

Parameshwarappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Sep-05-1991

Reported in : ILR1992KAR1691; 1991(3)KarLJ751

Judge : M. Ramakrishna, J.

Acts : Karnataka Land Grant Rules, 1969 - Rule 43(8); [Constitution of India](#) - Article 341

Appeal No. : W.P. No. 15191 of 1988

Appellant : Parameshwarappa

Respondent : State of Karnataka

Advocate for Def. : M. Siddagangaiah, Adv. for R-1 to R-3 and ;N.B. Nijalingappa, Adv. for R-4

Advocate for Pet/Ap. : P.G. Gowri, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

M. Ramakrishna, J.

1. The petitioner, in this Petition, under Articles 226 and 227 of the [Constitution of India](#), has challenged the correctness and legality of the order made by the Assistant Commissioner at Annexure-A and that of the Deputy Commissioner at Annexure-B and he has sought for quashing the same for the reasons set out in the Writ Petition.

2. A few facts that are necessary for the disposal of the Writ Petition, are as follows:

The undisputed facts disclosed in the impugned orders as well as the averments in the Writ Petition are that Naga Bhovi, the 4th respondent, was granted 4 acres of land in Sy.No. 45 of Haliyur village, Kasaba hobli, Tarikere taluk, Chickmagalur district, in proceedings No. SSDPCR 37/53-54 under the Karnataka Land Grant Rules by the competent authority by order made on 2nd of November 1953. Accordingly, Saguvali chit came to be issued in his favour on the same day, subject to certain conditions. One such condition was that the grantee shall not alienate the granted land for a period of 10 years as found in paragraph 8 of the condition imposed in the saguvali chit.

3. Again, it is not in dispute that by a registered sale deed dated 9-7-1963, the granted land came to be sold by the grantee in favour of one Gulam Hussain Sab s/o Kareem Sab for a valuable consideration. Later, that Gulam Hussain Sab sold the granted land in favour of one S.G. Parameshwarappa. Subsequently, that Parameshwarappa sold the land in favour of the petitioner by a registered sale deed dated 25-10-1985. Thus the petitioner has been in enjoyment of the land in question.

4. After the coming into force of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, (hereinafter referred to as 'Act'), the original grantee, the 4th respondent, approached the Assistant Commissioner, Tarikere sub-division, with an application seeking for the relief under the said Act. His case was that the granted land was sold in contravention of the condition of the grant. Therefore, he has sought for declaring the said sale as void and to restore the granted land in his favour.

5. The Assistant Commissioner, 3rd respondent, issued notices to both the parties and held an enquiry. During the enquiry both the parties appeared and their statements were recorded. The Advocates representing their respective cases were heard and ultimately the Assistant Commissioner, assessing the evidence on record, both oral as well as documentary including the original records held that, non-alienation period applicable to the case was 20 years and not 10 years. In other words, he held that though the saguvali chit discloses non-alienation clause of 10 years, the law provided for a period of 20 years. Therefore, that should prevail. In the instant case, since the alienation had taken place before the expiry of that period of 20 years he declared transfer of granted land as null and void. He further held that the original grantee, the 4th respondent shall be entitled for restoration of granted land. Aggrieved by this order, Annexure-A, the petitioner filed an appeal before the Deputy Commissioner, Chickmagalur, under Section 5(A) of the Act, who, having heard the learned Counsel on both the sides, dismissed the appeal by his order impugned at Annexure-B dated 27-9-1988, affirming the conclusion reached by the Assistant Commissioner both on questions of fact and law. Hence, this Writ Petition.

6. Smt. Gowri, learned Counsel for the petitioner, who took me through the impugned orders urged the following points:

- 1) When the saguvali chit disclosed 10 years as non-alienation period, it is not open to the authorities below to construe it as 20 years. This view was incorrect.
- 2) The land in question was not granted free of cost but on payment of Rs. 10/- per acre and therefore it must be construed that the land was granted on payment of upset price, in that view, the non-alienation clause of 10 years must hold good.
- 3) Lastly, it is contended that the 4th respondent, original grantee, belongs to a caste known as Bhovi. He was also called as Vaddar. As on the date when the land was granted in his favour, the caste Bhovi was not recognised under the Constitution as Scheduled Caste or Scheduled Tribe. Therefore, such person would not be entitled for seeking relief under the Act.

7. One more submission made by the learned Counsel for the petitioner, is that the petitioner, after the sale of the land in his favour, invested a certain sum of money to improve the land. Now there are standing crops i.e., Ragi and Paddy raised by him. Therefore, he will be entitled to harvest the crop before any action is taken to evict him from the land.

8. I will deal with the first point whether the finding recorded by the authorities below holding that the period of non-alienation clause was 20 years and not 10 years was proper and justifiable and at the outset I refer to the certified copy of the saguvli chit produced before the Court. It is in Form No. 2 and the land in question was granted in favour of the 4th respondent and others under free scheme, it is seen that the scheme is evolved by the competent authority for grant of Government lands in favour of persons representing Scheduled Caste. In Kannada it is stated as

Therefore, the scheme under which the land was granted to the 4th respondent was a schema for grant of land in favour of depressed class prevalent in those days, I am directly referring to the declaration made by the President of India in exercise of the powers conferred on him. Under Clause (1) of Article 341 of the [Constitution of India](#), he declared the caste Bhovi as found in Part IV Karnataka as Scheduled Caste. They came to be published is the Gazette of India Extraordinary dated 11th of August, 1950. Therefore, even when the land in question came to be granted in favour of the 4th respondent he was considered to be a person representing the Bhovi community and therefore that community or caste having been declared as Scheduled Caste in the Presidential Order, referred to above, there is no doubt in my mind that even as on that day he would be entitled for being considered for the purpose of granting of land as a person representing Scheduled Caste. Therefore, that contention fails, However, Smt. Gowri, submits, that the appellate authority while dealing with similar appeals has held that a person representing Bhovi community is included in the list of backward tribes. In the instant case, the Deputy Commissioner has clearly stated that the land was granted to respondent No. 4 considering him as belonging to Scheduled Caste and that there was no reason to disbelieve it. Further, though there was no caste as Scheduled Caste or Scheduled Tribe when the land was granted, the

community to which respondent No. 4 belongs was known as depressed class. Therefore, he was granted land. Thus this contention has to fail.

9. Dealing with the next contention that the period of non-alienation as provided in the saguvali chit must prevail over the condition provided under the Rules, it is not possible for me to accede to this contention, because that question came to be considered by the Division Bench of this Court in LAXMAMMA v. STATE OF KARNATAKA AND ORS., 1983(1) KLJ 417. In that Judgment the Division Bench has held as follows:-

'Where the granting authority had imposed a longer period than the one provided by law, that condition in its entirety would not be void, but the condition to the extent permitted by law would be valid.'

This observation would apply to the facts of this case. When Rule 43(8) of the Land Grant Rules provided 20 years of non-alienation clause as on the date when the land in question came to be granted, the competent authority ought to have seen that there should have been imposition of 20 years of non-alienation clause in the saguvali chit. In the instant case it was mentioned as 10 years in paragraph 8 of the condition. To that extent non-alienation clause provided under Rule 43(8) should prevail and not the one provided in the saguvali chit. In other words the 20 years period of non-alienation clause as provided under Rule 43(8) must prevail over the period provided under the saguvali chit. Therefore, both the authorities below have correctly held that the grant was subject to non-alienation of the granted land for a period of 20 years and not 10 years. Since the granted land came to be sold before the expiry of that period, Sections 4 and 5 of the Act are attracted. Accordingly, the authorities below have held against the petitioner. Therefore, this contention is one without any force.

10. Dealing with the last contention that the petitioner having purchased the land invested a certain sum of money to improve the land. Therefore, that aspect must be taken into account before taking any action to evict him from the land, I am of the opinion, that the scheme of the Act does not provide anywhere for taking into consideration any improvement made by the purchaser and to provide for compensation. In the absence of any specific provision for doing so, it is improper

for the Court to do so. Therefore, I must observe that even though the petitioner has improved the land investing money after the sale in his favour, he himself was enjoying the land all these years. When the law clearly provided for vesting the land by virtue of the Act, there is no question of consideration regarding the improvement.

11. However, the last submission of the learned Counsel deserves consideration. It is stated that by virtue of interim order of stay enjoyed by the petitioner, he continued to be in the possession of the land and that he raised certain crops, it will be ready for harvest some time in the month of May, 1992. Therefore, it is submitted that the petitioner may be permitted to harvest the standing crops by then. It is true that this submission is based upon equity in favour of the petitioner inasmuch as, if he has raised the crops and invested money by virtue of stay order it would be fair for the Court to permit him to harvest the crops standing on the land. But, I have taken a consistent stand in a large number of cases having regard to the facts and circumstances of the case, to permit the petitioners who have raised the crops to harvest the same by the petitioners not later than 31st December, 1991. In the instant case also following the same consistency I direct the Assistant Commissioner to permit the petitioner to harvest the standing crop not later than 31st of December, 1991. However, it is open to the Assistant Commissioner to consider the grievance of the petitioner with a view to extend time if harvest is not possible within that period prescribed. With the above observations the Writ Petition fails and it is dismissed.