

B. Shivappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Oct-20-1989

Reported in : ILR1990KAR1089; 1990(1)KarLJ93

Judge : Rajashekhara Murthy, J.

Acts : Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 - Sections 1, 3, 4, 4(3) and 7

Appeal No. : W.P. No. 3185 of 1988

Appellant : B. Shivappa

Respondent : State of Karnataka

Advocate for Def. : K. Sreedhar, HCGP for R-1 to R-4

Advocate for Pet/Ap. : G. Papi Reddy, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Rajasekhara Murthy, J.

1. The Writ Petition which is posted for preliminary hearing is taken up for final disposal by consent of both sides.

2. The petitioner was the highest bidder in an auction held by the 4th respondent-Assistant Registrar of Co-operative Societies, Kolar Sub-Division, Kolar for recovery of certain amounts due under an award obtained by the 5th respondent-Primary Co-operative Agricultural and Land Development Bank Ltd., Srinivasapur against one Venkatappa under the Co-operative Societies Act.

3. Survey No. 17 of Neelatoor Village which was sold in the said auction was a 'granted land' under the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as the SC/ST Act). The said Venkatappa mortgaged the said land in favour of the 5th respondent as security for a loan advanced by the Bank.

4. After the sale was confirmed, the sale certificate dated 29-10-1987 was Issued as per Annexure-D in favour of the petitioner. The petitioner presented the said sale certificate for registration before the 3rd respondent-Sub-Registrar, Srinivasapur, Kolar District.

5. The Sub-Registrar referred the matter to the District Registrar for his opinion whether the said sale certificate could be registered having regard to the provisions of Section 4 of the SC/ST Act?

6. The District Registrar (R-2) opined as per Annexure-E that the sale in favour of the petitioner In the public auction held by the 4th respondent was violative of the provisions of Sections 4(2) and (3) of the SC/ST Act and that therefore, the said sale being prohibited under the SC/ST Act, the sale certificate could not be registered. This order (opinion contained in Annexure-E) Is challenged by the petitioner in this petition.

7. It is argued by Sri Papi Reddy, learned Counsel for the petitioner that the auction sale held by the 4th respondent is not a transfer prohibited under Section 4 of the SC/ST Act and that therefore, there was no legal impediment for the Sub-Registrar to register the sale certificate and the opinion given by the District Registrar is not sustainable in law. The learned Counsel for the petitioner has also relied upon Section 7 of the SC/ST Act which exempts application of the provisions of the SC/ST Act to transfer of granted lands in favour of the State

Government, the Central Government, a local authority or a Bank either before or after the commencement of the SC/ST Act.

8. The argument of the learned Counsel is that the mortgage of the land in question by the original grantee in favour of the 5th respondent-Bank is a transfer as defined by Section 3(e) of the SC/ST Act and therefore, the transfer of the 'granted land' in the present case by executing a mortgage in favour of the Bank, is a transfer to which the SC/ST Act does not apply.

9. He also relied upon the decision of this Court rendered by Rama Jois, J in YELLAPPA v. YELLAWWA KOM SUBRAY GOWDA, : ILR 1987 KAR683 in support of this contention.

10. It is argued by Sri K. Sreedhar, learned High Court Government Pleader that though under Section 7, transfer of granted lands in favour of a Bank is exempted from the application of the provisions of the Act, there is a reference to 'any award' in Section 4(3) of the SC/ST Act which is applicable to an award obtained under the Co-operative Societies Act.

11. I have carefully considered the contentions of the learned Counsel for the petitioner and the learned Government Pleader. In my opinion, the transfer of the granted land by the original grantee by executing a mortgage deed in favour of the 5th respondent-Bank is a 'transfer' to which none of provisions of the SC/ST Act, is applicable by virtue of Section 7 of the SC/ST Act. If the transfer of the granted land in favour of the 5th respondent-Bank is one such transfer as per the definition of 'transfer' occurring in Section 3(e) of the SC/ST Act, it follows that the Legislature with a deliberate intention exempted the application of the SC/ST Act to any transfer of granted lands or lands in favour of the State Government, Central Government, Local Authority or a Bank.

12. The next question that has to be examined is about the scope of Section 4 of the SC/ST Act. His Lordship, M. Rama Jois, J., has, on the facts found in Yeltappa's case, observed that Section 4(3) speaks of sale in execution of a decree or an award or an order secured by a private, individual or person in respect of the amount due to him. His Lordship also further observed that the words 'order of any

authority' used in last part of Section 4(3) should be understood ejusdem generis.

13. That the object of enacting SC/ST Act was only to prohibit transfer of granted lands in favour of any person or persons, is clear from the observations made by this Court in KRISHNAPPA S.V. AND ORS., ILR (Karnataka) 1962(2) 1310 Paragraphs 42 & 42. v. STATE OF KARNATAKA AND ORS. and in MANCHE GOWDA v. STATE OF KARNATAKA, : [1984]3SCR502 which was an appeal filed against the Judgment of this Court in Krishnappa's case (vide paras 11 and 12)

14. The object of the enactment In the light of the observations made by this Court and the Supreme Court in the above mentioned cases may be summed up thus:

'In Krishnappa's case, this Court examined the scheme of the Act in detail and observed that the object of the Act is to provide for the prohibition of transfer of 'granted lands' and for restoration of such lands to original grantees.

The important Sections noticed and commented upon by the Division Bench are, Sections 3, 4, 5 and 11 and Rule 3.

Dealing with the connotation of the term 'transfer' under the Act, Their Lordships held that Section 4(1) declares any transfer of granted land made in contravention of the terms of the grant shall be null and void and further observed that Sub-section (3) of Section 4 extends this prohibition to sale of granted lands in execution of a decree or order of a Civil Court or any award or order of any other authority. The Division Bench next discussed the provisions of Section 5 which provides for resumption and restoration of such, lands to the original grantees or their legal heirs and where it is not practicable to restore to them, such lands shall vest in the Government.

Section 5(3) declares that the possession of the granted land by a person other than the original grantee, it shall be presumed that the transfer in favour of such person is null and void by the provisions of Section 4(1).

Rule 3 of the Rules made under the Act enjoins on the Assistant Commissioner to give an opportunity to the person or persons in possession of a granted land to file objections before ordering eviction. The Division Bench, on a detailed examination

of the scheme of the Act, held that the object of the Act and the Rules, is to nullify transfer of granted lands.

Next, the Division Bench referred to Land Grant Rules by which the grants are made and the non-alienation of such granted lands. The contravention of non-alienation clause will result in deprivation of the land to the grantee and it will be summarily resumed to Government under the Land Grant Rules.

Therefore, the provisions of the SC/ST Act should be read along with the Land Grant Rules and the condition of non-alienation imposed by the Government.

In para 25 of the order of the Division Bench it is further observed that the granted lands are alienated for various reasons, the most compelling among them being the economic demands of the grantees by which they are forced to alienate them often for paltry prices in favour of land grabbers.

Referring to object of Section 4 in this background it was further noted that the first part of Section 4 prohibits future transfer of granted lands and the second part invalidates even past transfers taken place before the coming into force of the Act.

It was therefore held in Paras 42 and 43, that the alienations made inspite of the prohibition should be set aside and the lands restored to the original grantees. This, according to Their Lordships could not be remedied except by invalidating such alienations and restoring such lands to the original g grantees. It was also observed that the alienees who purchased such lands always took the risk of losing it, in view of the defeasance clause in the conditions of grant and as such they cannot complain when they are deprived of the lands purchased in violation of the conditions of grant by force of the law.

The Supreme Court in Manche Gowda's case, upheld the constitutionality of the SC/ST Act that the said Act was made by the State for the benefit of the members of the SC and ST, who are recognised as backward citizens and weaker section of the community and to protect their economic and educational interest and also to protect them from social injustices and all forms of exploitation.

The Supreme Court also observed that the conditions regarding prohibition of transfer of granted land had been introduced in the interests of the grantees for the purpose of upkeep of the grants and for preventing the economically dominant sections of the Society from depriving the grantees who belong to the weaker sections, of the people of their enjoyment and possession of these lands and for safeguarding their interests against any exploitation by the richer sections in regard to the enjoyment and possession of the granted lands essentially for their benefit.

Therefore, what emerges from the observations made by this Court and the Supreme Court in the two decisions cited above, is that the alienations referred to Section 4 can only be construed as alienations made by the grantees in favour of individual person/persons only and has no application to transfer of granted lands in favour of the Government, the Central Government, a Local Authority or a Bank which are excluded from the purview of the Act.

The word 'person' used in a public statute includes both a natural person (a human being) and an artificial person (a Corporation etc.). It is plain that in common speech 'person' would mean a natural person. In technical language, it may mean the other, but which meaning it has in a particular Act must depend on the context and the subject-matter. (See Lord Blackburn's observations in PHARMACEUTICAL SURVEY v. LONDON & PROVINCIAL SUPPLY ASSOCIATION), 5 AC 857,

In the light of this principle of interpretation and in the context of the provisions of the SC/ST Act, prohibiting alienation of granted lands, and having regard to Section 7 in particular, the person alienee 'should be' understood only as a natural person and none else.

15. For the reasons stated above, this Writ Petition is allowed, the order (opinion) of the District Registrar, Kolar as per Annexure-E, is quashed and the 3rd respondent is directed to register the sale certificate presented to him for registration by the petitioner.

