

(2011) 08 KAR CK 0091

In the Karnataka High Court

Case No : Writ Petition No. 17898 of 2011 and Miscellaneous W. 8654 of 2011

Sri N. Ashwathnarayana and Others

APPELLANT

Vs

Sri Narasimhaiah and Others

RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:

Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 4, 5, 5 (3)

Citation : (2011) 6 KarLJ 140

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : P. Narayanappa, for the Appellant; K. Abhinav Anand, for C/R1 and 2, R. Om Kumar, AGA for R3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Though the matter is posted for orders on the applications, with the consent of counsel appearing for the parties, the main matter itself is taken up for disposal along with the applications,

2. Heard Sri. Narayanappa, learned Counsel for the Petitioners, Sri. Abhinav Anand, learned Counsel for the Respondents 1 & 2, Sri. R. Omkumar, learned Additional Government Advocate appearing for Respondents 3 & 4.

3. I.A. No. V of 2011 for production of additional documents is an application filed by the Petitioners only to bring on record the application that had been filed by persons claiming to be legal heirs of the original grantee by name Muniswamy before the Assistant Commissioner and also the copy of the memorandum of appeal filed by the very applicants before the Special Deputy Commissioner on the effort before the Assistant Commissioner failing, both the documents are documents which are borne out on record and with or without production of these documents, this Court can always look into the record of the Assistant Commissioner and also that of the Deputy Commissioner to ascertain the availability or otherwise of these applications and appeal.

4. In the circumstances, IA No. V/2011 is ordered and can be looked into as part of the record.

5. Insofar as Misc. W. 8654 of 2011 and IA No. IV of 2011 are concerned, both are of the same nature, but on different dates praying for issue of direction to the Special Land Acquisition Officer, KIADB for release of certain funds in favour of the Petitioners on the ground of medical necessity etc.

6. Interim direction of this nature cannot be issued in this proceeding for the simple reason that the Petitioners have failed before the Special Deputy Commissioner, writ petition is against that and the question is yet to be resolved and in the meanwhile on medical exigencies, if the amount is released, that may become an irreversible process insofar as the present proceedings are concerned. Therefore it is open to the Petitioners to make their efforts elsewhere but not through such applications raised for such purpose.

7. Misc. W. 8654 of 2011 & IA No. IV of 2011 are dismissed.

8. While submission of Sri. Narayanappa, learned Counsel for the Petitioners is plain and straight to the effect that the subject transactions of the year 1975 are not hit by the provisions of Section 4 of the Karnataka Scheduled Caste & Scheduled Tribe (Prohibition of Transfer of Certain Lands) Act, 1978 (for short "the Act") for the simple reason that section is not even attracted as transactions took place beyond the period of fifteen years which was prohibitory period in terms of the rules governing such grants of the year 1975 etc., and therefore the Assistant Commissioner was right in rejecting the application but the Special Deputy Commissioner is wrong in reversing that and allowing the application and also that the Special Deputy Commissioner has cited a rule not applicable to the subject grant which was of the year 1975 whereas the rule cited is applicable only for grants of the year 1938 etc.

9. Submission of Sri. Abhinav Anand, learned Counsel for the Respondents 1 & 2 - legal heirs of the original grantee who had filed an application before the Assistant Commissioner u/s 5 of the Act is that the Assistant Commissioner has not held a proper inquiry; that the Special Deputy Commissioner has also failed in this regard; that it was the specific stand of the Respondents that the subject sale deeds are not real sale deeds in the eye of law; that they are only nominal sale deeds never acted upon; that the grantee and his legal heirs have all along remained in possession and cultivation of the subject land; that this aspect has been totally overlooked both by the Assistant Commissioner and the Deputy Commissioner; that irrespective of the fifteen years condition as under the impugned order of the Assistant Commissioner, the possession was likely to be disturbed, an order passed by the Special Deputy Commissioner to ensure retention of the possession is a proper order in the eye of law having regard to the objects and provisions of the Act and therefore there is no need to interfere with the order; that the writ petition should be dismissed.

10. Sri. R. Omkumar, learned Additional Government Advocate submits that the

order passed by the appellate authority no doubt is not supported by the rule quoted in the order, but can be supported only by the provisions of Section 5(3) of the Act, particularly, as the burden is on the purchaser to prove that it is a valid transaction, but on the other hand, even the revenue records and as per the records which were available before the Special Deputy Commissioner also, it was clear that the original grantee and his legal heirs remained in possession, particularly the entries in the revenue records having continued in the name of the original grantee up to the year 2009 and it is only after the year 2009, the Petitioners have got their names mutated, such mutation based on the transaction of the year 1975 not acted upon till now obviously does throw suspicion on the nature of transaction i.e., the genuineness of the transaction and in this regard points out that the sale deeds of the year 1975 while indicate that the sale is in respect of 1 acre each under two sale deeds and on receiving consideration of ~ 200/- each, the very lands extent of 2 acres sold within an interval of three months as per the sale deed executed in favour of the present writ Petitioners by the common vendor Mr. Mariswamappa is for a sum of ~ 2,000/- and therefore the earlier two sale deeds are obviously not reflecting the true value of the land etc.

11. It is the version of the learned Counsel for the Respondents 1 & 2 also that they are nominal sale deeds, not really sale deeds conveying any right, title and interest and as the grantee and his legal heirs have remained in possession all along, the order passed by the Assistant Commissioner was capable of giving an impression that sale transaction is validated and in fact for ensuring that the matter is taken beyond any controversy, the Respondents also instituted a civil suit for declaration that the so called sale transaction of the year 1975, particularly, sale deeds dated 19.3.1975, 17.4.1975 and also sale deed under which the writ Petitioners claim right, title and interest, namely, sale deed dated 28.7.1975 are all null and void and even otherwise these Respondents had perfected their title by way of adverse possession if it was to be taken that the present writ Petitioners figuring as Defendants in the suit in OS No. 347 of 2011 on the file of the Senior Civil Judge & JMFC, Devanahalli, have acquired some right, title, the Respondents on the other hand have now become owners even by adverse possession etc.

12. It is also submitted by both Mr. Omkumar, learned Additional Government Advocate appearing for Respondents 3 & 4 and Mr. Abhinav Anand, learned Counsel for the Respondents 1 & 2 that the land which was sought to be acquired by the State Government for the benefit of KIADB was also notified in the name of the original grantee and not in the name of the writ Petitioners and this also is proof that the sale transactions of the year 1975 are all nominal and sham transactions and not genuine transactions and therefore the possession of Respondents 1 and 2 in respect of the subject land can never be disturbed etc.

13. Submission of Sri. Narayanappa, learned Counsel for the Petitioners is that no such specific stand as is asserted before this Court by the Respondents had

ever been taken by the Respondents whether before the Assistant Commissioner or before the Special Deputy Commissioner and it is being urged for the first time and therefore the Respondents should not be allowed to raise such defence.

14. It is not as though the Respondents had never canvassed that the sale transactions are not valid and there is something amiss in them as that is their specific stand before the Assistant Commissioner, particularly, by pleading that the transactions are fraudulent in nature.

15. A proceeding/inquiry u/s 5 of the Act is mainly for the purpose of restoring the land which had been granted in favour of a person belonging to scheduled caste/scheduled tribe community if had been transacted in violation of the terms of the grant or statutory provisions, resume it to the State and restore it to the grantee or his legal heirs. This will happen if the authorities find that there is violation.

16. In the present case, if one should go by the dates as indicated in the sale deeds and the date of the grant obviously the period of fifteen years has expired before the three transactions have taken place. Grant being of the year 1959, on the eve of the transaction fifteen years has obviously expired, but the period of fifteen years has to be reckoned from the date of issue of saguvali chit which is dated 5.6.1959 and all the transactions being of the year 1975 even within the period of fifteen years is obviously over but the more important question is as to whether the subject land is in occupation of a person not the original grantee or his legal heirs and as a person who has got into possession through a transaction to which the provisions of the Act are not attracted. The authorities obviously have gone amiss in missing this obvious point and requirement of the Act as the record indicates and the assertion of the Respondents is that they have remained in possession all along and the fact that the subject land had been notified in the name of the original grantee even by the land acquisition officer in the acquisition proceedings in favour of the KIADB only indicates that the purchasers have not been able to get into possession nor they have made any efforts by getting their names mutated in the revenue records.

17. This is a very clear circumstance to indicate that the subject land obviously has remained in possession of the Respondents 1 & 2 as asserted and if that is so, the authorities while definitely are not required to become active for resumption and restoration, a land in possession of a grantee or his legal heir under any transaction, valid or invalid, can never be disturbed at this point of time by any revenue authority. The operative portion of the order passed by the Special Deputy Commissioner virtually becomes unnecessary, but rejection of the application of the Respondents 1 and 2 by the Assistant Commissioner based on the transactions which were not really acted upon and particularly when the revenue entries also stood in the name of the grantee itself at that time and the Petitioners had got it mutated only in the year 2009 which is not in dispute, particularly, for getting the revenue entries mutated in the name of persons claiming as legal heirs of Mallamma which during her lifetime was never mutated

in her name though under the sale transactions of the year 1975 is a very clear circumstance to point out that transaction is not really a genuine transaction for putting the Petitioners into possession of the land but for other reasons. The nominal sale consideration of ` 200/- per acre even in the year 1975 is yet Anr. circumstance under the two sale transactions dated 19.3.1975 and 17.4.1975 to indicate that the transactions are not real transactions, but may be as asserted by learned Counsel for the Respondents a security for repayment and though it is not on record, Sri. Abhinav Anand, learned Counsel for the Respondents 1 & 2 has been displaying sale deeds in his hand before the court and with the submission that the Respondents had repaid the loan amount and had got back the original sale deeds whereas Sri. Narayanappa, learned Counsel for the Petitioners submits that there was a complaint which had been lodged before the jurisdictional Police Station even way back in the year 1995-96 that they had been lost by the writ Petitioners or their predecessors.

18. Be that as it may, insofar as the proceedings under the Act are concerned, it is not one to validate a transaction but only to invalidate a transaction if the transactions are found to be in violation of the terms of the grant or statutory provisions.

19. It is therefore that the order passed by the Special Deputy Commissioner is left undisturbed by dismissing the present writ petition as the Assistant Commissioner without holding a proper inquiry into the real situation has rejected the application on the premise that it is a valid transaction beyond the period of fifteen years whereas it was a transaction which had never been acted upon and the Deputy Commissioner though has come to a right conclusion to the extent that the provisions of the Act are attracted for any action as the possession of the grantee or his legal heir is always protected under the provisions of the Act and if otherwise the duty of the authorities to resume it to the State and restitute it to the grantee or legal heirs if the transaction is in some way attracting Section 4 of the Act and as rightly pointed by Sri. R. Omkumar, learned Additional Government Advocate that Section 5(3) of the Act operating against the writ Petitioners and they having not discharged that burden, there is no need to interfere to upset the order of the Special Deputy Commissioner.

20. To the extent that Section 5(3) of the Act is attracted and operates the provisions of the Act only support the order passed by the Special Deputy Commissioner in appeal and therefore the writ petition is dismissed.