SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Pedda Reddy Vs. State of Karnataka

Pedda Reddy Vs. State of Karnataka

SooperKanoon Citation : sooperkanoon.com/377873

Court : Karnataka

Decided On : Jan-06-1993

Reported in : ILR1993KAR551; 1993(1)KarLJ328

Judge : K.A. Swami, Ag. C.J. and ;N.D.V. Bhat, J.

Acts : Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 - Sections 4

Appeal No. : W.A. No. 2088 of 1992

Appellant : Pedda Reddy

Respondent : State of Karnataka

Advocate for Def. : S.R. Nayak, Govt. Adv. for R-1 to R-3

Advocate for Pet/Ap. : B. Rudregowda, Adv.

Disposition : Writ petition allowed

Judgement :

K.A. Swamy, Ag. C.J.

1. At the stage of preliminary hearing respondents are served. Respondents-1 to 3 are represented by Sri S.R. Nayak, learned Government Advocate, who has also secured the records of the case. Respondent-4 died during the pendency of the

appeal, and his L.Rs. have been brought on record, and they have also been served with the notice. However, neither they are present nor represented through a Counsel. As the Appeal lies in a narrow compass, it is admitted and heard for final disposal.

2. This appeal is preferred against the order passed in W.P.No. 527/1987 dated 17.7.1990 by the learned single Judge. Writ Petition has been dismissed. Therefore, the petitioner has come up in Appeal.

3. In the Writ Petition, the petitioner sought for quashing the order dated 27.4.1983 passed by the Assistant Commissioner, Shimoga Sub-Division, Shimoga, in No. RRC.KR.315/82-83, and the order dated 5.12.1986 passed by the Special Deputy Commissioner, Shimoga District, Shimoga in No. SC.ST.26/84-85. The Assistant Commissioner has declared the transaction of sale dated 30.7.1966 effected by the grantee of the land in favour of the appellant, as void. This order is confirmed by the Special Deputy Commissioner.

4. The facts necessary for the purpose of deciding the question as to whether the orders passed by the Assistant Commissioner, the Special Deputy Commissioner and also by the learned Single Judge are valid in law are as follows:

The land bearing Sy.No. 145/3 of Hanumanthapura village, Bhadravathi Taluk, was granted on 23.6.1956 to one Hanumanthappa, s/o Hanumanthappa, Hanumanthapura of Bhadravathi Taluk, under the provisions of the Mysore Land Revenue Rules (hereinafter referred to as the Rules). The grantee sold the land on 30.7.1966 to the appellant. After the coming into force of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, the grantee made an application before the Assistant Commissioner for declaring that the sale was void because it was effected within the period of prohibition for alienation as contained in the Rules. The appellant appeared before the Assistant Commissioner and filed his statement. However, in the statement, the appellant did not raise objections that the grant was not made in favour of the person belonging to Scheduled Castes or Scheduled Tribes and that the grant was on upset price and not on free of cost. The Assistant Commissioner also did not go into these questions.

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 Rudregowda, 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 Gazettee 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.

7. We do not find any such findings in the orders of the Assistant Commissioner and the Special Deputy Commissioner. The findings on the aforesaid points would

be necessary for the purpose, of exercising the jurisdiction under the said Act and declaring the transaction of sale as void. Thus, the findings of fact necessary for the purpose of exercising the jurisdiction, are not recorded by anyone of the authorities below. Therefore, we are of the view that the orders of the Assistant Commissioner, the Special Deputy Commissioner and also of the learned single Judge cannot be sustained.

8. For the reasons stated hereinabove, the Writ Appeal is allowed. The Order dated 17.7.1990 passed in W.P.No. 527/1987 is set aside. The Writ Petition is allowed. The order of the Special Deputy Commissioner, Shimoga District, Shimoga in No. SC.ST.26/84-85 dated 5.12.1986 and the order of the Assistant Commissioner, Shimoga Sub-Division, Shimoga in case No.RRC.KR.315/82-83 dated 27.4.1983 are quashed. The case now stands remitted to the Assistant Commissioner, Shimoga Sub Division, Shimoga, with a direction to decide the application filed by Sri Hanumanthappa within six months from the date of receipt of this order. The Assistant Commissioner, Shimoga Sub-Division, Shimoga, shall decide the matter in accordance with Law and in the light of the observations made in this order after affording an opportunity to the parties to adduce such evidence as they deem it necessary.

9. A copy of this order be communicated to the Assistant Commissioner, Shimoga Sub-Division, Shimoga within 10 days.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com