

CASE NO.:
Appeal (civil) 2802 of 2001

PETITIONER:
Dharma Naika

RESPONDENT:
Rama Naika & Anr

DATE OF JUDGMENT: 05/02/2008

BENCH:
Tarun Chatterjee & Dalveer Bhandari

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO.2802 OF 2001

TARUN CHATTERJEE, J.

1. The subject matter of this appeal relates to the Government granted land measuring 2 acres 20 guntas in Sy.No.365/1 (New No.685) situated at Nayakanahatti Village, Challakera Taluk, District Chitradurga in the state of Karnataka (herein after referred to as the 'scheduled land'). The certificate of grant was issued on 10th of September, 1955 in favour of one Shri Tejyanaika in which one of the conditions stipulated was that the grantee shall not alienate the granted land for a period of 15 years.

2. On 10th of September, 1970, the abovementioned period of 15 years during which the land could not be alienated as per the conditions of the certificate of grant had expired. After the expiry of the aforesaid period of 15 years, more precisely on 6th of July, 1976, an agreement to sell was executed by the legal heirs of the original grantee who, in the meantime, had expired. Under this agreement for sale, the vendors, namely, the legal heirs of the original grantee had agreed to sell the scheduled land to the father of the appellant. Subsequent to the agreement for sale and the commencement of the Act, more precisely on 13th of October, 1986, a deed of sale was executed and registered by the vendors in respect of the scheduled land. After the registration of the sale deed, the authority under the Act initiated a proceeding for resumption of the scheduled land as, according to the authorities, the sale was in violation of the provisions of the Act. This is because the sale was effected after the commencement of the Act without previous permission of the government. An order was passed by the Assistant Commissioner who had the authority to direct resumption of the land holding that the sale having taken place on 13th of October, 1986, when the Act had already come into force, the sale deed dated 13th of October, 1986 must be found to be null and void in view of the prohibition contained in Section 4 of the Act. An appeal was carried against the aforesaid order before the appellate authority which was also dismissed, inter alia, on the finding that the title of the scheduled land could not pass under the registered sale deed dated 13th of October, 1986 as, admittedly, the same was executed and registered after the coming into force of the act and therefore, in view of Section 4 (2) of the Act, the sale made without obtaining prior permission of the Government was found to be null and void. Feeling aggrieved by the concurrent orders of the Assistant Commissioner as well as the appellate authority, a writ petition was filed before the High Court of Karnataka at Bangalore, which was dismissed by a learned Judge of the High Court and against that order of the learned Single Judge, a writ appeal was filed, which was also dismissed. Feeling aggrieved, this special leave petition was filed in respect of which leave has already been granted.

3. We have heard the learned counsel for the parties and examined the orders passed by the High Court as well as the authorities below. On a careful examination of the aforesaid orders and the materials on record

and also the provisions of the Act, including the objects and reasons for which this act was introduced, we are of the view that this appeal is liable to be dismissed for the reasons given hereunder, but before we proceed further, we may keep it on record that when the agreement for sale dated 6th of July, 1976 was subsisting, the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (in short 'the Act') came into force with effect from 1st of January, 1979.

4. The only question that needs to be decided in this appeal is whether the sale deed, which was executed and registered after the commencement of the Act but in respect of which, the agreement for sale was executed before the commencement of the Act, would be hit by the provisions of Section 4 of the Act. In order to decide this question and before considering the relevant provisions of the act with which we would be associated for a proper decision in this case later, it would be appropriate to reproduce the statement of objects and reasons of the act which was introduced by the Karnataka Gazette, Extraordinary, dated 30th of June, 1978, which reads as under: -

"The non-alienation clause contained in the existing Land Grant Rules and the provisions for cancellation of grants where the land is alienated in contravention of the above said provision are found not sufficient to help the Scheduled Castes and Scheduled Tribes grantees whose ignorance and poverty have been exploited by persons belonging to the affluent and powerful sections to obtain sales or mortgages either for a nominal consideration or for no consideration at all and they have become the victims of circumstances. To fulfill the purposes of the grant, the land even if it has been alienated, should be restored to the original grantee or his heirs. The Government of India has also been urging the State Government for enacting a legislation to prevent alienation of lands granted to Scheduled Castes and Scheduled Tribes by Government on the lines of the model legislation prepared by it and circulated to the State Government."

A plain reading of the statement of objects and reasons, for which the legislature has introduced this Act, would show that the non-alienation clause contained in the existing land grant rules and the provisions for cancellation of grants where the land was alienated in contravention of the above said provisions were found insufficient to help the Scheduled Castes and Scheduled Tribes grantees. From the objects and reasons of the Act, it is evident that ignorance and poverty of the scheduled castes and scheduled tribes were exploited by persons belonging to the affluent and powerful sections to get sales or mortgages, either for a nominal consideration or for no consideration at all and on account of this, the scheduled castes and scheduled tribes had become the victims of circumstances. It is for this reason and to fulfill the purposes of the grant, it was thought fit by the legislature that the land, even if it has been alienated, must be restored to the original grantee or his heirs and legal representatives who are admittedly scheduled castes and scheduled tribes. It is also evident from the objects and reasons of the Act that the Central Government was also urging the State Government to enact a legislation to prevent alienation of lands granted to the scheduled castes and scheduled tribes by the State Government on the lines of the model legislation prepared by it and circulated to the State Government. It is in that background, the Act was introduced providing for prohibition of transfer and restoration of lands granted by the Government to persons belonging to scheduled castes and scheduled tribes in the State. However, it is also evident from the relevant provisions of the Act with which we would be dealing with later that total prohibition of transfer by scheduled castes and scheduled tribes was also not intended by the legislature. It is provided that in respect of transfers after the commencement of the act, it would be open to transfer the land granted to scheduled castes and scheduled tribes if prior permission is obtained from the State

Government.

5. Keeping the objects and reasons for which the Act was introduced in mind for the purpose of deciding the present appeal and also for the purpose of giving proper interpretation to the relevant provisions of the Act with which we are concerned, let us now deal with certain relevant provisions of the Act. Section 3 of the Act is a defining section. Section 3(b) defines "Granted Land" which 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 to such person under the relevant law for the time being in force relating to agrarian reforms or land ceilings or abolition of imams, other than that relating to hereditary offices or rights and the word "granted" shall be construed accordingly.

6. Next is the definition of "Transfer" under Section 3(e) of the Act. "Transfer" means a sale, gift, exchange, mortgage with or without possession, lease or any other transaction not being a partition among members of a family or a testamentary disposition and includes the creation of a charge or an agreement to sell, exchange, mortgage or lease or enter into any other transaction.

A bare reading of the definition of "Transfer" as defined in Section 3(e) of the Act would show that an "agreement for sale" of any "granted land" is included within the meaning of "Transfer". That being the position, the word "Transfer" as defined under the Act is an inclusive definition. That is to say, it includes "sale" as well as "agreement for sale", although an agreement for sale under the Transfer of Property Act is not a transfer and the right, title or interest in the land does not pass until the sale deed is executed and registered. "Sale" has been defined in Section 54 of the Transfer of Property Act which means transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. As noted herein earlier, an agreement to sell does not by itself create any interest of the proposed vendee in the immovable property but only creates an enforceable right in the parties. (See : *Rambhau Namdeo Gajre vs. Narayan Bapuji Dhotra (Dead)* through LRs. [(2004) 8 SCC 614]). Therefore, it is clear that under the general law, that is, under the Transfer of Property Act, an 'agreement for sale' is not the same as 'sale' and in the case of an agreement for sale, the title of the property agreed to be sold still remains with the vendor but in the case of 'sale', title of the property is vested with the vendee. Therefore, an agreement for sale is an executory contract whereas sale is an executed contract.

7. Let us now consider Section 4 of the Act, which is the most relevant provision for the purpose of deciding this appeal. Section 4 deals with prohibition of transfer of granted lands and reads as under : -

"(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."

8. Section 5 deals with resumption and restitution of granted lands. Under this provision, power has been conferred on the Assistant Commissioner to initiate a proceeding and hold that the transfer of any granted land is null and void under sub-section (1) of Section 4 and if the transfer of such granted land is found to be null and void, he is empowered to take possession of such land after evicting all such persons in possession thereof in such manner as may be prescribed under the Act. This power can be exercised by the Assistant Commissioner on an application by any interested person or on information given in writing

by any person or even suo moto.

9. Section 6 of the Act prohibits registration of transfer of granted lands. It says that notwithstanding anything in the Registration Act, 1908, on or after the commencement of this Act, no registering officer shall accept for registration any document relating to the transfer of, or to the creation of any interest in, any granted land included in a list of granted lands furnished to the registering officer except where such transfer is in accordance with this Act or the terms of the grant of such land or the law providing for such grant. From a bare reading of this provision, it is clear that an embargo has been placed on the registering officer to accept any document for registration relating to the transfer of, or to the creation of any interest in, any granted land except where the transfer is in accordance with the grounds mentioned in the said section.

10. The only other relevant provision to be considered for the purpose of this appeal is Section 11 of the Act, which reads as under:

" The provision 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."

Section 11 of the Act, therefore, provides that the provisions of this act shall override all other laws inconsistent with this Act. Since, in this case, we are not concerned with any inconsistency with 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, it is needless to deal with this provision in the present case.

11. Keeping these provisions and the objects and reasons of the Act in mind, let us now deal with the submissions advanced by the learned counsel appearing on behalf of the appellant. According to the learned counsel for the appellant, having regard to the fact that the transfer of the granted land was made after the expiry of the prohibited period and before the coming into force of the Act, such transfer could not be hit by the provisions contained in Section 4 (2) of the Act. In this connection, the learned counsel for the appellant had drawn our attention to Section 3(e) of the Act, which defines "Transfer". We have already dealt with the definition of "Transfer" herein earlier. According to the learned counsel for the appellant, the prohibition imposed under section 4 of the Act would not be applicable to the facts of the present case. As noted herein earlier, the learned counsel, therefore, submitted that in view of the above, the High Court as well as the authorities below had committed an error in holding that the sale deed, having been executed and registered after the commencement of the Act, must be found to be null and void and that by the said sale deed, the right, title or interest in the granted land must be restored by the Assistant Commissioner, in the exercise of his power under Section 5 of the Act, to the respondents.

This submission of the learned counsel for the appellant was contested by the learned counsel appearing for the respondents. According to the learned counsel for the respondents, the transfer of the granted land must be hit by Section 4 of the Act as, admittedly, the sale deed was executed and registered after the commencement of the Act. The learned counsel for the respondents also contended that in view of the prohibition contained in Section 4 of the Act, even if the transfer was made before the commencement of the act in view of the agreement for sale, still since the sale deed was executed and registered after the commencement of the act, the same must be hit by Section 4 of the Act and therefore, no right, title or interest in such granted land shall be conveyed or be deemed ever to have conveyed by such transfer and that being the position, no interference could be made with the impugned judgment as well as with the orders of the authorities.

12. Having heard the learned counsel for the parties and after examining the objects and reasons and the relevant provisions of the Act, as noted herein earlier, in depth and in detail, we have no hesitation to hold that the submissions of the learned counsel for the appellant cannot at all be accepted. It is true that the agreement for sale in respect of the

granted land was executed before the commencement of the Act. It is also an admitted position that "Transfer" under the Act includes an agreement to sell as well. Keeping this fact in mind, let us now see whether in view of Section 4 of the Act, the transfer of the land, in respect of which the agreement for sale was executed before the commencement of the act but which was effected after the commencement of the Act by execution and registration of the sale deed, could be said to be null and void. Section 4 (1) of the Act in clear terms provides that notwithstanding anything contained in any law, agreement, contract or instrument, any transfer of granted land made either before or after the commencement of the Act in contravention of either (a) the terms of grant of such land; or (b) the provisions of the law providing for such grant; or (c) sub-section (2) of Section 4 of the Act, it 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. Therefore, under Section 4 (1) of the Act, it can be safely concluded that this provision declares any transfer of granted land made either before or after the coming into force of the Act, to be null and void if it is in contravention of the conditions specified therein. Section 4(2) of the Act, as noted herein earlier, deals with the transfer of granted land after the commencement of the Act i.e. after

1st of January, 1979. For the purpose of Section 4(2), the court must be satisfied that 1) the sale deed was executed and registered after the commencement of the Act and 2) the same was executed and registered without seeking prior permission of the state government. Therefore, Section 4(2) clearly postulates that a transferee cannot acquire the granted land from the grantee without seeking the permission of the government nor can the grantee transfer it without seeking prior permission from the government. We have already considered the scheme of the act as also the objects and reasons for which it was introduced. It is an admitted position that the act was introduced to help and protect the right, title and interest of the scheduled castes and scheduled tribes, in respect of the granted lands, whose poverty and status in the society was taken advantage of by some rich and affluent persons who took their lands either by paying a paltry sum or even without paying anything to them.

13. As noted herein earlier, it is true that in this case, admittedly, the parties had entered into an agreement for sale in respect of the granted land before the commencement of the Act. It is also an admitted position that the respondents belong/belonged to the scheduled caste community. As already noted herein earlier, for the purposes of this act, "Transfer" has been defined to include an "agreement for sale" although under the general law, an "agreement for sale" will not by itself transfer the granted land automatically to the purchaser/appellant. From an overall consideration of the objects and reasons for which this act was introduced viz., to protect the right and interest of the scheduled castes and scheduled tribes in respect of the granted lands and the relevant provisions of the Act, it is pellucid that the definition of "Transfer" under Section 3(e) of the Act includes an agreement for sale also and "Transfer" has been so defined to protect the right, title and interest of the scheduled castes and scheduled tribes so that possession of the lands could be restored to them even if they had entered into an agreement for sale. It would be necessary for us at this stage to examine Section 4 of the Act in depth and in detail. As noted herein earlier, Section 4 deals with prohibition of transfer of granted lands. Sub-section (1) of Section 4 starts with the non-obstante clause and provides that any transfer of granted land, 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 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. In our view, therefore, it is clear from a plain reading of Section 4(1) that if any one of the conditions is satisfied, it would render the transfer null and void.

14. Let us, therefore, consider whether any of the conditions is

satisfied in the present case and thereby, whether, the transfer shall be null and void conveying or deeming ever to have conveyed no right, title or interest of such land by such transfer. So far as the first condition, namely, transfer in contravention of the terms of the grant of such land is concerned, it cannot be disputed in the facts of this case that there was no contravention of the terms of the grant of such land as the transfer was admittedly made after 15 years of the date of certificate, which was the only condition regarding prohibition of transfer in the grant. It is also not in dispute that there is no contravention of any law providing for such grant. Therefore, so far as these two conditions are concerned, it cannot be disputed that they are not satisfied. Now, let us take into consideration the third condition i.e. transfer made in contravention of sub-Section 2 of Section 4 of the Act. In respect of this condition, a transfer of any granted land made after the commencement of the Act in contravention of 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. Sub-Section 2 of Section 4 clearly says that no person shall, after the commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government. Therefore, sub-Section 2 of Section 4 prohibits transfer or acquisition by transfer, either by the transferor or by the transferee of any granted land without the previous permission of the Government. Therefore, after the commencement of this Act, if any transfer is effected or any person acquires any granted land by transfer, without the previous permission of the Government, such transfer 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.

15. So far as the facts of the present case are concerned, admittedly, the transfer was effected after the commencement of the Act by a deed of sale dated 13th of October, 1986 without the previous permission of the Government. That being the position, we have no hesitation to hold that such transfer must be held to 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.

16. As argued and noted herein earlier, the learned counsel for the appellant submitted that in view of the admitted fact that the agreement for sale, which is also a transfer within the meaning of Section 3(e) of the Act, was made before the commencement of the Act, it cannot be held that such transfer was null and void and that no right, title or interest shall be conveyed by such transfer. We are unable to agree with this submission of the learned counsel for the appellant. As noted herein earlier, it is true that by virtue of Section 3(e) of the Act, "Transfer" includes an agreement for sale. We have to keep in mind that in order to protect the right, title and interest of the scheduled castes and scheduled tribes, this Act was promulgated as it was found that some affluent and influential persons of the society, either by payment of a mere consideration or by no payment at all, sought to get the property transferred in their favour from the scheduled castes and scheduled tribes community. In our view, it is for this reason and in order to protect the scheduled castes and scheduled tribes community, transfer has been defined to include an agreement for sale under the Act so that even if an agreement for sale is executed by a scheduled caste or scheduled tribe and possession is delivered to the vendee, it would be open to the authority under Section 5 of the Act to take steps for resumption of the land from the vendee. Otherwise, there can be cases where merely by entering into an agreement for sale, possession of the land is delivered to the vendee and supposing transfer as defined in this act does not include an agreement for sale, then in such cases, it would not be open to the authority under the Act to take steps for the resumption of the granted land as, merely by executing an agreement for sale, no transfer is effected.

17. Before parting with this judgment, we may note that the learned counsel for the appellant in support of his contention, as noted herein above, relied on a decision of this Court in the case of *Manchegowda & Ors. Vs. State of Karnataka & Ors.* [(1984) 3 SCC 301]. This decision

was also relied by the learned counsel who appeared for the appellant before the learned single judge of the Karnataka High Court. In our view, the decision of this Court in Manchegowda's case was rightly distinguished by the learned single judge. We are in agreement with the decision of this Court in Manchegowda's case but the scope of challenge by the petitioners in that decision was limited which was stated at paragraph 7 of the said judgment, as follows: -

"It may be noted that the validity of the Act in so far as it imposes prohibition on transfer of granted land after the commencement of the Act has not been challenged and the principal objection to the validity of the Act is taken because of the provisions in the Act seeking to nullify the transfers of granted lands effected before the commencement of the Act."

Therefore, we are in full agreement with the views expressed by the learned single judge of the High Court that the scope of challenge by the petitioners in the aforesaid decision of this Court was limited and therefore, that decision cannot be of any help to the appellant in the present case.

18. That being the position, we do not find any substance in the arguments of the learned counsel for the appellant and accordingly, this appeal fails. The appeal is, therefore, dismissed. There will be no order as to costs.