

(1999) 11 KAR CK 0032
In the Karnataka High Court
Case No : Writ Petition No. 17082 of 1999

Sri. Thimmanna Naik and Others

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 26-11-1999

Acts Referred:

Constitution of India, 1950 — Article 341, 342, 366 (24/25)
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 3 (2), 3 (b), 4 (1), 5

Citation : (2000) 2 KCCR 875

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : K.M. Natraj, for the Appellant; V. Jayaram, Government Advocate for Respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Hari Nath Tilhari, J.—Heard Sri K.M. Nataraj, learned Counsel for the Petitioners.

2. This petition is directed against the order dated 12.10.1998 passed by the Assistant Commissioner, Puttur, Dakshina Kannada, in No. C. Dis.LND.2:CR:40 of 1997-98 in proceedings u/s 5 of the Karnataka Act No. 2 of 1979, directing the resumption of possession of the land in question which order has been affirmed by the Appellate Authority namely the Deputy Commissioner vide order dated 30.3.1999 in case No. A. Dis.PTL.7 of 1998-99. The Petitioner has also challenged the appellate order.

3. The facts of the case in the nut-shell are that, the land was granted in favour of the father of Respondent No. 3, Sri Kartha Ajila vide grant dated 16.3.1960. The grantee transferred the land in favour of the wife of Petitioner No. 1 and mother of Petitioners No. 2 to 4 vide registered sale-deed dated 5.7.1989. On the report of the Tahsildar dated 12.10.1998, proceedings were initiated u/s 5 and the Assistant Commissioner held the transfer dated 5.7.1989 to be null and void and hit by Section 4(1) of the Act. He ordered resumption of the land and its

restoration in favour of the grantee or his legal heirs. The purchaser Smt. Saraswathi i.e., wife of the Petitioner No. 1 and the mother of Petitioners No. 2 to 4 filed appeal No. 7 of 1998-99. The Deputy Commissioner dismissed the appeal by order dated 30.3.1999. Feeling aggrieved from that order, the Petitioners have come up before this Court.

4. I have heard Sri K.M. Nataraj, learned Counsel for the Petitioners and the learned Government Counsel Sri V. Jayaram. The Respondent No. 3 has been served, but none has appeared on his behalf.

5. The Petitioners' Counsel Sri K.M. Nataraj contended that the authorities below acted beyond their jurisdiction in passing the orders impugned as the land has not been the granted land. He contended that the land in the present case is a Puncha land and not an agricultural land or wet land and so it could not be said to be granted land and Act did not apply. He further contended that the authorities below did not investigate the question whether the grantee belonged or belongs to depressed class or Scheduled Caste or Scheduled Tribe. The authorities without investigating that question and without recording any finding on that aspect of the matter, could not exercise powers u/s 5. The learned Counsel for the Petitioners further contended that the Assistant Commissioner and the Deputy Commissioner have not applied their mind to the question whether the land was granted free of cost or for upset price or for a price less than the full market value and as such, the order, impugned suffers from jurisdictional error.

6. These contentions of the learned Counsel for the Petitioners have hotly been contested.

7. The question is whether the land was granted or not, whether Puncha land was included in it or not. The granted land has been defined u/s 3(b) which reads as under:

Section 3(b): Granted land means any land granted by the Government to a person belonging to any of the Scheduled Castes or the Scheduled Tribes and includes land allotted or granted to such persons under the relevant law for the time being in force relating to agrarian reforms or land ceilings or abolition of inams, other than that relating to hereditary offices or rights and the word "granted" shall be construed accordingly.

Section 3(b) uses the expression "any land granted by the Government to a person belonging to any of the Scheduled Castes or the Scheduled Tribes". Then it also gives inclusive definition that it includes also "lands allotted or granted to such persons under the relevant law for the time being in force relating to agrarian reforms or land ceilings or abolition of inams". The later part is inclusive and the earlier part is exhaustive. The expression "land" has not been specifically defined in the Karnataka Act No. 2 of 1979. Sub-section (2) of Section 3 i.e., definition clause provides and reads as under:

Section 3(2).-Words and expressions not defined in this Act shall have the meaning assigned to them in the Karnataka Land Revenue Act, 1964.

Thus, by virtue of this Sub-section the expressions and words which have not been specifically defined under this Act, in respect thereof the Act provides that those expressions if defined and as defined by the Legislature in the Karnataka Land Revenue Act, 1964, shall be deemed to have been defined under this Act in the same manner. That definition has been incorporated in this Act. So for the purpose of looking to the definition of land, we have to look to the Karnataka Land Revenue Act. In the Karnataka Land Revenue Act, 1964, vide Section 2 of Karnataka Act No. 12 of 1964, the Legislature has defined the "land". in Clause 14 and then in Clause 8 of Section 2 expression "class of land". has been defined. It will be appropriate to quote Section 2 of the Act.

Section 2. In this Act, unless the context otherwise requires,

(8) "class of land" means any of the following classes of land, namely, dry land, wet land, garden land or plantation land;

Explanation.-For the purposes of this Act,-

(a) "dry land" means-

(i) land classified as dry land under any law repealed by Section 202, or any law in force at any time before the commencement of this Act;

(ii) land in which wet crops cannot be grown except when irrigated by water obtained from any source of water which is the property of the State Government;

(b) "wet land" means land in which wet crops can be grown by use of rain water or water obtained from any source of water which is not the property of the State Government;

(c) "garden land" means land in which garden crops other than plantation crops can be grown, and shall consist of dry garden land and wet garden land; and

(i) "dry garden land" means land classified as such under any law repealed by Section 202 or any law in force at any time before the commencement of this Act, or garden land in which wet garden crops cannot be grown except when irrigated by water obtained from any source of water which is the property of the State Government;

(ii) "wet garden land" means in which wet garden crops can be grown by use of rain water or water obtained from any source of water which is not the property of the State Government.

(d) "Plantation land" means land in which a plantation crop, that is, cardamom, coffee, pepper, rubber or tea, can be grown.

Clause (14) of Section 2 defines "land".

Clause (14).-"Land" includes benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth, and also shares in, or charges on, the revenue or rent of villages or other defined areas.

Thus, a perusal of Clauses (8) and (14) of Section 2 taken together leads me to think that the expression "land". includes in itself land which is dry land, which is plantation land or which is garden land. The learned Counsel for the Petitioners contended that the present land is a dry land. Dry land has been defined as land classified as dry land under any law repealed by Section 202, or any law in force at any time before the commencement of Act No. 12 of 1964. It also provides further that land in which wet crops cannot be grown except when irrigated by water obtained from any source of water which is the property of the State Government. The Petitioners have admitted that the land is dry land. Dry land is included. So whether it is a dry land or wet land it is immaterial for the purpose of Section 2 in view of the use of expression "any land" which includes plantation land or wet land or dry land or garden land granted by the State Government to a person belonging to the Scheduled Castes or the Scheduled Tribes. So even if the land in question has been dry land, it can be said to be granted land provided it is granted to a person belonging to any caste coming within the framework of "Scheduled Castes or any tribe coming under Scheduled Tribes. The learned Counsel for the Petitioners contended that the Petitioners have challenged that the grantee did not belong to depressed class. He placed before me the copy of the objection. I have perused the same. It has been contended that the grant in this case was made neither in favour of depressed class nor Scheduled Caste. But one material thing is there which clearly reveals that the Petitioner admitted that the grantee belongs to a caste namely Ajila. Once this fact is clear that the grantee Kartha Ajila belongs to Ajila caste or community, it is only to be examined whether Ajila caste comes within the Scheduled Castes or the Scheduled Tribes. In the schedule issued under Article 341 as pronote at page 49 of the II Edition of Treatise on the subject by T.N. Raghupathy, Ajila caste is mentioned at item No. 6 of the castes. In the Constitution vide Article 366, (24/25) the Scheduled Castes and the Scheduled Tribes have been defined to mean castes which are included in the list vide notification issued under Article 341 or 342. In the present case as Ajila caste has been included and described as deemed to be the Scheduled Caste and as the definition given in the Constitution has been adopted in this Act as seen from the definition of expression "Scheduled Castes". or "Scheduled Tribes". vide Section 2(d), there cannot be any dispute that as the grantee belongs to Ajila Caste, he belongs to the Scheduled Caste. Therefore, the second contention of the Petitioners" counsel has also got no substance.

8. Lastly it was contended by the learned Counsel for the Petitioners that no enquiry had been made nor any finding had been recorded whether the grant was free grant or for upset price.

9. As regards this aspect of the matter, in my opinion, that aspect of the matter

was not required to be considered because here it is not a case that the transfer had been made of the granted land by the grantee in violation of the grant rules. Here really transfer has been made after coming into force of the Karnataka Act No. 2 of 1979. Sub-section (2) of Section 4 which is prospective in operation clearly bars transfer of the granted land by any person even in execution proceedings and it provides that the granted land shall not be transferred after the commencement of this Act except with the previous permission expressly granted by the State Government nor can the granted land can be acquired by any person except with the previous permission being obtained from the State Government. If the transfer is in violation of Section 4(2), then such transfer will be deemed to be null and void and it is provided that by such transfer, no title or interest shall be conveyed nor shall be deemed ever to have been conveyed to the transferee. This being the position of law, in the present case even if the Court did not go into detail whether the grant was free grant or for upset price, it does not affect the merits of the decision. Here, grant was made on 16.3.1960 and transfer was made by sale dated 5.7.1989. That transfer deed had been executed after 1979 and it having not been the case of the Petitioner that any permission was obtained from the Government, the sale deed of 1989 being in contravention of Section 4(2), has rightly been held to be illegal, null and void u/s 4(1) of the Act.

10. Thus considered in my opinion, the all contentions of the Petitioner's counsel have got no merits though the learned Counsel for the Petitioners argued the matter with great force. The learned Counsel for the Petitioner placed before me a single Judge's decision in the case of C.V. Gouramma v. The Land Tribunal, Bantwal and Ors. reported in 1980 (1) KarLJ 154. This case has got no application as this is not a case with reference to definition of land in the context of Section 3(1)(b) nor on Sub-section (2) of Section 3 of the Karnataka Act No. 2 of 1979. That decision is not applicable to the merits of this case.

Thus considered in my opinion, the petition has got no merits and it is hereby dismissed. Costs made easy.