

(2011) 08 KAR CK 0087
In the Karnataka High Court
Case No : Writ Petition 21171 of 2010 (SC-ST)

Sri Obalappa Obanna and Others

APPELLANT

Vs

K.V. Lakshmana and Others

RESPONDENT

Date of Decision : 23-08-2011

Acts Referred:

Constitution of India, 1950 — Article 341, 342
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 5, 5 A, 5 A (1A)

Citation : (2011) 08 KAR CK 0087

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

Bench : Single Bench

Advocate : M.B. Nargund and Smt. Sona Vakkund, for the Appellant; Yadhav K and Smt. Pushparani for M/s A. Nagarajappa and Associates for R1 and R2; Sri R. Omkumar, AGA for R3 and R4; R5 - R6 are Served), for the Respondent

Judgement

1. Writ petition by purchaser of a granted land measuring 4 acres 34 guntas in Sy No 58 of Hanumapura village, Birur hobli, Kadur taluk, Chikkamagalur district, claiming right, title and interest in this land under a sale transaction dated 1-6-1993, executed by respondents 5 and 6 - sons of K N Nanjundappa.

2. Subject land had been sold to the father of the petitioner by respondents 5 and 6, who in turn acquired right, title and interest to the land under an earlier sale transaction dated 28-6-1991 executed by the first respondent, who had claimed to be adopted son of one Chikkathimmaiah [Chinnathimmaiah] and the said Chikkathimmaiah had got the land under a grant order dated 8-8-1954 in a proceeding of the Deputy Commissioner under depressed classes dharkast rules vide Order No 6/54-55 and the land having been given free of cost under the said Rules, subject to various conditions, particularly one of permanent non-alienation of the land.

3. Petitioner, who claims right, title and interest in the land in such a manner, is now aggrieved by the orders passed by the Assistant Commissioner in terms of

order dated 16-12-2004 [copy at Annexure-E to the writ petition] passed u/s 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 [for short, the Act] and affirmed in appeal by the Deputy Commissioner passing order u/s 5A of the Act as per the order dated 7-12-2009 [copy at Annexure-F to the writ petition] and has sought for quashing of these orders.

4. Under the impugned orders, the authorities under the Act had opined that the subject land being a granted land and having been sold for the first time by a person claiming to be a legal heir of the original grantee i.e. first respondent as per the sale transaction dated 28-6-1991 i.e. after the Act coming into force and not being preceded by permission granted by the state government to this effect, first transaction as well as the subsequent transaction under which petitioner derived title are voided u/s 4(2) of the Act and had, therefore, directed resumption of the land to the state and to restore in favour of respondents 1 and 2 claiming to be legal heirs of the original grantee. This order though challenged in appeal before the Deputy Commissioner in an appeal u/s 5A(1A) of the Act, the Deputy Commissioner having dismissed the appeal as per his order dated 07.12.2009. (Annexure - "F to the Writ Petition).

5. It is these orders which are questioned in this writ petition and Sri M B Naragund, learned counsel for the petitioner has urged many legal grounds to invalidate the impugned orders.

6. Grounds urged by learned counsel for the petitioner are that, in the first instance, the land cannot be understood to be a granted land, inasmuch as the land, no doubt was a government land and had been granted as per a grant order passed by the Deputy Commissioner, it had been granted in favour of Chikkathimmaiah, a person belonging to korama setty community, which was not notified as an SC community, either at the time of grant or even at the time when Assistant Commissioner began the enquiry u/s 5 of the Act. It is, therefore, urged that the very provisions of the Act are not attracted, impugned orders are not sustainable and should be quashed.

7. Second ground urged by the learned counsel for the petitioner is that father of petitioner - Soppina Obanna -who had participated in the proceedings before the Assistant Commissioner and who had preferred appeal, had expired during the pendency of the appeal i.e. he died on 26-11-2009, whereas the Deputy Commissioner has, in terms of his order dated 7-12-2009, dismissed the appeal and with the order being passed against a dead person, is nullity in law, which is a principle well recognized and well accepted in legal circles. It is, therefore, submitted that the order passed by the Deputy Commissioner should be set aside and matter remanded for fresh and proper examination of the appeal by the Deputy Commissioner.

8. Third point urged by Sri Naragund is that respondents 1 and 2 are not children of the grantee, but the first respondent has claimed only as adopted son and the

second respondent is his wife and the irony is both of them claiming to be adopted children, that in itself demonstrates the fallacy of the claims; that at the instance of such persons, the Assistant Commissioner should not have initiated proceedings under the Act etc.

9. It is lastly contended, though not as forcibly as the earlier points, that the proceedings having been initiated by the Assistant Commissioner only in the year 1999, whereas subject grant was of the year 1954 i.e. more than 40 years after the grant and when all conditions may not be operative any more, the Assistant Commissioner could not have become active in respect of a land which was transacted as per grant order of the year 1954.

10. It is on such grounds, learned counsel for the petitioner submits this writ petition deserves to be allowed.

11. On the other hand. Sri Yadhav K and Ms Pushparani, learned counsel for the respondents 1 and 2, have supported the impugned orders and have submitted that there is no need for interference in writ jurisdiction and that the orders passed by the authorities are perfectly valid in law and in consonance with the provisions of the Act and therefore writ petition should be dismissed.

12. Sri R Om Kumar, learned AGA, appearing for the statutory authorities - respondents 3 and 4 - submits that the orders passed by the authorities are well supported by legal position as noticed by this court in a good number of decided cases, starting from the case of KRISHNAPPA S V vs STATE OF KARNATAKA [ILR 1982 KAR 1310], particularly as noticed in para-65, holding that the provisions of the Act do apply even in respect of pre-constitutional grant orders and even when the particular community was not identified as SC/ST prior to the Constitution and the Presidential orders of the year 1950 and by authority it is well settled that if the community is one which is identified as a socially backward class and later a Presidential order is issued under Articles 341 and 342 of the Constitution of India, that is good enough to characterize a land which had been granted in favour of a person belonging to SC/ST and becomes a granted land within the meaning of this expression, as it occurs in Section 3(1) (b) of the Act.

13. It is also submitted by the learned AGA that in an identical case of land granted in favour of a person belonging to Korama community also, who are alternatively known as Korama setty has been decided by a Single Judge of this court in the case of SANNARANGAIAH vs ASSISTANT COMMISSIONER, MADHUGIRI [1991 (4) KAR LJ 766], and with reference to contents of paragraphs 8, 9 and 10, reading as under:

8. At the outset it is seen that by virtue of certificate of caste issued by Tahsildar, Sira Taluk, Annexure "E" it is seen that Tahsildar being competent authority under the existing law, has certified that Sannarangaiah-petitioner herein is a person representing Korama community which is brought within the Scheduled Castes under the Constitution of India, 1950 (Scheduled Castes Order as

declared by President of India).

9. That apart, the original records produced by the learned High Court Government Pleader, contain a check slip denoting the number of facts certified by Tahsildar. Even in this check slip Tahsildar notified the Assistant Commissioner saying that Sannarangaiah, son of Hanumanthappa ordinarily residing at Lakshmisagara village of Sira Taluk, is a person representing Scheduled Caste (Korama).

10. It is further seen by verification of the Scheduled Castes Order, 1950, Part I made under the Constitution at Entry 54 that the caste Korama is included in the list of Scheduled Castes.

Sri Om Kumar submits that the present case is an identical one; that even as per the original records in this case also, it is found that the tahsildar had issued a certificate in favour of second respondent that she is a person belonging to Korama community; that even assuming that school certificate, on which reliance is placed by the learned counsel for the petitioner, indicates the community as Korama Setty, that does not make much difference in understanding the community as an SC/ST community, as not only certificate that has been issued by the tahsildar that prevails but the later expression inclusion of Korama setty community under a Presidential order, which is more by way of a clarificatory, takes the issue beyond any controversy, with the subject land is undoubtedly a land granted in favour of a person belonging to SC community and therefore provisions of the Act are attracted.

14. It is also submitted by the learned AGA that there is intrinsic evidence that persons belonging to SC community earlier described as depressed classes, as the very grant order is one under depressed classes dharkast rules and that is a record which conclusively established that the provisions of the Act apply in respect of a land of this nature.

15. It is submitted that the view taken in the case of Krishnappa S V [supra] has been followed in two other subsequent cases viz., in S Nachimuthu Gounder vs H B Nagaraju ILR 1999 KAR 2506 and also in the case of T.M. Rangaiah and Another Vs. The Assistant Commissioner, Tiptur Sub-Division and Others, and therefore the first point urged by the learned counsel for the petitioner cannot have any avail for quashing the impugned orders.

16. In so far as the second point urged by the learned counsel for the petitioner is concerned, this court has consistently taken the view that proceedings initiated under the Act are not in respect of persons but in respect of granted lands and a person participating the proceedings being more in the context of an opportunity being given to a person who is currently in possession of the land, if he/she is a purchaser and not claiming under the original grantee, who is required to be evicted from the land, to resume it to the state and restitute to the grantee or his/her legal heir/s. It is only for such purpose notice is given to the purchaser or his representative or whomsoever may be in possession of the land and therefore

death or otherwise of any of the parties does not in any way cause either abatement of the proceedings or render the order passed by the authority a nullity in the eye of law, on the premise that it is passed against a dead person. The argument on this premise cannot succeed in a situation, of the present nature and in respect of proceedings under the Act.

17. In so far as the argument that the first respondent is not a legal heir of original grantee and claiming only as a adopted son, but not placing any worthwhile material to support this claim is concerned, in the first instance, the petitioner is not enabled to put forth such a contention for the simple reason that the petitioner himself is a person who has derived title claiming under such a person, as sale deed executed in favour of the father of vendor of petitioner is by the very first respondent and a person claiming right, title interest under first respondent cannot later turn round and say that he does not have any interest in the subject land etc.

18. In so far as the question of who are precise legal heirs of the grantee is concerned, it assumes importance and significance when the land is to be restituted and the Assistant Commissioner or on his behalf the Tahsildar, who has to restitute the land to the grantee or legal heir, and therefore the Tahsildar has to take note of this aspect and it is not necessary for this court in writ jurisdiction to examine this question and this question cannot in any way affect the orders of the Assistant Commissioner or the Deputy Commissioner one way or the other, as the basic question in the proceedings under the Act is as to whether the subject land is a granted land and if so whether it is transferred in violation of the conditions of the grant, whether transferred before the Act coming into force and if the transfer is after the Act has come into force, whether it has been accompanied by a prior permission granted by the State Government.

19. It is only these two yardsticks which are required to be employed to test the correctness or otherwise of the orders passed by the authorities under the Act and not any other considerations.

20. The other argument that the proceedings and the transaction are of more than four decades after the initial grant can be of no consequence, because, as is noticed above, the Act which has come into force on 1-1-1979, for the invalidation of all transactions in terms of Section 4 of the Act and therefore mere fact that grant was way back 41/2 decades ago can itself does not make any difference to the order be passed under the provisions of the Act.

21. In the light of the above examination, it is found that the orders passed by the authorities are fully in consonance with the provisions of the Act, sustainable and there is no scope for interference with such orders and it is, therefore, this writ petition is dismissed, levying cost of Rs. 5,000/- (Rupees five thousand only) on the petitioner in favour of respondents 1 and 2, to be shared equally between them.

22. Cost to be deposited before this court by the petitioner within four weeks

from today, failing which, the Registry is directed to issue a certificate in favour of the respondents 1 and 2 for recovery of the cost, as though it is a decree passed by a civil court. On such deposit, respondents 1 and 2 are permitted to draw the amount through their counsel.