# IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE $5^{\mathrm{th}}$ DAY OF NOVEMBER, 2015

### **PRESENT**

### THE HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

#### AND

### THE HON'BLE MR. JUSTICE B.VEERAPPA

## WRIT APPEAL NO. 2784/2010 (SC/ST)

## BETWEEN:

Mr. Shivanna,
Aged about 66 years
Son of Chikke Gowda,
Masavanagatta Village,
Nonavinakere Hobli
Tiptur Taluk,
Tumkur District.

...APPELLANT

(By Sri. Vijay Krishna Bhat, Advocate)

## AND:

- 1. The State of Karnataka,
  By the Secretary,
  Government of Karnataka,
  Revenue Department,
  M. S. Building,
  Dr. B. R. Ambedkar Road,
  Bangalore-560001.
- 2. The Deputy Commissioner, Tumkur District, Tumkur.
- 3. The Assistant Commissioner, Tiptur Sub-Division, Tiptur, Tiptur Taluk, Tumkur District.

4. Smt. Kariyamma,
Aged about 58 years,
Wife of Rama Naika,
Masavanagatta Village,
Nonavinakere Hobli,
Tiptur Taluk,
Tumkur District.

...RESPONDENTS

(By Sri. Aswathappa, AGA for R-1 to R-3, Sri S. Hanumanthaiah, Advocate for R4)

. . . . . .

This Writ Appeal is filed under section 4 of the Karnataka High Court Act Praying to set aside the order passed in the Writ Petition No. 10673/2007 dated 17/06/2010.

This Writ Appeal coming on for final hearing this day, **B. VEERAPPA**, **J.**, delivered the following:

## **JUDGMENT**

This intra court appeal is filed against the order dated 17.6.2010 made in W.P.No.10673/2007 by the learned Single Judge wherein the orders passed by the Assistant Commissioner and the District Commission have been quashed holding that the alienation made in favour of the appellant was in contravention of the conditions of grant.

2. The facts of the case are:-

The husband of the 4th respondent Mr. Rama
Naika was granted 4 acres of the land in Sy.No.115/5 of

Masavanagatta village, Nonavinakere Hobli, Tiptur Taluk. The original records reveal that initially on 18.1.1960 the land to the extent of 4 acres was leased temporarily for a period of 5 years and accordingly, lease deed was issued on 25th March, 1960. After completion of the lease period, the jurisdictional authority granted 4 acres of land to the husband of the 4th respondent by issuing grant certificate in Form No.1 on 28.12.1965 with a non-alienation clause for a period of 15 years.

3. The case of the 4th respondent before the learned Single Judge was that on 1.1.1971, out of 4 acres, 2 acres of land was alienated in favour of the appellant by the husband of respondent No.4. On 23.2.1973 and 18.4.1974, one acre each were alienated in favour of Bommegowda and Huchegowda respectively, who in turn have alienated the said lands in favour of the appellant on 12.11.1974 and on 23.9.1977.

After coming into force of the provisions of 4. Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 on 1.1.1979, the 4th respondent/petitioner filed an application for restoration of the said lands under the provisions of Section 4 of the said Act before the Assistant The Assistant Commissioner allowed Commissioner. the said application, against which, an appeal was filed before the Deputy Commissioner by the purchaser and the same was allowed by remanding the matter to the Assistant Commissioner for fresh consideration. Upon such remand, on second occasion i.e., on 23.11.1998 vide the order at Annexure-A to the writ petition, the Assistant Commissioner rejected the application which was confirmed by the Deputy Commissioner. Against the said orders passed by the Assistant Commissioner and the Deputy Commissioner, the 4th respondent filed a writ petition before the learned Single Judge, who after hearing both parties, by the impugned order dated 17th June, 2010 allowed the writ petition and set aside

the impugned orders passed by the Assistant Commissioner and the Deputy Commissioner holding that sale was in contravention of the grant against which, the present writ appeal is filed.

- 5. We have heard the learned Counsel for the parties to the lis.
- 6. Sri Vijaya Krishna Bhat, learned Counsel for the appellant mainly contended that the impugned order passed by the learned Single Judge is not a speaking order; no reasons are assigned and the grant made in favour of the original grantee i.e., the husband of the 4th respondent Sri Rama Naika was for an upset price and therefore, Rule 43 (6)(a)(ii) of the Mysore Land Revenue Code applies since the non lease period was for a period of 10 years. Therefore, the learned Single Judge was not right in holding that the condition of grant was for a period of 15 years. He also contended that the grant was made in favour of the 4th respondent on 18.1.1960 and prohibition for non-alienation was

only for a period of 10 years and hence, after completion of 10 years, the alienation was made and therefore, the very application filed for restoration before the Assistant Commissioner was not maintainable and both the authorities below have concurrently held that the alienation was made after completion of 10 years. Such a finding of fact recorded by the authorities below should not have been interfered with by the learned Single Judge. On these grounds, he sought to set aside the impugned order passed by the learned Single Judge.

7. Per contra, Sri D. Ashwathappa, learned AGA appearing for respondent Nos. 1 to 3 and Sri S. Hanumanthaiah, learned Counsel appearing for respondent No.4 sought to justify the impugned order passed by the learned Single Judge contending that the alienation made by the original grantee was in contravention of the conditions of the grant and therefore, the learned Single Judge was right in allowing the writ petition, etc. Hence, they sought for dismissal of the writ petition.

- 8. We have given our thoughtful consideration to the arguments advanced by the learned Counsel for the parties and perused the entire material on record including the original records produced by the learned Government Advocate for the State.
- 9. The original records reveal that on the first occasion, the land was leased to an extent of 4 acres in Sy.No.115/5 of Masavanagatta village of Nonavinakere Hobli, Tiptur Taluk in favour of the husband of 4th respondent on 18.1.1960 for a period of 5 years. Accordingly, the lease saguvali chit (lease possession letter) was issued on 25th March, 1960 with a condition that the lease was for temporary period i.e., for a period of 5 years up to the year 1964-65 and if the conditions mentioned in the undertaking are fulfilled, permanent grant will be made. After satisfactory completion of the temporary lease by the husband of the 4th respondent, the Assistant Commissioner granted the land in favour of the husband of the 4th respondent and the grant

certificate was issued on 28.12.1965 with a nonalienation clause for a period of 15 years. Both the Assistant Commissioner and the Deputy Commissioner without verifying the original records have come to a wrong conclusion that the alienation was made after completion of 10 years taking into consideration temporary lease deed as a grant order and thereby proceeded to pass wrong orders.

10. In the original records at page 116, we find from the order passed by the Assistant Commissioner dated 20.10.1965 that the upset price has been waived subject to the condition that the land shall not be alienated for a period of 15 years and it should be brought under cultivation within 2 years from the date of taking possession of the land. The operative portion of the order waiving the upset price is extracted as under:

"In the circumstances reported by the Tahsildar, Tiputur Taluk the upset price of Rs.120/- due from Sri Rama Naika of 4.00

acres of land granted in Masavanagatta village, Tiptur Taluk is waived subject to the condition that he shall not alienate the land for a period of fifteen years and shall bring the land under cultivation within a period of 2 years from the date of taking possession of land.

The Tahsildar should take action to recover the upset price in respect of other cases also very early.

Records accompany Tahsildar, Tiptur Taluk.

Assistant Commissioner, Tiptur Sub-Division, 20.10.65."

11. In view of the said order passed by the Assistant Commissioner, it is clear that non alienation condition was imposed at the time of grant for a period of 15 years and not for 10 years. Admittedly in the present case, on 8.1.1971, an area of 2 acres out of 4 acres of land was alienated in favour of the appellant. An area 1 acre of land in favour of Bommegowda and Huchegowda was alienated on 23.2.1973 and on 18.4.1974 in contravention of the conditions of grant.

Hence, the subsequent sales dated on 12.11.1974 and 23.9.1977 made in favour of the appellant by the said Bommegowda and Huchegowda in respect of 2 acres also are invalid. Therefore, the provisions of Section 4 Scheduled of Castes and Scheduled Tribes (Prohibition of Transfer of certain land) Act, 1978 are attracted. Hence, the impugned order passed by the learned Single Judge holding that the alienation was in contravention of the conditions of grant, is accordance with law.

12. The learned Single Judge has also recorded a finding that though a contention was raised that the husband of the 4th respondent belongs to Nayaka Community and as on the date of grant, the Nayaka Community was not considered as a Scheduled Tribe, this Court in the case of Obalegappa -vs- The Deputy Commissioner and Others reported in ILR 1999 KAR. 372 following the earlier judgment of B. Sanjeevaiah -vs-State of Karnataka reported in 1991(3) Kar. L. J.28 has opined that the said community is included in the

Schedule to the Constitution (Scheduled Tribe) Order, 1950, by a subsequent promulgation of an order by the President of India in exercise of the powers conferred on him by Clause (I) of Article 342. Hence, the land granted to any person belonging to the said community, by virtue of such inclusion in the list of Schedule Castes or Scheduled Tribes, would have to be treated as 'granted land' within the meaning of Section 3(b) of the Act.

13. The Hon'ble Supreme Court while considering the provisions Rule 43-G(4) and Rule 43-J of Karnataka Land Revenue Rules, 1960 in the case of *Guntaiah –vs-Hambamma reported in (2005)6 SCC 228* has held that where the grantees sold the land violating the condition restricting the alienation for a period of 15 years, the third party purchasers cannot challenge such condition as void, when grantees on whom the condition was binding under the contract with the Government had not challenged the same. Ultimately it was held therein that the provisions of Sections 4 and 5 of the Act would

attract such alienations. The said view of the Hon'ble Supreme Court was reiterated by a subsequent judgment in the case of *Chinde Gowda –vs- Puttamma* reported in (2007)12 SCC 618.

14. In view of the aforesaid reasons, we find that the impugned order passed by the learned Single Judge is in accordance with law. The appellant has not made out any case for interference while exercising the powers under Section 4 of the Karnataka High Court Act.

Accordingly, writ appeal is dismissed.

Sd/-Judge

> Sd/-Judge

Nsu/-