

**Rame Gowda Vs. Assistant Commissioner**

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**Court :** Karnataka

**Decided On :** Oct-26-1994

**Reported in :** ILR1995KAR259

**Judge :** G.C. Bharuka, J.

**Acts :** Karnataka Sceduled Casts and Scheduled Tribes (Prohibition on Transfer of Certaion Lands) Act, 1978 - Sections 3; Karnataka Land Grant Rules, 1969 - Rule 9(1)

**Appeal No. :** W.P. No. 10412 of 1991

**Appellant :** Rame Gowda

**Respondent :** Assistant Commissioner

**Advocate for Def. :** H.H. Kaladgi, HCGP. for R-1 and R-2

**Advocate for Pet/Ap. :** B.G. Sridharan, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

Bharuka, J

1. This Writ Petition is filed by the Petitioners for quashing the orders dated 19.12.1990 and 26.2.1991 being Annexures M and N respectively passed by the respondents/Assistant Commissioner and Deputy Commissioner, whereby the land in question has been resumed under the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition on Transfer of Certain Lands) Act, 1978 (Act 2 of 1979) (for short, 'the Act' only).

2. The land in dispute is Survey No. 51/B situate at Bosmanahalli Village in Alur Taluk. This land was given on a temporary lease for coffee plantation to respondent No. 3, who is a member of Scheduled Caste, on 25.2.1966. But the said respondent instead of undertaking coffee plantation by himself, permitted the petitioners to undertake the operation under a Power of Attorney dated 28.4.1974. Subsequently, on 20th April 1976 respondent No. 3 was granted a Saguvali Chit (Certificate of Grant) with a condition that he should not alienate the property within 15 years of grant in consonance with Rule 9 of the Rules. But the said respondent entered into an agreement for sale on 12.12.1978 with the petitioners and allowed them to remain on the land.

3. It appears that subsequent thereto, there was a civil litigation between the parties giving rise to OS No. 160 of 1982 on the file of the Civil Judge at Hassan which ended in compromise as per order dated 10.12.1982 (Annexure-H). Under the said compromise respondent No. 3 agreed to execute a registered sale deed in favour of the Petitioners. This is how the petitioners remained in possession of the disputed land.

4. Keeping in view these facts, the respondent/Assistant Commissioner initiated the proceedings under the provisions of the Act to resume the land since according to him the granted land was alienated in violation of the Rules within 15 years of grant, and, ultimately passed the impugned order at Annexure-M. Against the said order an appeal was preferred before the second respondent which has also been dismissed vide Annexure-N holding that the execution of an agreement for sale coupled with delivery of possession amounts to transfer of property in violation of the Rules, and, as such the order of the respondent Assistant Commissioner in resuming the land was valid.

5. Learned Counsel for the petitioners submitted that delivery of possession coupled with execution of an agreement for sale does not amount to transfer in law and as such it cannot be said that respondent No. 3 has in any way violated the condition restricting alienation.

6. Clause (e) of Section 3 of the Act defines 'transfer' as under:

'(e) '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.'

Therefore, from the definition noticed above, it is quite clear that delivery of possession coupled with an agreement for sale amounts to transfer. In that view of the matter, prohibition under Section 4 of the said Act comes into operation whereby transaction between the petitioner and respondent No. 3 became null and void. Once that finding is reached, under Section 5 of the Act the Assistant Commissioner becomes competent to take possession of such land after evicting all persons in possession thereof and restore the same to the original grantee or his legal heirs.

7. In view of the proviso to Rule 16 of the Karnataka Land Grant Rules, 1969 the grant of land for cultivation of plantation crops is also subject to the condition of grant prescribed under Rule 9(1)(i) of the Rules which reads as under:

'the grantee shall not alienate the land for a period of fifteen years from the date of taking possession:...'

8. Now it is to be ascertained as to what does the expression 'alienate' the land as used in the above referred condition mean. The meaning of the word 'alienation' as found in the Blacks Law Dictionary, 5th Edition, is in real property law, the transfer of property and possession of lands, tenements, or other things, from one person to another'.

9. In the case of MANCHEGOWDA ETC. vs . STATE OF KARNATAKA AND OTHERS : [1984]3SCR502 the Supreme Court while construing the purpose and

scope of grant of lands made under the Rules has observed that the condition regarding prohibition of transfer of granted lands had been introduced in the interest of grantees for the purposes of upkeep of grants and for preventing the economically dominant section of the community from depriving the grantees, who belong to the weaker sections of the society, of their enjoyment and possession of those lands and for safeguarding their interests against any exploitation by the richer sections in regard to the enjoyment and possession of these lands granted essentially for their benefit. Therefore, the expression 'alienate the land' as used in a restrictive sense, as noticed above, has to be construed and understood in a sense which will really advance the object of grant of lands under the Rules. If the expression 'alienate the land' is construed in its restricted sense of alienation as transfer of title in the property, then, in a quite good number of cases the object of ensuring retention of possession of land and enjoyment thereof by the grantees can be frustrated by technical legal devices. To obviate this result, the expression 'alienate the land' needs to be construed in its widest amplitude so as to include within its sweep transfer of any interest in the granted lands which may result in dispossession of the grantee from the said land.

10. The said view is also amply supported by the definition of the word 'transfer' as defined in Clause (e) of Section 3 of the Act to mean 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. Keeping in view the object of the Act, the word 'alienate' as used under Condition No. 10 of the Rules and the word 'transfer' as defined under the Act has to be construed as carrying the same meaning. This finds support also from the objects and reasons of the Act, which says that:

'The non-alienation clause contained in the existing Land Grant Rules and the provisions for cancellation of grants where the land is alienated in contravention of the above said provisions are found not sufficient to help the Scheduled Castes and Scheduled Tribes grantees whose ignorance and poverty have been exploited by persons belonging to the affluent and powerful sections to obtain sales or mortgages either for a nominal consideration or for no consideration at all and they

have become the victims of circumstances. To fulfil the purpose of the grant, the land even if it has been alienated, should be restored to the original grantee or his heirs.'

11. Learned Counsel for respondent No. 3 submits that the present application cannot be disposed of since the Counsel for respondent No. 3 is dead and no fresh notice has been served on respondent No. 3 intimating the said fact. In my opinion, the objection raised by the Counsel does not merit any serious consideration in the facts of the present case. This is for the reason that the third respondent, despite service of notice, had not contested the appeal before the Deputy Commissioner. Further also because the present order will not in any way adversely affect the interest of the said respondent.

12. Considering the facts as stated above and the statutory provisions, I do not find any illegality in the impugned orders. Writ Petition is accordingly dismissed.

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