

## **Guntaiah & Ors vs Hambamma & Ors on 22 July, 2005**

**Equivalent citations: AIR 2005 SUPREME COURT 4013, 2005 (6) SCC 228, 2005 AIR SCW 3657, 2005 AIR - KANT. H. C. R. 2075, (2005) 6 JT 347 (SC), 2005 (6) JT 347, 2005 (7) SRJ 39, 2005 (5) SLT 458, 2005 (5) SCALE 580, (2005) 33 ALLINDCAS 351 (SC), (2005) ILR (KANT) 4265, (2005) 5 SUPREME 148, (2005) 5 SCALE 580, (2005) 4 KER LT 227, (2005) 5 ANDHLD 78, (2005) 5 KANT LJ 304**

**Author: K.G. Balakrishnan**

**Bench: K.G. Balakrishnan, P. Venkatarama Reddi**

CASE NO.:

Appeal (civil) 4308-4310 of 1998

PETITIONER:

Guntaiah & Ors.

RESPONDENT:

Hambamma & Ors.

DATE OF JUDGMENT: 22/07/2005

BENCH:

K.G. BALAKRISHNAN & P. VENKATARAMA REDDI

JUDGMENT:

**J U D G M E N T WITH CIVIL APPEAL NOS. 6044-6047/1998 K.G. BALAKRISHNAN, J.**

All these appeals have been filed against the common Judgment passed by the Full Bench of the Karnataka High Court in five Writ Appeals.

Under the Mysore Land Revenue (Amendment Rules), 1960 [hereinafter being referred to as "Rules of 1960"], certain lands were granted to members of Scheduled Castes and Scheduled Tribes. Initially, these lands were given to them on temporary lease and later by virtue of Rule 43-J of Rules of 1960, these lands were given to them permanently with a restriction that the grantees shall not alienate these lands to third parties for a period of 15 years. These lands were granted to them during the period 1959-65. The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands), Act, 1978 [hereinafter being referred to as "Act 2 of 1979"] came into force on 1.1.1979. Section 4 of this Act is to the effect that any transfer of granted land made either before or after the commencement of the Act, in contravention of the terms of the grant of such land or the law providing for such grant, shall be null and void and no right, title or interest on such land shall be conveyed nor be deemed ever to have conveyed by such transfer. The persons who obtained

grant of Government land, contrary to the condition regarding alienation, transferred the properties to third parties. In some cases, even the transferees had effected further transfer of such lands to others. Section 5 of Act 2 of 1979 empowers the Assistant Commissioner to pass appropriate orders for restoration of the land to the original allottee in case any transfer was effected contrary to Section 4 of the Act. Section 5 of Act 2 of 1979 provides that an Assistant Commissioner, on application by any interested persons or on information given in writing by any person, or suo-motu, after such inquiry, if he is satisfied that the transfer of any granted land is null and void as provided under sub-Section (1) of Section 4, may by order, take possession of such land after giving a reasonable opportunity of being heard to the person evicted, and restore the land to the original allottee. An appeal also is provided against the order passed by the Assistant Commissioner. Section 11 of Act 2 of 1979 further states that Act 2 of 1979 shall have overriding effect over the other laws.

In all these cases, the original allottees who were either scheduled castes or scheduled tribes transferred the property to third parties without obtaining previous permission of the Government. Later, the original allottees or their successors-in-interest filed applications before the Assistant Commissioner praying for restoration of lands which were transferred contrary to Section 4 of Act 2 of 1979. The Assistant Commissioner after conducting inquiry in these cases held that all the transfers were null and void and directed restoration of possession to the original grantees. The affected parties filed appeals and those appeals were dismissed by the appellate authority. Those orders were challenged before the High Court and the learned Single Judge confirmed the orders passed by the appellate authority. Aggrieved by the Judgment of the learned Single Judge, Writ Appeals were filed which came up before the Division Bench. An argument was canvassed on behalf of the transferees of such lands that the lands in all these cases were granted under Rule 43-J of Rules of 1960 and as it is not specifically provided under Rule 43-J that there shall be any restriction on alienation, the restriction imposed was not valid or enforceable. The Division Bench of the High Court thought it fit to refer the matter to the Full Bench as certain conflicting opinions were expressed by different Benches of the same High Court. The relevant portion of the reference order was to the following effect:-

"One of the important questions that arises for consideration in these Writ Appeals is as to whether an Authority granting land under Rule 43-J of Mysore Land Revenue (Amendment) Rules, 1960 can impose any condition at the time of making grant that the grantee, shall not alienate the land for a period of 15 years when Rule 43-J do not provide for any such condition. A further question also arises on the effect of a condition imposed in the Saguvali chit by the Tahsildar that the grantee shall not alienate the land for a period of 15 years when such condition was not imposed by the order of the Authority making the grant."

The Full Bench held that in all these cases the lands were allotted under Rule 43-J and, therefore, there should not have been any condition restricting the alienation by the grantees. The Full Bench also held that the conditions stipulated in Rule 43-G were not applicable to the grants made under Rule 43-J and, therefore, the conditions imposed by the Tahsildar in the 'Saguvali chit' restricting the alienation of such lands by the grantee was not sustainable in law. Aggrieved by the said decision, the State as well as the affected parties have filed these appeals.

We heard the appellant's Counsel and learned Counsel for the respondents.

In order to appreciate the contentions urged before us by the parties on either side, it is necessary to go into some of the relevant provisions contained in the Rules of 1960. These Rules of 1960 were intended to regulate the allotment of the Government lands to certain category of persons. As regards grant of lands, the Revenue Officers are given certain powers. The Tahsildar to whom the power of Deputy Commissioner has been delegated may grant not exceeding two acres of rain-fed wet land or four acres of dry land, provided the market value of such land including the value of the trees thereon does not exceed three hundred rupees. The Assistant Commissioner in-charge of the taluk is also given power to grant land not exceeding two acres of land fit for garden cultivation or wet land with assured irrigation facilities. Rule 43 provides the format of the application form for grant of land for cultivation. Rule 43-B states that no land with more than twenty-five reserved trees in an acre shall be disposed of for cultivation except under the special orders of Government. Rule 43-C and Rule 43-D give certain preference to individual who is poor or bona fide agriculturist, political sufferer, etc. It also provides that lands which are in control of the Revenue Department may be leased out to the schools, colleges and the training institutions and also to farming societies registered under the Karnataka Co-operative Societies Act. Rule 43-E says that the lands available for disposal in a village shall be reserved, for grant to different categories of persons eligible for such grant, and where a land available for disposal in any village is less than ten acres, the entire lands available shall be reserved for grant to applicants belonging to the Scheduled Castes and Scheduled Tribes who are ordinarily resident in the village. Where the extent of land available for disposal in a village is more than ten acres, a minimum of ten acres shall be reserved for grant to applicants belonging to Scheduled Castes and Scheduled Tribes. Rule 43-F prescribes the order of priority and the extent of land to be granted. Marginal note to Rule 43-G says that the grant of land under the preceding rules shall be subject to certain conditions. Section 43-G reads as follows:-

43-G Grant of lands under the preceding rules shall be subject to the following conditions. (1) In the case of grant of lands to applicants belonging to the Scheduled Castes and Scheduled Tribes, and to other applicants, who are unable to pay the occupancy price on account of poverty, the occupancy price may be waived up to rupees two hundred and the balance recovered in three annual instalments.

(2) In the case of grant of land to applicants who are ex-

servicemen the occupancy price shall be waived up to the extent awarded by Government under the Military Concession Rules.

(3) In the case of grant of land free of occupancy price, the grant shall be subject to the condition that the grantee shall pay contribution or betterment levy in respect of the land and the value of trees standing of the land.

(4) Where the grant is made free of cost, or is made at a price which is less than the full market value, the grant shall be subject to the condition that the land shall not be alienated for a period of fifteen years from the date of the grantee taking possession of the land, after the grant:

Provided that such land may be alienated with the previous sanction of the Government and subject to such conditions as the Government may specify, if the Government is of the opinion that in the circumstances of any case, it is just and reasonable to permit such alienation either for purposes of acquiring some other land or for any other purpose:

Provided further that nothing in this clause shall apply to:

(a) the alienation of any land in favour of the State Government or Co-operative Society as security for loans obtained for improvement of the land or for buying cattle or agricultural implements for the cultivation of the land, or alienation of any land in favour of the Indian Coffee Board as security for loans advanced by the Indian Coffee Board under the Coffee Development Plan;

(b) the leasing of any land by a person who is a widow, a minor or who is subject to physical or mental disability or who is a serving member of the armed forces.

(5) The grantee shall cultivate the land personally.

(6) The land shall be brought under cultivation within two years from the date of the grantee taking possession of the land.

(7) The grant is liable to be terminated [by the Divisional Commissioner or the State Government] and the land resumed if any of the aforesaid conditions is not fulfilled, and on such resumption the land shall vest in Government free from all encumbrances:

Provided that no land shall be resumed under this clause except after giving an opportunity to the grantee or his successor in interest to show cause why the grant should not be terminated and the land resumed."

Rule 43-J is a general clause empowering the authorities to grant land to the lessees to whom lease had been granted previously. It reads as follows:-

43-J Grant of land to persons to whom lands have been leased temporarily- Notwithstanding anything contained in the preceding rules of this Chapter, in the case of agricultural land leased by competent authority to any person for purposes of cultivation at any time before the commencement of the Mysore Land Revenue (Amendment) Rules, 1960, if such land is available for disposal and if the conditions of the lease have been complied with, the land may be granted to the lessee.

The finding of the Full Bench of the Karnataka High Court is that if the grant is made under Rule 43-J, there could not have been any condition restricting the alienation and if at all there were any such conditions they are null and void. This view has been

taken for the reason that conditions restricting alienations are given under clause (4) of Rule 43-G and these provisions would apply to grant of lands made under the preceding rules and not apply to Rule 43-J which comes after Rule 43-G of the Rules of 1960. This view has been taken based on the title/marginal note of Rule 43-G. The Full Bench was also of the view that under Rule 43-J, it is not stated that there shall be any conditions prohibiting alienation. Therefore, the court held that authorities were not empowered to impose any such conditions.

A careful scrutiny of the entire scheme of the rules relating to grant of lease to landless persons would show that the finding of the Full Bench on this issue is legally not sustainable. First of all, Rule 43-J is only a general rule which says that the lands which have been given on lease for agricultural purposes could be assigned to the lessees if they complied with the conditions of lease. The title to the land primarily vests with the Government. The Government while granting title to the lessees, can impose any conditions which are permissible under law. The land is being given to lessees either free of cost or at a price which is less than the full market price. It is not an outright sale made by the Government for full consideration. In all these cases, lands were given almost free of cost. The upset price of the land was either fixed at Rs. 200-250 per acre and this Rs. 200 itself was waived and the grantee was to remit only Rs. 50 per acre. Grantee was to execute "Saguvali Chit" and it incorporated a condition prohibiting alienation for a period of 15 years. The history of the legislation also would show that the State of Karnataka has all along been giving lands to the landless persons belonging to Scheduled Castes and Scheduled Tribes subject to the restriction on alienation of such land.

Rule 43-J is a general provision which empowers the authorities to invest the lessees with title of the land provided the lessees fulfilled the conditions of lease. The High Court assumed that conditions of alienation are not stated in Rule 43-J and therefore, the authorities were not empowered to impose such conditions. Rule 43-J is only an enabling provision which permits the competent government authorities to grant title to lessees. The Government being the paramount title-holder is empowered to impose any condition which is not against the law and it is binding on the grantees. All these grants of land are made under the general provisions of rules and Rule 43-J by itself is not a provision by which grants are made. All the general provisions of the Rules of 1960 could be made applicable to such grant if the grant is made at a price lesser than the market price, or is made free of cost.

In the title to Rule 43-G, it is stated that the grants of lands under the preceding rules shall be subject to the following conditions. This title to the rules as such cannot be taken as the key words to interpret Rule 43-G. They have got the effect of only marginal notes. The marginal notes are not considered as legitimate aid to construction of any section or rule. The side notes are not considered as part of the Act. Lord Macnaghten in a case decided by the Privy Council held that the marginal notes cannot be referred to for the purpose of construction. Lord Reid in *Chandler*

Vs. D.P.P. [1964] A.C. 763 said: " In my view, side notes cannot be used as an aid to construction. They are mere catchwords and I have never heard that an amendment to alter a side note could be proposed in either House .So side notes cannot be said to be enacted in the same sense as the long title or any part of the body of the Act."

When the rule itself says that where the grant is made free of cost or at a price which is less than the full market value, such grant shall be subject to the condition that the land shall not be alienated for a period of 15 years from the date of the grantee taking possession of the land after the grant, such conditions could be imposed on any grant made to the party.

In any case, the High Court failed to take into account the clear language employed in Section 4, according to which 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' shall be null and void(emphasis supplied). The violation of the terms of grant itself gives rise to the action under Section 4 read with Section 5. So long as the terms of the grant prohibiting transfer are not opposed to any specific provision of law, they cannot be violated and the transferee gets no rights by virtue of such invalid transfer. That is the sum and substance of Section 4 which has not been duly considered by the High Court.

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 the 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 no 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 advertng to Section 4 of the 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 & Ors. Vs. State of Karnataka & Ors. 1984(3) SCC 301:

"17. Granted lands were intended for the benefit and enjoyment of the original grantees who happen to belong to the Scheduled 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 a 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 granting lands to the original grantees to stipulate such a condition the condition being a term 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 of 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 the possession and enjoyment of the granted lands by the grantees and the 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 least 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."

The conditions restricting alienation imposed by the authorities are legally valid and the finding of the Full Bench to the contrary is not correct and the impugned Judgment is thus not sustainable in law. The impugned Judgment is set aside, the order passed by the learned Single Judge is upheld and these appeals are allowed. The authorities shall take appropriate steps pursuant to the order passed by the authorities under the Act 2 of 1979 within a period of three months. There will be no order as to costs.