

Narasareddy and anr. Vs. the Deputy Commissioner, Chitradurga District and ors.

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Court : Karnataka

Decided On : May-28-2002

Reported in : ILR2002KAR2758; 2003(2)KarLJ158

Judge : N.K. Jain, C.J., ;V.G. Sabhahit and ;N. Kumar, JJ.

Acts : Karnataka Land Revenue Code, 1888 - Sections 233; Karnataka Land Revenue (Amendment) Rules, 1956 - Rule 43(6); [Karnataka Land Revenue Act, 1964](#) - Sections 197; Karnataka Land Grant Rules, 1969 - Rule 9(1); Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 - Sections 4 and 5

Appeal No. : Writ Petition No. 27595 of 1998

Appellant : Narasareddy and anr.

Respondent : The Deputy Commissioner, Chitradurga District and ors.

Advocate for Def. : B. Anand, Additional Govt. Adv. for Respondents-1 and 2

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

Judgement :

ORDER

N.K. Jain, C.J.

1. This reference has been placed before the Full Bench as per the order of the Hon'ble Chief Justice dated 1-4-2002 and has come up before us. A learned Single Judge of this Court has referred this matter as per order dated 23-6-1999 to the larger Bench formulating the following questions.-

1. What is the meaning of expression date of grant for the purpose of computation of the period of prohibition against alienation under Rule 43(6-A) of the 1958 Rules as amended after January 20, 1958 or in Rules of 1956 (Rule 43(6-A) or Rule 43-A(3a) of the Rules) as operative from January 18, 1956 or as used in Rule 43(8) of the Rules operative from 4-8-1956?

2. Whether correct proposition of law has been laid down by the Division Bench of this Court in the case of Laxmamma v. State of Karnataka and Ors., : AIR1983 Kant237 vide observations in paragraphs 75 and 76 or that it has been correctly laid down in the cases of Karappa Bovi v. Special Deputy Commissioner, Mysore and Ors., 1990(3) Kar. L.J. 361 and Hanumanna v. Machappa and Ors., 1996(1) Kar. L.J. 359 : ILR 1996 Kar. 3507?

2. Brief facts leading to the order of reference are.-

Land bearing Sy. No. 83/3 measuring 5 acres of Gudihalli Village was granted to one Marappa on 24-3-1960. The said Marappa belonged to Scheduled Caste. However, the saguvali chit/grant certificate was issued on 25-1-1963. The grantee sold the land in favour of the petitioners on 13-12-1974. In view of the passing of the Scheduled Castes, Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter for short referred to as 'Act of 1978'), the said grantee made an application to the Assistant Commissioner for restoration of land as the said sale was in contravention of the Act of 1978. After notice to the petitioners an enquiry was held and the Assistant Commissioner held that the alienation in favour of the petitioners was against the terms of the grant and therefore he ordered eviction of the petitioners and for restoration of land to the grantee. Petitioners filed an appeal to the Deputy Commissioner which also came to be dismissed. It is against the said orders the petitioners have preferred this writ petition.

3. It was contended that, firstly, as the grant was for an upset price the prohibition for alienation is to be taken as only 10 years and not 15 years and secondly, it was contended it is the date of grant which is to be taken into consideration and not the date of issue of saguvali chit or grant certificate. The said contention was strongly opposed by the respondents. Both the parties relied on several judgments of this Court on the point and it is in this context the learned Single Judge after referring to the earlier judgments of this Court came to the conclusion that the decisions in Hanumanna's case, *supra* and Karappa Bovi's case, *supra*, appears to be in conflict with the decision in Laxmamma's case, *supra*, and therefore to resolve this dispute he formulated the above said questions for consideration and directed the matter be placed before the Hon'ble Chief Justice for constituting a large Bench as stated. Accordingly, the matter is before us.

4. We have heard the learned Counsels for the parties at great length, perused the materials on record and the relevant case-laws on the point.

5. The Karnataka Scheduled Castes, Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 has been enacted with the object to prevent the alienation of the lands granted to SC/ST on certain conditions by the Government, as they are below the poverty line. Section 4(1) of the Act of 1978 reads as under.-

'Prohibition of transfer of granted lands.--Notwithstanding anything in any law, agreement, contract or instrument, any transfer of granted land made either before or after the commencement of this Act, in contravention of the terms of the grant of such land or the law providing for such grant, or Sub-section (2) shall be null and void and no right, title or interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer'.

6. The aforesaid provision makes it clear that if any alienation is made in respect of the granted land in contravention of the terms of the grant such alienation shall be null and void. Though the order of grant will be subject to the terms and conditions to which the land has been granted we are only concerned in this reference about the condition prescribing prohibition of alienation within a particular period from the date of grant. Therefore, if such a condition is violated, for the purpose of computing the period what is the starting point? Is it the date of

order of grant, or issue of a grant certificate or saguvali chit or the date of delivery of possession of the granted land. Before we notice the case-law on the point it is necessary to have a look at the conditions of grant. Sub-rule (6)(a) of Rule 43 of the Rules of 1956 reads as under.-

'(6)(a) Every grant of land under Rule 43 and every grant-of registered occupancy of land under Clause (a) of Rule 43-H shall be subject to the condition.

(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 or for a reduced upset price, that the land granted shall not be alienated for a period of ten years from the date of the grant'.

7. Under the Karnataka Land Grant Rules of 1969, Rule 9 dealing with conditions of grant reads as under.-

'9. Conditions of grant.--(1) The grant of lands under these rules for agricultural purposes shall be subject to the following conditions, namely.-

(i) the grantee shall not alienate the land for a period of fifteen years from the date of taking possession; xxx xxx xxx'.

(emphasis supplied)

8. Prior to the Karnataka Land Grant Rules, 1969 the period had to be calculated as is clear from the rule from the date of the grant. Whereas, under the 1969 Rules it has been made from the date of taking possession. The Legislature has made known its intention clear and in unambiguous terms. It is in this context we have to refer to the various decisions. In the case of Laxmamma, supra, it was held the period of non-alienation could be computed from the date of grant and not from the date of the issue of grant certificate to the grantee and held as under.-

'74. 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 and 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 literal and will not carry out the scheme and object of the Rules.

75. On the above discussion, we hold 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 the order was made in his favour'.

That was a case where the order of grant and issue of grant certificates were on two different dates and on the date of grant no possession was delivered and possession was delivered only on the date of issue of saguvali chit.

9. In the case of Karappa Bovi, *supra*, an order of grant was made on 28-4-1965 on which date itself the grantee executed the sale deed. However, on the next day, i.e., 29-4-1965 saguvali chit was issued which contained the clause regarding non-alienation. Therefore, it was contended as the sale was before the grant of saguvali chit, the non-alienation clause has no application and therefore date of order of grant is to be taken into consideration and not the date of the saguvali chit.

10. Hanumanna's case, *supra*, is a case where grant was effected on 29-12-1959 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 in that context it was held the period of non-alienation clause is from the date of grant and not from the date of issue of a grant certificate.

11. In the case of Onkarappa and Ors. v. Sanna Neelappa and Ors., 1990(1) Kar. L.J. 54 : ILR 1990 Kar. 727 the grantee was invested with possession anterior to the grant made on 11-2-1960 and the Saguvali Chit was issued subsequently and in that context it was held that the date of grant is to be taken into consideration for the purpose of computing the non-alienating clause.

12. In all the aforesaid judgments, the dispute between the parties was whether the period of alienation is to be computed from the date of the order of grant or from the date of certificate of grant or saguvali chit if it has been given on a day other than the order of grant. The answer to this question not only revolves round the interpretation to be placed on the words used in the rule but also on the intention of the legislature behind passing the Land Grant Rules and the Act.

13. The Government lands are granted either free of cost or at an upset price to the persons belonging to the depressed class who are illiterate and who are agricultural labourers, the reason being that these people belonging to depressed classes namely, the Scheduled Castes and Scheduled Tribes because of their poverty were unable to purchase land in open market and cultivate the same. Therefore, Government granted these lands with the object of enabling the persons belonging to weaker section to become prosperous in life so that they can come out of their age old poverty. To achieve this object the grantees had to be put in possession of the land and they had to cultivate the land for a particular period of time. It is to prevent any other person from depriving those grantees of the said land this clause regarding prohibition' of alienation was introduced. But, contrary to such an intention in practice it was found that such land was alienated even before the expiry of the period prescribed. Now, the question remains if possession is not given simultaneously from the date of the grant, whether the period can be computed to justify the prohibition period from the date of grant or saguvali chit. But, in certain cases, for some reason or the other, if possession is given prior to the grant, the date of grant does not arise unless he has got a right and started enjoyment of the property. As there was no effective remedy for taking action for violation of the terms of the grant, the Act of 1978 came to be passed. The object of the said legislation as already stated, is to provide for the prohibition of transfer and for restoration of lands granted by the Government belonging to the

Scheduled Castes and Scheduled Tribes in the State. It is in this context to find out whether there is a contravention of this non-alienation clause what should be the starting point. According to the relevant rules after an application is made for grant of land it has to be processed at the lower level and then the authority competent to grant such land grants the same. After an order of grant is made a grant certificate which is in the nature of a title deed or a saguvali chit is to be issued to the grantee demarcating the extent of land granted to him and on such certificate being issued he can enter upon the land and cultivate the same. However, in practice it was noticed though order of grant was made the grantee was not put in possession. He was put in possession later and saguvali chit is a document evidencing the factum of delivery of possession to the grantee. There are also cases where even before the order of grant the grantee was already in possession and an order of grant was made subsequently. Therefore, on the date of the order of grant if the grantee is put in possession and grant certificate is also issued there is no difficulty in holding that period of non-alienation is to be computed from the date of grant itself. But if on the date of grant order possession is not delivered, but possession is delivered subsequently under a grant certificate or a saguvali chit, then that would be the effective date from which the grantee is entitled to enter upon the land and cultivate the land and enjoy and have the benefit of the land granted and therefore the period of non-alienation is to be computed from the said date. The whole object is that grantee should enjoy the land by cultivating the same for a period stipulated in the grant order or the grant certificate. If the grantee is already in possession prior to the date of grant as he had no title to the said land date of order of the grant confers on him the title to the land and therefore it is the date of order of grant which is to be taken into consideration. The legislative intent is clear from the words used in 1969 Rules where the term 'date of grant' was deleted and 'date of possession' was introduced. In either of the rules date of saguvali chit is not referred to at all. If date of saguvali chit is to be taken as the date on which grantee is put in possession then irrespective of the date of grant it is the date on which the saguvali chit was issued that is to be taken into consideration for computing the period. But even if on the date of saguvali chit possession is not delivered and it is delivered, subsequently, the date of Saguvali Chit loses significance. But, if possession is

delivered on the date of grant itself and saguvali chit is issued at a later date even then the date of saguvali chit is of no consequence. Therefore, the crucial date in our opinion would be the date of taking possession of the granted land by grantee, as is clear from the language employed in Rule 9 of the 1969 Rules. Merely because in the 1956, 1958 Rules the words used are date of grant and not date of taking possession, it cannot be said date of taking possession is of no consequence in computing the period of non-alienation clause in respect of grants prior to 1969 Rules. If date of taking possession is taken into consideration, the controversy which has given rise in the aforesaid decisions would lose importance and pales into insignificance. It would also achieve the object sought to be achieved not only by the rules but also by enacting the Act. The letter of law is to be taken as conclusive, unless a literal interpretation of the statute would result in such absurdity and unreasonableness as to make it too obvious that the Legislature could not have meant what it said. It is well-settled that when on a construction of a statute two views are possible, one which results in an anomaly and the other not, it is the duty of the Court to adopt the latter and not the former seeking consolation in the thought that the law bristles with anomalies. The situation calls for a harmonious construction. The soul of the legislation is to see that the property granted to members of Scheduled Castes or Scheduled Tribes remained with them or enjoyed by them at least for the period stipulated in the grant. These grantees are members of the weaker section of the society; they are exploited class; that special statutory protection is needed to safeguard their interest; the land was granted to landless people and if alienation is allowed unchecked then the object of the very grant would be defeated. Therefore, any interpretation to be placed on the rule should be to further the object of the legislation and to prevent any mischief being perpetuated by persons with vested interests. In other words, as the land has been granted to such landless persons with some conditions; the object of the Act is that they should enjoy the property for which they have been granted, meaning thereby, the period will start from the date they have started enjoyment of the land, that is from the date of possession. Therefore, in our view, if any person purchases land from a person belonging to weaker section of the society, that is SC/ST community, the prohibition period will count from the date of possession. Under these circumstances, we are of the

opinion the expression 'date of grant' for the purpose of computing the period of prohibition against alienation under 1956 and 1958 Rules has to be understood as from the date of taking possession of the land. Therefore, if possession has been delivered prior to the date of the order of grant then the date of order of grant, if possession is delivered on the date of order of grant the date of order of grant and if possession is delivered subsequent to the order of grant, the date of taking of possession is the period from which the period of prohibition has to be computed.

As discussed above, we answer the point for reference accordingly.

14. The writ petition be placed before appropriate Bench as per roster for decision on merits.

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