

Smt. Gowramma Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Jul-30-1998

Reported in : 1998(5)KarLJ702

Judge : Mohamed Anwar, J.

Acts : Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 - Sections 4 and 5; Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Rules, 1979 - Rule 3

Appeal No. : Writ Petition No. 22310 of 1998

Appellant : Smt. Gowramma

Respondent : State of Karnataka and Others

Advocate for Def. : Sri Siddagangaiah, Government Pleader

Advocate for Pet/Ap. : Sri H.M. Somashekaraiah, Adv.

Judgement :

ORDER

1. Heard.

2. It is not in dispute that the land measuring S acres bearing Sy. No. 305 of Doddauarthi Village, Challakere Taluk of Chitradurga District had been granted under dharkhast to the husband of respondent 5, named Erappa since deceased

under relevant Land Grant Rules. It is also not in dispute that the grantee Erappa was a member belonging to the Scheduled Tribe. The grant was subject to non-alienation condition prohibiting transfer thereof for a period of 15 years. But, the granted land was sold by the grantee Erappa on 4-2-1971 to one Smt. Venkatamma. On 21-2-1990, the said land was jointly purchased by the petitioner and respondent 4, Smt. Kariyamma.

3. Thereafter, an application was made by respondent 5, wife of the deceased grantee before respondent 3-Assistant Commissioner seeking resumption of the said land under Section 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 ('the Act' for short). Then, the enquiry proceeding was initiated by the Assistant Commissioner against respondent 4-Smt. Kariyamma alone who is one of the joint purchasers of the said land. He then passed Annexure-D order dated 25-6-1993 directing eviction of respondent 4 from the land for restoration thereof to respondent 5. It is not in dispute that the petitioner who was the other joint purchaser of the said land along with respondent 4 was not a party before the Assistant Commissioner during his enquiry. After he acquired the knowledge of the letter's order at Annexure-D the same was challenged by her (petitioner) before respondent 2-Deputy Commissioner in appeal No. SCPTL(A) 11:95-96 on the ground that the Assistant Commissioner's order was illegal order since it had been passed behind his back. Petitioner's appeal before Deputy Commissioner also came to be dismissed by the latter's order Annexure-E dated 19-11-1997.

4. The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Rules, 1979 ('the Rules' for short) lay down the procedure for the Assistant Commissioner to follow while conducting an enquiry under Sections 4 and 5 of the Act. Sub-rules (3) and (4) of Rule 3 cast a duty on him to initially issue a notice in Form No. 2 to the person or persons in possession of the granted land calling upon him/them to file his/their objections to the application made by a person under Section 5(1) of the Act, in the manner stipulated in sub-rule (3); and thereafter he shall also issue the notice of hearing in the enquiry proceeding to the occupant/occupants of the land informing him/them the date of hearing fixed by him. Indisputably, in the instant case petitioner who was in possession of the land

as joint owner thereof along with Respondent 4 was not served with either of the said imperative notices by the Assistant Commissioner and that his impugned order Annexure-D was passed behind the petitioner's back to the detriment of his interest. Therefore, without more, the order of Assistant Commissioner at Annexure-D is vitiated by this patent illegality and is liable to be quashed. So also the Deputy Commissioner's order at Annexure-E confirming the Assistant Commissioner's order has to be quashed.

5. For the reasons aforesaid, the petition is allowed. The impugned orders at Annexure-D and E of the Assistant Commissioner and Deputy Commissioner are quashed. The matter is remitted to the Assistant Commissioner-respondent 3 for fresh enquiry and disposal in accordance with law after notice to petitioner and to all other interested persons and after giving them sufficient opportunity of hearing.

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