

Nirvanappa Vs. the Deputy Commissioner and ors.

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Court : Karnataka

Decided On : Oct-06-2004

Reported in : 2005(1)KarLJ234

Judge : D.V. Shylendra Kumar, J.

Acts : Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 - Sections 4, 4(2) and 5; Karnataka Land Revenue Code, 1888 - Rule 43G, 43G(1) and 43G(4); [Evidence Act, 1872](#) - Sections 101 to 104 and 114

Appeal No. : Writ Petition No. 26608 of 2004

Appellant : Nirvanappa

Respondent : The Deputy Commissioner and ors.

Advocate for Def. : M.G. Anjana Murthy, High Court Government Pleader for Respondents-1 and 2

Advocate for Pet/Ap. : H. Jayakar Shetty, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

D.V. Shylendra Kumar, J.

1. Writ petitioner is a person who claims to be a purchaser of a granted land to an extent of 3 acres in Survey No. 51/4 at Somapura Village, Mallipatna Hobli, Arakalgud Taluk, Hassan District. It is the case of the petitioner that he had purchased this land in terms of sale deed 8-3-1991 from one Sri Eraiah, father of the respondent 3 in this petition and the original grantee of this extent of land.
2. The land in question appears to have been granted to said Sri Eraiah in the year 1964 under the Dharkhast proceedings as a person belonging to Scheduled caste community and free of cost. The record indicates that the condition of non-alienation for a period of 15 years from the date of grant had been imposed.
3. The son of said Sri Eraiah had filed an application before the Assistant Commissioner, Sakleshpur Sub-Division, Sakleshpur under the provisions of Section 5 of the Karnataka Scheduled Caste and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, praying for invalidating the sale transaction and for restoration of the land. The Assistant Commissioner after issue of notice to the petitioner held an enquiry and accepted the application and recorded a finding that the land in question had been granted to the father of the applicant Sri Eraiah who was a person belonging to Adi Karnataka Community a Scheduled Caste, in the year 1964 with a condition that it should not be alienated for a period of 15 years and such a land had been sold on 25-1-1973 and as such this transaction and all other subsequent transactions under the sale deed are all void and in this view of the matter resumed the land free of all encumbrances and directed restoration of the same in favour of the applicant.
4. The petitioner being aggrieved by this order had preferred an appeal to the Deputy Commissioner. The Deputy Commissioner, on examination of the appellant's case, found that the sale transactions were being in violation of the terms of the grant particularly the sale of the year 1973; that the order passed by the Assistant Commissioner was one which did not call for interference and accordingly dismissed the appeal.

5. It is aggrieved by these orders, the present writ petition has been filed contending that the orders passed by the authorities below is not in accordance with law, that it is not in terms of the provisions of the Act, that it is contrary to the decisions rendered by this Court etc.

6. Sri Jayakar Shetty, learned Counsel appearing for the petitioner has urged mainly two contentions. It is the first submission of the learned Counsel that the petitioner had taken a specific stand of the land having been granted with an upset price to the grantee, the condition of 15 years could not operate; that no condition could have been imposed and in spite of such clear stand having been taken by the petitioner, the authorities below have not given a categorical finding on this aspect and have blindly accepted that the condition of 15 years as the prohibited period for alienation operated and have proceeded to pass orders on such premise which is not sustainable and requires to be set aside.

7. Second submission of Sri Jayakara Shetty is that the grantee had sold the land in the year 1973. The grantee himself had repurchased the land in the very year and it was the very grantee who had subsequently sold the land in favour of the purchaser in terms of sale deed dated 8-3-1991 and at the time when the sale deed was executed in favour of the petitioner in the year 1991, even the period of 15 years had already elapsed and therefore the authorities are clearly in error in holding that it was sale in violation of the terms of the grant.

8. In view of the assertion of the learned Counsel for the petitioner that the record did not reveal any material to indicate either that it was a grant as such or that it was a grant with 15 years non-alienation condition, learned Counsel for the Government had been directed to take notice and secure records.

9. Sri Anjanamurthy, learned Government Pleader who appears for respondents 1 and 2 has also placed the relevant records. It is pointed out from the records that extract of land and the Dharkhast proceedings indicate that there was a condition of 15 years non-alienation on the grant in respect of the land in question and accordingly learned Government Pleader submits that there is no merit in the submission on behalf of the petitioner and the writ petition deserves to be dismissed.

10. Sri Jayakara Shetty, learned Counsel for the petitioner, has nevertheless, contended that the extract of the land register or even the extract of the Dharkhast proceedings is not the same as the grant order; that conditions are imposed only under the grant order and therefore in the absence of the original grant order or even the records relating to the original grant before the authorities, any inference drawn by the authorities to conclude that the sale transactions are voided for being in violation of the terms of the contract is only a surmise and not based on material on record and therefore the orders are not sustainable.

11. I have perused the record in the light of the submission made by learned Counsel for the petitioner. It is no doubt true that neither the grant order nor the records relating to the original grant have been referred to in the orders passed by the Authorities. It is also not clear as to whether the original records relating to the grant was before the authorities or not. But, the Authorities had an occasion to look into copies of the orders produced by the applicant and the Dharkhast records. It is based on the Dharkhast records that the authorities inferred that there is a condition of 15 years non-alienation clause attached to the grant. Submission of Sri Jayakara Shetty, learned Counsel for the petitioner proceeds on the premise that if the grant in question was on full market value, no condition could have been imposed in respect of that land; that imposition of any condition in respect of a grant which is for a market value is a condition which cannot operate and as this is the view taken by the Full Bench of this Court in B. Mohammad v. Deputy Commissioner, Dakshina Kannada District, Mangalore and Ors., 1998(6) Kar. L.J. 30, (FB) : ILR 1999 Kar. 634 (FB) and on complying the ratio laid down in this decision, the orders under challenge are required to be quashed.

12. It is no doubt true that this Court had taken the view when a grant is for a price which represents the full market value of the granted land which amounts to absolute sale of the land in such an event no conditions can be imposed. This proceeds on the premise that in fact the land is granted for a price which represents the market value of the land.

13. Under the Land Grant Code and particularly in dharkhast proceedings, it is rarely that a land is granted for full market price. The very grant by the

Government is in favour of persons who are landless, who are socially backward, economically weak and to rehabilitate and provide some sustenance to them, such agricultural lands of the Government are granted in favour of such persons. Examination of the provisions of the Karnataka Land Revenue Code, 1888, indicates that any number of concessions are provided to such class of persons and conditions are imposed to ensure that the grant is sustained in favour of the grantee lest such grantees lose the land by frittering away the grant by other inducements. The conditions are imposed to dissuade and to deter other persons from eyeing such granted land by obtaining sale deeds in their favour at no cost or nominal cost and deprive the benefit to the grantees whether by purchasing the land by paying proper consideration or by inducing such persons who ultimately lose the land. In such a scenario, when the petitioner sets up a case that the land in question had been granted on receipt of full market value, the onus lies on the petitioner not only to take a specific stand through a proper plea but also to make good that plea by providing cogent material to support the plea. It should be positively proved by the persons who take up such a plea. It is the petitioner who has taken this stand and the burden is upon the petitioner to prove the same. However, submission of Sri Jayakara Shetty, learned Counsel for the petitioner is that proof for such a thing is only in the records maintained by the revenue authorities and if those are not forthcoming, no blame can be laid on the petitioner, that it should be taken that the authorities could not have given a finding without verifying the original records and therefore it should be taken that the absence of a finding given by the authorities in the context of such a plea or stand, is sufficient to invalidate the orders.

14. I am unable to accept the submission made by learned Counsel for the petitioner. In the first instance, it is rather doubtful whether such a plea has been taken at all before the authorities below. Even assuming such a plea it taken by the petitioner, it is for the petitioner to make good that plea by cogent evidence. It is only when the petitioner has made good the plea and proved that the grant in question was a grant for a price which represented the full market value, then only can it be contended that the condition could not be imposed and reading a condition into the grant and based on such condition invalidating such a sale transaction is bad in law. If the plea is not made good, the argument for

invalidating the order on such premise does not follow. The plea should be specific as to what was the price that had been collected from the grantee; as to whether it represented the full market value of the land granted, etc. In the absence of a full and precise plea and supporting evidence, the argument advanced on behalf of the petitioner on this ground fails.

15. For yet another reason, I am unable to accept the argument i.e., when there is no dispute that the land in question had been granted in favour of a person belonging to Scheduled caste, the very provisions namely, Rule 43-G which governs such grants indicate that when such a grant is in favour of a person belonging to Scheduled caste, the first Rs. 200/- of upset price even when one is fixed is waived and in respect of the balance of the upset price such a person belonging to the Scheduled caste is allowed installment facility to pay the balance in three equal installments. If this is the legal position, it is inevitable that in respect of grants made in favour of a Scheduled caste person, whether it is a free grant or one after fixing an upset price, the amount collected from the person is never the market price of the land granted in favour of such a person. It is always at a concession of 100% of the upset price being waived if the upset price is less than or equal to Rs. 200/- and thereafter on installment facility. Therefore, the land granted in favour of the Scheduled caste person in terms of Rule 43-G(1) of the Rules under Karnataka Land Revenue Code, 1888 which reads as under:

'43.G. Grant of lands under the proceeding 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 installments'.

is always a concessional grant attracting 15 years non-alienation Clause under Sub-rule (4) of Rule 43-G of the Rules.

16. It is the further stand of Sri Jayakara Shetty, learned Counsel for the petitioner that assuming period of 15 years non-alienation condition operated, even then the second sale by the grantee in the year 1991 is not hit by violation of any such

condition and as such provisions of the Act are not attracted as an alternative submission.

17. I am unable to accept this submission either. In the first instance, though it is sought to be contended that the second sale is of the year 1991, what one has to examine is the transaction which is the first in the series and as to whether the first transaction is in violation of any of the terms of the grant, it is not in dispute that the first sale transaction was in the year 1973 i.e., within about 9 years of the date of the grant. It definitely is a transaction which is in violation of the terms of the grant condition being 15 years non-alienation. Therefore, the argument that reckoned from the date of the second sale i.e., from 8-3-1991, there is no violation of the condition of the grant cannot be accepted.

18. The argument also fails for yet another reason namely that even if it is the transaction of the year 1991, that is being subsequent to the provisions of the Act having come into force until and unless the transaction of this nature, is preceded by a prior permission of the Government, it is hit by the provisions of Section 4(2) of the Act. In any view of the matter, the transaction in question is not saved. Neither the transactions of the year 1973 nor the transaction of the year 1991 can be saved from the teeth of the provisions of the Act. If these transactions are voided, the only course that was open to the authorities was to resume the land and restore it to the legal heir of the original grantee. That is precisely what the authorities have done.

19. In the circumstances, there is no scope for interference in exercise of writ jurisdiction under Article 227 of the Constitution of India.

20. There is no merit in this petition. Dismissed.