

Ningegowda Vs. State

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Court : Karnataka

Decided On : Nov-06-1991

Reported in : ILR1992KAR2602; 1991(3)KarLJ170

Judge : M. Ramakrishna, J.

Acts : [Land Revenue Act, 1964](#) - Sections 36(2); ;Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Rules - Rule 3(5); ;Mysore Land Revenue (Amendment) Rules, 1960 - Rule 43G(4)

Appeal No. : W.P. No. 3936 of 1986

Appellant : Ningegowda

Respondent : State

Advocate for Def. : Thimme Gowda, HCGP for R-1 to R-3 and ;S.M. Narimath, Adv. for R-4

Advocate for Pet/Ap. : M. Dasappa, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

M. Ramakrishna, J.

1. This Writ Petition is directed against the orders, Annexure-A and B, made by the Assistant Commissioner and the Deputy Commissioner, respondents 3 and 2 herein respectively.

2. It is undisputed that two acres of land in Sy.No. 108 of Ankanahalli, Bellur Hobli, Nagamangala Taluk, Mandya District, was granted in favour of respondents Rangaiah by the competent authority by an order dated 12-6-1982 under the Karnataka Land Grant rules subject to certain conditions. Saguvali Chit was also issued to him on that day itself. It is again undisputed that out of the granted land, 1 acre was sold by the grantee in favour of the petitioner under a registered sale deed dated 12-7-1974 for a sum of Rs. 1,000/- and that since then he has been in possession and enjoyment of the said land.

3. After the coming into force of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (the Act for short), respondent-4 filed an application before the Assistant Commissioner for granting him the reliefs under Sections 4 and 5 of the Act. That application was allowed by the Assistant Commissioner by his order impugned herein at Annexure-A, annulling the alienation and directing restoration of the said land to the original grantee.

4. The petitioner did not file any Writ Petition as against the order made by the Assistant Commissioner. He slept over the matter till 3-1-1985 when he filed an appeal before the Deputy Commissioner as provided under Section 5A of the Act. The Deputy Commissioner dismissed the appeal on the ground of delay by his order dated 3-1 -1985 impugned at Annexure-B.

5. Sri Dasappa, however, urged two points. The petitioner had no proper opportunity to put forward his case before the Assistant Commissioner in that on service of notice, when the petitioner went to the Office, he was informed that there was no sitting and that he would be communicated the next date of hearing. But, without notice to him thereafter, the matter was disposed of behind his back. Therefore, the matter may be remitted for reconsideration after affording an opportunity to the petitioner of being heard. He nextly submitted that as the grant was subject to payment of Rs. 20/- Plus Rs. 20/-, it must be construed as an upset

price and not free of cost in which case the non-alienation was for a period of 10 years and not 15 years, in the present case, the alienation having taken place after 10 years, it cannot be invalidated under Section 4 of the Act.

6. The first contention relates to the manner of enquiry held by the Assistant Commissioner, Rule 3 of the Rules framed under the Act deals with the procedure to be followed by the Assistant Commissioner while holding an enquiry under Section 5 of the Act. Sub-rules (3) and (4) of Rule 3 of the Rules provides for issuance of a notice in Form-II to the person or persons in possession of the granted land to file objections and also fixing a date for hearing by the Assistant Commissioner. Sub-rule (5) of Rule 3 states:

'(5) Save as otherwise provided in these rules, the Assistant Commissioner shall for the purpose of an enquiry under Section 5 follow the procedure for a formal enquiry under Section 33 of the Karnataka [Land Revenue Act, 1964](#). Section 33 of the Karnataka [Land Revenue Act, 1964](#) deals with formal inquiry regarding recording evidence of the parties, passing orders etc. Section 35 thereof states that a formal or a summary enquiry under the said Act shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code and the Officer or any authority holding such enquiry shall be deemed to be a Civil Court, Section 36 deals with hearing and Decision in public and after notice. Sub-section (2) thereof reads;

'If any party to a case or proceeding, whether in a formal or summary enquiry does not appear on the date fixed for hearing, after due service of a notice or summons on him, the case or proceeding may be heard and determined in his absence, or may be dismissed for default, as the case may be.'

xx xx xx

7. Admittedly, the petitioner was served with notice of hearing by the Assistant Commissioner and accordingly he did appear before him; but returned as there was no sitting on the assumption that he would be informed the next date of hearing. But the aforesaid provision makes it clear that if a person fails to appear after due service of notice, the authority holding the enquiry can proceed with the

case in his absence. That provision does not contemplate another notice on the failure of the person concerned, to appear on the date of hearing. Therefore, in the instant case, the Assistant Commissioner rightly passed the order in the absence of the petitioner, I do not see any good reason to accede to the contention of Sri Dasappa. Hence his contention in this behalf fails and is rejected.

8. Coming to the second contention, I must say that it is also one without any force. Of course, the alienation in the present case is beyond 10 years; therefore the alienation must be declared valid provided condition in Sub-rule (4) of Rule 43-G of the Mysore Land Revenue (Amendment) Rules, 1960, which was prevalent as on the date of the grant here, is fulfilled. It reads:

'43-G. Grant of lands under the preceding rules shall be subject to the following conditions: (1) In the case of grant of lands to applicants belonging to the Scheduled Castes and Scheduled Tribes and to other applicants, who are unable to pay the occupancy price on account of poverty, the occupancy price may be waived upto rupees two hundred and the balance recovered in three annual instalments.

(2)

(3) xxx xxx xxx '

(4) Where the grant is made free of cost or when the grant is made at a price which is less than the full market value, the grant shall be subject to the condition that the land shall not be alienated for a period of fifteen years from the date of the grantee taking possession of the land.'

xx xx xx

Admittedly, in the present case, an amount of Rs. 20 + 20/- was imposed and collected at the time of grant. Based upon this sum, Sri Dasappa contended that the grant was not free of cost but on payment of upset price; therefore, the non-alienation period was 10 years and the alienation having taken place after 10 years, it was valid in law. I cannot accept this contention. Merely because an amount of Rs. 40/- has been recovered from the grantee, it cannot at all be

construed as the upset price imposed for grant of land. In BASAPPA v. SPECIAL DEPUTY COMMISSIONER. I had an occasion to consider similar question. However, in that case an amount of Rs. 50/- per acre was imposed at upset price, unlike the present case where only Rs. 40/- (Rs. 20 + 20), in all, was imposed and collected. Considering the question in detail as to what is 'upset price' and 'Market value', I held in Basappa's case that that amount of Rs. 50/- per acre imposed and collected cannot be construed as the upset price muchless equivalent to full market value. Holding so, I dismissed the Writ Petition in Basappa's case. The very principle of law applies to this case. Mere imposition of Rs. 40/- cannot be construed as the upset price muchless equivalent to full market value. Thus the second contention also fails.

9. In the result, this Petition fails and is dismissed. No costs.

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