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Mala vs the State of Karnataka and Ors

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Court : Karnataka Kalaburagi

Decided On : Dec-02-2024

Judge : S.R.Krishna Kumar

Appeal No. : WP/203395/2024

Appellant : MALA

Respondent : The State of Karnataka and Ors

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA, KALABURAGI BENCH DATED THIS THE 2ND DAY OF DECEMBER, 2024 BEFORE THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR WRIT PETITION NO. 203395 OF 2024 (KLR-LG) BETWEEN: SMT. MALA W/O B NARAYANRAO AGE. 56 YEARS,OCC. AGRICULTURE R/O NO. 232, II CROSS NEAR AYYAPPA SCHOOL NANDI DURGA ROAD BANGALURU-46 PRESENTLY RESIDING AT: BASAVAKALYAN TQ AND DIST BIDAR : 585 401. PETITIONER (BY SRI. INDUDHAR PANDURANG JADAV,ADVOCATE) AND:

1. THE STATE OF KARNATAKA Digitally signed

by SUMITRA THROUGH SECRETARY TO GOVERNMENTSHERIGA

KARNATAKA

2. THE DEPUTY COMMISSIONER BIDAR D. C OFFICE BIDAR-585 401.

3. THE ASSISTANT COMMISSIONER BIDAR SUB DIVISION D C OFFICE BIDAR-585 401.

4. THE TAHASILDAR BIDAR TAHASIL OFFICE BIDAR-585 401. -2-

5. KAMANNA S/O MARUTAPPA GOUR

AGE. MAJOR, OCC. AGRICULTURE, VILLAGE GOUR, TQ BASAVAKALYAN DIST BIDAR 585 401. RESPONDENTS (BY SMT. MAYA.T.R., HCGP FOR R-1 TO R-4 VIDE ORDER DATED: 02.12.2024 NOTICE TO R-5 D/W) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND

227 OF THE CONSTITUTION OF INDIA, PRAYING TO A WRIT OF CERTIORARI ANY OTHER WRIT OR DIRECTION TO QUASH THE IMPUGNED ORDER DATED 19.11.2024 IN FILE NO. ND REV/APPEAL/R.P-68/2024-25 PASSED BY THE 2 RESPONDENT AS AT ANNEXURE-N IN THE INTEREST OF JUSTICE AND EQUITY. THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER: CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

(PER: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR)

In this petition, the petitioner seeks the following reliefs: a) A writ of Certiorari any other writ or direction to quash the impugned order dated: 19.11.2024 in the file No.REV/Appeal/R.P.-68/2024-25 passed by the

2nd respondent as at Annexure-N, in the interest of justice and equity. b) Issue a writ of Mandamus directing the Respondents to restore the schedule property to the petitioner by deleting the entries in column No.11 ROR by considering -3-

the representation dated: 22.07.2021 made by the petitioner as at ANNEXURE-J, in the interest of justice and equity. c) Pass such other order/s at this Honble Court deems fit to grant in the circumstances of the case, in the interest of justice and equity.

2. Heard learned counsel for the petitioner and learned HCGP for respondent Nos.1 to 4 and perused the material on record.

3. For the order proposed, notice to respondent No.5 is dispensed with.

4. A perusal of the material on record will indicate that the

subject land bearing Sy.No.3/2 measuring 4 acres 32 guntas at Nizampur Village, Bidar District and Taluk was granted in favour of one Govindappa S/o Nagappa Nizampur vide grant order dated 31.12.1980. The said grant order stipulated that the subject land shall not be alienated by the grantee, Govindappa for a period of 15 years from the date of grant. The said Govindappa executed registered Sale Deed dated 08.08.1991 selling the subject land in favour of respondent No.5 - Kamanna S/o Marutappa, pursuant to which khata was mutated into the name of Kamanna, respondent No.5 herein vide M.R. No.1372/1991-92. Accordingly, revenue

-4- records were mutated in the name of the aforesaid Kamanna, respondent No.5 herein vide M.R.No.1372/91-92 dated 15.10.1991.

5. Subsequently, respondent No.5 sold the subject land

in favour of the petitioner herein vide registered Sale Deed dated 29.12.2003. Thereafter, there were various correspondence and proceedings between petitioner and respondent Nos.1 to 4 - Authorities, which culminated in the impugned order at Annexure-K dated 10.03.2022, whereby the request of the

petitioner to delete the endorsement in Column No.11 regarding non-alienation period was rejected by the Assistant Commissioner. The said order dated 10.03.2022 passed by the Assistant Commissioner was challenged before this Court in W.P.No.200791/2022, which was disposed of by this Court relegating the petitioner by filing a Revision Petition before the Deputy Commissioner, who proceeded to dismiss the

Revision Petition vide impugned order dated 19.11.2024. Aggrieved by the impugned orders passed by the Assistant Commissioner and the Deputy Commissioner, the petitioner is before this Court by way of the present petition. -5-

6. Per contra, learned HCGP for respondent Nos.1 to 4 submits that there is no merit in the writ petition and the same is liable to be dismissed.

7. A perusal of the material on record will indicate that it

is an undisputed fact and the matter on record that the subject land was granted in favour of one Govindappa, the predecessor in title of the petitioner as long back as in the year 03.12.1980 and khata was mutated into his name. Subsequently, the aforesaid Govindappa sold the subject land in favour of Sri. Kamanna, respondent No.5, who was the vendor of petitioner vide registered sale deed dated 08.08.1991 and khata was mutated into the name of the aforesaid respondent No.5 vide M.R.No.1372/1991-92 dated 15.10.1991. It is also not in dispute that the endorsement in Column No.11 regarding non-alienation was inserted for the first time in the RTC only in the year 2004-05 and the subject proceedings and the impugned order was passed by the Assistant Commissioner only in the year 2022. It is therefore clear that insertion of the endorsement regarding non-alienation having been made after 24 years from the date of grant and the proceedings before the Assistant Commissioner having been initiated almost -6-

more than 40 years from the date of grant, I am of the considered opinion that in the peculiar/special facts and circumstances of the instant case and by virtue of the reasonable time principle as enunciated by the Apex Court as well as this Court in the case of Chhedi Lal Yadav & Others Vs. Hari Krishna Yadav (D) thr. Lrs and Others - (2018) 12 SCC 527, Nekkanti Rama Lakshmi Vs. State of

Karnataka and another - (2020) 14 SCC 232 and Sri. Vivek M. Hinduja and others Vs. M. Ashwatha and others -

(2020) 14 SCC 228, I am of the considered opinion that the impugned orders at Annexure-K dated 10.03.2022 passed by respondent No.3 - Assistant Commissioner and the impugned

order at Annexure-N dated 19.11.2024 passed by the Deputy

Commissioner deserve to be quashed and necessary directions are to be issued to respondent Nos.1 to 4 to mutate the khata into the name of the petitioner by deleting the entry regarding non- alienation in Column No.11 of the RTCs within a stipulated timeframe.

8. In other words, in the light of the undisputed fact that in the peculiar/special facts and circumstances obtaining in the instant case, grant having been made in favour of the petitioners vendor -7-

as long back as on 31.12.1980, the insertion of the endorsement regarding non-alienation having been made after 25 years, i.e., in the year 2004, coupled with the proceedings culminated in the

order of the Deputy Commissioner more than 40 years from the

date of the grant, the order of the Assistant Commissioner and the Deputy Commissioner and the insertion of the endorsement in Column No.11 deserves to be quashed.

9. In the result, I pass the following:

ORDER

(i) The Writ Petition is hereby allowed.

(ii) The impugned order at Annexure-K dated 10.03.2022 passed

by respondent No.3 - the Assistant Commissioner is hereby quashed; so also the impugned order at Annexure-N dated 19.11.2024 passed by respondent No.2 is hereby quashed.

(iii) Respondent Nos.1 to 4 are directed to mutate the khata into the

name of the petitioner by deleting the entry in Column No.11 regarding non-alienation within a period of four weeks from the date of receipt of a khata of this order. -8-

(iv) It is made clear that the present order is passed in the peculiar/special facts and circumstances of the instant case, having regard to the reasonable time principle and the present

order passed shall not be treated as a precedent nor the same

shall carry any precedential value for any purpose, whatsoever. Sd/- (S.R.KRISHNA KUMAR) JUDGE BMC List No.: 1 Sl No.: 6

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