

**Thirtharama and Others Vs. the State of Karnataka Represented by Its Secretary and Others**

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**Court :** Karnataka

**Decided On :** Jan-28-2011

**Judge :** The Honorable Mr. Justice H.G. Ramesh & the Honorable Mr. Justice V. Jagannathan

**Appeal No. :** Writ Petition No. 25407 of 2002 (SC/ST)

**Appellant :** Thirtharama and Others

**Respondent :** The State of Karnataka Represented by Its Secretary and Others

**Advocate for Pet/Ap. :** For the Petitioners: K.A. Ariga, Advocate. For the Respondents: R1 to R4 - N.B. Viswanath. AGA.

**Judgement :**

(Prayer: This Writ Petition is Filed under Articles 226 and 227 of the Constitutions of India Praying to Quash the Order dated 13.5.2002 by R2 Arising out of the Order dated 4.12.2000 by R3 vide Ann-A and B Respectively.)

1. On a reference by a learned Single Judge of this Court, this writ petition is placed before us. In substance, the question referred is as to whether the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 is inapplicable to a 'granted land' i.e., a land granted by the Government to a person belonging to any of the Scheduled Castes or the

Scheduled Tribes but in respect of which occupancy rights were subsequently granted to a tenant under the Karnataka Land Reforms Act, 1961?

In the context, it is relevant to refer to the definition of 'granted land' as defined under Section 3(1) (b) of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 ('the Act' for short):

"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 or 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:

We 52. have heard the learned counsel for the petitioners and the learned Additional Government Advocate for the respondents and perused the judgments referred to by them.

3. At the outset, we deem it appropriate to state that the Full Bench judgment of this Court in Mohammed Jaffar Vs. State of Karnataka (ILR 2002 KAR 4693) referred to by the learned Single Judge in the order of reference has no bearing on the question referred. In the said judgment, the question for consideration was as to whether a land which was not originally a 'granted land' i.e., a land not originally granted or a person belonging to any of the Scheduled Castes or the Scheduled Tribes could become a 'granted land' by reason of grant of occupancy rights in respect of such a land to a tenant belonging to any of the Scheduled Castes or the Scheduled Tribes. It was held that such a land could not become a 'granted land' within the meaning of Section 3(1) (b) of the Act.

4. To examine the question referred to us, it is relevant to refer to Sections 4 and 11 of the Act:

4. Prohibition of transfer of granted lands:

5. 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:

(2) No person shall, after the commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government.

(3) The provisions of sub-sections (1) and (2) shall apply also to the sale of any land in execution of a decree or order of Civil Court or of any award or order of any other authority.

11. Act to override other laws: The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom, usage or contract or any decree or order of a Court, Tribunal or other Authority.”

5. In our opinion, a plain reading of Sections 4 and 11 referred to above would show that the provisions of the Act override anything inconsistent contained in any other law for the time being in force or any decree or order of a Court, Tribunal or other Authority. The combined effect of the aforesaid two sections is that any transfer (which includes a lease) of a ‘granted land’ by a grantee contravening the terms of the grant or the law providing for such grant or Section 4(2) of the Act would be hit by Section 4(1) of the Act making such a transfer null and void; consequently any subsequent transfer of such a land or any subsequent grant of occupancy rights under the Karnataka Land Reforms Act, 1961 in respect of such a land would also be null and void. Therefore, granting of occupancy rights under the Karnataka Land Reforms Act, 1961, in respect of a ‘granted land’ whose earlier transfer or lease was contrary to Section 4 of the Act, would not give exemption to such a land from the applicability of the Act. It is also relevant to state that Section 7 of the Act does not exempt such a land from the purview of the Act. Hence, we are clearly of opinion that such a land is also liable to be dealt with as per the provisions of the Act. The question referred to us is answered accordingly.

6. We may state that our above view is also supported by a Division Bench judgment of this Court in O. DYAMAPPA vs. APANNA BHOVI and ORS. (ILR 1997 KAR 1283).

7. As the writ petition is also referred to us for determination on merits, we proceed to examine the matter on merits. As stated earlier, the Full Bench judgment of this Court in Mohammed Jaffar's case is not applicable to the facts of the present case as the land involved herein is originally a 'granted land'. With that note, we will now refer to the facts of the case. The land in question is Survey No.109/2 measuring 4 acres 58 cents situate in Devachalla village, Sullia Taluk. The land was originally granted to one Narnu Naika on 11.4.1960. Subsequently he leased the said land to one Kamala stated to be the mother of the petitioner's herein. She applied to the Land Tribunal, Sullia for grant of occupancy rights. The Land Tribunal granted the occupancy rights to her by its order dated 21.9.1981. It is stated that she died in the year 1992. The original grantee - Narnu Naika is also stated to have died in the year 1972 and the whereabouts of his legal heirs are not known. After the coming into force of the Act, proceeding was initiated under the Act for resumption of the land in question resulting in the order at Annexure - B. By the said order, the land was ordered to be resumed to the Government as provided under Section 5 of the Act by declaring that the occupancy rights granted by the Land Tribunal in respect of the land in question as void. This order came to be confirmed by the Appellate Authority by the order at Annexure - A. The petitioners are the legal heirs of the tenant - Smt. Kamala being her sons. Being aggrieved by the aforesaid orders at Annexures - A and B, they have filed this writ petition.

8. Sri. K.A. Ariga, learned counsel appearing for the petitioners, by referring to the order dated 4.12.2000 (Annexure-B) passed by respondent No.3 - the Assistant Commissioner and the order dated 13.5.2002 (Annexure - A) passed by the Deputy Commissioner i.e., the Appellate Authority, submits that both the authorities have not examined as to whether the lease by the grantee - Narnu Naika in favour of the petitioners mother - Kamala was in contravention of the terms of the grant or the law providing for such grant and that no finding is recorded by both the authorities as to whether the said lease contravened Section 4 of the Act. According to the counsel, as both the authorities have not recorded

their findings as to how the lease by the grantee contravened the terms of the grant or the law providing for such grant, the impugned orders are liable to be set aside and the matter requires to be remitted to respondent No.3 - the Assistant Commissioner for reconsideration in accordance with law.

9. A perusal of the impugned orders at Annexures - A and B would show that both the authorities have not examined as to whether the lease by the grantee - Narnu Naika in favour of Smt. Kamala contravened the terms of the grant or the law providing for such grant. Without examining the said aspect of the matter, both the authorities have declared the grant of occupancy rights by the Land Tribunal as null and void and have ordered for resumption of the land. In our opinion, in the absence of any finding as to how the lease by the grantee contravened Section 4 of the Act, the impugned orders are unsustainable in law and the matter requires to be remitted to respondent No.3 - the Assistant Commissioner for reconsideration in accordance with law. Accordingly, the impugned orders at Annexures - A and B are set aside and the matter is remitted to Respondent No.3 - the Assistant Commissioner for reconsideration in accordance with law.

Petition disposed of.

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