

**Ombalamma and ors. Vs. the Assistant Commissioner Mandya Sub Division
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Court : Karnataka

Decided On : Jun-22-2012

Judge : B. S. Patil, J.

Acts : Constituion Of India - Articles 226, 227; Karnataka Scheduled Castes And Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 - Sections 3(1)(b), 5A

Appeal No. : W.P. No.31072 of 2004

Appellant : Ombalamma and ors.

Respondent : The Assistant Commissioner Mandya Sub Division Mandya and ors.

Advocate for Def. : H. Venkatesh Dodderi; H.R. Vasudha; GSV Associates, Advs.

Advocate for Pet/Ap. : N. Vasudevan; S. Shivaprasad, Advs.

Judgement :

(Prayer: This writ petition is filed under Articles 226 and 227 of the Constitution of India praying to quash the orders dt. 30-11-2001 passed by R.1 vide Annex. H and orders dt. 22-3-04 passed by R.2 vide Annex. H.1, etc.)

1. Order dt. 30-11-01 passed by the Assistant Commissioner, Mandya sub-division, Mandya, confirmed in appeal by the Deputy Commissioner, Mandya, vide his order dt. 22-3-04, thereby rejecting the claim made by the petitioner, seeking resumption and restoration of the site in question is called in question in this writ petition.

2. Petitioner claims to be the grand daughter of late Kivudamma. Site bearing No. 22 situated within the limits of Maddur Town Municipality was granted to late Kivudamma, wife of late Kari Chikkaiah on 29-10-73. Admittedly, this grant was made by the Chief Officer, Maddur Municipality, Maddur, based on the resolution passed by the Maddur Municipality.

3. It is the case of the petitioner that as the grant was made in favour of Kivudamma who belonged to Scheduled Caste the grant in question fell within the meaning of the term granted land under Sec. 3(1)(b) of the Karnataka Scheduled Castes/Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (Act for short) hence the petitioner made an application as legal representative of Kivudamma seeking restoration of the land by setting aside the sale deed executed by the grantee. It is necessary to notice here that Kivudamma had sold this property in favour of the third respondent Thimmaiah on 12-4-85 for a sale consideration of Rs.4,000/-.

4. The case put forward by the petitioner before the Assistant Commissioner was that, violating the condition of grant and within the period of 15 years from the date of grant, the grantee Kivudamma had sold this property in favour of the fourth respondent and therefore, the site was liable to be resumed and restored.

5. This was objected to by the fourth respondent before the Assistant Commissioner. The Assistant Commissioner passed the impugned order holding that as the site belonged to the Town Municipality and as it was the Town Municipality which distributed the site, the provisions of the Act were inapplicable.

6. This order came to be challenged by filing an appeal under Sec.5-A of the Act before the Deputy Commissioner, Mandya. The Deputy Commissioner has affirmed the order passed by the Assistant Commissioner. It is in this background,

the present writ petition is filed.

7. I have heard the learned Counsel for the parties.

8. The main contention urged by the petitioner is that the definition of the term granted land as incorporated in Sec. 3(1)(b) of the Act, includes land granted in favour of a person belonging to Scheduled Caste or Scheduled Tribe even by the local body such as the Town Municipality. He further points out that having regard to the laudable object for which the enactment is made to ameliorate and redress the social and economic condition of the Scheduled Castes and Scheduled Tribes and to ensure that they are not exploited, the term granted land has to be interpreted in such a way as to include the grants made even by the local bodies and local authorities. He further contends that merely because it is a non-agricultural land being a house site granted as per the relevant rules, it does not cease to be a granted land. In this regard, reliance is placed by the petitioner on the judgment in the case of Kariyappa @ Kariyappa versus The A.C. Hassan and others ILR 1997 Kar. 1723.

9. Counsel for the fourth respondent strongly refutes these contentions and urges that the definition of granted land cannot be stretched so as to include grants made by bodies other than the Government. It is her contention that as per the concept of Local Self Government and the enactment made the local body is governed in its actions by the set of rules and regulations and the present allotment has been made in terms of the relevant rules and although the allotment is made in favour of the Scheduled Caste and Scheduled Tribe, the provisions of the Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act cannot be applied for such grants. Learned Counsel takes me through the definition clause of 'the granted land' under the Act to substantiate her contention.

10. Learned Government Advocate makes available the relevant records and supports the orders passed by the authorities below.

11. Having carefully considered the contentions of the learned Counsel for the parties, the only question that falls for consideration is,

Whether the grant of the site by way of allotment by the Town Municipality, Maddur, will fall within the definition of the term granted land for the purpose of the Act.

12. It is useful to refer to the definition of the term 'granted land' as contained in Sec. 3(1)(b) of the Act. It reads as under :

granted land' means any land granted by the Government to a person belonging to any of the Scheduled Castes or the Scheduled Tribes and includes land allotted or granted to such person under the relevant law for the time being in force relating to agrarian reforms or land ceilings or abolition of inams, other than that relating to hereditary offices or rights and the word granted shall be construed accordingly.

13. Therefore, it is important to note that the granted land is defined to mean, any land granted by the "Government".

In the instant case, admittedly, the land is not granted by the Government. On the other hand it is granted by the Town Municipality, Maddur under a resolution passed by it. No doubt such grants are required to be approved by the higher authority including in some cases by the Government. In this case also, the resolution passed by the Town Municipality is approved by the Government. But, that by itself will not make the grant a Government grant. Therefore, in order to fall within the ambit of the term granted land it must be shown that the land is granted by the Government.

14. Of course, grant made by the Government is not necessarily confined to the grant by the secretary heading the particular department of the Government. It can be a land granted by the officers subordinate to the Government like the Deputy Commissioner, Assistant Commissioner or the Tahsildar who are invested with the power to grant government lands as per the provisions of the Karnataka Land Revenue Act and the Rules framed thereunder. But, we are not concerned with a case of grant by the government Department or the officers of the Government. This is a case of allotment made by the Town Municipality, which is a local body. This allotment cannot be brought within the ambit of the definition 'granted land', for, it cannot be said that the term Government used in Sec. 3(1)(b) of Act includes

a local body.

15. Reliance placed by the Counsel for the petitioner on the decision in the case of Kariyappa @Kariyappa versus The Assistant Commissioner, Hassan and others ILR 1997 Kar. 1723 is not apposite to the facts of the present case, as the issue involved in this case whether a site granted will fall within the definition of the term land so as to constitute granted land. In Kariappa's case, this Court has ruled that even if a site granted by the State Government or its authorities, or its officials in favour of a person belonging to Schedule Caste or Scheduled Tribe has been sold in violation of the conditions of the grant or the relevant rules, regarding non-alienation the provisions of the Act is applicable. In the facts of the said case, the authorities had rejected the claim made by the beneficiary solely on the ground that what was granted was only a house site.

16. In the instant case, the authorities have not dismissed the claim made by the petitioner on the ground that as the grant was in respect of a house site the Act was inapplicable. On the other hand, both the authorities have held that the grant was made by a local body, namely the Town Municipality and therefore the provisions of the Act were inapplicable. This finding recorded by both the authorities is just and legal, having regard to the scheme of the provisions contained in the Act and the definition of the term granted land as incorporated in Sec. 3(1)(b) of the Act.

17. Having regard to the consequences that ensue on account of the provisions enacted in the Act resulting in resumption of the land and restoration of the same, the provisions contained under Sec. 3 even if they have to be read keeping in mind the laudable object of the Act, cannot be so construed as to include grants made by local bodies. If that were to be the intention of the legislature, it would have included such grants also while defining the term granted land under Sec. 3(1)(b) of the Act. It is a well established principle of statutory interpretation that a provision should be read as it is. The courts shall not endeavour to supply an omission, inferring one, particularly when there is none.

18. Therefore, I do not find any apparent illegality or error of jurisdiction in the order passed by both the authorities. Hence, this writ petition fails and the same is

dismissed.

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