

Savithramma and ors. Vs. State of Karnataka and ors.

Savithramma and ors. Vs. State of Karnataka and ors.

SooperKanoon Citation : sooperkanoon.com/381579

Court : Karnataka

Decided On : Aug-28-1996

Reported in : ILR1997KAR1218

Judge : P. Vishwanatha Shetty, J.

Acts : Karnataka Village Officers Abolition Act, 1961 - Sections 5, 6, 7 and 7A;
Karnataka Village Officers Abolition (Amendment) Act, 1978

Appeal No. : WP. 7279/1993

Appellant : Savithramma and ors.

Respondent : State of Karnataka and ors.

Advocate for Def. : M. Siddagangaiah, HCGP for R-1 and R-2 and ;K.G. Lakshminarasimha Rao, Adv. for R-3

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

Judgement :

ORDER

P. Vishwanatha Shetty, J.

1.The petitioners, in this petition are the purchasers of land measuring 2 acres and 23 guntas in Survey No. 83 and 19 guntas in Survey No. 19 situated at

Kondliganahalli Village, Munganahalli Hobli, Chintamani Taluk, Kolar District from the holders of a village office by means of registered sale deed dated 5th March 1969.

2. In this petition, the petitioners have prayed for quashing the order dated 30th January 1993, the copy of which has been produced as Annexure-E passed by the 2nd respondent rejecting the application of the holder of the village office i.e., the 3rd respondent for regrant of the land in question in favour of third respondent and further directing that the said lands should be vested with the government.

3. Sri Papireddy, the Learned Counsel for the petitioner submitted that the order impugned is totally illegal and suffers from 'errors apparent on the face of the record in as much as the said order came to be passed in utter disregard of the order dated 20th December 1984 made by this Court in Writ Petition No. 12405 of 1981. He further submitted that in view of the law laid down by this Court in the case of SYED BHASHEER AHMED AND ORS. v. STATE OF KARNATAKA, : AIR1994 Kant227 the order impugned is also liable to be quashed.

4. Sri M. Siddaganagaiah, learned Government Pleader appearing for the respondents submitted that while the petitioners cannot be evicted from the land in question as the petitioners have purchased the land in question on 5th March 1969 in view of the order passed by this Court in Writ Petition No. 12495 of 1981 and also the decision of this Court in the case of Bhasheer Ahmed, the petitioners are not entitled to seek for regularisation of the purchase of the land made by them unless there is an order of regrant made in favour of the 3rd respondent.

5. I find considerable force in the submission of the Learned Counsel for the petitioners. This Court in Writ Petition No. 12495 of 1981 filed by the Petitioners at Paragraph 3 of the Judgment has held that even if the land had not been regranted on the date of the sale, the title would ensure to the benefit of the purchaser after the land is regranted to the vendor. In the case of Bhasheer Ahmed (Supra), the Full Bench of this Court has observed that the alienation of service inam land between 1st February 1963 and 7th August 1978 by a holder or an authorised holder before regrant is not invalid as he had a vested right to get regrant and as there was no bar regarding alienation during that period, but the

alienee will be a person with imperfect title entitled to continue in possession and when the land is regranted to the alienor, the title obtained by the alienor will ensure to the benefit of the alienee. Therefore, the order-Annexure-E passed by the 3rd respondent to the extent it directs that the petitioner should be evicted from the land in question and the land in question vests with the State Government is illegal and liable to be quashed.

6. Further, as it could be seen from order Annexure-E, the application filed by the 3rd respondent for regrant of the land in question in his favour has been rejected. Since the sale of the land in question made in favour of the petitioners is not invalid in law, it was not permissible for the 2nd respondent to reject the application filed by the 3rd respondent for regrant of the land in question. Therefore, the order-Annexure-E to the extent it rejects the application of the 3rd respondent for regrant of the land in question in his favour also is unsustainable in law. However, the Learned Government Pleader submitted that it is not permissible for the petitioner to challenge the order-Annexure-E to the extent it rejects the application of the 3rd respondent for regrant. I do not find any merit in this submission. In the case of Bhasheer Ahmed, this Court has observed that while alienee of the land between 1st February 1963 and 7th August 1978 has no right to seek regrant in his own name and his right is only to claim the benefit on the doctrine of feeding of the grant by estoppel as and when the regrant is made to the alienor under Section 5(1) or Section 6 of the Act has held, for the said purpose he may support or pursue any application for regrant of the land in question in favour of his alienor. The order-Annexure-E which rejects the application of the 3rd respondent for regrant of the land in question seriously affects the rights of the petitioners to get the regularisation of the sale of the land in question. Under these circumstances, it will be totally unjust to hold that the petitioners who are the purchasers of the land and who are entitled for protection from eviction have no right to challenge the order passed by the authorities rejecting the application of the holder of the village office for regrant, I am of the view, since the holder of the village office is entitled for regrant as laid down by this Court in the case of Bhasheer Ahmed (Supra), the same principle must be applied to the right of the alienee of the land. Otherwise, it will result in great injustice to the alienee. The right of the alienee to the land can be frustrated by a non-co-operative alienor with the alienee. Any law or principles

of law should be understood and applied while adjudicating the rights of the parties in a fair and reasonable manner and to sub-serve the object of law, and not with a view to defeat the rights of the parties. Therefore, when this Court in the case of Bhasheer Ahmed (Supra) has taken the view that the alienee is entitled for the benefit of order of regrant made in favour of the alienor of the land in respect of the sale transaction taken place during the period between 1st February 1963 and 7th August 1978, I do not find any justifiable ground to hold that the alienee is not entitled to seek regrant in favour of the alienor, if the alienor fails to seek regrant in his favour or fails to challenge the order passed rejecting his claim for regrant. The alienee having purchased the land steps into the shoes of the alienor. Therefore, it is reasonable to hold that the alienee who is willing to comply with the conditions which the alienor is required to comply with before seeking regrant is entitled to seek regrant of the land in favour of the alienor. Therefore, this petition is entitled to succeed. Accordingly, this petition is allowed and I make the following order:

1. Rule is issued and made absolute.
2. Order-Annexure-E dated 30th January 1993 is quashed.
3. The 2nd respondent is directed to consider the application of the 3rd respondent for regrant of the lands referred to above and also the application of the petitioners if it has already been filed to regularise the sale of the lands in question made in favour of the petitioners by means of registered Sale Deed dated 5th March 1969; and however, if the application has not been made by the petitioners for regularisation of the sale of the lands in question, if they make such an application within twelve weeks from today the 2nd respondent shall consider the said application and dispose of the same in the light of the decision of this Court in Bhasheer Ahmed's case(supra).
4. The 2nd respondent is directed to conduct an enquiry and pass appropriate orders in accordance with law and in the light of the observations made above, as expeditiously as possible and at any event of the matter not later than six months from the date of receipt of this order.
5. In terms stated above, this petition is disposed of.

6. Sri M. Siddagangaiah, Learned High Court Government Pleader is given four weeks time to file memo of appearance.

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