

Kolla Bovi Vs. Thimma Bovi

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Court : Karnataka

Decided On : Sep-05-1991

Reported in : ILR1991KAR3834; 1991(3)KarLJ502

Judge : M. Ramakrishna, J.

Acts : Karnataka Land Grant Rules, 1960 - Rule 43G and 43J; Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Alienation of Certain Lands) Act, 1978 - Sections 4

Appeal No. : W.P. No. 4698 of 1991

Appellant : Kolla Bovi

Respondent : Thimma Bovi

Advocate for Def. : M. Siddagangaiah, HCGP for R-2 and R-3

Advocate for Pet/Ap. : B.K. Manjunath, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

M. Ramakrishna, J.

1. The petitioners have filed this Writ Petition challenging the legality and correctness of the orders, Annexure-D and E, of the Assistant Commissioner and the Deputy Commissioner, respondent-2 and 3 herein respectively. They have also sought to quash them for the reasons set out in the petition.

2. Brief facts of the case are as follows:-

Five acres of land in Sy. No. 16 (gomal land) situated in Annehal village, Chitradurga Taluk, was leased in favour of Thimmabovi, respondent-1 herein, by the Tahsildar under the lease deed, Annexure-A, for a period of five years commencing from 1948-49 subject to certain conditions. It is needless to say that this lease was made under the Karnataka Land Grant Rules made under the Mysore Land Revenue Code then prevailing.

It is the case of the petitioners that subsequently respondent-1 obtained an order of confirmation as per Annexure-B confirming the lease made in his favour. That order was made on the recommendation of the Assistant Commissioner that the lease made in favour of respondent-1 and others under the Grow More Food Scheme may be confirmed.

3. It is not in dispute that out of five acres of the granted land, three acres was sold in favour of Kolla Bovi, husband of petitioner-1 Renukamma, under a registered sale deed dated 9-12-1959 and the remaining two acres was also sold to one Durgabovi under a registered sale deed of even date. It is seen from the order of the Assistant Commissioner at Annexure-D that Durgabovi sold the two acres of land purchased by him from the lessee Thimmabovi in favour of Kolla Bovi. Thus, Kolla Bovi was in possession of the entire five acres of land right from the dates of sale without interruption.

4. 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), Thimmabovi approached the Assistant Commissioner for granting him the reliefs under the Act on the ground that the land leased to him was sold against the condition therein. The Assistant Commissioner notified both parties, adjourned the case from time to time during the course of enquiry, heard the learned Counsel

appearing for the parties, recorded the statement of the parties and ultimately passed an order as per Annexure-D declaring the alienations made in favour of Kollabovi and Durgabovi as null and void on the ground that they were made in contravention of the condition of the grant that the land shall not be alienated for a period of 10 years and directing restoration of the land in favour of the grantee.

5. As against the said order, an appeal was preferred before the Deputy Commissioner who dismissed the appeal affirming the view taken by the Assistant Commissioner. Hence this petition.

6. Sri Manjunath, learned Counsel for the petitioners, took me through the impugned orders and the documentary evidence produced and firstly urged that though the Deputy Commissioner observed in the course of his order, Annexure-E, that the confirmation of leasehold rights of respondent-1 was cancelled owing to his playing fraud by impersonation, no such order was found; that hence the order of confirmation dated 28-1-1954 remained intact and that that being so, the order of confirmation must be construed to be one under Rule 43-J and not under Rule 43-G as held by this Court in SIDDAMMA v. CHIKKE GOWDA, 1991(1) KLJ 210 in which event the condition imposed in the instant case under the grant was bad in law and consequently the impugned orders were liable to be quashed.

7. It is true that if confirmation of lease hold right by way of grant is made in favour of a person in possession of the land on the date of confirmation on the strength of the lease, then the authorities cannot impose any condition of non-alienation, as, in such case, Rule 43-J is attracted and not Rule 43-G as held by this Court. In other words, the condition precedent to attract Rule 43-J is that the lessee must be in possession of the land by virtue of the lease to be confirmed. But, in the instant case, the facts are different.

8. Thimmabovi, respondent-1 was at first granted the land on lease for five years as per Annexure-A. Subsequently, after the expiry of the period of lease, the Deputy Commissioner having satisfied himself about the compliance of the conditions of the lease, confirmed it by way of grant as found in Annexure-B dated 28-1-1954. However, he cancelled it by his order, Annexure-C dated 12-12-1956. He took an opportunity to consider this aspect of the matter in his order in Appeal

No. SCPTL (A) 17/89-90 dated 11-2-1991 impugned herein at Annexure-E wherein at page-3 he has observed as follows:-

'It is quite interesting to note from the records that the 5.00 acres land was originally granted to Thimma Bovi s/o Govinda Bovi on 28-1-1951 and Saguvali Chit was issued. Subsequently on certain complaints of impersonation and Saguvali Chit was being obtained on fraudulent means the Deputy Commissioner in his order dated 12-12-1956 has directed the grant to be cancelled and restore the land to the Government he has also directed the Sub-Divisional Officer (Assistant Commissioner) to conduct enquiry into the matter and to take suitable disciplinary action against the village Officers. The records further discloses that the Shanbogue and Patel of the village were fined Rs. 3/- and 2/- respectively for having attested the wrong thumb impression of Thimma Bovi. One interesting item is there are no further orders of cancellation of grant in the records, instead there is an application dated 31-7-1957 from Thimma Bovi (page 107 of DRR/58-59 of Taluk Office file) that he has prayed for issue of permanent Saguvali Chit and to exempt him from pay Rs. 20/-. There is also a receipt for Rs. 30-47 paid by Thimma Bovi on 13-5-1958. This goes to prove that inspite of the order of the Deputy Commissioner dated 12-12-1956 the grant was not cancelled but he continued to be in possession of the land in contrary to the allegation of the appellant. This proves beyond reasonable doubt that the land is a granted land.....'

9. For the reasons aforesaid, the grant made in favour of Thimmabovi on 28-1-1954 was cancelled by an order dated 12-12-1956. Consequently, the land vested in the Government free from encumbrances being available for disposal in accordance with law. However, for the reasons best known to the granting authority, on the very day itself, the land was again granted to him (respondent-1 Thimmabovi) under Order No. AC.2892 of 1956-57 as could be seen from the order of the Assistant Commissioner at Annexure-D. It is a fresh grant having nothing to do with the leasehold right held by respondent-1 under Annexure-A. That being so, naturally the grant must be made under Rule 43-G subject to the condition contained therein, and not under 43-J as contended. The authorities below rightly did so with a condition not to alienate the land for a period of ten years. However, violating the said condition, respondent-1 sold the land with in a

period of three years from the date of grant in favour of Kollabovi and Durgabovi. They are null and void under Section 4 of the Act. The authorities below rightly declared so and also directed restoration of the land to the original grantee. I do not see any good ground to interfere with the said view.

10. Assuming for the sake of argument that the order made by the Deputy Commissioner on 12-12-1956 is the order confirming the lease made in favour of respondent-1 Thimmabovi on 23-7-1948, yet the petitioner has no case because as on the date of confirmation, Rule 43-J was not on the statute book and it came to be introduced in the Karnataka Land Grant (Amendment) Rules, 1960 by notification No. RD 4 LAD 1960 dated 10-5-1960.

11. Before parting with this case, Sri Manjunath submits that, after the death of the alinee Kollabovi, his legal representatives viz., the present petitioners have been in possession and enjoyment of the land; that this year, they have raised certain crops on the land which will be ready for harvest by the end of this year and that therefore the petitioners may be permitted to harvest the crops standing on the land before any action is taken to evict therefrom. I find some force in this contention.

12. In the result, I make the following:

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