

A. Narasimhamurthy Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Sep-26-2000

Reported in : ILR2000KAR4761; 2001(2)KarLJ313

Judge : B.N. Mallikarjuna, J.

Acts : Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 - Sections 4 and 5; Mysore Land Revenue Code, 1888 - Sections 233; Mysore Land Revenue (Amendment) Rules, 1960 - Rule 43-G; [Limitation Act, 1963](#) - Articles 3, 65 and 112

Appeal No. : Writ Petition Nos. 21806 and 21807 of 2000

Appellant : A. Narasimhamurthy

Respondent : State of Karnataka and Others

Advocate for Def. : Sri Shiva Swamy, Government Adv.

Advocate for Pet/Ap. : Sri V. Chandrappa, Adv.

Judgement :

ORDER

B.N. Mallikarjuna, J.

1. Petitioner is common in these two petitions and he has sought for quashing the common order of respondent 4-Deputy Commissioner dated 18-4-2000, Annexure-C is the order. Therefore, this common order would dispose of both the petitions.

2. When the matter came up for hearing for admission on 2-8-2000, emergent notice regarding rule was ordered for respondent 3. Learned High Court Government Pleader took notice and appeared for respondents 1, 2 and 4, respondent 3 is served but he had remained absent. The matter is therefore taken up for final disposal. Heard the learned Counsel for the petitioner and the learned High Court Government Pleader, perused the papers.

3. Briefly stated the facts are:

Certain land ad-measuring 4 acres in Sy. No. 60 of Byradenahalli Village, Kundana Hobli, Devanahalli Taluk, Bangalore Rural District undisputably was granted under Darkast in favour of respondent 3-Gun-dappa on 29-7-1966 and it would appear that thereafter khata was changed in his name and accordingly an entry was made in the mutation register on 23-8-1966. Subsequently, on 28-9-1966 Gundappa sold the said land in favour of the petitioner-Narasimhamurthy.

4. The Act called the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as 'the Act') came into force with effect from 1-1-1979. Section 4 of the Act declares that transfer of granted lands 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 shall be null and void and no right, title or interest in such land be conveyed nor be deemed ever to have conveyed by such transfer. Section 5 of the Act confers power on the Assistant Commissioner of the area to initiate proceedings either on application by any interested person or on information given in writing by any person or on information given in writing by any person or suo motu and after such enquiry and being satisfied that transfer of granted land is in violation of the terms and conditions of the grant, to evict the purchaser and to restore possession of the land to the grantee or to his representatives as the case may be. Section 5-A of the Act' provides for an appeal before the Deputy Commissioner against such

orders by an aggrieved person. What is granted land is defined in Section 3(b) of the Act.

5. In the instant case, respondent 3-Gundappa on 28-12-1994 made an application before respondent 2-Assistant Commissioner contending inter alia that he is a person belonging to Scheduled Caste, the land was granted to him under Darkast for certain price and thereafter within two months from the date of grant, petitioner, a rich and influential person in the locality, made him to part with the said land and obtained the sale deed in contravention of the terms and conditions of the grant and accordingly prayed for declaring the sale null and void and to restore the land to him. The Assistant Commissioner initiated proceedings and after enquiry by the order at Annexure-B declared the sale null and void and directed the eviction of the petitioner from the land in dispute. However, he declined to restore possession of the land to the grantee respondent 3-Gundappa on the ground that he was not a resident of the village and was never in possession of the property at any time after he sold it in favour of the petitioner.

6. Aggrieved by the said order, both the petitioner and respondent 3 appealed separately before respondent 4-Deputy Commissioner in LND.SC.ST 4 of 1998-99 and LND.SC.ST 9 of 1998-99 respectively. Respondent 4 after hearing the parties, by common order at Annexure-C, dated 18-4-2000 dismissed the appeal by the petitioner and allowed the appeal of respondent 3 and directed respondent 2 to make an order under Section 5(1)(b) of the Act restoring possession of the land in question in favour of the grantee respondent 3. These orders are under challenge in these petitions.

7. The principal contention of Sri Chandrappa, learned Counsel for the petitioner is that the grant in question being for upset price, the sale in favour of the petitioner is neither in contravention nor in violation of the terms of the grant. Rule 43-G of the Mysore Land Revenue (Amendment) Rules, 1960 in force during the relevant time, did not permit any condition prohibiting alienation in case of grants for upset price, it is only in case where the grant was free of cost or made at a price which is less than the full market value, condition of non-alienation for a definite period could have been imposed, Therefore, the grant being for an upset price, sale by

respondent 3 in favour of the petitioner is not in contravention of any of the terms of the grant and therefore the provisions of the Act are not attracted. Incidentally, he contended that the grantee viz., Gundappa respondent 3 is not a person belonging to Scheduled Caste. His further contention is that the sale in favour of the petitioner being on 28-9-1966 and the Act having come into force on 1-1-1979, petitioner has perfected his title to the land in question by law of adverse possession being in continuous possession for over 12 years, adverse to the interest of the real owner the grantee. Learned Government Pleader however tried to support the order at Annexure-B and C.

8. I may straightaway say that the question of adverse possession does not arise if the grant in favour of respondent 3 did not contain any condition of non-alienation. Even assuming that the condition is incorporated in the saguvali chit unless the rule that existed on the date permitted imposing such condition, alienation of such land will not attract the provisions of the Act. Relevant rule should debar/prohibit alienation for any period or for a definite period. The relevant rule as rightly quoted by respondent 4 during the course of his order was Rule 43-G that governed the procedure regarding grant of land which reads thus:

'43-G. Grant of lands under the preceding rules shall be subject to the following conditions.'--(1) In the case of grant of lands to applicants belonging to the Scheduled Castes and Scheduled Tribes, and to other applicants, who are unable to pay the occupancy price on account of poverty, the occupancy price may be waived upto rupees two hundred and the balance recovered in three annual instalments.

(2) In the case of grant of land to applicants who are ex-servicemen to occupancy price shall be waived up to the extent awarded by Government under the Military Concession Rules.

(3) In the case of grant of land free of occupancy price, the grant shall be subject to the condition that the grantee shall pay contribution or betterment levy in respect of the land and the value of trees standing on the land.

(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:

Provided that such land may be alienated with the previous sanction of the Government and subject to such conditions as the Government may specify, if the Government is of the opinion that the circumstances of any case, it is just and reasonable to permit such alienation either for purposes of acquiring some other land or for any other purpose'.

A plain reading of sub-rule (4) makes it clear that the prohibition is only in respect of lands granted either free of cost or at a price which is less than the full market value.

9. Though a feeble attempt was made to show that the grantee is not a person belonging to the Scheduled Caste, certificate produced by him does show that he is a person belonging to Scheduled Caste. Therefore, there is no dispute that the land in question is a granted land within the definition of that expression contained in Section 3(b) of the Act. But the important question is as to whether the grant in favour of respondent 3 did contain any non-alienation clause nor the rule permitted imposition of such condition. Rule referred to above makes it clear that in the case of grants for upset price, no such non-alienation clause could have been imposed. In the instant case, Saguvali Chit is not produced, however the averments in the application of respondent 3 before the Assistant Commissioner and production of documents both by the petitioner and respondent 3 and referred to by the Deputy Commissioner make it clear that the land was granted at upset price and in fact subsequently the khata was changed in the name of the respondent and an entry was made in the mutation register. Petitioner and as well respondent 3 have produced the extract of mutation register relating to the land in dispute and they are available in the record made available to me for my perusal by the learned Government Pleader at the hearing. Annexure-A is the copy of the mutation register extract. The entry therein makes it crystal-clear that the land in question was granted in favour of respondent 3-Gundappa for price, may be read as upset

price. The entry reads thus:

It is therefore clear that the land in question was granted in the year 1966 in favour of Gundappa for upset price. It is not granted either free of cost or at reduced upset price. Therefore, the rule did not permit the granting authorities, to impose any non-alienation clause in the grant.

10. Interpreting Rule 43-G(4) of the Rules in G.N. Vemareddy v State of Karnataka and Others, learned Single Judge of this Court has declared that in case where the grant is for upset price, transfer of such lands cannot be declared as in contravention of either the terms of the grant of the land in question or sub-rule (4) of Rule 43-G of the Rules. The relevant portion reads thus:

'8. No doubt, as rightly pointed out by Sri Siddagangaiah, who relied upon the decision in G.S. Virupakshappa u Hanumantha and Others, that though there is no condition provided in the grant order prohibiting the alienation of the land granted for a particular number of years, the provisions of the rules can be read into the grant. Rule 43-G(4) of the Rules, which governed the grant, prohibits the alienation of the land in question by the grantee for a period of 15 years from the date of taking possession of the granted land, provided the grant was made free of cost or is made at a price which is less than the full market value. As stated earlier, unless the upset price fixed is waived off in fuller in part, the provisions of sub-rule (4) of Rule 43-G cannot be attracted. I am of the view that the land in question was not sold in contravention of either the terms of the grant of the land in question or sub-rule (4) of Rule 43-G of the Rules. Therefore, the orders impugned passed by respondents 2 and 3 are liable to be quashed'.

11. Again, the question came up for consideration before another learned Single Judge in Thangavelu Gounder v The Deputy Commissioner, Shimoga District, Shimoga. Referring to Rule 43-G, it is held:

'This provision is self-explanatory. It makes it clear that its applicability is attracted to the alienation of such of the granted lands whose grant was made to the grantee free of cost, or at a price which is less than the full market value. Furthermore, applicability of provisions of the Act, it is a condition precedent that

the grantee must be a member belonging to the Scheduled Caste or Scheduled Tribe'.

In the instant case, the entries in the mutation register and as well the observations made by respondents 2 and 4 during the course of their orders at Annexure-B and C respectively, puts beyond doubt that the land in question was granted for an upset price and in such case there can be no condition of non-alienation for any specified period or for a definite period. It is therefore incorrect to say that the sale by respondent 3 is in contravention or violation of terms and conditions of the grant. Therefore, the provisions of the Act are not attracted. In this view of the matter, orders of both respondents 2 and 4 are not sustainable in law.

12. In view of the fact that the grant did not contain any condition regarding the alienation, there is no need to go into the question as to whether the petitioner has established title to the property by law of adverse possession. However, it may be mentioned that in the instant case, petitioner is entitled to continue in possession of the land even on the ground of adverse possession. In response to the notice by respondent 2, the records reveal the petitioner appeared before the Assistant Commissioner and sought for interim order restraining respondent 3 from interfering with his possession and his right to cut the eucalyptus tree that were on the land, also filed a detailed statement wherein he pleaded that he has perfected the title to the land in question by law of adverse possession. In para 9 filed by way of objection to the main petition he had pleaded that he being in possession of the property for over 12 years from 28-9-1966 till the Act came into force, he has perfected his title by-law by adverse possession. The Act has come into force with effect from 1-1-1979. Respondent 4 dealing on the point holds that the petitioner having not established his continuous possession over the land over a period of 30 years adverse to the interest of the State, it does not lie in his mouth to say that he has established his title by-law of adverse possession. I would only say that this finding is not correct and unsustainable for the reason that the grant in question was for upset price. It is only in case where the grant is not absolute, in the sense it contained non-alienation period or prohibited alienation for a particular period, purchaser of land is required to prove his continuous possession for over

30 years to establish his title to the property by law of adverse possession. For the reason that in such cases the title to the land does not pass on to the grantee absolutely till the expiry of the period contained in the grant, the State continues to have its right over the land till the expiry of the period. The decision of the Apex Court in K.T. Huchegowda v Deputy Commissioner , makes this position clear. It is declared that if by grant only possession of the land is passed on to the grantee by way of allotment without conveying the title over such land, purchaser of such land is required to establish his continuous possession for over a period of 30 years as against the State Government but in other cases it would be only 12 years and as such each case has to be examined on its own merits. It would be useful to refer to the relevant observation which reads:

'9.....

The cases where the transfer by the State Government by way of grant has been absolute, then unless there is an amendment so far the period of limitation is concerned, it is not possible to apply the special limitation of 30 years, so far such grantees are concerned, when the question to be determined, is as to whether a transferee in contravention of the terms of the grant, has perfected his title by remaining in continuous and adverse possession. The transferee, who has acquired the land from the grantee, in contravention of the terms of the grant shall perfect his title by adverse possession by completing the period of 12 years'.

In the instant case, I have said that the grant in favour of respondent 3 is absolute and the rules that prevailed as on the date of grant did not permit the authorities to impose any non-alienation clause. Undisputably, grantee has delivered possession of the land on 28-9-1966 and thereafter the petitioner has continued to be in possession adverse to the interest of respondent 3 for over 12 years by the time the Act came into force. Therefore, even on this ground, the order of respondent 4 at Annexure-C is not sustainable.

13. In the result and for the reasons hereinabove stated, these two petitions are allowed. Common order of respondent 4 at Annexure-C and as well the order of respondent 2 at Annexure-B are hereby quashed. Parties to bear their own costs.

