

(2010) 04 KAR CK 0044
In the Karnataka High Court
Case No : Writ Appeal No. 1012 of 2010

Sri. S. Krishnarama Choudary

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 61, 61 (1), 61 (3)

Citation : (2010) 5 KarLJ 569 : (2010) 4 KCCR 2963

Hon'ble Judges : V.G. Sabhahit, J;B. Manohar, J

Bench : Division Bench

Advocate : N.R. Naik, for N.R. Naik and Associates, for the Appellant; T.P. Srinivas, AGA for R1 to R3, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—This appeal is filed by the unsuccessful writ petitioner in W.P. No. 16945/2008, being aggrieved by the order dated 29.01.2010, wherein the learned single Judge of this Court has declined to interfere with the order passed by the Karnataka Appellate Tribunal, in Appeal No. 530/2002, confirming the order passed by respondent No. 2 - Assistant Commissioner, Bangalore South Sub-Division, dated 18.06.2002 forfeiting the land purchased by the petitioner - appellant as the same is in contravention of the provisions of Section 61(1) of the Land Reforms Act, 1961, (hereinafter called the Act).

2. We have heard the learned Counsel appearing for the appellant and the learned Additional Government Advocate appearing for respondents 1 to 3.

3. The appellant purchased 01 Acre 32 guntas of land in Sy. No. 104 of Bheemanakuppe village under registered sale deed dated 29.03.1994 from respondents 7 and 8. The land purchased by the writ petitioner was part of 02 Acres 06 guntas, in respect of which, occupancy right had been granted in favour of respondent No. 6 - Sri K. Gangappa and one of the conditions imposed while granting occupancy right in respect of the entire extent of land measuring 02

Acres 06 guntas in Sy. No. 104 by order dated 12.09.1979 was that it should not be alienated for 15 years. Thereafter, there was partition between Gangappa and members of his family and 01 Acre 32 guntas fell to the share of Hanumakka and Govindaraju (respondents 7 and 8 in the writ petition). On a complaint being made, the Assistant Commissioner held after issuing notice to the appellant herein that the alienation had been made within 15 years as occupancy right was conferred on 12.09.1979 and purchase was made by the petitioner on 29.03.1994 i.e., within the forbidden period of 15 years and only 14 years 6 months and 17 days had expired from the date of grant and accordingly, passed an order forfeiting the land to the Government and ordering that the land shall be disposed of in accordance with the provisions of Section 61(3) of the Act. Being aggrieved by the same, the petitioner preferred appeal before the Karnataka Appellate Tribunal (for short, K.A.T), in Appeal No. 530/2002 and K. Gangappa and Govindaraju also filed appeal No. 613/2002 before K.A.T.

4. The K.A.T., by order dated 31.10.2008, after considering the provisions of Section 61 of the Act and the fact that alienation of the land in possession of the appellant was made within 15 years from the date of conferment of the occupancy right, held that the order passed by the Assistant Commissioner is justified and dismissed the appeal. The K.A.T., followed the decision of the Hon"ble Supreme Court of India in ILR 2002 Karnataka 273. Being aggrieved by the order passed by the K.A.T., in Appeal No. 530/2002 dismissing the appeal, the appellant herein filed Writ Petition No. 16945/2008 contending that : he is a bona fide purchaser for value from respondents 7 and 8, who are the persons in whose favour, occupancy right was granted; occupancy right was granted on 12.09.1979 and thereafter, there was partition on 10.03.1990 and the impugned property purchased by the petitioner was from respondents 7 and 8 and they were not bound by the conditions imposed while granting occupancy right. It was also contended that the provisions of Section 61 (1) and (3) are inconsistent as partition is exempted from alienation and purchase of land from respondents 7 and 8 would not amount to alienation within the period prescribed and forfeiture of land to the Government u/s 61 of the Act was not justified.

5. Learned single Judge, after considering all the contentions of the learned Counsel appearing for the parties and scrutinizing the material on record, negated the contentions urged by the petitioner and held that admittedly, occupancy right was granted on 12.09.1979 and land could not be alienated for a period of 15 years from the date of grant and purchase was made by the petitioner on 29.03.1994 and wherefore, alienation is made within the said prohibited period. Merely because there was partition of the property, the condition prescribed would not commence from the date of partition and there is no inconsistency in the provisions of Section 61 of the Act and having regard to the said admitted facts, the order passed by the Assistant Commissioner confirmed by the K.A.T., is justified. Accordingly, the learned single Judge declined to interfere with the orders passed by the Assistant Commissioner and the K.A.T., and dismissed the Writ Appeal. Being aggrieved by the said order

dismissing the writ petition dated 29.01.2010, the writ petitioner has preferred this appeal.

6. Learned Counsel appearing for the appellant vehemently contended that the petitioner is a bona fide purchaser for value under the registered sale deed dated 29.03.1994 from respondents 7 and 8. He has taken us through the provisions of Section 61 (1) and (3) of the Land Reforms Act, which reads as follows:

(1) Notwithstanding anything contained in any law, no land of which the occupancy has been granted to any person under this Chapter shall within 15 years from the date of the Final Orders passed by Tribunal under Sub-section (4) or Sub-section (5) or Sub-section (5-A) of Section 48-A be transferred by sale, gift, exchange, mortgage, lease or assignment, but the land may be partitioned among the members of the holder's joint family.

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(3) Any transfer or partition of land in contravention of Sub-section (1) shall be invalid, and such land shall vest in the State Government free from all encumbrances and shall be disposed in accordance with provisions of Section 77.

Learned Counsel further submitted that in view of the provisions of Sub-section (1) of Section 61 of the Act, partition of the property among the members of the joint family, would not amount to alienation and is not prohibited and wherefore, any transfer made by person to whom the property is allotted in partition would not be bound by partition and the provisions of Sub-sections (1) and (3) of Section 61 of the Act are inconsistent and the learned single Judge ought to have set aside the order passed by the learned Karnataka Administrative Tribunal, confirming the order passed by the Assistant Commissioner.

7. On the other hand, the learned Additional Government Advocate submitted that the occupancy right has been conferred on 12.09.1979 subject to the condition that the property shall not be alienated. Mere fact that there was partition of the property would not mean that the condition would be operative from the date of partition as partition delimits the share of the members of the family and the condition attached that the property should not be alienated within 15 years from the date of grant of occupancy right would continue and admittedly, the alienation in this case is within the prohibited period of 15 years. Therefore, the order passed by the learned single Judge is justified.

8. We have given careful consideration to the contentions of the learned Counsel appearing for the parties and scrutinized the material on record.

9. The material on record would clearly show that the fact that occupancy right was conferred in respect of 02 Acres 06 guntas of land in Sy. No. 104 of Bheemanakuppe village on 12.09.1979 with a condition that the land should not be alienated for 15 years from the date of grant of occupancy right is not in dispute. It is also not in dispute that the appellant-writ petitioner purchased 01 Acre 32 Guntas of land out of the said 02 Acres 06 guntas in Sy. No. 104 from

respondents 7 and 8. Admittedly, the said extent of land had been allotted to respondents 7 and 8 in a partition that took place in 1990. Therefore, having regard to the date of conferment of occupancy right and the date of registration of the sale deed in favour of the appellant, it is clear that the sale is within the prohibited period of 15 years as 14 years 6 months and 17 days had elapsed from the date of grant of occupancy right. Mere fact that there was partition of the property in respect of which, occupancy right was granted, would not do away with the condition that is attached to the land at the time of grant of occupancy right and even after partition of the property, the condition for alienation shall continue as the same is attached to the land. Since the land in question is alienated within the prohibited period of 15 years, it is clear that the order passed by the Assistant Commissioner is justified. There is no merit in the contention of the learned Counsel appearing for the appellant that there is inconsistency between the provisions of Sub-sections (1) and (3) of Section 61 of the Act as Section 61(1) of the Act prohibits alienation and partition among the members of the joint family is excluded from the ambit of alienation and therefore, it would not be an alienation, which would only mean that the property can be partitioned among the members of the family. Further, Sub-section (3) of Section 61 of the Act clearly states that if the alienation is made within the prohibited period, the land shall stand forfeited to the Government and shall stand disposed of in accordance with the provisions of Section 77 of the Act. There is no merit in the contention of the learned Counsel appearing for the appellant that merely because the appellant had not purchased the property from persons in whose favour, occupancy right was granted and that he had purchased the property from respondents 7 and 8, for whom the property had been allotted in partition, sale was not hit by the provisions of Section 61(3) of the Act, in view of the above said admitted facts. Further, there is also no merit in the contention of the learned Counsel appearing for the appellant that No. application had been filed by the original grantee. This is not a case of grant made in favour of a person, in respect of whom, occupancy right is conferred under the Land Reforms Act and the provisions of Section 61(3) of the Act does not refer to restoring the land to the grantee, but, it states that the land vests with the State and the same shall be disposed of in accordance with the provisions of Section 77 of the Act. Therefore, the contention of the learned Counsel appearing for the appellant that no complaint could be entertained except from the original grantee or the person in whose favour, occupancy right was granted, cannot be accepted. Accordingly, we hold that the order passed by the learned single Judge is justified and does not suffer from any error or illegality as to call for interference in this appeal.

Accordingly, the Writ Appeal is dismissed.