

(2011) 08 KAR CK 0025

In the Karnataka High Court

Case No : Writ Petition 39204 of 2009 and 2106 of 2010 (SC-ST)

Sri Ramakrishna Gouda (Since Deceased Represented by
L.Rs. Neelamma Gouda, Thanuja and Shivaraju Gouda) and
Smt Jayamma

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:

Constitution of India, 1950 — Article 227, 341
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain
Lands) Act, 1978 — Section 4 (2), 5 A

Citation : (2011) 08 KAR CK 0025

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

Bench : Single Bench

Advocate : Mohamed Rizwan Ahmed, for Sri. N.Y. Guruprakash, for the
Appellant; R. Omkumar, AGA for RI - R3 and Sri Gururaj Kulkarni, for R4 (a-c)
and R5 - absent, for the Respondent

Final Decision : Dismissed

Judgement

1. These two writ petitions are directed against the common order dated 7-9-2009, passed by the Deputy Commissioner, Hassan district, Hassan, in exercise of his appellate jurisdiction u/s 5A of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 [for short, the Act] disposing of four PTCL appeals together in proceedings No. PTCL 4, 5, 6 and 7 of 2004-05.

2. While PTCL Appeal Nos. 4 and 5, which were at the instance of the original grantee or legal heirs of original grantee against, the order of the Assistant Commissioner for a limited purpose of getting over the restoration of the land by way of re-grant as ordered by the Assistant-Commissioner and though these two appeals were also dismissed, the Deputy Commissioner has modified the order passed by the Assistant Commissioner in so far as it related to Sy No. 84 of B Chowdenahally village, Bagur hobli, Channarayapatria taluk in Hassan district,

which actually measures an extent of 4 acres, but had been wrongly described as 2 acres, as in the other case.

3. But for this slight correction to the order passed by the Assistant Commissioner, the Deputy Commissioner had dismissed all four appeals in terms of his common order, which included the appeals of the purchasers, the present: writ Petitioners, to get over the two orders of even dated viz., 25-3-2004 passed by the Assistant Commissioner in proceedings No. LND SCST/CRA 3/98-99, which are subject matter in these writ petitions, but with the difference that WP Nos. 39204 of 2009 and 2106 of 2010 relating to grant of lands as per grant order dated 21-7-1978 in respect of 2 acres 17 guntas and the subject matter in WP No. 446 of 2010 being in respect of grant order dated 5-6-1962 in favor of Krishna Setty in respect of 4 acres, but khata being made in common between Krishna Setty and his brother Nanja Setty for two acres each as per ME No. 11/84-75.

4. The entire extent in two-survey numbers had been purchased by the Petitioners- Ramakrishne Gowda, his brother Rangegowda and his wife Smt Jayamma under four sale transactions, one dated 10-10-1993, for an extent of 1 acres 8 1/2 guntas, another sale transaction dated 11-10-1993 for 1 acres 8 1/2 guntas, making up to 2 acres 17 guntas of land in Sy No. 22 of the very village and two. mere sale transactions dated 17-11-1990 in respect of an extent of 2 acres each, to make up four acres of land in Sy No. 84, and the Assistant Commissioner having opined that all sale transactions are voided for being in violation of Section 4(2) of the Act for want of prior permission, as all sale transactions in respect of the granted land were after the Act coming into force.

5. The limited challenge to these two orders passed by the Assistant Commissioner in the appeals before the Deputy Commissioner by the purchasers was on the premise that the original grantees belong to korama setty community, which was not notified as an SC community, as on the date of grant viz., in the year 1962 or even in the year 1978; that the community of korama setty was recognized as SC community as per the Government notification dated 30-3-2002 and therefore the land was not a granted land and the provisions of the Act do not apply etc.

6. The Deputy Commissioner rejected this contention, noticing that as certified by the tahsildar, grantees children of one Kalasetty were persons belonging to korama, a scheduled caste and it cannot be disputed etc.

7. Assistant Commissioner had also taken the same view and to further canvass this point, the present writ petitions by the purchasers.

8. Notices had been issued to the Respondents. Statutory Respondents are represented by Sri R. Om Kumar, learned AGA. Though Sri Gururaj Kulkarni, Advocate has filed power for Respondents-legal heirs of grantees, no appearance for these Respondents before the court today.

9. I have heard Sri Mohammed Rizwan Ahamed, learned counsel for the Petitioners and Sri R. Om Kumar, learned AGA.

10. While Teamed counsel for the Petitioners points out that if the community to which the grantees belong to had been notified as an SC community only as per notification of the year 2002, obviously the grantees are not persons belonging to SC community at the time of grant, particularly as grantees belong to korama setty community and therefore the orders impugned are not sustainable, on the other hand, submission of learned AGA is that korama setty community has been included in the schedule to presidential order dated 10-8-1950, issued under Article 341 of the Constitution of India and therefore it cannot be disputed that persons belonging to said community are treated as SC community, though, for better clarification and to make things clear, now korama setty community, which is nothing but a synonym to korama., has been expressly notified by the state government in the year 2002. it does not in any way detract from the presidential order of the year 1950 itself.

11. Learned AGA also submits that it is not as though the - community over a period of time graduates into become an SC community, but on the basis of their social status and social conditions on the date of issue of presidential order, whether identified for extending certain benefits and it is regionwise and not universal and when persons belonging to korama community is so identified for the benefit that accruing under the presidential order of the year 1950, it cannot be denied to them just because the grantees carried the name which is a" synonym of korama community, but some permutation of the term and therefore submits that the orders passed by the Assistant Commissioner and the Deputy Commissioner require to be sustained.

12. Including a name of a community in the presidential order or now by legislation is for extending benefits. Until and unless it is shown or demonstrated that some impersonator or persons without bona fides have wrongly availed of the benefit, there is no question of courts on its opinion and perception bringing in some community within the scope of the presidential order or excluding some out of the very benefit of it.

13. In the present case, the presidential order of the year 1950 itself included korama community as an SC community. Subsequent orders are being a mere classificatory for removing any controversy etc., and the Act being a beneficial piece of social welfare legislation and with the authorities under the Act having affirmed that the grantees belong to SC community, no question of interfering with such orders in the exercise of jurisdiction Article 227 of the Constitution of India.

14. In the result, these writ petitions are dismissed.