

Manche Gowda Vs. State of Karnataka

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Court : Karnataka

Decided On : Jul-30-1991

Reported in : ILR1991KAR3830; 1992(1)KarLJ323

Judge : M. Ramakrishna, J.

Acts : Karnataka Land Grant Rules, 1960 - Rule 43G and 43J

Appeal No. : W.P. No. 24131 of 1990

Appellant : Manche Gowda

Respondent : State of Karnataka

Advocate for Def. : M. Siddagangaiah, HCGP for R-1 to R-3 and ;S. Siddaiah, Adv. for R-4

Advocate for Pet/Ap. : T.S. Ramachandra, Adv.

Disposition : Petition allowed

Judgement :

ORDER

M. Ramakrishna, J.

1. The question that arises for consideration in this petition is as follows:

'Whether the authority under the Land Grant Rules is competent to confer occupancy rights on the lessee before the expiry of the period of lease and if so, whether Rule 43-J is attracted?'

To appreciate this question of law, it is necessary to refer to certain salient features of the case.

2. It is undisputed that one acre of land in Sy. No. 95 of Heggur village, T. Narasipura Taluk, Mysore District, which was a Government land, was leased in favour of Nanjundaiah - the fourth respondent herein, under proceedings No. LCR 8/59-60 dated 3-11-1959 subject to certain conditions. A copy of the lease has been produced at Annexure-A. The lease was for a period of five years commencing from June, 1960. Although the sentence relating to period of lease is missing in Annexure-A, in the Government records produced by Sri Siddagangaiah, learned High Court Government Pleader, there is a specific word indicating that the period of lease was for five years. Before the expiry of the said period, the granting authority confirmed occupancy right in favour of fourth respondent by the saguvali chit (Annexure-B) dated 28-12-1961. In this saguvali chit (certificate of grant) a condition is imposed in para-7 saying that the grantee shall not alienate the granted land for a period of fifteen years.

3. However, the grantee (Respondent-4) sold the land in favour of the petitioner before the expiry of the period of 15 years. There is no doubt about that. The Assistant Commissioner having held an enquiry passed the impugned order (Annexure-C) by which he held that since the granted land came to be sold in contravention of the condition of the grant, Sections 4 and 5 of the Karnataka Schedule Caste and Scheduled Tribes (Prohibition Of Transfer Of Certain Lands) Act, 1978 (hereinafter referred to as 'the Act') were attracted. Accordingly, he declared that the alienation of 1 acre of granted land was void. Besides, he directed restoration of the land in favour of the fourth respondent. Against this order, the matter was taken up in appeal before the Deputy Commissioner who dismissed the appeal by his order, Annexure-D. Hence, this Writ Petition under Articles 226 and 227 of the Constitution.

4. The main contention urged by Sri Ramachandra, learned Counsel for the petitioner is that both the Assistant Commissioner and the Deputy Commissioner committed an error in not taking into consideration Rule 43(J) of the Karnataka Land Grant Rules, 1960 (hereinafter referred to as 'the Rules'), which clearly provides for grant of land in favour of the lessee, if the conditions of the lease are complied with. In the instant case, the authorities having been satisfied with the compliance with the lease, granted land. That being so, the Rule that can be attracted is 43(J) and not 43(G). If a land is granted under Rule 43(J), no condition of non-alienation can be imposed, as held by this Court in SHIVANNA v. STATE OF KARNATAKA AND ORS., 1989(1) KLJ 294 and another Ruling of Division Bench of this Court in SMT. SIDDAMMA v. CHIKKEGOWDA AND ORS., 1991 (1) KLJ 210.

5. Sri Siddaiah, learned Counsel for the fourth respondent however argued that the lease was for a period of five years from June, 1960; that it expired only in June 1965, whereas, the authorities, without awaiting completion of the period of lease, confirmed it by way of grant within a period of two years from the date of lease and that therefore, it is not possible to say whether the grant was made after due satisfaction that the lessee has complied with the conditions of the lease. That being so, Rule 43(G) is attracted and not Rule 43(J). The authorities were right in granting the land under Rule 43(G), subject to a condition regarding non-alienation.

6. In order to appreciate the rival contentions urged by learned Counsel on both sides, it is necessary to refer to 43(J) which reads:

'Grant of land to persons to whom lands have been leased temporarily- Notwithstanding anything contained in the preceding Rules of this Chapter, in the case of agricultural land leased by Competent Authority to any person for purposes of cultivation at any time before the commencement of the Mysore Land Revenue (Amendment), Rules, 1960, if such land is available for disposal and if the conditions of the lease have been complied with, the land may be granted to the lessee.'

Having regard to non-obstinate clause found in the beginning of the Rule, I had an occasion to construe the said Rule in Shivanna's case holding that it is not possible to gather any intendment of the State Government to impose a condition while invoking Rule 43(J) in a case where the grantee was enjoying the lease hold rights over the Government land before conferment of occupancy right. I have also held that in such a case Rule 43(G) cannot be attracted. Brother Balakrishna, J., had an occasion to take a similar view in CHIKKE GOWDA AND ANR. v. STATE OF KARNATAKA AND ORS., W.P. Nos.6737 & 6738 of 1988 DD 26-6-1 989

7. Indeed my view in Shivanna's case and that of Balakrishna, J., in Chikke Gowda's case came to be considered and approved by Division Bench of this Court in SMT. SIDDAMMA v. CHIKKEGOWDA AND ORS., 1991(1) KLJ 210

8. No doubt, the question as to whether the authority under the Land Grant Rules can confer occupancy right before the expiry of the lease period of 5 years has not crept in that Judgment. However, having regard to the language employed in Rule 43(J) extracted above, I am of the opinion that the fixation of the period while leasing the land was only to enable the lessee to cultivate it personally for his benefit. That does not mean that the authority is prevented from conferring occupancy right on the lessee before the expiry of the period of lease. It is open to the authorities to confirm the lease by way of grant, even before the expiry of the lease period provided they are satisfied about the compliance of the condition of the lease. There is no Rule prohibiting the Competent Authority from granting occupancy before the expiry of the lease period of five years, in which case Rule 43(J) is applied and not Rule 43(G). Viewed from these circumstances, I am of the opinion that it is not possible to accede to the submissions made by Sri Siddaiah, that in a case like this, Rule 43(G) is applicable and not Rule 43(J). Considering all these aspects and following the law laid down in Shivanna's case hold that, where there is confirmation of occupancy right pursuant to the enjoyment of the lease hold right, Rule 43(J) attracts and not Rule 43(G). In that view, the granting authority was not right in imposing a condition not to alienate the land for a period of 15 years from the date of grant in the Saguvali Chit. Based upon the non-alienation clause, the authorities below were not right in annulling the alienation in question.

In the result, the Writ Petition is allowed. The impugned orders Annexures C and D are quashed. No costs.

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