

(2000) 11 KAR CK 0027
In the Karnataka High Court
Case No : Writ Petition No. 9778 of 1999

Sri. Nanjunda Naik

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 10-11-2000

Acts Referred:

Karnataka Village Offices Abolition Act, 1961 — Section 5 (3)

Citation : (2001) 1 KCCR 220

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : M.S. Prakash, for the Appellant; B.H. Satish, High Court Government Pleader for Respondents 1 to 4 and H.B. Puttamadaiah, for Respondent 7, for the Respondent

Final Decision : Allowed

Judgement

Hari Nath Tilhari, J.—This petition has been listed today showing the names of all the Counsels including Sri H.B. Puttamadaiah, learned Counsel for the Respondent No. 7. The case has been shown in the cause-list as for final hearing. None has appeared on behalf of Respondent No. 7 though learned Counsel for the Petitioner and learned Counsel for the Respondents 1 to 4 are present.

2. This petition arises from the judgment and order dated 14.1.1999 passed by the Deputy Commissioner, Chamarajanagar, in appeal No. PTCL/5/1997-98.

3. The facts of the case in brief are that land was granted to Smt. Muniyamma, daughter of Hutchaiah, Kallamballi Village, Chamarajnagar Taluk, vide order of grant dated 1.7.1971, Annexure-B to the writ petition. Under that grant, Sy. No. 2 - area 1.33 guntas, Sy. No. 324 - area 1 acre 17 guntas and Sy. No. 332 - area 1 acre 33 guntas were granted in favour of Smt. Muniyamma who has been mother of Respondent No. 7 in the writ petition. The land was granted under the provisions of the Mysore Village Offices Abolition Act, 1961. The grant contained two conditions in addition to usual conditions namely one, that the occupancy of

the lands granted shall not be transferable otherwise than by partition among members of Hindu Joint Family without previous sanction of the Deputy Commissioner, on payment of fifteen times the amount of full assessment of the land. The other condition is that this grant is without prejudice to the tenancy rights in the land. These were two additional conditions in addition to usual conditions. According to the Petitioner, the grantee sought permission with reference to bar against alienation. The transferee credited the amount equal to fifteen times of amount of full assessment of land in the Sub-Treasury, Nanjangud on 10.5.1971 and as such, sanction was accorded to him to transfer his land subject to the conditions namely, (i) that these lands should be used for agricultural purpose only and (ii) that in case the agricultural use of any of these lands is/are changed for a purpose other than agriculture, the occupant shall be liable to pay fine equal to the difference between 50% of the market value and 15 times the assessment of the lands already paid. Annexure-"C" to the writ petition thus indicates that permission was granted to transfer the lands, subject to the conditions mentioned in Annexure-"C", and this permission appears to have reference to the lands which had been granted vide Annexure-"B". The grantee by sale deed dated 27.7.1971, the electrostate copy of which has been filed as Annexure-"D" to the writ petition, transferred Sy. No. 332-area 1 acre 33 guntas in favour of the present Petitioner. It appears that the Petitioner obtained mutation of the land in revenue records in his favour. It appears later on Respondent No. 7 moved an application before the Assistant Commissioner, Nanjangud, for striking out the entry of mutation in favour of the present Petitioner alleging that alienation of the land was in violation of the Karnataka Village Offices Abolition Act. The Assistant Commissioner, vide his order dated 17.5.1993, rejected the application of Respondent No. 7 holding that transfer was made by the grantee after getting the necessary permission from the Deputy Commissioner. Feeling aggrieved from the order of the Assistant Commissioner, Annexure-"E" to the writ petition, the Respondent No. 7 filed an appeal before the Deputy Commissioner i.e., Respondent No. 2 in the writ petition. The Deputy Commissioner passed the order dated 14.1.1999 allowing the appeal. He mentions,

No submissions of records or arguments have been made by the Respondents. No documents have been submitted by them to resist the claims. Hence, I order that Survey No. 2 Extent 1 Acre 24 Guntas and Survey No. 332 Extent 1 Acre 33 Guntas which have been alienated in violation of the Karnataka Village Offices Abolition Act, 1961 may be restored to the Appellants. Hence, the mutation made in favour of the Respondents are hereby struck down and shall be made in favour of the Appellants.

Feeling aggrieved from this order dated 14.1.1999 - Annexure-"A" passed by the Deputy Commissioner, the transferee has come up before this Court.

4. It has been submitted that alienation has not been made in violation of the provisions of the Karnataka Village Offices Abolition Act as existing in July, 1971

and that transfer was not in violation of either provisions of the Act nor against the terms of the grant.

5. Firstly, the Assistant Commissioner mentions in his order that transfer had been made after obtaining necessary sanction and permission for transfer after having deposited the necessary amount. A perusal of Annexure-"C" to the writ petition also reveals the same. I do not know how the Deputy Commissioner says that these documents were not on record. In these circumstances, it appears that transfer had been made with permission.

6. Originally, Section 5(3) of the Karnataka Village Offices Abolition Act provided as under:

Section 5(3). The occupancy or the ryotwari patta of the land, as the case may be, regranted under Sub-section (1) shall not be transferable otherwise than by partition among members of Hindu Joint Family, without the previous sanction of the Deputy Commissioner and such sanction shall be granted only on payment of an amount equal to fifteen times the amount of full assessment of the land.

It may further be mentioned by Act No. 13 of 1978, vide Section 3 Sub-section (1), the following expressions were deleted.

without the previous sanction of the Deputy Commissioner and such sanction shall be granted only on payment of an amount equal to fifteen times the amount of full assessment of the land.

And in its place, the expressions, "for a period of fifteen years from the date of commencement of Section 1 of the Karnataka Village Officers Abolition (Amendment) Act, 1978" were substituted prospectively as the expression used is "shall be substituted".

Section 3(1) of Act No. 13 of 1978 reads as under:

(1) in Sub-section (3), for the words "without the previous sanction of the Deputy Commissioner and such sanction shall be granted only on payment of an amount equal to fifteen times the amount of full assessment of the land" the words, brackets and figures "for a period of fifteen years from the date of commencement of Section 1 of the Karnataka Village Offices Abolition (Amendment) Act, 1978" shall be substituted.

It may be mentioned here the present proviso to Sub-section (3) of Section 5 of the Act had been inserted by Act No. 27 of 1984. It may be mentioned here that present proviso to Sub-section (3) was inserted vide Section 3 of the Karnataka Act No. 27 of 1984 which provides "in Section 5 of the Principal Act after Sub-section (3), the following proviso shall be inserted". "Shall be inserted" clearly indicates to have been inserted prospectively and not retrospectively. It really indicates that during the integral period, I mean to say, during the period from 7.8.1978 to 4.5.1984, there was no provision under the Act authorising the Deputy Commissioner even to grant permission to transfer. This clause for grant

of permission did exist prior to 1978 and after 1984. It means during this period whatever transfers were made even if with permission, they were be void in view of Sub-section (4) of Section 5 which was inserted retrospectively by Act No. 13 of 1978.

7. So far as the present case is concerned, no doubt, the transfer with permission granted on 10.5.1971 could be made. After 1978 amendment, the position might have been different till 1984 and it may be argued that no transfer could be made even of granted land for 15 years from the date of enforcement of Act 13 of 1978 even with the permission as there did not exist any permission clause as proviso to Sub-section (3) to Section 5 of the Karnataka Village Offices Abolition Act. But I do not want to express any opinion on that aspect of the matter. Any way, so far as the present case is concerned, transfer could be made in 1971 with the permission of the Deputy Commissioner after complying with the requisition for depositing fifteen times amount of the full assessment of the land. Annexure-"C" indicates permission to have been granted. It appears transfer in the present case had been made in accordance with Section 5 Sub-section (3) as it stood in July, 1971 and so the transfer could not be said to be in contravention of Sub-section (3) so as to be held null and void under Sub-section (4) of Section 5 which no doubt had been inserted in the Act by Act No. 13 of 1978 with retrospective effect by use of expression in Sub-section (2) of Section 3 of Act No. 13 of 1978 with reference to Sub-sections (4), (5) and (6) shall be and shall always be deemed to have been inserted and Sub-section (4) no doubt provides that transfer of the land made in contravention of Sub-section (3) shall be null and void.

8. Here in the present case, the transfer prima facie appears to be in consonance with Sub-section (3) of Section 5. In view of the facts of the case and law as then stood, the order of the Deputy Commissioner dater 14.1.1999 also appears to be illegal, null and void and suffers from jurisdictional error and error of law apparent on the face of record.

The writ petition, as such, has to be allowed and it is hereby allowed and a necessary direction is issued to the Deputy Commissioner to decide the case No. PTCL/5/1997-98 afresh according to law keeping in view the observations made in this judgment, but appeal should be decided after notice to the parties.