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Court : Karnataka

Decided On : Jan-03-1995

Reported in : ILR1995KAR1597

Judge : Hari Nath Tilhari, J.

Acts : Karnataka Scheduled Castes and Scheduled Tribes Act, 1978 - Sections 4 and 5; Karnataka Land Grant Rules, 1969 - Rule 9(1); Karnataka Land Grant Act - Sections 9

Appeal No. : W.P. Nos. 35927 and 35928 of 1994

Appellant : Ramaiah

Respondent : State of Karnataka

Advocate for Def. : H.H. Kaladgi, HCGP

Advocate for Pet/Ap. : K.N. Subba Reddy and R.A. Devanand

Disposition : Petition dismissed

Judgement :

ORDER

Hari Nath Tilhari, J.

1. These Petitions filed under Article 226 of the Constitution have been filed by the second purchasers of land in dispute. That according to the petitioners case as pleaded in the Writ Petitions, respondents-4 to 9 were grantees of land in dispute. That the respondents-4 to 9 sold the aforesaid land to one Avalakondappa by registered Sale Deed. That the petitioners allege to have purchased the Land from said Avalakondappa the original purchaser of land from Respondents-4 to 9. According to the petitioners case Respondents-4 to 9 were grantees of land on payment of the upset price and they have sold the same land to one Avalakondappa vide registered sale deed. Thereafter two petitioners purchased the property in dispute in the proportion as mentioned in paragraph 2 of the Writ Petition.

2. The petitioners claim that after having purchased the land they planted coconut and fruit bearing trees and spent lot of money for raising certain other crops. According to the petitioners respondents 4 to 9 filed an application before the 3rd respondent namely Assistant Commissioner with the allegations to the effect that they belonged to Scheduled Caste Community and they have been grantees of the land, The land had been sold by them to the petitioners but the sale is in violation of the conditions of grant and as such they sought restoration of the possession of the land in their favour. This application was filed under Sections 4 and 5 of the Karnataka SC and ST (Prohibition of Transfer of Certain Lands) Act 1978. The petitioners case is that on notice being served on them, the petitioners put in their appearance before the Assistant Commissioner and their case has been to the effect that if the land has been granted to Respondents-4 to 9 for an upset price there was no condition prohibiting the alienation of the said land. The petitioners further averred that they have also brought to the notice of the Assistant Commissioner the fact of improvement which have been carried on by the petitioners in the said land. That vide order dated 23.11.1991 the Assistant Commissioner allowed the application of respondents-4 to 9. After having taken the view that the transaction of sale was violative of the condition which prohibits alienation of the land for a period of 15 years and as such the transaction of sale in favour of Sri Avalakondappa as well as in favour of the present petitioners was illegal or null and void.

3. Having felt aggrieved from the order of the Assistant Commissioner the petitioners filed an appeal under Section 5(a) of the Karnataka Act No. 2/79, challenging the order of the Assistant Commissioner dated 23.11.1991. By his order dated October 12, 1994 the Deputy Commissioner, Bangalore Rural District dismissed the petitioners appeal and affirmed the order of the Assistant Commissioner. After having taken the view that though Rule 9 provided for and imposed the non-alienation condition of 15 years in all cases of land grant but in spite of that condition the transfer has been made by the grantees and so the transfer has been illegal or null and void.

4. Having felt aggrieved from the Judgment and order dated October, 12 1994, whereby the Deputy Commissioner affirmed the order of the Assistant Commissioner dated 23.11.1991 (23.12.1991) case No. LND SC ST5/80-81, the petitioners have filed these Petitions under Article 226 of the Constitution of India. Notice has been accepted by learned Government Pleader on behalf of Respondents-1 to 3. I have heard learned Counsel for the petitioner at great length.

5. Sri Devanand, learned Counsel for the petitioners submitted before me that the order of the Assistant Commissioner as well as of the Deputy Commissioner suffers from jurisdictional error and error of law apparent on the face of the record, to the effect that inspite of the fact that the land was granted to Respondents-4 to 9 on full payment of upset price and as such there was no condition which may be said to prohibit the transfer of the said land by the grantee the respondents No. 2 and 3 held the sale deed to be illegal null and void under Section 4 of the Act. Learned Counsel for the petitioners submitted that in view of the fact that the respondents 4 to 9 were the grantees on payment of full upset price of the land in dispute, they had full right to transfer and there was no bar to the making of the alienation. Learned Counsel also referred to the Decision of the Single Judge of this Court in W.P.No. 27360/82 Somasettypurada Chikkanna Alias Swamy v. State of Karnataka and Ors. decided on 25th of January 1983, i.e., Annexure-H to the Writ Petition. Learned Counsel for the petitioner put a great reliance on the observations made in paragraph 5 of the Judgment, in support of his contention. He further submitted that in case there would have been a free grant or a grant

made for reduced upset price the condition not to alienate could be imposed but where there is full payment of upset price then, in that case, the grantee is entitled to make transfer and there is no prohibition for grantee to alienate the land. He contended as such there was no prohibition or any restriction on respondents 4 to 9 in the matter of making alienation of the land. The alienation made in favour of the predecessor-in-interest of the petitioners could not be said to be illegal or null and void and the alienation made in favour of the petitioners cannot be termed to be illegal or null and void and as such the authorities committed error of law apparently on the face of the record in allowing the applications of respondents-4 to 9 which has been moved under Section 5 of the Karnataka Act No. 2/79. [Karnataka S.C. ST (Prohibition of Transfer of Certain Lands) Act.] Learned Counsel submitted in this view of the matter the orders of the original as well as appellate authority deserves to be quashed. The contention of the petitioner was hotly contested by learned Government Pleader Sri H.H. Kaladagi, learned Government Pleader submitted as to whether there was a prohibition in respect of alienation or not whether the rights that have been conferred under the grant and whether those rights include the rights to transfer or alienate or were those rights subject to the condition of prohibition against transfer viz., the right to transfer such land in a question that has got to be determined on the basis of law that has been applicable on the date the grant was made in favour of the grantee, in other words if there was a prohibition on the right of the grantee to alienate. Learned Government Pleader further submitted that the Decision relied by the learned Counsel for the petitioner is not applicable to the fact of the present case. Learned Government Counsel submitted that in 1964 there might have been no prohibition but in the year 1970 when the grant has been made in favour of respondents-4 to 9 Rules framed under the Act namely the Karnataka Land Grant Rules framed under the Act namely the Karnataka Land Grant Rules of 1969 were in operation. Learned Government Pleader invited my attention to Rule 9 of the Karnataka Land Grant Rules 1969 and particularly to Sub-rule 1 thereof and on that basis learned Government Pleader contended that Rule has been in operation in 1970 and under this Rule the grant had been made subject to the condition that the grantee shall not alienate the land for a period of 15 years from the date of taking possession. Learned Government Counsel therefore submitted that in view of this

Rule and the law prevailing on the date the grant has been made in favour of Respondents-4 to 9 they could not alienate the land in favour of any person for the period of 15 years and as the transfer had been made within that period of 15 years it has been made without any right and so the original transfer or subsequent one are and have been illegal or null and void. Therefore according to the learned Government Pleader the authorities did not commit any error of law or of jurisdiction in passing the orders impugned,

6. I have applied my mind to the contentions of learned Counsel for the parties and have perused the record of the case. The admitted fact which appears from the Annexures is that the grants have been made in favour of Respondents 4 to 9 under Order dated 21.3.1970. It also appears that in July 1970 respondents-4 to 9 sold the land in favour of one Avalakondappa on July 2nd 1970. It appears that sale was made within, a period of four months. Avalakondappa thereafter sold the land in favour of the petitioners vide sale deeds dated 29.1.1973 and 18.10.1974. As regards the law applicable there can be no dispute with the observations made in the Decision given in Somasetty's case referred by the learned Counsel for the petitioners, which observations appear have been made after taking into consideration the Division Bench Decision of this Court in LAKSHMAMMA v. STATE OF KARNATAKA AND ORS WP No. 10674 of 1980 DD 10.1.1983 : 1983 (1) KLJ 417. In Lakshamma's case supra the Division Bench has held : 'that terms of grant should be examined with reference to the date on which grant certificate or Saguvali Chit has been issued to the grantee' and the law prevailing at that time i.e., the time of grant of Certificate in the area has to be taken into consideration. In this view of the matter and in view of the law laid down by Division Bench of this Court referred to above the law that would be applicable for the determination of the question whether there was a prohibition in grant in the matter of transfer, will be the law applicable on or in March 1970. Karnataka Land Grant Rules, 1969, have been in operation and the Rules have been notified on November 1969. Rule 9 Sub-rule (1) which is relevant for the purpose.

Rule 9 of Land Grant Rules reads as under:-

'Conditions of Grant:- (1) The grant of lands under these rules (for agricultural purposes) shall be subject to the following conditions namely:-

(i) the grantee shall not alienate the land for a period of fifteen years from the date of taking possession:

Provided that he may, after a period of five years, with the previous permission of, and subject to such conditions as may be specified by the Deputy Commissioner, alienate the whole or any portion of such land. But however, the Deputy Commissioner shall not grant such permission unless he is satisfied that the alienation is for the purpose of acquiring other land or for improving the remaining land and the grantee credits to Government an amount equal to fifty percent of the market value of such land as on the date of sanction of such alienation as determined by the Deputy Commissioner:

Provided that no person who has obtained permission to alienate land under the rule shall, notwithstanding the provisions of Rule 4 be eligible for grant of any Government Land;'

7. It may be mentioned here that there is no dispute with respect to these facts in between the parties. That according to the Grant Certificate the grantee had paid the full upset price or full market value of the land. There is no dispute between the parties with regard to full upset price having been paid and the Commissioner appears to have proceeded to consider the argument raised before him on the question that even if full upset price has been paid by the grantee whether the condition of non-alienation against alienation will be binding on the grantee.

8. Before this Court learned Counsel for the petitioner raised the same contention. Learned Counsel submitted earlier, that petitioners are the grantees of payment of full upset price. The restriction or prohibition against alienation was not applicable and as such the respondents acted illegally in passing the orders dated 23/11-12/91 and 12.10.1994. As, I have observed earlier and as held by this Court as well the law and the conditions applicable under law, will be those that were operative at the time and on the date the grant was made. As Rule 9 of Karnataka Land Grant Rules 1969 has been applicable, it has to be examined whether the

prohibition contained thereunder bar the original grantees from making the transfer of the land. Rule 91 Sub-rule 1 which has been quoted above, in my opinion does not, make any classification of the grantees as grantees on payment of full upset price or payment of part upset price. The Rule clearly says the grant will be subject to the condition mentioned in the Rule itself and then it provides that the grantees shall not alienate the land for a period of 15 years from the date of taking possession. If the contention raised on behalf of the learned Counsel for the petitioner is accepted then it will lead and compel the Court to trespass into the field of legislation by adding the word after the expression grantee who has taken the grant after payment of part of the upset price or it will leave this Court read provisions or expression to the effect that the grantee who has paid full upset price shall not be subject to this condition. It is trite principles of law of interpretation that ordinarily the Court should not enter into the field of legislation and should not read some expressions which are not there in the provision of the Act. or Rules nor add any word, or subtract any thing from the language used in the Section. The provision of law has got to be interpreted as it is particularly when the language is clear. In my opinion the language of Rule 9 Sub-rule 1 is very clear and in accordance with it the grantee whether is a grantee who has taken grant after payment of full upset price or part of the upset price, he has for the period mentioned in the Rule been prohibited from making transfer or alienation of the land granted to him. Where the Legislature or Rule framing authorities did intend to provide some relaxation from rigour of bar it has so provided as appears from perusal of the first Proviso to Rule 9(1).

9. According to the Proviso, after the expiry of the period of 5 years the grantee may with previous' permission of the Deputy Commissioner and subject to the condition as may be specified by the Deputy Commissioner alienate the whole or any portion of such, land which has been granted to him. Section further indicates the conditions and circumstances in which only and on the establishment of which only the Deputy Commissioner can grant the permission. A reading of Proviso firstly shows that ordinarily Commissioner shall not grant such permission unless and until the Commissioner is satisfied that the alienation is sought to be made for any of the purposes, indicated in the Proviso and that grantee deposits the same referred in Proviso. This being the position of law as emerges from reading of Rule

9 Sub-rule (1) in my opinion there is no force in the contention of the learned Counsel for the petitioner that simply because the grantees, that is, respondents 4 to 9 were grantees for full upset price, there was no bar or no condition prohibiting them from making alienation. Really Rule 9 did apply to the grantees in whose favour the grant was made on 21.3.1970 and as transfer has been made in July 17, 1970 by the respondents in favour of Avalakondappa from whom the petitioners purchased the land in dispute. The transfer made in favour of Avalakondappa by the grantees respondents No. 4 to 9 as well as transfer made by Avalakondappa in favour of the petitioners were illegal or null and void on account of alienations having been made for violation of the statutory prohibition created by Rule 9 of Karnataka Land Grant Rules, 1969.

No other contention has been made before me by learned Counsel for the petitioner.

Thus considered in my opinion the orders impugned do not suffer from further error of jurisdiction or error of law apparent on the face of the record. Having thus considered, I am of the opinion that the present Petition has got no force and is liable to be dismissed and as such it is hereby dismissed with costs.

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