

**Sampathkumar Vs. Tahsildar**

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**Court :** Karnataka

**Decided On :** Jul-12-1991

**Reported in :** ILR1991KAR4030; 1991(3)KarLJ604

**Judge :** M. Ramakrishna, J.

**Acts :** Karnataka Village Offices Abolition Act, 1961 - Sections 3, 5, 5(3), 6, 7 and 7A; Karnataka Village Offices Abolition (Amendment) Act - 1978

**Appeal No. :** W.P. No. 13650 of 1991

**Appellant :** Sampathkumar

**Respondent :** Tahsildar

**Advocate for Pet/Ap. :** H.P. Mudlappa, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**M. Ramakrishna, J.**

1. It is not in dispute that two survey numbers viz., Sy. No. 23 of Bidalur village, Thyamagondlu Hobli, Nelamangala Taluk, Bangalore District measuring 2-10 guntas and Sy. No. 39 of Kodihalli village, Thyamagondlu Hobli, Nelamangala

Taluk, Bangalore District measuring 30 guntas are endowed upon the village office Talari of these two villages. Accordingly, respondents 2 and 3 being the holders of the village office at the relevant point of time, were enjoying these lands by discharging their duties as such.

2. Out of the two survey numbers referred to above, in Sy. No. 23, 0-38 guntas came to be sold in favour of one Subhadramma as far back as in the year 1967. It appears that it came to be sold with the permission of the Competent Authority. Therefore, in this Petition, we are not concerned with the said survey number.

3. Out of the land in Sy. No. 39, 30 guntas of wet land came to be sold by respondents 2 and 3 in favour of the petitioner -Sampathkumar under a registered Sale Deed dated 23-2-1972 and a copy of the Sale Deed is at Annexure-A.

4. After the coming into force of the Karnataka Village Offices Abolition Act, 1961 (hereinafter referred to as the 'Act'), action was taken by the Competent Authority seeking eviction of the petitioner from the land in question. Aggrieved by that action, the petitioner along with Subhadramma, another purchaser, approached this Court in W.P. Nos. 12049 and 12050 of 1983 challenging the correctness of that action by Tahsildar. This Court by an order dated 19th September, 1985 allowed W.P. 12049/1983 with the following observations:-

'i) Rule is made absolute.

ii) The Writ Petition is allowed.

iii) Annexure-D dated 18-1-1983 is quashed.

iv) The petitioner is directed to pay 15 times the land assessment within three months from today and get his sale regularised.'

W.P. No. 12050/1983 came to be dismissed with the following observation:

'The dismissal of this Writ Petition will not come in the way of vendor seeking or pursuing regrat proceedings.'

Thus, those Writ Petitions came to be disposed of in the above manner.

5. Pursuant to the said order, the Tahsildar, Nelamangala - first respondent herein, took the matter on his file once again and, having held an enquiry as required by law, providing opportunity to both parties, passed the impugned order Annexure-C, on 30-8-1958 by which he regranted nine items of lands in Sy. No. 39 of Kodihalli village in favour of the holders of the village office under Sections 5 and 6 of the Act While doing so, he followed the provisions of the law inasmuch as he has imposed the condition that the grantee shall not alienate the granted land for a period of 15 years from the date of grant. In the operative portion of the order, he further directed as follows:-

Aggrieved by this order of the Tahsildar, the matter was taken in appeal before the District Judge, Bangalore. The learned District Judge by his order dated 23rd February, 1991 at Annexure-E dismissed the appeal. Hence, this petition.

6. Two contentions have been urged by Sri Mudlappa, learned Counsel for the petitioner in support of the Writ Petition:

i) The Tahsildar - the Competent Authority as well as the learned District Judge failed to comply with the direction given by this Court in W.P. No. 12049/1983 referred to above, inasmuch as the contention is that when the petitioner was entitled for grant of the land sold in his favour pursuant to the direction of this Court, the Authorities below ought to have applied their mind to comply with the direction given by this Court. On the other hand, they have rejected the relief sought for by the petitioner.

ii) Having regard to the law laid down by this Court in LAKSHMANA GOUDA v. STATE OF KARNATAKA, ILR (Kar) 1980(2) 892, 1981(1) KLJ 1 the Competent Authority as well as the learned District Judge failed to apply the ruling in that case.

7. I carefully went through the observations made by my brother Murlidher Rao, J., while disposing of W.P. No. 12049/1983 on 19th September, 1985. It is true that petitioner Subhadramma was directed to pay 15 times the land assessment within three months from the date of the disposal and get the sale regularised. In this context, the learned Counsel for the petitioner submits that the Tahsildar ought to

have complied with this direction. But, he has not done so while passing the impugned order Annexure-C. In appeal, even the learned District Judge has failed to consider this fact. I do not think that there is any force in the submission of Sri Mudlappa for the following reasons:-

When the above direction came to be issued by my learned brother Murlidher Rao, J., on 19th September, 1985, the Ruling of Lakshmana Gouda's case was in force. But, subsequently the Ruling in that case came to be distinguished by another Division Bench Ruling in HANUMAIAH v. STATE OF KARNATAKA, : ILR 1987 KAR550 wherein the Division Bench having reconsidered the Ruling in Lakshmana Gouda's case held as follows:-

'With reference to the law laid down in Lakshmana Gowda's case (supra) it is contended that subsequent regrant in favour of the vendor, who is the holder of the inferior village office would enure to his benefit and entitle the vendee i.e., unauthorised holder who is evicted, to claim title. Two factors militate against this submission. Firstly, on the day the land was sold it had vested in the State Government and the Vendor had no title, and secondly, the amended Section 7 has taken away the right of unauthorised holder to claim regrant in any circumstances. In this situation it is not possible to confer title on the unauthorised holder by invoking equity or the principle of 'Feeding the grant by estoppel'. What is taken away by the Legislature cannot be conferred by the Court.'

8. Before referring to the other aspects that came to be considered in this Judgment, it is necessary for me to refer to certain facts arising in this case. As I have already stated, this piece of land came to be sold in favour of the petitioner on 23-2-1972. This is not in dispute. As on that day Section 7 of the Act had not been amended, much less Section 5 of the Act. But, by virtue of the Amendment in 1978 (Karnataka Act 13 of 1978) Sub-section (3) of Section 5 came to be amended to the effect that the grantee was prohibited from alienating the granted land for a period of fifteen years from 7-8-1978. But, by a perusal of the Act it is seen that Sections 3, 5 and 7(A) shall come into force at once i.e., 7-8-1978 and all the other provisions shall be deemed to have come into force on 27th December, 1975. There was no order made by the Tahsildar regranteeing the land in

question as on 7-8-1978. But when he passed the impugned order on the 30th August, 1978, both the amended provisions of Sub-section (3) of Section 5 and Section 7 were in force. I am saying this because amended Section 7 has an important object to be achieved. That was the reason why in Hanumaiah's case the Division Bench has held as follows:-

'The vital difference between a grantee under Section 7(3) and Sections 5 and 6 is that while 'holder' and 'authorised holder' have a right to make application for regrant under Sections 5 and 6 of the Act respectively, no such right is provided for an unauthorised holder. The prospective grantee is preferred for the disposal of land after summary eviction of the unauthorised holder. The holders of the inferior officers under Section 7(3) are those who have failed to secure the regrant under Section 5 of the Act. Preference under Section 7(3) of the Act is restricted to 'holders of inferior village office' and not to 'authorised holders of inferior village office'.'

In that view of the matter, the impugned order - (Annexure-C), having been made under Sections 5 and 6 of the Act, no person other than the holder of the village office or authorised holder would be entitled to seek benefit of it. This Ruling in Hanumaiah's case was not in force when Mr. Murlidher Rao, J., disposed of the case.

9. Again another Division Bench of this Court in CHIKKANARASIAH v. TIRUPATHAIAH, : ILR 1989 KAR1520 reconsidered the matter once again and followed the view taken in Hanumaiah's case. With reference to Section 7 it has held as follows:-

'Section 5(3) stood amended with effect from 7-8-1978, thereby imposing a complete bar against alienation for a period of 15 years from the date of the Amendment Act, Hence, while considering the principle to be examined whether, the doctrine of feeding the grant by estoppel can be extended, so as to override the bar imposed by the amended Section 5(3).

When a person purports to transfer a property without title, the transferee gets title only when the alienor acquires a valid title; in such a case, the moment the alienor

gets a good title, the estate would pass on to the transferee by the application of the doctrine of feeding the estoppel. But here, that is not possible because at the very instant of the grant, the bar against alienation imposed by the statute operates.'

10. Again distinguishing the principle laid down in Lakshmana Gouda's case their Lordships held in para-13 as follows:-

'The application of principle of feeding the estoppel' and that of Section 43 of the Transfer of Property Act, would be inconsistent with the provisions of Section 7 of the Act; a new mode of conferring title to the land on an unauthorised holder not provided by the Act will be contrary to the scheme of the Act.

Again in *GOPALAPPA v. SECRETARY TO GOVERNMENT OF KARNATAKA*, : ILR 1991 KAR42 Rama Jois, J., speaking for the Bench referring to the observation made in *Cnikkanarasaiah's* case held as follows:-

'The clear distinguishing feature between the facts of the case and the facts considered by the Division Bench, in Lakshmana Gouda's case is that was a case to which Section 5(6) was not attracted, whereas it is attracted to this case. Therefore, we have to understand the meaning of Section 5(6) and give effect to it. The language of Sub-section 5(6) is clear and unambiguous. According to the said clause any agreement for transfer of land resumed under Clause (3) of Section 4 entered into prior to the regrant under Sub-section (1), is null and void and it does not stop there and it further provides that any person in possession of such land in furtherance of such agreement shall be summarily evicted therefrom by the Deputy Commissioner. In the present cases, there is no dispute that the lands in respect of which the petitioners entered into an agreement of sale were those resumed under Clause (3) of Section 4. There is also no dispute that the agreements were entered into before the regrant under Section 5(1). Therefore, the agreements became null and void the moment Sub-section (6) was introduced into Section 5 and further the petitioner became liable to be summarily evicted from the lands in question. There is no provision in the Act which provides that there should be eviction first and regrant next. All that Sub-section (6) of Section 5 provides is, if the agreement had taken place after the resumption of the land

under Clause (3) of Section 4 and before the regrant, the agreement is void. Therefore, the agreements in favour of petitioners became null and void and they became liable to be evicted summarily.'

Following the view taken in the cases of Hanumaiah and Chikkanarasaiah. Their Lordships held in para-8 held as follows:-

'The learned Counsel for the petitioner has relied on Section 43 of the Transfer of Property Act which lays down the principle of feeding or estoppel by grant. In our opinion the principle contained in that Section has no application to the facts of this case. There would have been some force in the contention of the petitioner, if there was no prohibition for sale of the lands after regrant in favour of the concerned respondents, in which event, the petitioners could have contended that though on the date on which the agreements were entered into, they were hit by Sub-section (6) of Section 5, after the regnant were made, as the respondents were entitled to sell the land, the petitioner was entitled to retain the possession and it was for the grantees to file a suit for recovery of possession of the land from the petitioner in which event he could not only rely on Section 43 of the Transfer of Property Act, but also on Section 53A of the Transfer of Property Act which incorporates the doctrine of part performance. But in the present case the position is Sub-section (3) of Section 5 prohibits transfer of lands regranted under Section 5(1) for a period of 15 years from the date on which the 1978 (Amendment) Act came into force. Sub-section (3) of Section 5 as amended reads -

'Section 5 Sub-section (3):- The occupancy or the ryotwari patta of the land, as the case may be, regranted under Sub-section (1) shall not be transferable otherwise than by partition among members of Hindu Joint Family [for a period of fifteen years from the date of commencement of Section 1 of the Karnataka Village Offices Abolition (Amendment) Act, 1978].' Therefore, it is clear, not only that the agreement entered into by the petitioners became void by force of Section 5(6) of the Act, there was also prohibition for alienation of the land granted to the respondent under Section 5(1) of the Act. for a period of 15 years from 7-8-1978, the date on which the 1978 Act came into force.'

11. Under these circumstances, following the latest Rulings in the cases of Hanumaiah, Chikkanarasaiah and Gopalappa, I am afraid that it is not possible to accept the contention of Sri Mudlappa, learned Counsel for the petitioner, The Tahsildar has passed the impugned order in confirmity with Sub-sections 5 and 6 which came to be confirmed by the learned District Judge relying upon the Decision in MUNISWAMAPPA v. STATE, : ILR 1990 KAR3923 . Therefore, the conclusion reached by the learned District Judge in appeal cannot be found fault with. In that view of the matter, the impugned order of the learned District Judge does not call for my interference.

In the result, this petition fails and is dismissed at the stage of admission without notice to the respondents.

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