

Malinaika Vs. Assistant Commissioner

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Court : Karnataka

Decided On : Sep-26-1991

Reported in : ILR1992KAR1931; 1992(4)KarLJ32

Judge : M. Ramakrishna, J.

Acts : Mysore Land Grant Rules - Rule 43(8); Mysore Land Revenue Code

Appeal No. : W.P. No. 14502 of 1991

Appellant : Malinaika

Respondent : Assistant Commissioner

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

Advocate for Pet/Ap. : D.S. Lingappa, Adv.

Disposition : Petition allowed

Judgement :

M. Ramakrishna, J.

1. In this Petition under Articles 226 and 227 of the Constitution of India the petitioner has called in question the correctness and the legality of the order passed by the Deputy Commissioner, Annexure 'C'. He has sought for quashing

the same on more than one ground. Before referring to the real question of law arising in this case it is better to refer to a few salient facts necessary to dispose of the Writ Petition. They are as follows :-

4 acres of land in Sy.No. 1336/6, situated in the village Kengalapura, Handanakere Hobli, Chikkanayakanahalli Taluk, Tumkur District, was granted by a competent authority in favour of Mallanaika, (the petitioner herein) in proceedings No. DEP.DCR. 61.51-52 dated 20th of June, 1952, under the erstwhile Mysore Land Grant Rules, carved out of Mysore Land Revenue Code, (hereinafter referred to as the Rules). The grant is subject to certain conditions including the condition incorporated in the grant that the grantee shall not alienate the granted land at any time to any person. The grantee was a person representing Scheduled Caste. It was free grant.

2. It is an admitted fact that the granted land came to be sold in favour of Hemlanaika (the 3rd respondent herein), by a Registered Sale Deed dated 26.5.1977, for valuable consideration. It is stated that ever since the sale of granted land in favour of the 3rd respondent he has been enjoying the land.

3. After coming into force of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as 'the Act'), an application was presented by Thimmanaika, son of the petitioner herein seeking for the relief under the Act, before the Assistant Commissioner, Tiptur Sub-Division, Tiptur. His case was that since the granted land came to be sold in favour of the 3rd respondent in contravention of the conditions of grant, Sections 4 and 5 of the Act would be attracted. Therefore, he has sought for a declaration declaring the transfer of granted land as null and void and to restore the granted land in his favour.

4. There is one factual position arising in the Petition which I have got to clarify. Even though the original grantee Mallanaika (the petitioner herein) had been very much present, it appears, on the advice made by the Revenue Authorities, his son Thimmanaika, presented an application seeking for the relief in his favour. However, during the course of the enquiry it was made clear that the original grantee Mallanaika had been alive and he would be entitled to the relief and not

his son Thimmanaika.

5. Before the Assistant Commissioner it was contended that the granted land came to be sold after the expiry of period of 15 years and that therefore question of applying the provision of the Act did not arise. However, the Assistant Commissioner held a detailed enquiry and passed an order as per Annexure 'A' declaring the sale of the granted land as null and void, as, according to him, the land was sold against the condition of the grant that the land shall not be alienated for ever and directing restoration of the land to the original grantee.

6. Aggrieved by this order, the 3rd respondent Hemalanaika, filed an appeal in RSS ES TPS/PTCL 4/ 88-89 before the Deputy Commissioner, Tumkur, under Section 5(A) of the Act. The learned Deputy Commissioner after hearing the learned Counsel on both sides allowed the appeal by his impugned order Annexure 'C' dated 25th of March, 1991, by which he reversed the order of the Assistant Commissioner taking a different view from the one expressed by the Assistant Commissioner on the question of interpretation of the Rule. In the operative portion of the order Annexure 'C' the learned Deputy Commissioner observed as follows:-

'On Verification of the record it is made out that as per M.R. extract the land was granted in favour of the respondent in Survey Number 133/6 of Kengalapura village to an extent of 4.00 acres under Depressed Class Rules vide number Dis.DCP.DCR.61/51-52 dated 20-6-1952 with the condition of non-alienation for ever vide MR.3/52-53 dated 18-2-1953. The land was alienated on 26-5-1977 through the registered sale deed vide No. 529. The period of alienation is 24 years 8 months. Even though the condition of non-alienation period is for ever, as per the decision of the Hon'ble High Court of Karnataka, the non-alienation is only 15 years. Taking into consideration of the High Court order in this case; the non-alienation is not attracted under Section 4 of the Act. Therefore the appeal is liable to be allowed.'

Thus, the learned Deputy Commissioner accepting the contention on behalf of the 3rd respondent appellant, while reversing the order of the Assistant Commissioner, held that the non-alienation Clause was for 15 years, in a case like

this as per the Decision of this Court. The learned Deputy Commissioner has not cited what is the Decision of this Court which he has followed. No particulars or facts or question of law declared by this Court have been referred to in the order of the Deputy Commissioner. In other words, the reasoning of the Deputy Commissioner is bald and cryptic. The learned Deputy Commissioner ought to have seen that no such law has been declared by this Court as has been referred to in his order extracted above. Even the learned Counsel appearing for the 3rd respondent has not been able to cite such a Decision in which the period of non-alienation was held to be 15 years where the Rule relating to grant of land provided a total ban.

7. The learned Counsel for respondent No. 3 argued that Rule 43(8) came to be amended by the Notification dated 4-8-1953 with retrospective effect, that therefore the alienation in question having taken place after 20 years, was valid and that though a contention to this effect was not taken before the Deputy Commissioner, this Court could consider it and grant necessary relief.

8. I do not see any force in the submission made by the learned Counsel. Sub-rule (8) of Rule 43 as amended by Notification No.R.7594-604-LR.266-53-2 dated 4-8-1953 reads:

'Sub-rule (8) - the grant of lands under Sub-rule (1) and (2) to persons belonging to Depressed classes for an upset price or reduced upset price and to poor persons not owning any land shall be subject to the condition that the land granted shall not be alienated for a period of twenty years from the date of the grant and the grantees shall also execute mutchalikas in the form prescribed by Government.'

9. It is a well established cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. (Please see KESHVAN v. STATE OF BOMBAY, : 1951 CriLJ680). Further, unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only. This principle is based upon the salutary statement of law 'nova constitutio futuris formam imponere debet non praeteritis.' In other words, a new law ought to regulate what is to follow, not the past, (Please see Osborn Concise Law

Dictionary, page 224), By the amendment dated 4-8-1953, it cannot be said that the Legislature had intention to affect existing rights. On the contrary, it has, by the amendment, relaxed the rigour of the condition to twenty years for the first time. The amendment does not either expressly or impliedly state that it is intended to have retrospective operation. Hence, it is only prospective and not retrospective. Therefore, we will have to consider this case, applying the unamended Rule 43(8) which prohibited the alienation for ever. Therefore, irrespective of duration, the alienation made in favour of respondent No. 3 against the statutory prohibition is bad in law. The Assistant Commissioner was right in declaring the alienation as null and void and the Deputy Commissioner was in error in reversing such an order, taking a different view,

10. Before parting with this case there is one more aspect arising in the Writ Petition which requires to be decided. Sri. D.S. Lingappa, learned Counsel for the petitioner, brought to my notice that by virtue of a Mahazar drawn on 15.7.1987, possession of the land of 4 acres has been taken over from the 3rd respondent and re-delivered to the petitioner. Accordingly from then onwards the petitioner has been in enjoyment of the land.

11. Contrary to this, Sri. Bhaskaraiah, learned Counsel for respondent No. 3, submits that, pursuant to the order of the Deputy Commissioner, the competent authority drew up a Mahazar on 30th of May, 1991, by which the possession of the land was re-delivered in favour of the 3rd respondent. Thus, according to him he, being in possession of the land, raised certain crops, therefore, he may be permitted to harvest the standing crop before any action is taken to evict him from the land. The petitioner however referred to the averments found in the Writ Petition at page 4 stating that he has raised groundnut crop, jowar and green gram, by investing money and labour. Thus, there is assertion against the assertion made by the two parties in relation to the standing crop.

12. I do not think, at this stage, the Court can come to a conclusion on this disputed question. However, in view of this order, the petitioner is legally entitled to possession, as required under Section 5 of the Act. As regards the question, who raised the crops, the Tahsildar shall hold an enquiry, after providing both parties

an opportunity of hearing, and make appropriate orders, within a period of one month from the date of receipt of this order.

13. Writ Petition is allowed and the impugned order of the Deputy Commissioner impugned herein at Annexure 'C' quashed.

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