

(1996) 08 KAR CK 0024
In the Karnataka High Court
Case No : Writ Petition No. 24749 of 1992

T. Chowdanna

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 30-08-1996

Acts Referred:

Karnataka Land Grant Rules, 1969 — Rule 43-G (4)
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 5 (1)

Citation : (1998) ILR (Kar) 1269

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : K.T. Mohan, for the Appellant; S.M. Nagendra Rao, for R-4 and M. Siddagangaiah, HCGP for R-1 to R-3, for the Respondent

Judgement

P. Vishwanatha Shetty, J.

1. Sri M. Siddagangaiah, learned High Court Government Pleader is directed to make notice to respondents-1 to 3.

2. Though this petition is posted in "B" Group, with the consent of the learned Counsel for the parties, it is taken up for final hearing and disposed of by this order.

3. The petitioner in this petition is the grantee of land measuring 1 acre 30 guntas of land in Survey No. 21/1 (New No. 51) situated in Thirtamuthur village, Thirthahalli Taluk, Shimoga District. In this petition, he has challenged the correctness of the order dated 27th December, 1991, the copy of which has been produced as Annexure-D passed by the 3rd respondent rejecting the application of the petitioner seeking for a declaration of the sale of the land referred to above made by the petitioner in favour of the 4th respondent as null and void. He has also challenged the validity of the endorsement dated 18th June, 1992 issued by the 2nd respondent, the copy of which has been produced as Annexure-E wherein the 2nd respondent refused to entertain the appeal filed by the

petitioner against the order-Annexure-D on the ground that the appeal was not maintainable.

4. Sri K.T. Mohan, the learned Counsel for the petitioner while fairly admitting that there is no infirmity in the endorsement-Annexure-E issued by the 2nd respondent as the appeal filed by the petitioner against the order-Annexure-D at the relevant time was not maintainable, submitted that the order-Annexure-D is totally illegal and suffers from errors apparent on the face of the record and therefore liable to be quashed by this Court. He submitted that since the land in question was granted to the petitioner who is a Scheduled Caste on 1st October 1962 and the said land was sold by the petitioner to the 4th respondent on 25th August 1969, i.e., within 15 years from the date of the grant, the order impugned is liable to be quashed.

5. He further submitted that it is not in dispute that the grant order prohibited the alienation of the land in question for a period of 15 years from the date of the grantee taking possession of the land in question. In this connection he also brought to my notice Sub-rule 4 of Rule 43-G of the Land Grant Rules which prohibits the grantee from alienating the granted land for a period of 15 years from the date of grantee taking possession of the granted land, if the grant was a free grant or for a reduced upset price. He submitted that there is no dispute that the land in question is granted land and it was a free grant. He submitted that the 3rd respondent has seriously erred in law in rejecting the application of the petitioner solely on the ground that the grant made in favour of the petitioner came to be cancelled by the Tahsildar in his proceedings No. HC.CR.80/76-77 dated 25th October 1976 and thereafter the land in question came to be granted in favour of the 4th respondent by means of order dated 25th February 1981 in NO. LND:SR:1205/76-77. According to the learned Counsel, what was required to be considered by the 3rd respondent was whether the granted land came to be sold in violation of the terms of the grant or the law governing the grant of such land or not ; and this aspect of the matter has been completely overlooked by the 3rd respondent while passing order-Annexure-D.

6. Sri M. Siddagangaiah, learned High Court Government Pleader strongly supported the submissions made by the learned Counsel for the petitioner and submitted that the order impugned is liable to be quashed and the sale of the land made by the petitioner in favour of the 4th respondent requires to be declared as null and void.

7. Sri Nagendra Rao, the learned Counsel appearing for the 4th respondent submitted that there is no infirmity in the order impugned and since the 3rd respondent has found that the land in question came to be granted in favour of the 4th respondent after cancelling the grant made in favour of the petitioner, the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act 1978 (hereinafter referred to as "the Act") cannot be made applicable in respect of the land in question and therefore this petition is liable to be dismissed. He further submitted that since

there is a provision now made in the Act providing for appeal against the order of the Assistant Commissioner, instead of deciding the matter finally, the writ petition may be dismissed with liberty reserved to the petitioner to file an appeal before the Deputy Commissioner.

8. Though normally in a matter like this I would have remitted the matter to the Deputy Commissioner for consideration of the grievance of the petitioner in view of the provision now made providing for a right of appeal to the petitioner against the order-Annexure-D passed by the Assistant Commissioner, having regard to the facts and circumstances of the case I am not inclined to either remit the matter to the Deputy Commissioner for consideration of the grievance against order-Annexure-D or dismiss the writ petition with liberty reserved to the petitioner to file an appeal before the Deputy Commissioner as submitted by the learned Counsel for the contesting 4th respondent.

9. Admittedly, the land in question was granted to the petitioner on 1st October 1962 and the said land came to be sold to the 4th respondent by means of registered sale deed dated 25th August 1969. It is not disputed that the petitioner is a Scheduled Caste and the land in question is a granted land. It is also not in dispute that the terms of the grant prohibited the alienation of the land in question for a period of 15 years from the date of the grantee taking possession of the land in dispute. As stated earlier, Rule 4 of Rule 43-G of the Rules which governed the grant of the land prohibited the alienation of the land in question for a period of 15 years from the date of the grantee taking possession of the land in question. However, the 3rd respondent has rejected the application of the petitioner filed u/s 5(1) of the Act solely on the ground that the grant made in favour of the petitioner came to be cancelled by the Tahsildar on 25th October 1976 and subsequently the land in question came to be granted in favour of the 4th respondent on 25th February 1981 and therefore the provisions of the Act cannot be made applicable. I am of the view that the said finding recorded by the 3rd respondent is erroneous in law. The 3rd respondent, as rightly pointed out by the learned Counsel for the petitioner was required to consider whether the sale of the land in question came to be made either in violation of the terms of the grant or the law providing for such grant. The facts which are not in dispute clearly shows that the land in question came to be sold in violation of the terms of the grant and also the law providing for the said grant. Therefore, even assuming that the grant of the land made in favour of the petitioner came to be cancelled on 25th October 1976 is correct as found by the 3rd respondent it would not have any bearing on the rights of the parties. Even according to the finding recorded by the 3rd respondent the grant of land made in favour of the petitioner came to be cancelled for violation of the terms of the grant i.e., for selling the land in question. It is also not in dispute that on 25th October 1976, when the Tahsildar cancelled the grant made in favour of the petitioner, the 4th respondent had become the owner of the land in question by virtue of the sale deed dated 25th August 1969 executed by the petitioner selling the land in question to the 4th respondent. Section 4(1) of the Act provides that

notwithstanding anything in any law, contract or instrument, any transfer of granted land made either before or after the commencement of the Act in contravention of the terms of the grant of such land or the law providing for such grant of Sub-section 2 of Section 4 shall be null and void and no right, title or interest of such land be conveyed or deemed to have been conveyed by such transfer. Therefore, since the land in question came to be sold in contravention of the terms of the grant, the sale deed dated 25th August 1969 executed by the petitioner in favour of the 4th respondent is null and void in terms of Section 4(1) of the Act and the 4th respondent does not get any right, title or interest by virtue of the said sale deed. The mandate of Sub-section 1 of Section 5 of the Act is to take possession of the granted land which came to be transferred by means of a transaction which is null and void u/s 4(1) of the Act and to restore possession of the said land to the original grantee or his legal heir. As the sale of the land made in favour of the 4th respondent was null and void and the petitioner was entitled for restoration of possession of the said land with effect from 1st January 1979 i.e., the date on which the Act came into force, the said land was not available for grant by the State or the authorities of the State in favour of the 4th respondent. Therefore, I am of the view that even assuming that the land in question came to be granted to the 4th respondent on 25th February 1981 is correct, it will not affect the rights of the petitioner which had accrued to him by virtue of the provisions of the Act on 1st January 1979. In view of my above conclusion, it is not necessary for me to consider the submission of the learned Counsel for the petitioner, Sri K.T. Mohan that the cancellation of the grant made in favour of the petitioner by means of order dated 25th October 1976 and subsequent grant of the said land stated to have been made in favour of the 4th respondent by means of order dated 25th February 1981 are all collusive and fraudulent documents created solely for the purpose of circumventing the provisions of the Act and to protect the interest of the 4th respondent on account of extraneous reasons.

10. It is necessary to point out that the 3rd respondent who is conferred with the power under Sub-section 1 of Section 5 of the Act to conduct an enquiry as to whether the granted land came to be sold in violation of the terms of the grant or the law providing for such grant refused to give relief to the petitioner solely on the ground that the grant made in favour of the petitioner came to be cancelled by the Tahsildar in the year 1976 and subsequently the land in question came to be granted to the 4th respondent in the year 1981. The entire approach made by the 3rd respondent to the matter in controversy is erroneous in law. Therefore, I am of the opinion that the order-Annexure D dated 27th December 1991 passed by the 3rd respondent is liable to be quashed and the sale deed executed by the petitioner in favour of the 4th respondent referred to above requires to be declared as null and void. Normally in view of my above conclusion, I would have remitted the matter to the 3rd respondent to pass appropriate orders declaring the sale deed in question as null and void in the light of the observations made by me in this case. However, since the dispute between the parties has been

pending consideration for the last several years and the order passed by the 3rd respondent on the first instance came to be set aside by the 2nd respondent and the matter was remitted for fresh consideration to 3rd respondent and thereafter the 3rd respondent has passed the impugned order, I am of the view that it will be in the interest of justice to pass an order declaring that the sale deed in question is null and void. However, so far as the direction regarding restoration of possession of the land in question to the petitioner is concerned, Sri K.T. Mohan, learned Counsel for the petitioner submitted that pursuant to the order passed by the 3rd respondent at the first instance, the petitioner was put in possession of the said land and he continued to be in possession of the same. However, this submission made by the learned Counsel for the petitioner is seriously disputed by the learned Counsel for the respondent. Therefore, I make the following order :

(i) Rule is issued and made absolute.

(ii) The order-Annexure-D dated 27th December 1991 passed by the 3rd respondent is hereby quashed.

(iii) Sale of land measuring one acre and 30 guntas in Survey No. 21/1 (New Survey No. 51) situated at Thirtamuthur Village, Thirthahalli Taluk, Shimoga District, made by the petitioner in favour of the 4th respondent by means of registered sale deed dated 25th August 1969 is declared as null and void.

(iv) The 3rd respondent is directed to conduct an enquiry as to whether the petitioner was put in possession of the land in question or not and on such enquiry, if it is found that the petitioner is not in possession of the land in question, the 3rd respondent shall put the petitioner in possession of the land in question. The 3rd respondent is given three months" time to conduct an enquiry and put the petitioner in possession of the land in question. However, if the 3rd respondent on such an enquiry is satisfied that the petitioner has already been put in possession of the land in question pursuant to the earlier order passed by him, the 3rd respondent need not pass fresh order putting the petitioner in possession of the land in question and it will be sufficient if he records a finding to that effect.

11. In terms stated above, this petition is disposed of.

12. Sri M. Siddagangaiah, learned High Court Government Pleader has given four weeks time to file memo of appearance.