

(1993) 07 KAR CK 0002
In the Karnataka High Court
Case No : W.A. No. 1337 of 1993

Thammannegowda

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 06-07-1993

Acts Referred:

Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 4

Citation : (1993) ILR (Kar) 2097 : (1993) 3 KarLJ 231

Hon'ble Judges : S.B. Majmudar, C.J;N.D.V. Bhat, J

Bench : Division Bench

Advocate : B. Rudra Gowda, for the Appellant; S.R. Naik, Government Advocate for R-1 to R-3, for the Respondent

Final Decision : Dismissed

Judgement

N.D.V. Bhat, J.—In this Writ Appeal the appellant has challenged the Order dated 26th March 1992 passed by the learned single Judge in W.P.No. 17213/78. Before the learned single Judge the appellant who was the petitioner had challenged the order dated 2.11.1987 passed by the Deputy Commissioner, Shimoga District, in Case No.SC.ST. 125/84-85 who dismissed the appeal preferred by the instant petitioner against the order passed by the Assistant Commissioner in No. HRC.KR. 321/79-80 dated 27.6.1980.

2. Before the Assistant Commissioner the instant respondent No.4 (since deceased by LRs) had challenged the sale executed on 2.11.1966 on the ground that the same is hit by the mischief of Section 4 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as "the Act").

3. The learned Assistant Commissioner by his order took the view that the transaction took place on 2.11.1966 was within the non-alienation period and as such hit by the mischief of Section 4 of the Act, with the result he declared the sale as void ab initio. That order was appealed against before the Deputy

Commissioner who also by his order confirmed the same and that was challenged in the Writ Petition referred to above.

4. The learned Single Judge for the reasons reflected in the impugned order took the view that the orders passed by the Assistant Commissioner and the Deputy Commissioner cannot be found fault with and thereby the Writ Petition came to be dismissed, it is this order of the learned Single Judge which is challenged before this Court in this Appeal.

5. We have heard Sri. B. Rudragowda, learned Counsel for the appellant. The main thrust of the submission made by the Counsel for the appellant is that the Assistant Commissioner who passed the order in the first instance did not record his findings on the aspects which are required to be recorded, with the result his order is bad in law. Dilating on this aspect the learned Counsel also submitted that the order passed by the Deputy Commissioner is also bad on the same count. It is the contention of the learned Counsel for the appellant that the learned Single Judge has not applied his mind with reference to the aspect alluded to hereinabove, and that therefore suffers, according to learned Counsel for the appellant, from infirmity. In particular the submission made by Sri. Rudragowda, is that the Assistant Commissioner has not given a finding on the question, as to whether respondent-4 belongs to the Scheduled Caste. In this connection he has placed reliance on the Decision of a Division Bench of this Court to which one of us (Justice N.D.V. Bhat) is a party, in the case of Pedda Reddy Vs. State of Karnataka, . In the said Decision, this Court among other things has held thus:-(paras-5 and 6).

"5. As already pointed out, the sale is declared as void in law, by the order dated 27.4.1983. In the appeal also, the Special Deputy Commissioner has affirmed the order of the Assistant Commissioner. The learned Single Judge has dismissed the Writ Petition on the ground that there is no substance in the contention of the grantee that the order declaring the transaction as void, was invalid in law, and that the contention of the appellant that no sufficient opportunity was afforded to him, was also not correct. Before us, it is contended by Sri. Rudre Gowda, learned Counsel for the appellant that whether the appellant had contested the proceeding or raised an objection or not it was all the more necessary for the Assistant Commissioner, while declaring the transaction as void, to record a finding as to whether the transaction of sale had taken place within the period prescribed by the Rules prohibiting the alienation of the land in question, and for that purpose the Assistant Commissioner was also required to decide whether the grant was on an upset price or on free of cost. If it were to be held that the grant was on an upset price, the period of prohibition was 10 years from the date of grant, and if it were to be held that the grant was a free grant, the period of prohibition was 15 years as per Sub-rule 8(a) of Rule 43 of the Mysore Land Revenue Rules as amended by the Notification dated 6.7.1955 published in the Mysore Gazette on 14th July 1955.

6. The legal position is that the Assistant Commissioner cannot declare the sale

of the land granted under the provisions of the Rules as void unless he records the following findings;

- i) that the grant was made in favour of a person belonging to scheduled caste or scheduled tribe;
- ii) that the grant was either on upset price or a free grant or for a price less than upset price; and
- iii) that the alienation had taken place within the period of prohibition prescribed under the Rules",

Learned Counsel for the appellant has placed his finger with reference to the observations made in para-5 and contended that since the order passed by the Assistant Commissioner does not comply with the aspects required to be complied with in the context of the Decision rendered by this Court the said order confirmed by the Deputy Commissioner and the learned single Judge is liable to be set at naught and the matter is liable to be remanded for fresh consideration.

6. After having carefully considered the submissions made by the Counsel for the appellant, we find that there is no substance in his submissions. It is needless to say that the Decision in each case depends on its own facts. It is true that in the case dealt with by the Division Bench in Pedda Reddy's case (supra) the Division Bench took the view as reflected in paras 5 and 6. However, it is necessary to state that paras-5 and 6 will have to be read together. The different aspects referred to in para-6 which are the aspects to be considered by the Assistant Commissioner did arise for consideration in the said case in the context of the stand taken by the respective parties and in the light of the submissions made at the Bar by the learned Counsels, In the instant case, it is necessary to point out here that the appellant does not appear to have raised a whisper before the Assistant Commissioner that respondent-4 does not belong to Scheduled Caste. Further even in the appeal presented before the Deputy Commissioner the appellant is not shown to have raised a contention that respondent-4 does not belong to Scheduled Caste. Further it is seen that the question as to whether the instant respondent-4 belong to Scheduled Caste was not in dispute before the learned single Judge. This is clear from the observation made by the learned single Judge in the course of his Order. It is indeed refreshing to cull out the observation made by the learned Single Judge in the first para in the course of his Order;

"The facts which are not in dispute are:

The land in question which was originally a Government land came to be granted to the 4th respondent in the year 1963. The grantee was a scheduled caste person. At the time of grant, the non- alienation condition was for a period of 15 years".

7. It is also necessary to point out that the order passed by the learned single Judge appears to have been dictated in the open Court. Sri Rudra Gowda, who

appeared for the petitioner before the learned single Judge does not dispute the same. If there was any dispute on that question, in the normal course it would have been pointed out to the learned Single Judge by the Counsel for the petitioner that it was not so. The very fact that such a dispute was not raised before the learned single Judge would clearly go to show that such a contention was not raised before the learned Single Judge and that therefore the learned Single Judge has rightly pointed out that there is no dispute with regard to that aspect. It is this circumstance which will make all the difference to the ratio laid down in the Decision of Pedda Reddy's case. It is needless to say that the question as to whether respondent-4 belongs to S.C., or not is a question of fact and that when a question of fact is stated to be not disputed by the learned Single Judge in the circumstances referred to earlier, we are indeed of the view that such a contention cannot be allowed to be raised in this Appeal.

8. Under these circumstances, we are of the view that the Decision pressed into service by the learned Counsel for the appellant is not applicable to the facts of the case and the said Decision is clearly distinguishable. We may also point out that Sri Rudragowda, rightly has not touched upon the other two aspects in the course of his submissions. Even otherwise we are of the view that the two other aspects, namely, the question as to whether the grant was on upset price or a free grant, or for that matter the alienation had taken place within the prohibited period does not arise having regard to the fact that the sale took place within three years next after the grant was made.

9. Before we close, we may also make a mention of a submission made by Sri Rudragowda that the appellant has perfected his title to the property by way of adverse possession. The submission made by Sri Rudragowda is to be mentioned only to be rejected. It is necessary to remember that alienation took place in 1966 and adverse possession against the Government requires the enjoyment for 30 years from that date and next before the Act came into force. Under the circumstances, we do not find any substance in the last of the submissions made by Sri Rudragowda.

10. Looked at from any point of view, we are of the view that there is no substance in the Appeal. Accordingly, the Appeal is liable to be dismissed and the same is hereby dismissed.