

CASE NO.:
Appeal (civil) 7782 of 2001

PETITIONER:
Bhadrappa (D) By Lrs.

RESPONDENT:
Tolacha Naik

DATE OF JUDGMENT: 08/01/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T
[With Civil Appeal No.7799/2001]

Dr. ARIJIT PASAYAT, J.

Civil Appeal No. 7782 of 2001

1. Heard learned counsel for the parties.

2. Challenge in this appeal is to the order passed by a Division Bench of the Karnataka High Court dismissing the writ appeal filed under Section 4 of the Karnataka High Court Act (in short the \021High Court Act\022). Challenge in the appeal was to the order passed by a learned Single Judge who had dismissed the writ petition filed by the appellant-Bhadrappa. After the death of Bhadrappa, his legal heirs were brought on record and they are the appellants before this Court.

3. Background facts in a nutshell are as follows:

The land in question was granted some time in the year 1955 in favour of one Gopya Naik who is referred hereinafter as grantee. Saguvali Chit was issued on 11.10.1956. Seetamma, widow of the grantee who was also the mother of respondent No.3 sold the land in the year 1959 in favour of one Gangappa who in turn sold the said land to Ahmad Pasha and there was subsequent sale by Ahmad Pasha to Bhadrappa. The land in question bears Survey No.106 measuring 3 acres and 5 guntas.

4. Proceedings were initiated on the basis of an application that the alienation was hit by Section 4 of Karnataka Scheduled Castes and Schedules Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (in short the \021Act\022).

5. Sections 4 and 5 of the Act read as follows:

\0234. Prohibition of transfer of granted lands.- (1) 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 a civil court or of any award or order of any other authority.

5. Resumption and restitution of granted lands.-

(1) Where, on application by any interested person or on information given in writing by any person or suo-motu, and after such enquiry as he deems necessary, the Assistant Commissioner is satisfied that the transfer of any granted land is null and void under sub-section (1) of section 4, he may,-

(a) by order take possession of such land after evicting all persons in possession thereof in such manner as may be prescribed:

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard;

(b) restore such land to the original grantee or his legal heir. Where it is not reasonably practicable to restore the land to such grantee or legal heir; such land shall be deemed to have vested in the Government free from all encumbrances. The Government may grant such land to a person belonging to any of the Scheduled Castes or Scheduled Tribes in accordance with the rules relating to grant of land.

(1A) After an enquiry referred to in sub-section (1) the Assistant Commissioner may, if he is satisfied that transfer of any granted land is not null and void pass an order accordingly.]

(2) Subject to the orders of the Deputy Commissioner under section 5A, any order passed under sub-sections(1) and (1A) shall be final and shall not be questioned in any court of law and no injunction shall be granted by any court in respect of any proceeding taken or about to be taken by the Assistant Commissioner in pursuance of any power conferred by or under this Act.

(3) For the purposes of this section, where any granted land is in the possession of a person, other than the original grantee or his legal heir, it shall be presumed, until the contrary is proved, that such person has acquired the land by a transfer which is null and void under the provisions of sub-section (1) of section 4.\024

6. An order was passed in the proceeding under Section 5 of the Act to the effect that the alienation had been effected within the period of prohibition. The appellant took the stand that the land was not a free grant land. It was a grant for upset price. The authorities concluded that it was a free grant. The writ petition was dismissed.

7. The stand before the learned Single Judge and the Division Bench were reiterated.

8. Section 5(3) of the Act clearly provides that any person other than the grantee or his legal heirs in possession of the granted land, shall be deemed to be in possession under a transfer which is null and void under Sections 4(1) and 4(2) until and unless anything contrary is established. Burden, therefore, is on the person in possession to prove that his possession was valid in accordance with law. It was found factually that the writ petitioner had failed to establish the same. The transfer in favour of Gangappa was in violation of the prohibition of the Act. That being so, the High Court was right in dismissing the writ petition and the writ appeal. In *Guntaiah and Ors. v. Hambamma and Ors.* (2005 (6) SCC 228 at para 14) it was noted as follows:

\023It 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, in spite 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 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 v. State of Karnataka* (SCC pp. 310-11, para 17) \02317. 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.\024

Civil Appeal No.7799 of 2001:

9. In view of the position of law indicated in the connected Civil Appeal No.7782 of 2001 this appeal is sans merit.

10. Above being the position, there is no merit in these appeals which are accordingly dismissed with no order as to costs.

JUDIS