

(2004) 03 KAR CK 0053

In the Karnataka High Court

Case No : Writ Petition No's. 35366-67/01

Sri Neelakantappa and Another

APPELLANT

Vs

Deputy Commissioner and Others

RESPONDENT

Date of Decision : 24-03-2004

Acts Referred:

Constitution of India, 1950 — Article 227
Karnataka Land Revenue Act, 1964 — Section 43 G (4)
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 4, 5

Citation : (2004) ILR (Kar) 2357 : (2004) 5 KarLJ 407 : (2004) 3 KCCR 1729

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

Bench : Single Bench

Advocate : R. Rudragowda, for the Appellant; M.G. Anjanamurthy, HCGP for R1 and 2 and Kavitha H.C. Advocate for R.3(a) and 3(b), for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Petitioners and their Predecessors claim to be the purchasers of 1 acre each of land in Sy. No. 49 of Hirehalli Village as per two registered sale deeds dated 5.6.1968. The land in question was part of a land which had been granted in favour of one Rangaiah, a person belonging to schedule caste community in the year 1961 and it is the version of the petitioners that the grant was on collecting an upset price of Rs. 10/- per acre. The Saguvali chit in respect of the land had been issued on 27.4.1965. It is from out of such a granted land that the said Sri Rangaiah had sold the extent of 1 acre each to the predecessors of petitioners 1 and 2.

2. On and after coining into force of the provision of the Karnataka Schedule castes and Schedule Tribes (Prohibition of certain Lands) Act, 1978, the original grantee applied to the Assistant commissioner Under the provision of Section 5 of the act praying for invalidating the sale transaction and for restoration of the land to him. The assistant commissioner, who held an enquiry into the matter vide order dated 22.6.1994, copy at Annexure-A held that, the sale transactions

were in violation of the conditions of the grant and as such they are null and void and directed for restoration of the land to the original grantee. Against the order of the Assistant Commissioner, the petitioners have preferred an appeal to the Deputy Commissioner. But, the deputy Commissioner has dismissed the appeal as per order dated 31.5.2001, copy at Annexure-B. Being aggrieved by these orders, the present Writ Petitions have been filed.

3. Submission of the learned Counsel for the petitioners is that, the authorities under the Act could not have entertained the application since the land in question had been granted on collection of the upset price and having regard to the relevant rules that govern such grants at the time when the land was granted to the grantees, on fixing and collecting an upset price, no condition can be imposed as per the ruling of division Bench of this Court *PUTTAVEERIAH v. STATE OF KARNATAKA AND ORS.* and this apart, the procedure that has been followed by the Assistant Commissioner was totally in-contravention of the rules that no proper opportunity had been given to the purchasers. Learned Counsel for the petitioners submits that the writ petitions have to be allowed and the matter remanded to the Assistant Commissioner for a fresh consideration.

4. The learned government pleader appearing on behalf of respondents 1 and 2 on the other hand submitted that, even as per the relevant Rule that prevailed at the time when the grant was made namely, Rule 43-G(4) which reads as under:

" 43-G(4)- where the grant is made free of cost or is made at a price which is less than the full market value, the grant shall be subject to the condition that the land shall not be alienated for a period of 15 years from the date of the grantee taking possession of the land after the grant."

Indicates that, a land which is granted cannot be alienated for a period of 15 years and in the instant case, as the sale transactions have taken place within 7 years from the original grant and within 3 years from the date of issue of Saguvali chit, when the Authorities had fixed a price of Rs. 10/- collected per acre on the grantee, the transactions became void as it is in violation of the conditions of the grant, i.e. sold within a period of 15 years from the date of this grant and the orders passed by the Authorities is Justified and does not call for interference at the hands of this court.

5. It may be true, that in the course of passing of the order, the Assistant Commissioner may not have strictly complied with the requirements of the rules and regulations. However, the question before this Court is, as to whether the orders passed by the statutory authorities call for interference at the hands of this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India?

6. In the present case, there is no dispute that the land in question belonged to the Government and was granted by the Government to a person belonging to the scheduled caste community. The sale is of the year 1968, i.e. within 15 years period. Even assuming no condition had been stipulated under the grant order

regarding non-alienation for any particular period, the rule automatically supplements the grant with the condition and the only aspect is, as to whether the land had been granted free of cost or at a reduced upset price.

7. The contention on behalf of the petitioners is that, collection of Rs. 10/- per acre indicates fixation and collection of upset price and in which event it should be understood that the condition regarding non-alienation cannot be supplemented to the grant in terms of the decision of the Division Bench of this Court referred to supra. However the learned Government Pleader appearing for respondents No. 1 and 2 has placed reliance on the decision of the Supreme Court reported in the case of *SIDDEGOWDA v. ASSISTANT COMMISSIONER AND ORS.*

8. The Supreme Court had occasion to look into the provisions of the very Rule 43-G(4) of the Mysore Land Revenue Act, 1988 and the Karnataka Schedule caste and Schedule Tribes (prohibition of transfer of Certain Land) Act, 1978. The examination was for the purpose of the transaction attracting or otherwise of Section 4 of this Act. In that case, the Supreme Court observed that, fixing the price of Rs. 500/- per acre at the time of the grant, cannot be taken to be fixation of the market value of the land and as such, the argument that no conditions can be read into the grant was rejected. The Supreme Court also clarified that, even where an upset price is fixed, it need not necessarily always mean that it is the market price. It was held that, unless it is demonstrated that the price collected from the grantee is the actual market price at the time of the grant, the conditions under the land Revenue code for grant of Government lands necessarily get attracted and operated on such grants.

9. In the light of the decision of the Supreme Court, the ruling of the Division Bench of this Court in *Puttaveeraiah's* case cannot be said to be a decision which can continue to govern the situation.

10. In the instant case, the price that had been collected was very meager i.e. Rs. 10/- per acre. This can neither be called as the upset price nor the market value of the land. If that is the situation, the conditions stipulated under Rule-43-G(4) are necessarily attracted and the transaction is hit for being in violation of the condition and the order passed by authorities to annul the sale transaction and to restore the lands to the legal heirs of the original grantee or to his legal heirs, cannot be found fault.

11. Even assuming that there were some procedural irregularities, it is not necessary for this Court to delve deep into these aspects, as the orders passed by the authorities has only served the objects of the Act and is in consonance with the provisions of the Act. Ultimately it is inevitable that a transfer of a granted land in violation of the terms of the grant has to be invalidated by the authorities functioning under the Act and when the Facts and circumstances clearly lead to a situation where it is found that the first transfer subsequent to the grant is bad, no useful purpose will be served in remanding the matter to the

authorities under the Act, for procedural irregularities or technical violations. It will only prolong litigation and agony to the parties. In the result these petitions are dismissed. 12. Learned Counsel for the petitioners has made a request that this Court should direct the Authorities to ensure that the grantee or their LRs to re-fund the sale price along with interest at 9% as had been ordered by the Supreme Court in SLP No. 11167/97.

13. It is no doubt true that the Supreme Court has passed such an order in that case. But what is significant is that, the Supreme Court has observed;

" However, the amount of consideration, if any, paid by the Appellant for the land in question should be refunded by the respondent within a period of three months today failing which the amount will carry an interest @ 9% p.a".

14. It is obvious that the Supreme Court has not laid down any law. As I do not find any enabling provisions either under the Act or any binding precedents to issue such a direction, I am not inclined in favour of granting the request of the learned counsel for the petitioners.

Hence, the request on behalf of the petitioners is rejected.