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Court : Karnataka

Decided On : Dec-17-1988

Reported in : ILR1989KAR2311

Judge : Ramakrishna, J.

Acts : Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 - Sections 3, 4 and 5; Darkhast Rules - Rule 43(8)

Appeal No. : W.P. Nos. 8107 and 8108 of 1987

Appellant : Siddalingiah

Respondent : State of Karnataka

Advocate for Pet/Ap. : H.P. Mudlappa, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Ramakrishna, J.

1. Even though these cases are posted for orders, by consent of both parties, they are heard on merits and disposed of by this common order.

2. The petitioners in these two petitions have sought for a Writ of Certiorari to quash the order of the Deputy Commissioner, Mandya made on 3-3-1987 at Annexure-D.

The matter arises in this way: Boratah - 2nd respondent herein in these two petitions, a person representing Scheduled Caste. presented an application before the Assistant Commissioner, Mandya Sub-Division, Mandya, under the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands), Act 1978, (hereinafter referred to as 'the Act') seeking relief under the said Act. His case was that 2 acres of land in Sy.No. 283 situate in the Village Yathagadahalli, Guttalu Hobli, Mandya Taluk, Mandya District, came to be granted in his favour under the darkest Rules (The Mysore Land Grant Rules framed under the Mysore Land Revenue Code), by the Competent Authority by an order made on 31-9-1944. It may be pointed out, that the proceedings were actually initiated in this behalf in proceedings No. 9/41-42 and a saguvali chit in this behalf came to be issued by an order made on 31-9-1944 in his favour. His further case is that out of the granted land, 20 guntas came to be sold in favour of Siddalingiah, petitioner in W.P. 8107/1987 by a registered sale deed dated 11-9-1950 for valuable consideration. Another 20 guntas of the granted land came to be sold in favour of Boriah, petitioner in W.P. 8108/1987 by a registered sale deed dated 7-2-1951 for valuable consideration. His contention before the Authority was that during the course of grant of land referred to above, there was a condition imposed by the Competent Authority that the granted land shall not be alienated for ever to anyone. In contravention of this condition, the granted land having been sold as referred to above, Sections 4 and 5 of the Act came to be attracted and therefore, he sought for the relief under the said Act.

3. The learned Assistant Commissioner having notified both parties and having held an enquiry in Case No. STL:113:82-83 passed the Impugned order on 30-4-1983. The learned Assistant Commissioner having allowed the application of the original grantee-claimant, declared that the sale of granted land was null and void. He further declared that the original grantee was entitled for restoration of the granted land pursuant to Section 5 of the Act.

4. It is necessary to mention here that as against the order of the Assistant Commissioner, the petitioners approached this Court in W.P.Nos. 11166 and 11167 of 1983 challenging not only the correctness of the order of the Assistant Commissioner, but also the Constitutional validity of the Act.

5. Sri Mudlappa, learned Counsel for the petitioners is unable to furnish information about the date of the disposal of these petitions, but according to him, with the permission of this Court an appeal was presented before the Deputy Commissioner under Section 5-A of the Act which came to be incorporated by an amendment that came into force on 3-3-1984. That appeal was filed before the Deputy Commissioner, pending disposal of these Writ Petitions.

6. It is needless to say that the appellants have called in question the correctness and validity of the order passed by the Assistant Commissioner in appeal.

7. The learned Deputy Commissioner having heard both parties, by an order made on 3-3-1987 dismissed the appeal affirming the conclusion of the Assistant Commissioner.

8. By a perusal of the order of the Deputy Commissioner, it is clear that the learned Deputy Commissioner has clearly pointed out as to the maintainability of the appeal observing that he was not informed whether the Writ Petitions before this Court were either pending or came to be disposed of as on the date when the appeal was presented. Be that as it may, the learned Deputy Commissioner both on questions of fact and on questions of law held that the view expressed by the Assistant Commissioner was justified. Hence, these petitions under Articles 226 and 227 of the Constitution.

9. Although in the main petition, the petitioners have called in question the correctness of the order of the Deputy Commissioner, subsequently by an application filed by the learned Counsel for the petitioners on 8-8-1988, the petitioners sought for permission to incorporate an additional prayer seeking to quash the order of the Assistant Commissioner the original Authority. That application is found in the records.

10. The legal contentions urged by Sri Mudlappa in support of the Writ Petitions are that: (1) The Authorities below were not right in recording a finding that the granted land made in favour of Boriah was subject to any condition or prohibition. The contention is that there was no condition incorporated in the grant of land made in favour of the claimant Boriah in the year 1944. Therefore, both the Authorities were in error in recording the finding that Section 4 of the Act is attracted in a case like this.

(2) 36 guntas of land in Sy.No. 283 came to be granted in favour of the vendor of the petitioners by an order made on 15-1-1963 by the Competent Authority. Therefore, as on the date when the sales of 2 pieces of land referred to above were made, there was no title whatsoever possessed by Boriah to convey the same in favour of the transferees. In that view Section 4 cannot be attracted for the purpose of giving relief in favour of the applicant.

(3) So long as there was no violation of any of the conditions of the grant in regard to 36 guntas of land which came to be granted subsequent to the sale made in favour of the petitioners, the question of giving relief in favour of the applicant Boriah would not arise. The last contention of Sri Mudlappa is that right from the year 1950-51, the dates of sale are referred to above, petitioners have been in physical possession and enjoyment of the lands in question. Therefore, after the expiry of the period of 30 years, a right of prescription having been accrued in favour of the petitioners, as laid down by Supreme Court , in SUNKARA RAJYA LAXMI v. STATE OF KARNATAKA ILR 1987 KAR 2067 the authorities were not right in having failed to apply their mind on this Important question of law in reaching the conclusion against the petitioners. Another legal contention that is urged by Sri Mudlappa is that Y. Boriah-2nd respondent herein, the original grantee is none other than the cousin brother of petitioners 1 and 2. Therefore, he submitted that since the transactions of the transfer of granted land having taken place in mutual understanding intending to confer certain benefits upon each other, there is no need for applying Section 4 in a case like this.

11. Dealing with the first contention of the learned Counsel, I must say that it is not in dispute that the Competent Authority in the proceeding No. 9/41-42 having

considered the need for granting land in favour of the applicant, by a final order made on 31-9-1944, granted 2 acres of land in favour of the 2nd respondent. If that is so, what is the law that governs the grant of land? I will straight-away answer this question referring to Sub-rule (8) of Rule 43 as it stood then. For the purpose of convenience I will extract Sub-rule (8) of Rule 43 which reads thus:

'Occupancies granted to applicants belonging to depressed classes under Rule 43(5) above and those granted by Government free of upset price or reduced upset price to poor and landless people of other communities or to religious or charitable institutions, shall not be alienated and the grantee shall execute Mutchalikas in the form prescribed by Government. This shall not, however, prevent lands granted to depressed classes under Rule 43(5) being accepted as security for any loan which they may wish to obtain from Government or from a Co-operative Society for the bona fide purposes of improving the land.'

Recently I had an occasion to deal with the very question in NAGARAPPA S. AND ANR. v. STATE OF KARNATAKA AND ORS. 1988 KLJ 372 in the reported Judgment, the learned Assistant Commissioner held having regard to the date of grant and the law governing the same, that there was a total ban imposed on the grantee prohibiting him from alienating the granted land at any time. In appeal, the Deputy Commissioner taking a different view reversed the order of the Assistant Commissioner. In the Writ Petition having considered all the facts and circumstances obtained therein, I have held as follows:

'A cryptic entry made in the certificate contrary to the condition of law will not have the effect of over ruling the provisions of law existing then. In that view Rule 43(8) shall always prevail over any such entry made in the certificate of grant. The Deputy Commissioner ought to have seen what is the law governing the grant of land, then. He should not have been guided by mistaken entry made in the saguvali chit. The Deputy Commissioner has not applied his mind to the then existing rules governing the grant of land. When the Assistant Commissioner specifically pointed out in the order that there had been a total ban in law in regard to transfer of granted land, I do not know how the Deputy Commissioner reached this conclusion, contrary to the express provisions without assigning any reason to

do so. Therefore the conclusion of the Deputy Commissioner in reversing the order of the Assistant Commissioner deserves to be set aside.'

In the light of what is observed by me in the above Judgment, it is now made clear that as on 31-9-1944 when the grant of land came to be made in favour of the 2nd respondent, the law that stood viz., Sub-rule (8) of Rule 43 imposed a clear ban permanently prohibiting the grantee from alienating the granted land to anyone. To this extent, there is no doubt in my mind that the view taken by the Assistant Commissioner that there was a non-alienation clause of 10 years, is factually incorrect. He failed to apply his mind as to Sub-rule (8) of Rule 43 that was prevailing as on the date of grant. To this extent, the reasoning of the Assistant Commissioner is erroneous.

12. Referring to the order of the Deputy Commissioner in appeal, the learned Deputy Commissioner also made a similar mistake in observing in para 4 that there had been a non-alienation clause of 10 years in the grant, referring to the view expressed by the Assistant Commissioner. Thus both the authorities have made a mistake in reaching this conclusion. Therefore, applying Sub-rule (8) of Rule 43 extracted above, I must hold that in the instant case that there was a total ban imposed on the grantee, prohibiting , the grantee from alienating the granted land at any time to anyone. Reaching this conclusion, I must hold that the ultimate analysis resulting in the relief granted in favour of Boriah, the applicant, both by the Assistant Commissioner and Deputy Commissioner under Sections 4 and 5 of the Act must be held to be correct. In that view, the first contention fails.

13. Dealing with the second contention, the argument of Sri Mudlappa is two fold. So far as the transfer of 20 guntas on 11-9-1950 by one registered sale deed and another 20 guntas on 7-2-1951 by another sale deed in favour of the petitioners are concerned, the submission is that to the extent of 40 guntas, the subject matter of sale in two pieces, though they can be brought within the purview of the Act, in so far as 36 guntas of land is concerned which came to be granted in favour of the applicant Boriah on 15-1-1963, that being the post-facto sale, the Authorities were not right in bringing these pieces of land within the purview of Sections 4 and 5 of the Act. Before I could refer to the legal contention on this

point, it is necessary for me to clarify certain factual position arising out of the impugned orders as well as the pleadings. By producing Annexures B and C, certified copies of sale deeds in favour of the petitioners, one on 11-9-1950 and another on 7-2-1951 as referred to above already, it is sought to be demonstrated before me that two pieces of land, 20 guntas each, came to be sold in Sy.No. 283, Indeed the extent, the boundaries and the Sy.Nos. have been furnished in these two documents Annexures B and C. Therefore, what was sold in favour of petitioners 1 and 2 was only portions of the land granted in favour of 2nd respondent Boraiah by the Competent Authority under the Land Grant Rules.

14. But it is now sought to be argued by Sri Mudlappa that 36 guntas of land which came to be granted by a fresh order on 15-1-1963, though found to be in Sy.No. 283, was not a part and parcel of the very land that was the subject matter of two sales referred to above. I do not agree with this contention for the simple reason that Annexure-B and C clearly demonstrate that two pieces of land that were sold in favour of the petitioners 1 and 2 were the portions of the granted land made by the Competent Authority on 31-9-1944. In other words, to clarify matters, although 2 acres of land came to be granted in favour of Boraiah-Respondent-2 herein by the Competent Authority, at the time of resurvey and back holding, the Authorities have discovered that there was a deficiency to the extent of 36 guntas which ought to have been included in Sy.No. 283 out of 2 acres of land actually granted in favour of the applicant. This deficiency sought to be made good by subsequent order made on 15-1-1963. That does not mean that 36 guntas of land came to be added from some other Survey Numbers and that was not the subject matter of sale in favour of the petitioners 1 and 2. It is also not possible to concede to the submission of Sri Mudlappa that 36 guntas of land which came to be granted in favour of 2nd respondent by an order made on 15-1-1963 must have taken away from the purview of the application made by him claiming relief under the Act. Both the Authorities below have dealt with this aspect and they have held that 2nd respondent Boraiah was entitled to the relief to the extent of 2 acres that was the subject matter of grant made in his favour. Therefore, viewed from these circumstances, it is not possible to concede to the contention of Sri Mudlappa.

15. Dealing with the third point, that the right of prescription having been accrued in favour of the petitioners by virtue of adverse possession enjoyed by the petitioner? for over 30 years, placing reliance upon the ruling of Supreme Court in MANCHEGOWDA'S case ILR 1984(2) KAR 1, it is submitted that the authorities below were wrong in passing an order intending to disturb the possession of the petitioners. It is true that their Lordships of the Supreme Court clarified in Sunkara Rajyalakshmi v. State of Karnataka in para 2 of the Judgment, that for the purpose of determination of prescriptive period of 30 years of limitation has to be established against the State Government by a person seeking right of prescription. Sri Mudlappa wanted me to take into account for the purpose of determination of 30 years, the date of first sale made on 11-9-1950 and again on 7-2-1954. But he falls to take into account the order made by the Competent Authority on 15-1-1963. It is by this latter order, the Authorities conferred title on the grantee in regard to 2 acres of land inclusive of 36 guntas which was found to be deficient out of extent of 2 acres. Therefore, if this date of order of grant of land viz., 15-1-1963 is taken into account, then, referring to the observation made by the Supreme Court in para 2 of Sunkara Rajyalakshmi's case, these petitioners have failed to establish continuous possession for over a period of 30 years. Thus this contention also fails.

16. Before parting with this case, I have been called upon to refer to another aspect of the matter. Sri Mudlappa vehemently submitted that both the grantee as well as the alienees are found to be persons closely related coming from the same family or caste and therefore, the Court may take a sympathetic view in applying Sections 4 and 5 of the Act intending to give relief in favour of the 2nd respondent. I am unable to concede to this submission of Sri Mudiappa. Sub-clause (e) of Section 3 of the Act defines what transfer means: It reads:

'transfer' means a sale, gift, exchange, mortgage (with or without possession), lease or any other transaction not being a partition among members of a family or a testamentary disposition and includes the creation of a charge or an agreement to sell, exchange, mortgage or lease or enter into any other transaction.'

In view of the definition of the word 'transfer' even an exchange or gift of the granted land is prohibited. Secondly, there is no exemption provided for exempting any transaction between the two persons of the same community or two members of the same family except to the extent of partition among the members of a family or a testamentary disposition. Therefore, it is not possible to hold that, in case where the granted land made in favour of the Scheduled Caste, person came to be transferred in favour of another relative of his own, the transfer could be exempted from applying Sections 4 and 5 for the purpose of giving relief under the Act. This is not the intendment of the legislation. In that view, I am unable to accept the submission of Sri Mudiappa. No other contention is raised.

In the result, the Writ Petitions fail and are dismissed.

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