

(2010) 09 KAR CK 0035

In the Karnataka High Court

Case No : Writ Appeal No. 3927 of 2009 and Misc.Writ No. 10876 of 2009

Sri N. Marappa

APPELLANT

Vs

Smt. Shanthama, The Assistant Commissioner and The
Special Deputy Commissioner

RESPONDENT

Date of Decision : 02-09-2010

Acts Referred:

Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 4 (2), 5, 5 A

Citation : (2011) 2 KarLJ 111

Hon'ble Judges : V.G. Sabhahit, J;K. Govindarajulu, J

Bench : Division Bench

Advocate : G. Papi Reddy, for the Appellant; D. Vijaykumar, AGA and Sheela Krishna, for the Respondent

Final Decision : Dismissed

Judgement

Sabhahit, J.—This appeal is filed by the unsuccessful writ Petitioner in W P No. 16941/2009 being aggrieved by the order of the learned Single Judge of this Court dt. 20th July 2009, wherein the learned Single Judge has declined to interfere with the order dt. 3.11.2006 passed by the second Respondent - Assistant Commissioner. Bangalore South sub-division u/s 5 of the Karnataka Scheduled Castes and Scheduled Tribe (Prohibition of Transfer of Certain Land) Act. 1978 (hereinafter called as "Act" for short) setting aside the alienation which has been confirmed by the third Respondent- Special Deputy Commissioner. Bangalore district in appeal, by order dt. 10.7.2009.

2. The Writ Petition was filed by the Appellant herein contending that he purchased two acres of land in Sy. No. 10 (Resurvey No. 10/25) of Sonnanayakanapura village from one Siddappa son of Kempaiah. under a registered sale deed dt. 19.5.1982. It is averred in the application filed by the first Respondent herein u/s 5 of the Act before the second Respondent that her husband - Siddappa was granted four acres of land in Sy. No. 40 situated in

Sonnanavakanapura village. Jigani Hobli. Anekal taluk as per The Saguvali Chit No. LND. SR. 842/1968-69 under DD. Rules, subject to the non-alienation condition for eve. However, her husband alienated the land in favour of the Appellant herein under the registered sale deed No. 309/82-83 dt. 19.5.1982. Wherefore, there is violation of the provisions of the Act and requested for restoration of the property in her favour. The Assistant Commissioner after hearing the parties and examining the records, held that the land was granted for an upset price of Rs. 50/- per acre to Siddappa and it was treated as a granted land during the year 1970 and the said land has been alienated during the year 1982 i.e., under the sale deed dated 19.5.1982 in favour of the Appellant herein. Thus, the land granted in favour of a Scheduled Caste person is alienated after coming into force of the Act (i.e., after 1.1.1979, the date on which the Act came into force). Wherefore, in view of Section 4(2) of the Act, no permission has been obtained from the Government as the alienation is subsequent to coming into force of the act and in view of the decision of this Court in the case of Thippaiah Vs. The Deputy Commissioner and Others, and since alienation is after coming into force of the Act, the same is without obtaining the permission, there is violation of Section 4(2) of the Act. Accordingly, allowed the application and ordered for restoration in favour of the first Respondent herein. Being aggrieved by the same, the Appellant herein preferred appeal to the Special Deputy Commissioner, Bangalore district u/s 5A of the Act and the Special Deputy Commissioner by order dt. 10th July 2009 held that the land was granted to Siddappa as a member of the Scheduled Caste and the same is alienated after coming into force of the Act and wherefore, the alienation is in violation of Section 4(2) of the Act. Admittedly, no previous permission from the Government is obtained before alienating the land. Accordingly, confirmed the order passed by the Assistant Commissioner and dismissed the appeal. Being aggrieved by the said order of the Special Deputy Commissioner confirming the order of the Assistant Commissioner, Writ Petition was filed by the Appellant herein. The learned Single Judge confirmed the order passed by the third Respondent -Special Deputy Commissioner who has confirmed the order of the second Respondent - Assistant Commissioner. Being aggrieved by the said order of the learned Single Judge this appeal is filed by the unsuccessful Writ Petitioner contending that the order passed by the Deputy Commissioner confirming the order of the Assistant Commissioner, is erroneous as the land was granted for an upset price and no condition could be imposed after coming into force of the Act. It is necessary to find out as to whether there is violation of condition of the grant and to consider the application filed u/s 5 of the Act. In support of his contentions, the learned Counsel for the Appellant has relied upon the decision of this Court in the case of Puttaveeraiah v. State Of Karnataka And Ors. reported in 1996(3) Kar.L.J. 34 (DB) wherein, while considering the application filed u/s 5 of the Act for violation of the conditions which was prior to coming into force of the Act, this Court has held that no condition can be imposed against the Rules which was prevalent at the time of grant and accordingly, upheld the alienation. In the said case, the alienation was

made in violation of the non-alienatory clause for 15 years i.e., on 29th February 1978 the grantee transferred the land prior to coming into force of the Act i.e., on 1.1.1979.

3. Learned Counsel appearing for the Appellant further submitted that the Assistant Commissioner ought to have held that transfer of the granted land is not in violation of the condition of the grant and no order can be passed u/s 5 of the Act and wherefore, the order passed by the Special Deputy Commissioner confirming the order of the Assistant Commissioner ought to have been set aside and the learned Single Judge was not justified in dismissing the Writ Petition.

4. The learned Government Advocate argued in support of the order passed by the learned Single Judge and Respondent Nos. 2 and 3.

5. We have given careful consideration to the contention of the learned Counsel appearing for the" parties and scrutinised the material on record.

6. The material on record would clearly show that the grant was made in the year 1970 to the husband of the first Respondent - the applicant before the Assistant Commissioner and the Act came into force with effect from 1.1.1979. The alienation in favour of the Appellant herein is by registered sale deed dt. 19.5.1982 and wherefore, admittedly the alienation is made after the Act came into force and provisions of Section 4(2) of the Act is attracted and the provisions of the said Sub-section reads as follows:

No persons shall, after the commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government.

7. The decision relied upon by the learned Counsel appearing for the Appellant is not helpful to him as in the said case, alienation was before the Act came into force and wherefore, it was necessary to consider as to whether there was violation of the condition of grant regarding prohibition or restrain for alienation for certain period u/s 4(1) of the Act and in the present case, we are concerned with the transaction which has been effected after coming into force of the Act. and in view of Section 4(2) of the Act, it is clear that admittedly the Appellant has not obtained permission while purchasing the land which was allotted to a person belonging to Scheduled Caste u/s 4(2) of the Act. A perusal of the order passed by the Assistant Commissioner and the Special Deputy Commissioner would clearly show that the Assistant Commissioner has perused the records and found that land was granted in the year 1970 to the person belonging to the Scheduled Caste and since the alienation is subsequent to coming into force of the Act, the same is violative of Section 4(2) of the Act. He has relied upon the decision of this Court in the case of Thippaiah Vs. The Deputy Commissioner and Others, wherein, this Court held that sale made in the year 1988 though after thirty years of grant, but without obtaining permission from Government, transfer made in violation of Clause (2) field to be void. The Special Deputy Commissioner has also considered the matter in detail and in view of the admitted fact that the transaction of sale is subsequent to the Act came into

force, transaction dt. 19.5. 1982 is subsequent to coming into force of the Act on 1.1.1979 and no permission has been obtained u/s 4(2) of the Act and the order passed by the Learned Single Judge declining to interfere with the order of the Special Deputy Commissioner confirming the order of the Assistant Commissioner, is justified. We do not find any error or illegality in the order passed by the Learned Single Judge as to call for interference in this Appeal. Accordingly, the appeal is liable to be dismissed OP. merits.

Misc. W. 10876/09 is filed for condoning the delay of 65 days in filing the appeal. We would have definitely condoned the delay in filing the appeal, if there is merit in the case. Since the appeal is dismissed on merits, it is unnecessary to consider the application for condoning the delay after issuing notice to the Respondents.

Accordingly the appeal is dismissed.