

Hanumanna Vs. Machappa

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Court : Karnataka

Decided On : Nov-27-1995

Reported in : ILR1995KAR3507; 1996(1)KarLJ359

Judge : M.L. Pendse, C.J. and ;B. Padmaraj, J.

Acts : Karnataka Scheduled Castes & Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 - Sections 4 and 5; Karnataka Land Grant Rules, 1956 - Rule 43(2) and 43(3)

Appeal No. : W.P. No. 607 of 1992

Appellant : Hanumanna

Respondent : Machappa

Advocate for Def. : B.V. Prabhakar, Adv. for R-1 and R-2 and ;K. Vishwanath, HCGP for R-3 and R-5

Advocate for Pet/Ap. : B.M. Siddappa, Adv.

Disposition : Appeal allowed

Judgement :

Padmaraj, J.

1. We have heard the learned Counsel for the parties at some length and we have been taken through the relevant case papers.

2. The appellant is aggrieved by the Order dated 14.11.1991 passed by the learned Single Judge in Writ Petition No. 20114/1991, allowing the Writ Petition filed by the first respondent herein.

3. A detailed narrative of the facts has been given in the order of the learned Single Judge as well as in the orders made by the Deputy Commissioner and the Assistant Commissioner. Hence, it is not necessary for us to repeat the same.

4. Respondents 1 and 2 are brothers and are belonging to the Scheduled Caste. 5 acres of land in Survey No. 5 of Kyatanamale Village in Parashurampur Hobli, Challakere Taluk, Chitradurga District, was granted to the first respondent herein by the Competent Authority as per the provisions of the Mysore Land Revenue Rules, subject to certain conditions, vide Order No. HKF.20/59-60, dated 29.12.1959. The Grant Certificate was, however, issued on 4.5.1967. The Rule prevailing at the time of the grant with respect to the non-alienation clause was Rule 43-A(3) of the Mysore Land Revenue Rules. That Rule prescribes that where the grant was made free of cost, the land granted shall not be alienated for a period of 15 years from the date of the grant and where the grant was made for an upset price, the land granted shall not be alienated for a period of 10 years from the date of the grant. It is required to be stated that the Special Deputy Commissioner himself has stated in the course of his order that the land in question was actually granted to the first respondent as per the order No. HKF.20/59-60 dated 29.12.1959 for an upset price, but, however, the Grant Certificate was issued on 4.5.1967. This factual observation made by the Special Deputy Commissioner in the course of his order passed in the appeal filed before him under Section 5A of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, has neither been controverted nor shown to be incorrect. In fact, the learned Single Judge concerned also observed in the course of his Judgment that by an order made by the Competent Authority on 29.12.1959, 5 acres of land in Survey No. 5 of Kyatanamale Village came to be granted in favour of the first respondent in accordance with the provisions of the

Karnataka Land Grant Rules, subject to certain conditions. It is thus clear from the factual observations made by the learned Single Judge as well as by the Deputy Commissioner that the land in question was granted to the first respondent on 29.12.1959 by an order made by the Competent Authority in HKF, No. 20/59-60, but the Grant Certificate was, however, issued to the first respondent on 4.5.1967 as per Annexure-A. Therefore, here is a case where, though the land was granted to the first respondent on 29.12.1959, the Grant Certificate was not issued at once to the grantee when the land was granted to him, but it was issued to the grantee on a subsequent date, that is, on 4.5.1967. Even on the date of the grant of the land to the first respondent, certain Rules regarding the grant of land were in force in the State and the grant was made in accordance with the Rules that were applicable at the time of the said grant. It has to be stated that different Rules were prevailing at different times with regard to the grant of lands. In fact, when the land was granted to the first respondent on 29.12.1959, the Rule that was applicable with respect to the non-alienation clause was Rule 43- A(3), while the Rule that was applicable at the time of the issue of the Grant Certificate on 4.5.1967 was Rule 43-G of the Mysore Land Revenue (Amendment) Rules, 1960. Therefore, the Rules that were prevailing at the time when the land was actually granted by the State, would be applicable and in fact, for that reason alone, the learned Single Judge as well as the Deputy Commissioner and the Assistant Commissioner applied the Rule with respect to the non-alienation clause that was in force at the time of the grant. As we have already stated, the Rule that was applicable at the time of the grant with regard to the non-alienation clause was Rule 43-A(3). Having so applied the Rule that was prevailing at the time of the grant of the land to the first respondent, the learned Single Judge while placing reliance on a Decision of this Court in LAXMAMMA v. STATE OF KARNATAKA AND ORS. 1983 (1) KLJ 417, has sought to compute the period of 15 years from the date of the Grant Certificate. No doubt, one of the questions for consideration before the Court in Laxmamma's case (supra) was, whether the period of alienation should be computed from the date of the grant or from the date of issue of the Grant Certificate to the grantee. It was contended on behalf of the petitioners in that case that wherever the Rules read, 'the date of grant' in particular in respect of the Rules that were in force in the old Mysore area before 1960, the period of non-

alienation should be computed from 'the date of grant' only and not from the date of issue of the Grant Certificate to the grantee and the Court dealing with such contention has observed that on an application made for grant before the Competent Officer, the same is processed by him and thereafter an order is made by him or the appellate or the revisional authority that deals with the same. When a grant is made, a Grant Certificate, a title deed or a Saguvali Chit is issued to the grantee demarcating the extent of the boundary of the land granted to him. Without such a Grant Certificate or title deed, the grantee cannot enter on the land and cultivate the same, though there is a grant order in his favour. A grant and a Grant Certificate cannot be treated as two different and distinct matters divorced from each other. Without a Grant Certificate, the grant is not really effectuated. From this it follows that the construction suggested by the learned Counsel for the petitioners on the Rules and more so, on Rule 43(B) (5) of the Mysore Land Revenue Rules before their amendment in 1960, is too liberal and will not carry out the scheme and object of the Rules and in view of such discussion, the Court held that even where the Rules employ the term 'the date of the grant', that term should be read as the date from which the Grant Certificate is actually issued to the grantee and not from the date when the order was made in his favour.

5. We have carefully gone through the Decision and in our view, there, their Lordships were dealing with a situation where, in the normal course, the Grant Certificate will be issued at once when the grant was effected in favour of the grantee and there, Their Lordships were not confronted with a peculiar situation, like the present one where the grant was effected much prior to the date of issue of the Grant Certificate as per the Rules which were prevalent at the time of the grant of the land and the Grant Certificate came to be issued at a later date and that too, when altogether different Rules were applicable on the date when the grant was actually effected and when the Grant Certificate was issued. To be more precise, here the case admittedly is that the grant was effected in favour of the first respondent on 29.12.1959 as per the Order No. HKF.20/59-60 and pursuant to the grant, the grantee was put in possession of the land and subsequently, the Grant Certificate was issued to the first respondent on 4.5.1967. It is nobody's case that there were no Rules prevailing at the time when the land was actually granted to the first respondent. In fact, the Rules were very much in force and the land was

required to be granted only in accordance with the Rules that were prevailing at the time of the grant. Therefore, the rights and obligations which were created in favour of a grantee by virtue of the grant made under the Rules that were applicable at the time of the grant, could never be postponed or deferred till the Saguvali Chit or Grant Certificate was issued to the grantee. If one were to say that the rights and obligations were created only after the issue of the Grant Certificate or Saguvali Chit in favour of the first respondent, it will lead to absurdity. This is because when the grant was made to the first respondent as per the Rules, which were in force at that time, certain rights and obligations were created in his favour by virtue of the grant made in his favour and they cannot be said to have been postponed or deferred till the Grant Certificate was issued in his favour. When once we agree that the land had been granted to the first respondent on 29.12.1959 as per the Rules which were prevailing at the time of such grant, then all the rights and obligations which were flowing from such grant, will be accrued to the grantee on the date of such grant and by no stretch of imagination, they can be said to be postponed till the issue of the Grant Certificate in his favour. In fact, the Grant Certificate or Saguvali Chit is required to be issued at once to the grantee imposing all the conditions of the grant which were applicable in respect of such grant at the time when the grant was actually made. Therefore, in the normal course, the Saguvali Chit or Grant Certificate is required to be issued at once with the grant, but for some reason, as in the present case, the Saguvali Chit or the Grant Certificate had been issued at a much later date and not simultaneously with the grant of land, that by itself will not postpone the rights and obligations flowing from the grant that was made in favour of the grantee. In fact, dealing with a similar situation, the Division Bench of this Court in the case of KARAPPA BOVI v. SPECIAL DEPUTY COMMISSIONER, MYSORE AND ORS 1990 (3) KLJ Supp 361. has observed as under:

'Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, Section 4 - Land Grant-Operative from date of Grant - Issuance of Saguvali Chit is in furtherance of Grant - Not permissible to contend that period of prohibition as to alienation to be computed from the date of saguvali chit and not from date of grant - Writ petition dismissed.'

6. It was a case where the grant was made on 28.4.1965 and the Saguvali Chit was issued on 29.4.1965 and the contention put forth before the Court was that according to the provisions of the Land Grant Rules, the grant becomes effective only from the date on which the Saguvali Chit was issued and as the sale had been effected prior to the date on which the Saguvali Chit was issued, the provisions of the Act were not attracted. While disagreeing with the said contention, this is what the Division Bench of this Court has observed in the above quoted Decision in Paragraph-7 on Page 362:

'Issuing of Saguvali Chit is only a further step taken pursuant to the order of grant. In the present case, there is no dispute that the Granting Authority granted the land in favour of the petitioner on 28.4.1965. The moment land is granted to a member of the Scheduled Caste under the Darkhast Rules, whether it is free grant or for a reduced upset price, the prohibition against alienation imposed under the Rules operate, as held by the Division Bench in Laxmamma's case itself. Once such bar is prescribed under the statutory rules, that bar cannot be got over by any individual by violating the law even before the issue of Saguvali Chit.'

7. in another Decision of this Court in the case of ONKARAPPA v. SANNA NEELAPPA : ILR 1990 KAR727 , this is what Balakrishna, J. (as he then was), has observed dealing with almost a similar situation as the present one:

'Issue of a Saguvali Chit symbolises physical possession and vesting of the right to cultivation in the grantee, whereas grant of land is indicative of constructive possession. There could be a grant of land even without the issue of a Saguvali Chit. The issue of a Saguvali Chit only enables or empowers the grantee to cultivate the land and it cannot be said that there is no grant of land unless a Saguvali Chit is issued. The Legislature intended that the prohibitive clause ought to commence with effect from the date of grant in so far as Rule 43-A(3) is concerned.'

8. Therefore, when once it is admitted that the land was granted to the first respondent on 29.12.1959 as per the Rules which were prevailing at the time of such grant, the rights and obligations which were created in favour of the grantee by virtue of the grant made in his favour under the Rules that were prevailing at

the time of such grant, will be accrued to him and will never get postponed to a future date merely because the Grant Certificate or the Saguvali Chit had been issued at a later date and not at once with the grant. In other words, the rights accrued to the grantee and the obligations created or imposed on the grantee by virtue of the grant made in his favour on a particular date will not get postponed to a future date merely because the Saguvali Chit or the Grant Certificate in respect of such grant was issued at a future date and not at once with the grant. Now, in the present case, the Rule that was applicable at the time of the grant of the land to the first respondent on 29.12.1959 was Rule 43-A(3) and it reads as under:

'43-A(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;

Provided that nothing in this sub-rule shall apply to:-

A) the alienation of any land in favour of the State Government or a Co-operative Society, as security for loans obtained for improvement of the land or for buying cattle or agricultural implements for the cultivation of the land; or

B) the leasing of any land by a person who is a widow, a minor or who is subject to physical or mental disability.

b) If the provisions of Clause (a) are contravened, the land granted may be summarily resumed by the State Government, and such land shall vest in the State Government, free from all encumbrances, and neither the grantee nor the alienee, if any, shall be entitled to any compensation.'

9. A plain reading of the above Rule would clearly indicate that where the grant was made free of cost, the land granted shall not be alienated for a period of 15 years from the date of the grant and where the grant was made for an upset price,

the land granted shall not be alienated for a period of 10 years from the date of the grant. There is nothing in the said Rule to indicate that the period of 10 years or 15 years, as the case may be, shall be computed from the date of the issue of the Grant Certificate or the Saguvali Chit. On the other hand, the said Rule, which was in force at the time of the grant of land to the first respondent, would clearly indicate that the period of non-alienation clause imposed by the Rule should be computed from the date of the grant. It was, however, contended on behalf of the first respondent that the period of 15 years as embodied in Rule 43-A(3) was to be calculated or computed from the date of issue of the Grant Certificate and not from the date of the grant. We are unable to agree with the said submission advanced on behalf of the first respondent for the simple reason that the Rule itself would indicate that the period of prohibition will commence from the date of the grant and there is nothing to indicate from the said Rule that it should commence from the date of issue of the Grant Certificate. A plain reading of the Rule would clearly indicate that where the grant is made free of cost, the land granted shall not be alienated for a period of 15 years commencing from the date of the grant and where it is a grant for an upset price, then it shall not be alienated for a period of 10 years commencing from the date of the grant. This obligation imposed on the grantee will not get postponed to a future date merely because the Grant Certificate had been issued not at once to the, grantee, but at some future date as in the present case. The Rule has to be read as it exists and nothing extraneous could be imported into it. The Rule as it existed at the time of the grant had imposed an obligation on the grantee not to alienate the land for a period of 15 years or 10 years, as the case may be, from the date of the grant. This is obviously because the Grant Certificate was required to be issued at once in the normal course to the grantee when the land was granted to him. Therefore, we are unable to accept the contention of the learned Counsel for respondent-1 that the condition with regard to the period of prohibition of transfer shall commence from the date of the issue of the Grant Certificate and not from the date of the grant of the land having regard to the peculiar facts and circumstances of this case and on a plain reading of the Rule. The situation calls for harmonious construction. If the contention of the learned Counsel for the first respondent were to be accepted, then it will lead to an anomalous situation that the grantees would not only be

bound by the Rules that were prevailing at the time of the grant, but also by the Rules that were prevailing at the time of issue of the Grant Certificate. Such a situation was not contemplated by the framers of the Rules. This is because the rights and obligations accrued to the grantee when such grant was made will not stand postponed to a future date merely because the Grant Certificate which was required to be issued at once, had not been so issued and it was issued at a future date. Even in Section 4 of the Act, the term employed is 'in contravention of the terms of the grant of such land or the rule providing for such grant'. It is thus clear from the above discussion that the conditions embodied in the Rule that was applicable at the time when the grant was made, would apply and they will not get postponed to a future date merely because the Grant Certificate had been issued at some future date by the Authorities concerned. When once such a conclusion is reached, Rule 43-A(3) has to be read as it existed on the date of the grant. It has to be clarified, therefore, that if the Grant Certificate was not issued at once with the date of the grant as it was required to be issued in the normal course by the Authorities concerned and if, for some reason, the Grant Certificate had been issued at a future date, as it happened in the present case, then the rights and obligations flowing from such grant which were applicable at the time of the grant, will not stand postponed to a future date merely because the Grant Certificate had been issued at a subsequent date and not at once with the date of the grant. In this background, when this Court in Laxmamma's case, said that the term 'the date of the grant' should be read as the date from which the Saguvali Chit is actually issued to the grantee, it has to be read in the context that normally the Saguvali Chit or Grant Certificate should be required to be issued at once to the grantee on the date of the grant itself and it never contemplated a situation where contrary to such normal practice, the Grant Certificate was issued at some future date and the date of grant of the land to the grantee and the date of issue of Grant Certificate in respect of such grant were made on two different dates and not on the same date. There may be cases as the present one, where the date of grant was much prior to the date of the issue of the Grant Certificate. In that contingency, which is contrary to the normal Rule, the rights and obligations created in favour of the grantee on the date of the grant of land will not stand postponed to some future date merely because the Grant Certificate had been issued at some future date

and not at once with the date of the grant. We are, therefore, very clear in our view that the conditions embodied in the Rule that was prevailing at the time of the grant will not get postponed to a future date merely because the Grant Certificate had been issued at a subsequent date and not at once with the date of the grant. In the present case, admittedly the land was granted to the first respondent on 29.12.1959 by the Competent Authority in accordance with the Rules prevailing at the time of such grant. The condition of non-alienation clause as embodied in Rule 43-A(3), which was applicable at the time of the grant, prescribed that the land granted shall not be alienated for a period of 15 years if it is a free grant and if it is for an upset price, the land shall not be alienated for a period of 10 years from the date of the grant. In this case, the land was granted on 29.12.1959 and the granted land was alienated by the grantee on 24.8.1977. That means that the alienation had taken place after a period of 18 years from the date of the grant. Even at the risk of repetition, it has to be observed that the period of prohibition with regard to the transfer commences only from the date of the grant. That being so, it has to be stated that in the present case, the alienation has taken place after the expiry of the period of 15 years and as such, the transaction in question cannot be declared as null and void under Section 4 of the Act as, in this case, there was no contravention of the terms of the grant.

10. Even assuming that the period of prohibition was to commence from the date of the Grant Certificate, then having regard to the Rule that was prevailing at the time of the grant, the period of non-alienation clause would depend on the nature of the grant. If it is a free grant, it will be 15 years and if it is a grant for an upset price, it will be 10 years. In this case, the preamble of the Grant Certificate (Annexure-A) issued to the first respondent and three other grantees jointly, would read thus :

11. A plain reading of the above contents of the Grant Certificate (Annexure-A) would clearly indicate that it was not a free grant. On the other hand, it would indicate that the land had either been sold or granted for an upset price. There is nothing to indicate from the Grant Certificate that it was a free grant. When the grant is not made free of cost and it is made for an upset price, the condition embodied in the above Rule would clearly indicate that it shall not be alienated for

a period of 10 years. It would be required to be stated here itself that the word 'upset price' has been defined in Rule 43(2) of the Rules under the Mysore Land Revenue Code, which was in force from 1939 onwards and Rule 43(3) of the amended Rules, which were in force in 1956. Both the definitions are identical and they are extracted hereinbelow :-

'43(2). The 'Upset Price' shall not be arbitrarily fixed but shall represent the actual market value of the land, as nearly as it can be ascertained by local enquiries and by the examination of records of sales of similar lands in the neighbourhood, and if necessary, of the registration statistics relating to them.'

12. In this context, it has to be stated that in case where the land had been granted to persons belonging to Scheduled Castes or Scheduled Tribes, who are poor, under Rule 43-A(1), the Competent Authority can even waive Rs. 200/- out of the upset price; the balance being payable in annual instalments not exceeding three. Therefore, in the case of poor Scheduled Caste or Scheduled Tribe persons, the price may be fixed by waiving Rs. 200/- out of the upset price. The above definition would clearly indicate that the upset price would represent the actual market value of the land as nearly as it can be ascertained by local enquiries and by the examination of records of sales of similar lands in the neighbourhood and if necessary, of the registration statistics relating to them. But, at the same time, a discretion has also been given to the Competent Authority to reduce the price in the case of persons belonging to the Scheduled Castes and Scheduled Tribes, who are poor. The order of the Assistant Commissioner is, however, silent with regard to the nature of the grant. But, the Order of the Deputy Commissioner would clearly indicate vide Paragraph-2 that the land in question was actually granted to the first respondent as per Order No. HKF.20/59-60 on 29.12.1959 at an upset price. The learned Single Judge, however, on his own interpretation of the sum of Rs. 45/- mentioned in the Grant Certificate, came to the conclusion that the grant was free of cost. There is absolutely no scope for such interpretation having regard to a plain reading of the terms of the grant as incorporated in the preamble to the Grant Certificate, In fact, the learned Single Judge himself has stated in the course of his order that the Saguvali Chit (Annexure-A) does disclose that a sum of Rs. 45/- was collected from the grantee

towards Kimmat and Phodi Fee. This would clearly indicate that in the Grant Certificate, the Kimmat and Phodi fee have been separately mentioned and the word 'Kimmat' in its common connotation would mean the 'price'. It may be that the price mentioned therein may not be equal to the market value of the land that was prevailing at the time of the grant, but it was certainly not a free grant. It is to be remembered that in the case of poor Scheduled Caste and Scheduled Tribe persons, even from the upset price, a sum of Rs. 200/- can be waived. Therefore, there was no scope for the learned Single Judge to have interpreted the grant as free of cost. In fact, under the Land Grant Rules, the term 'free grant' and the term 'upset price' are used in different context and in the case of poor Scheduled Caste or Scheduled Tribe persons, even out of the upset price, Rs. 200/- can be waived. Therefore, it is very clear from a plain reading of the contents of the Grant Certificate (Annexure-A), in the light of the provisions of the Land Grant Rules, that it was not a free grant and in all probability, it was for an upset price or for a reduced upset price. In fact, the Deputy Commissioner himself would observe in the course of his order that it was a grant for an upset price. Therefore, by no stretch of imagination, the grant in this Case can be regarded as a free grant. We are unable to share the view of the learned Single Judge that it was a free grant. We shall, therefore, conclude on the basis of the materials placed on record that it was not a free grant, but it was made for an upset price as has been stated by the Deputy Commissioner. That being so, the period of non-alienation would be 10 years and not 15 years as per the Rule stated supra. In this case, the first respondent had sold the land to the appellant after the expiry of the period of 10 years from the date of the Grant Certificate (the Grant Certificate was issued on 4.5.1967 and the land in question was sold on 24.8.1977).

13. Therefore, in any event, there was no contravention of the terms of the grant and as such, the transaction in question was not hit by Section 4 of the Act. Therefore, the alienation made in favour of the appellant cannot be declared as null and void under Sections 4 and 5 of the Act as there was no contravention of the terms of the grant of such land or the law providing for such grant.

14. Therefore, for the foregoing reasons, the Order of the learned Single Judge cannot be sustained and it is liable to be set aside.

15. In the result, therefore, the Appeal filed by the appellant is allowed. The Order of the learned Single Judge impugned in the Appeal is hereby set aside. Consequently, the Writ Petition stands dismissed and the order of the Deputy Commissioner stands restored.

In the circumstances of the case, there is no order as to costs.

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