

(2013) 11 KAR CK 0167

In the Karnataka High Court

Case No : Writ Petition No. 28086 of 2013 (LR-RES)

Sri. Mahalinga Poojari

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 61, 83

Citation : (2013) 11 KAR CK 0167

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : Vigneshwar Shastri, for the Appellant; I. Tharanath Poojary, AGA for R1-4, for the Respondent

Final Decision : Dismissed

Judgement

B.V. Nagarathna, J.—The petitioner has assailed the order dated 19.11.2012 passed by the 1st respondent (Annexure-J) as well as the order dated 29.10.2007 passed by the 2nd respondent (Annexure-G) and the order dated 27.07.1998 passed by the 3rd respondent (Annexure-E). The brief facts of the case are that the land bearing Sy. No. 69/24, measuring 0.08 cents of Vandse village, Kundapura Taluk was granted to the 11th respondent, mother of the petitioner herein by the Land Tribunal at Kundapura by conferment of occupancy rights by order dated 21.11.1979. The 11th respondent had executed a general power of attorney on 04.05.1983 in favour of one Sadashiva Sheregara empowering him to make improvement on the said lands and also to alienate the same. On the strength of the said power of attorney, the land was sold to 5th respondent on 11.09.1997 by way of a registered sale deed. The 5th respondent sought change of entries in the mutation records on purchasing the said land. At that stage, the petitioner objected to the same. The Deputy Tahsildar-4th respondent overruled the objections of the petitioner and directed making entries in the revenue records in favour of 5th respondent. That order was challenged before 3rd respondent by way of an appeal by the petitioner. The 3rd respondent

by his order dated 29.10.2007 held that as the execution of the general power of attorney as well as the sale deed was in violation of 61 of the Karnataka Land Reforms Act, 1961, the said transaction was null and void and accordingly forfeited the same to the Government exercising powers u/s 83 of the said Act. Being aggrieved by the order of the 3rd respondent, the petitioner filed an appeal before the Deputy Commissioner, Udupi District, Udupi who by his order dated 19.11.2012 has dismissed the appeal. As a result, land granted to the 11th respondent who is none other than the mother of the petitioner has stood vested with the State Government. Assailing the aforesaid orders, the Writ Petition has been preferred.

2. I have heard the learned Counsel for the petitioner and learned AGA for respondents 1 to 4 who has appeared on advance notice and perused the material on record. Subsequent to the conferment of occupancy rights in favour of the 11th respondent, the bar regarding alienation for a period of 15 years as stated in Section 61 of the Act comes into force. It is an admitted fact that in the instant case the power of attorney executed in favour of one Sadashiva Sheregara by the 11th respondent on 04.05.1983 was within the prescribed time of non-alienation clause as the land was granted on 21.11.1979. On that basis, the sale deed was executed on 11.09.1997. All the authorities have held that as the general power of attorney was executed within the period of non-alienation and even though the sale was subsequently on 11.09.1997, but on the strength of the GPA dated 04.05.1983, the sale is void in the eye of law as the GPA could not have been granted by the grantee on 04.05.1983. In this context, reliance has been placed on the decision of this Court in the case of Mohammed @ Podiya Vs. Assistant Commissioner, wherein it was held that the execution of power of attorney empowering the holder to alienate the same has to be construed as an assignment within the scope of Section 61 of the Act. In that view of the matter, the authorities were right in forfeiting the land in question u/s 83 of the Act. Thus, there is no merit in this Writ Petition and hence dismissed.