

H.A. Jayaram Vs. State of Karnataka

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Court : Karnataka

Decided On : Jul-13-1989

Reported in : ILR1989KAR2277; 1989(2)KarLJ161

Judge : Balakrishna, J.

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

Appeal No. : W.P. Nos. 17544 to 17546 of 1985

Appellant : H.A. Jayaram

Respondent : State of Karnataka

Advocate for Def. : T.N. Manjula Devi, Govt. Adv. for R-1 and R-3

Advocate for Pet/Ap. : K.K. Vasantha, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Balakrishna, J.

1. In these Writ Petitions, the petitioner who is common to all the Writ Petitions, has challenged the Impugned orders of the Deputy Commissioner, Chick-magalur

District, Chickmagalur, and the Assistant Commissioner, Chickmagalur Sub-Division, Chickmagalur, passed under Annexures 'G', 'H' and 'J' and Annexures 'D', 'E' and 'F' respectively.

2. The petitioner is adversely affected by resumption of lands which were purchased by him from the original grantees and restoration to them on the ground that the sale transaction had taken place before the expiry of the period restricting alienation. The action taken by respondent-3 and approved by respondent-2 in appeals is under Section 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (for short 'the Act').

3. Briefly set out the facts of the cases are as follows:

The petitioner purchased 2 acres of land situated in Sy.No. 29 of Kammaragudu village, Gonibeed Hobli, Mudigere Taluk, under three different registered sale deeds dated 12-7-1971 for valuable consideration from each of respondents-4 to 6 who are the original grantees. The Assistant Commissioner issued notice to the petitioner under the provisions of Section 5 of the Act and, after an enquiry, held that the transfer of land is null and void and ordered taking over of possession of the lands by evicting the petitioner. Thereafter, the petitioner preferred appeals before the Deputy Commissioner who is the Appellate Authority against the orders of the Assistant Commissioner. But the Appellate Authority confirmed the impugned orders of the Assistant Commissioner and, as a result, the petitioner has approached this Court through these Writ Petitions.

4. Arising out of the facts of the case, the point for consideration is whether the lands in question fall within the definition of 'granted land' as defined under Section 3(1)(b) of the Act and, if so, whether there is a violation of the restriction imposed on alienation of the said lands.

5. Sri K.K. Vasantha, the learned Counsel appearing for the petitioner, forcefully contended that the saguvali chits issued earlier to the grantees are different from the saguvali chits subsequently issued to them on which reliance is placed by both the Assistant Commissioner and the Deputy Commissioner for the reason that the earlier grants were cancelled and in their place fresh grants were made. According

to the learned Counsel, the reasons for cancellation of the earlier grants have not been disclosed and they are not forthcoming from the material on record. It was contended that the impugned orders of both the Assistant Commissioner and the Deputy Commissioner are silent on this question and the petitioner has a right to know the reasons for the cancellation and it is only after ascertaining the reasons that the petitioner would be in a position to question the validity of the cancellation or to submit that what is relevant is the prior grants and not the subsequent ones. It was pointed 'out that the earlier grants were made on 22-11-1956 whereas the subsequent grants in respect of the same lands to the same grantees was made during the year 1958-59.

6. The learned Counsel with justifiable fervour submitted that the lands which were granted to the vendors of the petitioner by the Government which ordinarily would have been brought into cultivation for raising the crops capable of growth on a dry land have been converted by the purchaser (Petitioner) into coffee plantations after a great deal of efforts, investment and labour. In each of the cases, It is contended that there are thriving coffee plantations and the value of the lands is estimated to be in the order of Rs. 40,000/-to Rs. 50,000/- per acre. It was also submitted that the original grantees would not have converted the granted lands into coffee plantations since, in the ordinary course, they had neither the means nor ability to do so. The divesting of the petitioner of his lands would result in inestimable loss and hardship since the petitioner does not have any other source of income nor does he possess any other property. It was further submitted that the petitioner has contracted huge loans from the Banks for the purpose of coffee cultivation.

7. The learned Counsel vehemently contended that the Grant Certificates (saguvali chits) issued to the original grantees on 12-5-1971 in furtherance of the grants made in 1958-59 do not contain any condition imposing a restriction on alienation of granted lands. It was argued that the failure of the Tahsilder in issuing Grant Certificates with a restrictive condition cannot be offset by applying the rules which were prevalent at the relevant point of time envisaging restriction on the alienation of granted lands. In the alternative, it was contended that the petitioner presumed from the Grant Certificates that the grants made in favour of the original

grantees were absolute in nature and that there was no impediment for alienation of the granted lands. It was also contended that, being agriculturist living in the rural area, it would not be reasonable to expect him to know the Rules of restriction on alienation and, as bona fide purchaser for valuable consideration, he had exercised the ordinary care and caution of looking into the conditions contained in the Grant Certificates which did not disclose any restriction on alienation. In such circumstances, it was argued that the orders of the Assistant Commissioner and the Deputy Commissioner deserve to be quashed.

8. On the other hand, the learned Government Advocate Smt. T.N. Manjuladevi contended that though the petitioner may be bona fide purchaser for valuable consideration, the legal presumption is that he is deemed to be aware of the Rules prevalent at the relevant point of time prohibiting alienation of the granted lands and ignorance of law is no excuse. The learned Government Advocate submitted that even if the Tahsildar who issued the Grant Certificates failed by oversight to provide for a restriction on alienation in accordance with the prevalent rules, such a failure cannot be taken advantage of by the petitioner because what is of relevance is the Rule which has the force of law at the relevant point of time irrespective of the omission on the part of the Tahsildar. The learned Government Advocate also submitted that though the petitioner has brought the granted land consisting of dry land into coffee cultivation investing huge amounts of money and even though as on today the value of the coffee land may range between Rs. 40,000/- and Rs. 50,000/-per acre, the petitioner ought to have been reasonably aware of the consequences of the purchase of lands which the Rules did not permit to be sold by the grantees and that it is too late in the day to cry over spilt milk. It was argued that where there is a conflict between the equity and law, law ought to prevail. It is not the omission of the Tahsildar that is consequential, but it is the Rule which prohibits alienation which is consequential. According to the learned Government Advocate the Rules prohibited alienation of the granted land for a period of 15 years from the date of the grant if the grant was made free of cost and 10 years in the case of lands granted on upset price in the year 1958-59. If the date of the original grant which is 1956 is taken into account, the prohibition against alienation is identical. In the instant cases, after the cancellation of the original grants, the subsequent grants were made in 1958-59 and the Grant

Certificates were issued on 12-5-1971 and it was, therefore, submitted that there is a clear case of violation of the terms of the grant and, therefore, the impugned orders of the Assistant Commissioner and the Deputy Commissioner are fully justified.

9. When this Court wanted to look into the records relating to the proceedings of the grant made in 1956-57 in order to ascertain the reasons for the cancellation of the earlier grants, the learned Government Advocate was unable to produce the same because admittedly as could be seen from the observation made by the Assistant Commissioner in the impugned orders, the records were not available in the concerned office. On an examination of the saguvali chits issued on 12-5-1971 in respect of the subsequent grants made during the year 1958-59 to the vendors of the petitioner (original grantees), it was seen that the column which is in printed words relating to prohibition on alienation of granted lands had been scored off by the Tahsildar who had issued the Grant Certificates duly initialled. Added to this, whereas the grants were made during 1958-59, the Grant Certificates came to be issued in the year 1971. It is not disputed that the Rules governing the grant of such lands which existed as or 1958-59 did provide for restriction on alienation for a period of 15 years in case of land granted free of cost and 10 years in case of lands granted on upset price. If there was ignorance of law on the part of the petitioner who hazarded the purchase of lands which were subject to restriction on alienation, equally so there was ignorance of law on the part of the Tahsildar who issued the Grant Certificates without Incorporating the restrictive covenant. All the more amusing is the fact that the printed column which was meant for imposition of restriction on alienation was struck off by the Tahsildar and it cannot be said that it was done unknowingly or unconsciously without a realisation of the implications. This Court has come across numerous grants of lands to the members of the Scheduled Castes and Scheduled Tribes in which Grant Certificates are issued incorporating restriction on alienation of lands for specified periods which were at total variance with the period specified in the corresponding rules. But in the instant cases, callousness and negligence is of the extreme kind. The Tahsildar appears to have winked at the rules and exempted the grantees from prohibition on alienation of granted lands for reasons best known to him. Grants made to the members of the Scheduled Castes and Scheduled Tribes

have landed the purchaser in a mine-field of litigation lurking with hidden danger with a potential for inestimable injury, loss, damage and devastation. The conduct of the officers charged with the responsibility of administering the benevolent Act warrants examination against the back-ground of the principle and philosophy behind the Act itself. The history of this Act is not hidden in the mist of antiquity. The origin could be traced as in the case of similar benevolent legislations to the Constitution of India which propounds a policy of National commitment to what is familiarly known as affirmative action which is aimed at the amelioration of the conditions of the weaker sections of the people of the Country. The Scheduled Castes and Scheduled Tribes are Constitutionally recognised as the weaker sections and the benefits of these Acts are intended for them.

My repeated encounters with the alarming, institutionalised Inefficiency and administrative deviance in public administration have ignited my desire to delve into the philosophy behind these benevolent legislations. By essaying into this area of public welfare and touching the interests of a large chunk of Nation's population, could be felt the authentic beat of the Nation's pulse. The feeling is that a Welfare State can ill-afford psychological expatriates in public administration who hardly have roots in society and who are numb to human suffering. If administrative anaemia, intellectual imbecility and political chicanery are not checked in time, they will destroy the confidence of the common man in democracy and Rule of Law. Do the frailties and lapses of public officials call for a new legal thinking?

FARRINGTON v. THOMSON (1959) V.R. 286 cited with approval (by Best, CJ) the principle in; HENLY v. LYME CPN (1858) 5 Bing: 91(107):

'Now I take it to be perfectly clear that if a public officer abuses office either by an act of omission or commission, and the consequence of that is injury to an individual, an action may be maintained against such public officer. The instances of this are so numerous that it would be a waste of time to refer to them.'

It can be said that Uncompensatory control is a negation of natural Justice. Expediency and justice are seldom on talking terms.

10. A developing Nation cannot forge ahead with meaningful progress if a microscopic minority marches forward with the masses trailing far behind socially and economically unless the public administrators act inspired by administrative will and faith in the cause to effectively implement the will of the Legislature. What is needed is a confluence of administrative action and legislative will because law alone cannot achieve and fulfill the basic aspirations of the common man. The need of the hour is concerted action and community of interest. Bare legislation couched in cabbalistic terminology will only make the law schizophrenic unless the bureaucrats identify their role in the vast body of social work-force and extend human understanding with a sincere desire to carry the masses towards fruitful goals and thereby lend meaning and substance to the concept that sovereignty lies with the people. The bureaucrats are equal partners in building the nation though they are often described as professional administrators and mercenaries. The note of warning sounded by the architect of the Constitution of India Dr. B.R. Ambedkar are relevant in the context;

'On January 26, 1950, we will have equality in politics and inequality in social and economic life. We must remove this contradiction at the earliest moment or else those who suffer from inequality will blow up the structure of political democracy.'

The problem of the weaker sections is not just a sociological problem. It is a human problem of the multitudes and also the problem of rural India peculiar to Hindu Society. Thought explosion precedes social revolution and the thinking is one of preferential treatment to the less fortunate and weaker sections who are the victims of neglect through centuries.

The incursion of institutionalised lethargy is detrimental to national interest as it erodes the values of ideal public administration. The concern of the Court is to bring in harmony the Rule of Law with the enlightened common sense of the Nation as articulated through the process of legislation. The administrative executive which is a permanent feature of the executive wing of the State is under a statutory and moral duty to strictly adhere to the letter, spirit and substance of law. The salvation lies in a change of mental attitude of bureaucracy towards faithful implementation of the legislative mandates without allowing scope for

maladministration, non-exercise, miss-exercise and wrong exercise of administrative power and discretion. A high standard of accountability is expected by virtue of the bureaucrats being the trustees of public interest and common good. Despite Imaginative legislation, policy failures are often the result of poor implementation and recalcitrant enforcement. To quote John Stuart Mill:

'No great improvements in the lot of mankind are possible until a great change takes place in the fundamental constitution of their modes of thought.'

The Constitution of India is more a social document than a political one, its heart being the Directive Principles of State Policy enshrined in Part IV of the Constitution. The Indian social structure has often been criticised in the following words:

'The most thorough going attempt known in human history to introduce absolute inequality as the guiding principles in social relationships.'

(Davis, 1951: 170)

Affirmative action programmes abound in India as nowhere else in the world. Such programmes were initially launched by the British and by Princes of some of the erstwhile princely states shortly after 1st World War - (Galanter: 18-40; Ouslekin 1979: 661-667).

After the Nation won independence in 1947, the principle of preferential treatment had gained considerable legitimacy. When the Constitution was framed, Constitutional anchorage was provided to the less privileged sections of society through various programmes of affirmative action.

The term 'scheduled' which has its genesis in the British legacy dates back to 1935 when the lowest ranking castes in the de-humanizing social stratification were listed in a schedule appended to the Government of India Act 1935. The word 'scheduled' connotes the meaning of being listed for purposes of special safeguards and benefits. These scheduled castes are the so-called untouchables of the inhuman social division of India's divided, compartmentalised and pluralistic society that were relegated to the lowest rungs of the social hierarchy. This label of

'Scheduled Castes' is described as 'the most recent of a long line of official euphemisms for the untouchables.' Mahatma Gandhi chose to christen them as Harijans - the children of God, intended to be a less disparaging appellation than the word untouchable but strongly resented and rejected by the younger section of Scheduled Castes who preferred to be called 'Dalits' ('oppressed' in Marathi) - a manifestation of militant and aggressive assertion of equality. The accursed practise of untouchability is a historic social stigma which has persisted for more than two millions with the Hindu social order. The most disturbing and infernal experience is that it is an existing social reality and that it has not atrophied despite the passage of time notwithstanding the fact that time has ushered in industrial, technological and scientific revolution in the Country. Even a cultural renaissance has not made a dent on this social evil. Stray are instances of inter-caste fraternisation. Its existence is a diabolical contradiction in a democratic Country professing justice, social, political, economic; equality of status, fraternity and dignity of the individual. The graded inequality in the social order is a brazen antithesis of the Universal Declaration of Human Rights to which Charter, India is an early signatory.

The Act is one of those legislative programmes intended to do justice to the weaker sections of society by affirmative action. It is against the back-drop of the story of inhuman suffering and misery of these unfortunate victims of societal prejudices that the need for the public administrators to bring into play a greater degree of efficiency, dedication and accountability in their functional role, is emphasised. What is involved is the national commitment to the avowed and declared policy of affirmative action. Further more what is involved is a matter of conscience in an unconscionable social landscape.

Relevant are the words of Learned Hand: uttered in 1942:

'We Americans have at last chosen sides; we believe that it may be idle to seek the soul of Man outside society; it is certainly idle to seek society outside the soul of man.'

The State Legislature enacted the law in order to provide for the prohibition of transfer of certain lands granted by the Government to persons belonging to the

Scheduled Castes and Scheduled Tribes in the State of Karnataka. The expediency which brought the Act into operation is the need to restore lands originally granted preferentially by the Government to persons belonging to the Scheduled Castes and Scheduled Tribes in the State and to impose a prohibition on transfer of such granted lands. The Act empowers resumption and restitution of granted lands on an application by any interested person or on information furnished in writing by any person or even suo moto after due enquiry by the Competent Authority under the Act.

The Act may be described as the product of a restructure of property rights in a developing society against the setting of the egalitarian order envisaged by the Constitution of India with the interests of the weaker sections of the people paramount. The order under scrutiny before this Court is an example of sabotage of the very purpose of the Act. The administration and enforcement of the Act is an onerous responsibility fastened on the Government officials who are in charge of public administration duly invested with power by the statute in rising to the call of duty in the amelioration of the economic conditions of the weaker sections of society who are plagued by graded inequality. The suffering cannot be wiped out in a day because it is a continuing evil needing consistent and persistent endeavour to mitigate the suffering resulting from social exploitation. This Court cannot turn a blind eye to the problem inherent in the cases confronting it and inherent in the pattern of functioning of these public administrators and officials. The malady is not only affecting the national ethos but also tends to tarnish the national image. It must be understood that the Act is not intended to be a mere palliative to appease the weaker sections but is an ancillary legislative measure intended to back up affirmative action and preferential treatment, in the widest sense. In the legislative landscape, the problem invites focus on the Indian predicament of a rich Country with enormous resources having a stupendous population of poor people with 60% of the population illiterate, half the population officially falling below the poverty line and predominantly belonging to the landed gentry. The Nation has aimed at the upliftment of the weaker sections through Constitutional provisions and parliamentary and legislative enactments evolving preference programmes consisting of three basic types.

First, are the reservations in the Legislatures, in Government service including the private sector and in Educational Institutions. On a lesser scale is the reservation device used in the distribution of land allotments, housing and other scarce resources.

The second variety consists of programmes involving expenditure or provision of services; example scholarship, grants, loans, land allotments, health care and legal aid to beneficiary groups beyond comparable expenditure for others.

Third and most significant kind envisages special protection accompanying the distributive schemes to protect the backward classes in general from being exploited and victimised. These protections bring within their sweep, constitutional prohibition of forced labour, efforts to release the victims of debt bondage, legislation regulating money lending, providing debt relief and restricting land transfers. Into this last class, the Act fits in. These measures are calculated to safeguard against exploitation of socially downgraded class which are the Scheduled Castes and Scheduled Tribes at the hands of their more sophisticated and socially upgraded, predatory neighbours.

The Scheduled Castes and Scheduled Tribes consist of about 165 million in our Country according to the statistics last obtained. The other backward classes match the strength of the Scheduled Castes and Scheduled Tribes. Put together they form about 43% of the Nation's population. Those 300 millions are eligible for preferential treatment of one kind or the other.

In order to complete the picture, peering from the top down, the upper caste Hindus constitute about 30 to 35% of the Country's population (Winer and Katzenstein, 1981: 132). In the language of graded inequality, these upper caste Hindus are better known as forward classes. Statistics confirm that Scheduled Castes and Scheduled Tribes consist of not less than 21.5% of the nation's population. The question is whether the interests of the weaker sections could be sub served and safeguarded by puerile, casual, faulty and indifferent orders passed from time to time by the public administrators while administering the Act.

When the end to graded inequality in the Hindu social order which relegates the Scheduled Castes and Scheduled Tribes to the fifth place in the social hierarchy is not in sight, when the bulk of the nation's population is wallowing in penury, misery and hunger, can the Court shut its eyes to puerile, casual, non-speaking, recalcitrant, indifferent and faulty orders flowing from the justice delivery-system of the public officials, without caustic observations of the Court? The tug of emotion triggered off by righteous indignation is too powerful to resist in an era of Human Rights. Cases are aplenty wherein the poor peasants have to make two to three rounds of litigation for a single dispute as a result of defective orders of the officials each time and languish in Courts most of their time. How much money, man-hours, energy is frittered away and how much is added to the back-log is a matter which deserves to be investigated and ascertained with reference to the poor litigant, the Court, the executive and the Nation as a whole. On account of a configuration of these adverse factors, the administration, I am afraid, is reaching the brink of disaster. The questions are how many cases are filed each year, how many cases are allowed and how many cases are still pending. When will the benefits reach the masses at this rate? Year-wise statistics make painful reading:

Statements showing Writ Petitions challenging orders passed under the Act:

Year of filing

No. of Writ Petitions filed

No. of Writ Petitions disposed of

No. of Writ Petitions pending

1980

584

584

—

1981

1000

1000

—

1982

1373

1373

—

1983

576

573

3

1984

458

427

31

1985

387

297

90

1986

443

233

210

1987

257

153

104

1988

381

155

226

1989 as on 4-7-1989

310

65

245

Inspite of legislative measures, the intended benefits are not reaching the people. The nuances of efficient public administration are rarely known to the administrators. It should not be forgotten that affirmative action is not intended to dole out largess to the weaker sections. But it is an entitlement to them for the past sins and continuing social bias and exploitation. The Court cannot be an idle spectator and if it acts as a senior partner in public administration, it cannot be mistaken for back-seat driving. The need for a monitoring machinery for a periodic review of the performance of the public officials apart from the effectiveness and enforcement of the Act is Imperative and similarly the need to acquaint these

administrators with the art of justice delivery and the spirit of Identity with the philosophy and spirit behind the concept of affirmative action. The efficacy and work-effectiveness of similar legislations require to be reviewed from time to time.

11. In the instant cases, the undisputed facts point towards only one direction and that is there is a violation of the rule of restriction by the original grantees as a result of which the unwary purchaser who is the petitioner in these cases, has to suffer by deprivation of the huge financial enterprise he has floated in bringing into existence, thriving and enviable coffee plantations on lands which were barren at one time, regarded as dry and and lands. All these could have been avoided probably If the Tahsildar who issued the saguvali chits had taken care to incorporate or retain the condition regarding prohibition on alienation for a specified period in accordance with the prevailing Rules instead of scoring off the column which would have perhaps cautioned both the grantees and the petitioner against sale transactions before the expiry of the restrictive period. The question is who is accountable in a situation like this is the grantee accountable' or is the Tahsildar who issued the Grant Certificates accountable, - the Tahsildar in his individual capacity or the Tahsildar as a representative of the State in the discharge of official duties? The principle of accountability is one of the main characteristics of good public administration and bureaucratic resistance is a symptom of diseased administration. Public good will suffer by maladministration. It is high time for the bureaucrats to realise their responsibilities towards the citizens in whom sovereignty is supposed to reside whether the citizen is a small farmer having meagre resources or belonging to aristocracy. Unfortunately, in these cases, the petitioner will have to go without a remedy. The reason is that law has to prevail over equity. A real principle is not a magical incantation. It is imbued with a purpose. The purpose is to reach the intended beneficiary who is entitled to legal redress. Legal principle wades through the facts before It ultimately homes into the intended destination, - mechanics and dynamics apart; remotely controlled, by considerations of legality and justifiability; equity and good conscience.

12. Before concluding the Judgment, I should refer to the doubts expressed by the learned Counsel appearing for the petitioner that If the reasons which compelled

the cancellation of the earlier grant had been disclosed, the petitioner would have been in a better position to explain that the alienations made by the original grantees would not be hit by the restrictive clause. It was also urged that the petitioner has a right to information in this regard. Undoubtedly the petitioner has a right to information; but the information even if available would not be of any avail to the petitioner because the date of earlier grant under the Rules then prevalent also envisaged restriction on alienation of granted lands in the same manner as the Rules governing the grants made in the year 1958-59. Either way, the grantees would be guilty of breach of the conditions of the grants and obviously the petitioner would have to surrender the lands back to the grantees in accordance with the provisions of the Act. The maximum that could be said is that there is carelessness and lack of accountability on the part of the officials in not properly preserving the records relating to the earlier grant proceedings. This again is only a pointer to demonstrate inefficiency.

13. In view of the foregoing discussions, I uphold the orders of both the Assistant Commissioner and the Deputy Commissioner. Consequently, the Writ Petitions are dismissed and the rule discharged. In the circum-stances of the case, I direct the Tahsildar concerned to pay costs of Rs. 1,000/- in each of the Writ Petitions to the petitioner and I direct the State Government to ensure the recovery of costs and payment to the petitioner.

14. In the circumstances of the case and especially in view of the huge investments and improvements made on the lands by the petitioner, the petitioner is permitted to remove the coffee crops before the end of February, 1990 and, till such time, delivery of possession of the lands in question to the original grantees shall be withheld- The Assistant Commissioner is directed to draw up a mahazar regarding the nature and number of trees standing on the lands in question and furnish a copy of the same to the petitioner. The mahazar shall be drawn up after issue of notice to the petitioner.