

Srinivas G. and Others Vs. Harish Kumar and Others

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Court : Karnataka

Decided On : Dec-02-2011

Judge : The Honourable Acting Chief Justice Mr. Vikramajit Sen & a.S. Bopanna

Appeal No. : Writ Appeal No. 15234 of 2011 (SC/ST)

Appellant : Srinivas G. and Others

Respondent : Harish Kumar and Others

Advocate for Pet/Ap. : For the Petitioners: A.G. Holla, Senior Counsel, J.M. Rajanna Shetty and K. Nayak, Advocates. For the Respondents: R1 - Nagaiah, R2 to R4 - B. Veerappa, Additional Government Advocate, R5 and R6 – R. Sukumar, R7 to R9 - M/s Chalapathy and Srinivas,

Judgement :

VikramajitSen, Ag.C.J. (Oral):

1. On the last date of hearing, we have brought to the notice of Sri.A.G. HOLLA, learned Senior Counsel appearing for the appellants that it is our understanding that the appeal is covered on all fours by the decision of the Hon'ble Supreme Court in *ChindeGowda*, as well as our judgement (Division Bench) in *Chandra Naik Vs State of Karnataka and others* in WA No.16380/2011 (2012 (1) KCCR 254 (DB)).

2. Sri. A.G.Holla, learned Senior Counsel contends that factual matrix in the aforementioned cases was that the Court was confronted with a lease granted in favour of the concerned party, containing the covenant restraining the power of alienation for a certain period of time (in that case 15 years). The distinction that is sought to be brought before us is that in the present case, an outright grant has been made. Therefore, the State has divested itself of any control over the land in question. It is however, not disputed that one of the terms of the grant was that there shall be no alienation and was prohibited for a period of 15 years.

3. Sri.B. Veerappa, learned AGA contends that on a perusal of the grant, the moratorium is for a period of 30 years. We need not go into this controversy for the reason that the period before us is not crucial to our decision. This is for the reason that the alienation in favour of the predecessor of the appellants in question took place within a period of 15 years.

4. In *Chandra Naik's* case we had noted the decision of their Lordships in *Siddegowda Vs Assistant Commissioner*, AIR 2003 SC 1290, as well as *Chinde Gowda Vs Puttamma* (2007) 12 SCC 618. In addition to these judgements, Sri.A.G. Holla, also refers to us *Guntaiah Vs Hambamma* 2005(6) SCC 228 which was infact applied in *ChindeGowda's* case.

5. Both in *Siddegowda* as all as in *Guntaiah* their Lordships had gone into question of alienation within the prohibited period. In *Siddegowda* the primary question before the Court was the importance of calculation of upset price and whether it would invariably reflect the market price. This is not what we are presently concerned with. However, In *Guntaiah*, the argument now put forward by Sri.A.G Holla, has been specifically dealt with. At the commencement of the judgment, their Lordships have noticed that initially the land in question was given temporary lease but later by application of Rule 43 J of the Karnataka Land Revenue (Amendment) Rules, 1960, the grantee was prohibited from alienating the land in favour of a third party for a period of 15 years. The distinction between the lease and a grant was therefore within the contemplation of the Apex Court. Even in those circumstances their Lordships have held as follows:

“It is also pertinent to note that the prohibition regarding alienation is a restrictive covenant binding on the grantee. The grantee is not challenging that condition. In all these proceedings, challenge is made by the third party who purchased land from the grantee. The third party is not entitled to say that the conditions imposed by the grantor to the grantee were void. As far as the contract of sale is concerned, it was entered into between the Government and the grantee and at that time the third-party purchaser had not interest in such transaction. Of course, he would be entitled to challenge the violation of any statutory provisions but if the grant by itself specifically says that there shall not be any alienation by the grantee for a period of 15 years, that is binding on the grantee so long as he does not challenge that clause, more so when he purchased the land, inspite of being aware of the condition. The Full Bench seriously erred in holding that the land was granted under Rule 43-J and that the authorities were not empowered to impose any conditions regarding alienation without adverting to Section 4 of Act 2 of 1979. These lands were given to landless persons almost free of cost and it was done as a social welfare measure to improve the conditions of poor landless persons. When these lands were purchased by third parties taking advantage of illiteracy and poverty of the grantees, Act 2 of 1979 was passed with a view to retrieve these lands from the third-party purchasers. When Act 2 of 1979 was challenged this Court observed in *Manchegowda Vs State of Karnataka* (SCC pp 310-11, para 17)

“17. Granted lands were intended for the benefit and enjoyment of the original grantees who happen to belong to the Schedules Castes and Scheduled Tribes. At the time of the grant, a condition had been imposed for protecting the interests of the original grantees in the granted lands by restricting the transfer of the same. The condition regarding the prohibition on transfer of such granted lands for specified period, was imposed by virtue of the specific term in the grant itself or by reason of any law, rule or regulation governing such grant. It was undoubtedly open to the grantor at the time of grating lands to the original grantees to stipulate such a condition the condition being a terms of the grant itself, and the condition was imposed in the interests of the grantee. Except on the basis of such a condition the grantor might not have made any such grant at all. The condition imposed against the transfer for a particular period such granted lands which were

granted essentially for the benefit of the grantees cannot be said to constitute any unreasonable restriction. The granted lands were not in the nature of properties acquired and held by the grantees in the sense of acquisition, or holding of property within the meaning of Article 19(1)(f) of the Constitution. It was a case of a grant by the owner of the land to the grantee for possession and enjoyment of the granted lands by the grantees and prohibition on transfer of such granted lands for the specified period was an essential term or condition on the basis of which the grant was made. It has to be pointed out that the prohibition on transfer was not for an indefinite period or perpetual. It was only for a particular period, the object being that the grantees should enjoy the granted lands themselves at lease for the period during which the prohibition was to remain operative. Experience had shown that persons belonging to Scheduled Castes and Scheduled Tribes to whom the lands were granted were because of their poverty, lack of education and general backwardness, exploited by various persons who could and would take advantage of the sad plight of these poor persons for depriving them of their lands. The imposition of the condition of prohibition on transfer for a particular period could not, therefore, be considered to constitute any unreasonable restriction on the right of the grantees to dispose of the granted lands. The imposition of such a condition on prohibition in the very nature of the grant was perfectly valid and legal.”

6. In *ChindeGowda*, which we have specifically relied upon in *Chandra Naik's* case, their Lordships infact relied on the extracted paragraphs of *Guntaiah* and thereafter opined that a challenge to any term in a lease or a grant would have to be made by the original lessee or the original grantee as the case may be. The subsequent alienee does not possess locus standi to challenge the moratorium contained in the lease or in the grant as the case may be.

7. We therefore find no reason to change our opinion as articulated in *Chandra Naik's* case. We hold that the original lessee or the original grantee is alone competent to assert that the upset price reflected the market price and therefore the moratorium of transfer was unfair and illegal. In these circumstances, the appeal is without merit and is accordingly dismissed.