

Rangaswamy Vs. the Assistant Commissioner, Shimoga Sub-division, Shimoga and Others

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Court : Karnataka

Decided On : Sep-07-1998

Reported in : 1999(1)KarLJ300

Judge : Mohamed Anwar, J.

Acts : Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 - Sections 5; Mysore Land Grant Rules, 1938 - Rule 43-G(4); Mysore Land Revenue (Amendment) Rules, 1960 - Rule 43-G

Appeal No. : Writ Petition No. 12984 of 1998

Appellant : Rangaswamy

Respondent : The Assistant Commissioner, Shimoga Sub-division, Shimoga and Others

Advocate for Def. : Sri Siddagangaiah, High Court Government Pleader

Advocate for Pet/Ap. : Sri B.K. Manjunath, Adv.

Judgement :

1. Heard.

2. The Government land measuring 1 acre 28 guntas in old Sy. No. 43/7, new Sy. No. 86 of Bommanakatte Village, Bhadravathi Taluk, Shimoga District was granted to respondent 3 under Grant Certificate dated 3-10-1961 produced as Annexure-A. On 20-6-1963, the said land was sold by respondent 3 to one Channaiah, who, in turn, sold the same to petitioner on 24-4-1975.

3. Subsequently, respondent 3-grantee made an application to the Assistant Commissioner for resumption of the land under Section 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 ('the Act' for short). Then an enquiry was held by the Assistant Commissioner against petitioner. The order dated 12-3-1998, produced as Annexure-C, came to be passed by him allowing respondent 3's application and directing petitioner's eviction from the land for the purpose of its restoration to respondent 3 under Section 5(1) of the Act, on the ground that the land was alienated on 20-2-1963 in favour of said Channaiah in violation of then existing sub-rule (4) of Rule 43-G of the Mysore Land Revenue (Amendment) Rules 1960 ('the Rules' for short) which prohibited alienation of the granted land for a period of 15 years from the date of the grantee taking possession of the land after the grant. In appeal by the petitioner, the Deputy Commissioner also passed his impugned order Annexure-D dated 9-3-1998 confirming the Assistant Commissioner's order. Hence, this writ petition by the petitioner praying to quash the impugned orders at Annexure-C and D of the Assistant Commissioner and Deputy Commissioner, respectively.

4. It was contended by the petitioner's learned Counsel B.K. Manjunath that Rule 43-G(4) was inapplicable to the alienations of the land in question because the grant of the land made to respondent 3 was for its full market value as borne out by the contents of Annexure-A, Grant Certificate.

5. Per contra learned HCGP argued otherwise in support of both the impugned orders, submitting that the amount shown in Annexure-A Grant Certificate should be taken not as the market value for the land but towards the miscellaneous charges collected by the Government relating to the said grant.

6. Sub-rule (4) of Rule 43-G runs as follows:

'43-G. Grant of lands under the preceding rules shall be subject to the following conditions.-

(1).

(2).

(3).

(4) Where the grant is made free of cost, or is made at a price which is less than the full market value, the grant shall be subject to the condition that the land shall not be alienated for a period of fifteen years from the date of the grantee taking possession of the land, after the grant'.

7. The material portion in Annexure-A, Grant Certificate is as extracted below.-

The above quoted relevant contents of Grant Certificate clearly indicate that the land was purchased by the grantee from the Government for Rs. 60.80. This amount is shown in the Certificate as the market value for the land. Nowhere in this certificate Annexure-A there is any indication, whatsoever, disclosing that the said amount was collected by the Government not as consideration for the sale of the land but towards miscellaneous charges for the grant, as sought to be made out by learned High Court Government Pleader. Therefore, the Grant Certificate at Annexure-A establishes that land was sold to the grantee for full market value, there being no other material available from the observations of both the authorities below in their impugned orders or from any other relevant revenue record pertaining to the grant that the said price of Rs. 60.80 was less than the full market value of the land. In that case, as rightly contended by the learned Counsel for petitioner, sub-rule (4) of Rule 43-G would be inapplicable and the authorities below have erred in taking the contrary view. A plain reading of this provision under Rule 43-G(4) imposing condition of non-alienation of the granted land makes it abundantly clear that it applies only when the grant is made free of cost or it is made at a price which is less than the full market value. Hence, I find that both the impugned orders are unsustainable and are liable to be quashed.

8. For the reasons aforesaid, the petition is allowed. The impugned orders at Annexure-C dated 12-3-1993 of the Assistant Commissioner and Annexure-D dated 9-3-1998 of the Deputy Commissioner are quashed.

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