
(2003) 07 KAR CK 0055
In the Karnataka High Court
Case No : Writ Petition No. 44506 of 2002

Y.M. Nagaraja Herekerehally

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 28-07-2003

Acts Referred:

Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 4, 5

Citation : (2004) ILR (Kar) 1047 : (2003) 5 KarLJ 216 : (2003) 4 KCCR 221 SN

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : R. Swaminathan and A.T. Venkatesh, for the Appellant; Patel D. Karegowda, for Respondent-4 and M.G. Anjana Murthy, Government Pleader for Respondents-1, 3 and 5, for the Respondent

Final Decision : Allowed

Judgement

V. Gopala Gowda, J.—Land bearing old Sy. No. 101, new No. 203 measuring 3-00 acres of Hirekerehalli Village in Molakalmuru Taluk was granted in favour of petitioner's father under darkhast on 23-11-1963 with a condition that it shall not be sold within 15 years. However, the grantee sold the land in the year 1966 to one Smt. Thimmakka. But the said sale was held null and void under the provisions of Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act by an order dated 11-6-1981. Instead of restoring the land to the grantee, granted in favour of 4th respondent by the Tahsildar on 29-12-1984. Since the original grantee died, his son, the petitioner herein, approached the Assistant Commissioner seeking restoration of the land. The Assistant Commissioner by his order at Annexure-A, dated 25-1-2002 set aside the order of the Tahsildar dated 16-10-1984 and directed restoration of the land to the petitioner. In the appeal preferred against the said order by the 4th respondent, the Deputy Commissioner by the impugned order at Annexure-B, dated 30-10-2002 set aside the order of the Assistant Commissioner at Annexure-A. Petitioner is seeking to quash the said order.

2. Heard the learned Counsels for the parties and perused the orders at Annexure-A and B.

3. The facts as such are not in dispute. Since the land in question was granted under darkhast with a non-alienation condition for 15 years, the Assistant Commissioner has held that the sale as null and void by his order dated 11-6-1981 and directed restoration of the land to the grantee. Instead of restoring the land to the grantee, the Tahsildar granted it to the 4th respondent by his order dated 16-10-1984, grant certificate dated 25-12-1984 was issued. By doing so, the Tahsildar has not only violated the order dated 11-6-1981 of the Sub-Divisional Officer but also assumed jurisdiction which does not vest with him. Since the sale of the land was held null and void u/s 5(1) of the Act, the land ought to have been restored to the grantee. But the Tahsildar has deviated from it and granted the land to 4th respondent contrary to the provisions of the Act. The mistake committed by the Tahsildar was rectified by the Assistant Commissioner by his order at Annexure-A by setting aside the order of the Tahsildar and directing restoration of the land to the petitioner. The order of the Assistant Commissioner was in accordance with the provisions of the Act. The same should have been affirmed by the Deputy Commissioner. Contrary to that, he has allowed the appeal of 4th respondent and set aside the order at Annexure-A.

4. The Deputy Commissioner in his order has placed reliance upon the law laid down in K.T. Sreenivasa Vs. State of Karnataka, and held that the petitioner cannot assert his right as the land had been kept barren and the land revenue was not paid. The said decision has no application to the instant case. What was held in the said decision is, when a granted land is resumed to Government for non-payment of land revenue and sold in auction, the land would lose the character of granted land and the transfer so effected will not be hit by Section 4 of the Act. In the instant case, neither the land was resumed to Government for non-payment of land revenue nor sold in public auction. On the other hand, the land was resumed in view of contravention of the provisions of the Act and ignoring the non-alienation period. That should have been followed by restoration to the grantee of his legal representative. Though the sale of the land was held null and void and the land was resumed, it was not restored to the petitioner. The Deputy Commissioner without applying his mind has wrongly placed reliance upon the aforesaid decision, which does not apply to the case. The Deputy Commissioner applied a wrong decision and passed the impugned order, which is unsustainable in law.

5. The Deputy Commissioner set aside the order of the Assistant Commissioner because the land was not cultivated and kept barren and land revenue was not paid. The land was sold in the year 1966 and the purchaser might not have cultivated the land. The proceedings initiated under the Act culminated in the order of resumption of land on 11-6-1981. Thereafter restoration of the land was not made in favour of the petitioner despite the said order. On the other hand,

the land was granted in favour of 4th respondent. The 4th respondent also might not have cultivated the land. In view of all these, the petitioner could not enter upon the land for cultivation. Such being the position, the right accrued to him for restoration of the land cannot be deprived of merely because the land was kept barren or land revenue was not paid. The petitioner was not responsible for both of these as the land was not restored to him. The Deputy Commissioner lost sight of all these aspects. Without application of mind the impugned order is passed by the Deputy Commissioner. The order is not only contrary to law but also the provisions of the Act and against the very objects of the Act. Hence, the same is liable to be quashed.

6. Learned Counsel for the 4th respondent contended that the Assistant Commissioner has reviewed his own earlier order and he has no power to do so. The decision in *Huthegowda and Ors. v. The Deputy Commissioner, Hassan and Ors.* 1992(1) Kar. L.J. 289 was pressed into service in support of the contention. The contention does not hold water. The earlier order dated 11-6-1981 directing restoration of the land after resumption of the land was passed by the Assistant Commissioner. The order at Annexure-A passed by the Assistant Commissioner, does not amount to review. Even in this order also it is ordered to restore the land, to the petitioner which amounts to re-affirming his earlier order of restoration of land to the petitioner for which he is legally entitled to in law. Therefore, there is no review of his earlier order as both pertains to restoration of the land in favour of the petitioner. Both the orders are in accordance with the provisions of the Act and the law on the subject. Hence, the decision relied upon will not help the petitioner and the contention is hereby rejected.

7. Another decision relied upon by the Counsel for 4th respondent, in *Venkatagiriappa and Others Vs. State of Karnataka*, has no application to this case for the reason that decision pertains to initiation of proceedings for cancellation of grant under the provisions of Karnataka Land Reforms Act and Land Grant Rules after a lapse of 30 years from the date of grant of land. In this case the provisions of Sections 4(1) and 5 of the PTCL Act, there is no presumption of time for initiation of proceedings, hence for this reason also the above decision has no application to the fact situation of the present case. But there is no delay in initiating the proceedings as the order of setting aside the sale was passed on 11-6-1981.

8. It is contended that 4th respondent also belongs to Scheduled Caste and hence the grant of land in his favour is legal. It may be that the 4th respondent also belongs to Scheduled Caste but the grant of the land in his favour was contrary to the restoration order passed by the Assistant Commissioner in exercise of his power under the provisions of the Act, after setting aside the sale as the same was suffering from nullity in the eye of law and therefore the grant order is not legal and valid in law. Moreover, the Tahsildar has no jurisdiction or power to grant the land in his favour. The grant of land in favour of 4th respondent is ab initio void in law, as the land was not available under the

provisions of Grant Rules for grant of the same in his favour.

9. Lastly, it is contended that 4th respondent is in possession of the land for the last 20 years and his possession be protected. The same cannot be accepted. 4th respondent came into possession by virtue of an illegal grant. He has no right over the land in question. He had the benefit of enjoying the land for the last 20 years. Though it is a fit case to conduct enquiry regarding mesne profits, the Court does not venture upon such an action since the 4th respondent belongs to Scheduled Caste.

10. For the reasons stated above, the writ petition is allowed and the impugned order is quashed. Respondents 3 and 5 are hereby directed to put the petitioner in possession of the land within eight weeks.