

Krishnappa Vs. State

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Court : Karnataka

Decided On : Sep-16-1991

Reported in : ILR1991KAR3843; 1992(1)KarLJ358

Judge : M. Ramakrishna, J.

Acts : Karnataka Land Grant Rules, 1960 - Rule 43J; Land Grant Rules, 1956 - Rule 43A

Appeal No. : W.P. No. 3464 of 1991

Appellant : Krishnappa

Respondent : State

Advocate for Def. : M. Siddagangaiah, HCGP for R-1 to R-3

Advocate for Pet/Ap. : G. Jayashree, Adv. for ;T.N. Raghupathy, Adv.

Disposition : Petition allowed

Judgement :

ORDER

M. Ramakrishna, J.

1. Narasimhappa, father of the petitioner, was leased one acre of land in Sy. No. 29 of Mallandapalli, Ragidahalli, Bangarpet Taluk, Kolar District by the Competent

Authority in proceedings No. Spl. DAR.43/42-43 dated 27-8-1944 under the Grow More Food Scheme, to begin with. Under the said proceedings, the leasehold rights were conferred upon the grantee under the scheme so as to enable him to cultivate the land and enjoy the leasehold rights on the Government land. Subsequently, on the compliance with the condition of the lease, the Competent Authority by its order dated 31 -7-1956 confirmed the lease under the Land Grant Rules. Accordingly a saguvali chit was also issued in his favour subject to certain conditions. One of the conditions was that the land shall not be alienated for a period of 15 years.

2. It is undisputed that despite such a condition, the land was sold in favour of the fourth respondent by a registered sale deed dated 30-8-1956 for valuable consideration. ever since then, respondent-4 has been in possession and enjoyment of the said land.

3. 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), the petitioner filed an application before the Assistant Commissioner for restoration of the land in his favour on the ground that it was sold in favour of respondent-4 in contravention of the condition of the Grant

4. The Assistant Commissioner, respondent-2 herein, notified both parties, held an enquiry and passed an order as per Annexure-B holding that the land was granted in favour of the father of the petitioner with a non-alienation clause; that against the said condition the land was sold and that therefore the sale was null and void under Section 4 of the Act. He further directed restoration of the land in favour of the petitioner as per Section 5 of the Act

5. Aggrieved by the said order, respondent-4 filed an appeal before the Deputy Commissioner under Section 5A of the Act. The Deputy Commissioner having heard learned Counsel on both sides allowed the appeal on the ground that the grant attracted Rule 43-J in which event no condition could be imposed and that therefore the sale was valid.

6. Now the question for consideration in this appeal is whether the view taken by the Deputy Commissioner is correct.

7. In support of the Writ Petition, learned Counsel for the petitioner produced a certified copy of the order made by this Court in W.Ps.6737 and 6738 of 1989. The facts arising in those cases are different from the facts of this case. In those cases, the confirmation of lease was made by the Deputy Commissioner on 24-3-1961 though the land was leased in the year 1943. Based upon the facts obtained in those cases, Balakrishna, J., as he then was, held that the grant attracted Rule 43-J in which case no condition could be imposed and not Rule 43-G. Indeed this Judgment was subject matter of appeal in SIDDAMMA v. CHIKKEGOWDA, 1991(1) KLJ 210. The Division Bench referring to the view taken by brother Balakrishna, J., and also the view taken by me in SHIVANNA v. STATE OF KARNATAKA, 1989(1) KLJ 294 approved the view in both the cases. Therefore, the question is whether the view taken in Siddamma's case, 1991(1) KLJ 210 could be applied to this case. The answer is very simple. In Siddamma's case, 1991(1) KLJ 210 after confirmation of lease, saguvali chit was issued on 24-3-1961 when Rule 43-J was in force whereas in the instant case saguvali chit was issued on 31-7-1956 before coming into force of Rule 43-J which came into force with effect from 10-5-1960. Therefore question of attracting Rule 43-J in the instant case would not arise..This is an important distinguishing point different from the facts in Siddamma's case, 1991(1) KLJ 210.

8. The learned Deputy Commissioner failed to apply his mind to these salient features arising in this case. In other words, the Deputy Commissioner ought to have seen that as on 31-7-1956 when saguvali chit was issued in favour of the father of the petitioner, Rule 43-J was not on the statute book and that therefore question of attracting Rule 43-J would not arise.

9. Admittedly, in the instant case, the lease was made and thereafter confirmed under Rule 43A of the Land Grant Rules, 1966. It reads:

'43A. Grant of lands to scheduled castes in certain cases -(1) Where any land has been leased under the Grow More Food Scheme to persons belonging to the scheduled castes and the scheduled tribes, who are poor and the lessee is under

the scheme entitled to confirmation of the land on payment of the upset price, the said land may, if an application is made by the lessee in accordance with Sub-rule (2), be granted to him by the Deputy Commissioner subject to provisions of Sub-rule (3) waiving two-hundred rupees out of the upset price, the balance being payable in annual instalments not exceeding three.

(2) A lessee referred to in Sub-rule (1) may apply to the Deputy Commissioner requesting that the land leased to him may be granted to him and agreeing to surrender the lease and to pay the amount payable under Sub-rule (1) in the manner indicated therein and to hold the land subject to the conditions specified in Sub-rule (3).

(3) (a) Every grant of land under Sub-rule (1) shall be subject to the conditions:-

(i) where the grant is made free of cost, that the land granted shall not be alienated for a period of fifteen years from the date of the grant; or

(ii) where the grant is made for an upset price, that the land granted shall not be alienated for a period of ten years from the date of the grant;xxx xxx xxx

10. In the instant case, the land has been sold within a period of one month from the date of issue of saguvali chit. Therefore, it makes no difference whether it is free grant or on upset price. The sale is in contravention of the condition of the grant It has to be declared as null and void. The learned Assistant Commissioner has rightly done so. The Deputy Commissioner was not correct in reversing the said order.

11. In the result, I make the following:

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