. 2 of 1979 for resumption of land and its restoration to the grantee.

3. The Assistant Commissioner, Shimoga Sub-Division, Shimoga, after holding

the enquiry and hearing both parties held that the grantee belongs to the Scheduled Castes community. It further found that condition of grant which prohibited the alienation of the granted land for a period of fifteen years had been violated and the alienation was in breach of the condition of the grant. So it held that the alienation made under a registered sale deed dated 17.12.1966 to be null and void u/s 4(1) of the Act. The Assistant Commissioner directed resumption of the land and its restoration of possession in favour of the grantee or his heirs vide the order dated 3.10.1990.

4. Respondent No. 3 feeling aggrieved of the said order of the Assistant Commissioner preferred the appeal before the Deputy Commissioner preferred the appeal before the Deputy Commissioner, Shimoga District, Shimoga, in appeal No. SC/ST. 44/1990-91 and the Deputy Commissioner has allowed the appeal on 15.6.1996 having opined that Respondent-3 had been in continuous possession for twelve years before 1.1.1979 so he has perfected his title by adverse possession before coming into force of the Act and the provision of the said Act could not be applied.

5. Feeling aggrieved of the said order of the Deputy Commissioner, dated 15.6.1996, the grantee has come up before this Court by this petition under Articles 226 and 227 of the Constitution of India.

6. I have heard Sri. H.S. Sureshappa Gowda, learned Counsel for the Petitioners and Sri. Basava Prabhu S. Patil Advocate assisted by Sri Raghavendra P. Hegde learned Counsel for Respondent-3.

7. The principal contention that has been urged by the learned Counsel for the Petitioners is that the Deputy Commissioner has committed error of law apparent on the face of the record in opining that Respondent-3 has perfected his title by adverse possession before coming into force of the Act on the basis of twelve years possession. The learned Counsel has contended that full ownership rights had not been granted by the Government in favour of the grantee, as such under the law unless it was held and found that full ownership rights were granted in favour of the Petitioners or the grantee, the period of thirty years had to be applied to consider the question of title by adverse possession. The learned Counsel contended that Respondent-3 has purchased the land in question on 17.12.1966 and Act No. 2 of 1979 came into operation on 1.1.1979. The period of thirty years has not been completed. The learned Counsel contended that Respondent-3 has failed to prove that the grantee under the grant had been given absolute ownership rights.

8. The above contention of the learned Counsel for the Petitioners has been hotly contested by the learned Counsel appearing for Respondent-3. The learned Counsel made reference to the decision of the Supreme Court in *K.T. Huchegowda v. Deputy Commissioner* (ILR 1994 Kar. 1839).

9. I have applied my mind to the contentions advanced by the learned Counsels for the parties.

10. It will be appropriate at this stage to quote the material observations in paragraph 8 of the said report.

Their Lordships observed as under;

On a plain reading, granted land will mean, any land granted by the Government to a person who is a member of the Scheduled Castes or Scheduled Tribes which includes land allotted to such persons. Grants may be of different types, it may be by absolute transfer of the interest of the State Government to the person concerned, it may be only by transfer of the possession of the land by way of allotment, without conveying the title over such land of the State Government. If by grant the transferee has acquired absolute title to the land in question from the State Government, then subject to protection provided by the different provisions of the Act, he will be subject to the same period of limitation as is prescribed for other citizens by the provisions of the Limitation Act, in respect of extinguishment of title over land by adverse possession. On the other hand, if the land has been allotted by way of grant and the title remains with the State Government, then to extinguish the title that has remained of the State Government by adverse possession, by a transferee on basis of alienation made in his favour by an allottee the period of limitation shall be 30 years.

11. Their Lordships further observed in paragraph 9 of the said report as under:

In this background when this Court in the case of *Sunkara Rajyalakshmi v. State of Karnataka* (supra) said that the period of limitation, which has to be taken into account for the purpose of determining, whether the title has been perfected by prescription, shall be that which runs against the State Government and therefore it would be 30 years and not 12 years has to be read by context with the lands, the ownership whereof, has not been transferred absolutely to the members of the Scheduled Castes and Scheduled Tribes, the lands having been only allotted to them the title remaining with the State Government.

12. Thus it is clear from the above decision that in cases where the grant of land had been made in favour of the Scheduled Castes or Scheduled Tribes person conferring full absolute ownership rights in the land, in those cases the transferee may claim to have perfected his title by Twelve Year's adverse possession. But where the grant does not confer such ownership rights, but only for enjoyment of the land by the grantee without transfer of any ownership rights then to the claim for title by adverse possession against the State 30 years period would apply. Nowhere the Deputy Commissioner has found that the grant in favour of the grantee was made with absolute ownership rights. In the absence of such finding, the finding of the Deputy Commissioner that Respondent-3 (alienee) has perfected his title by adverse possession within twelve years before coming into force of the Act suffers from jurisdictional error. The order impugned in this writ petition suffers from error of law apparent on the face of the record as well.

13. Thus the writ petition, as such, is hereby allowed.

14. The order dated 15.6.1996 passed by the Deputy Commissioner, Shimoga District, Shimoga vide Annexure-B is hereby quashed.

15. The order passed by the Assistant Commissioner, Shimoga Sub- Division, Shimoga, on 3.10.1990 vide Annexure-A is maintained and restored for being implemented.