

CASE NO.:
Appeal (civil) 4924 of 1998

PETITIONER:
SIDDEGOWDA

RESPONDENT:
ASSISIANI COMMISSIONER AND ORS.

DATE OF JUDGMENT: 13/02/2003

BENCH:
K.G. BALAKRISHNAN & P. VENKATARAMA REDDI

JUDGMENT:
JUDGMENT

2003 (1) SCR 1108

The following Order of the Court was delivered :

One Nanjaiah alias Gunsaiiah was allotted 1 acre 20 guntas of land by the State for a total sum of Rs. 750. The land allotted to Gungaiah was purchased by the appellant herein on 10.9.1968. His allotment was made under the Mysore Land Revenue Act 1888. The Karnataka State Legislature passed the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of certain lands) Act, 1978 and it came into force on 1.1.1979. Under section 4 of the said Act, certain alienations made in contravention of the terms of grant of land were declared null and void. Pursuant to that, notice was issued under section 4 of the Act to the appellant alleging that the sale in favour of the appellant by the predecessor-in-interest of respondent 3-A to E was violative of provisions of the Act and the land was to be resumed and possession be given back to these respondents. The appellant filed objection and the Assistant Commissioner by his order dated 26.3.1990 ordered resumption of the land. The appellant challenged the same before the Deputy Commissioner. The appeal was rejected. The appellant thereafter filed Writ Petition before the High Court of Karnataka. The same was dismissed. Appellant thereafter filed a Writ Appeal and by the impugned judgment the Division Bench dismissed the Writ Appeal.

We heard the learned counsel for the appellant and learned counsel for the respondents. The main contention urged by the appellants counsel was that the land granted to Gungaiah was for an upset price fixed as per the rules and the upset price being equivalent to market value of the land, the prohibition against alienating of the property, envisaged under Rule 43(g) of the Mysore Land Revenue Code is not applicable. The counsel for the appellant also contended that in the "Sagu Vah Chit" (grant certificate) executed in favour of the original grantee Gungaiah there was no specific clause prohibiting alienation of the land to any other party. Therefore, it was argued that the sale in favour of the appellant was perfectly valid and section 4 of the Act has no application.

The counsel for the respondents, on the other hand, contended that the grant in favour of Gungaiah was effected on payment of the occupancy price payable by the grantee, though it is described as upset price and the same does not amount to market value of the land. The counsel for the State also supported this contention and submitted that any grant of land made under Rule 43-C would automatically attract the provision prohibition contained in Rule 43-G if the grant is for any amount less than the market value.

The counsel for the appellant has drawn our attention to the various rules applicable to the grant of land. Evidently, the grant made of Gungaiah was under Rule 43-C of the Karnataka Land Revenue Act and under such circumstances, the prohibition prescribed under Rule 43-G would apply. Rule

43-G (4) read as follows.

"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."

Therefore, the crucial question is whether the grant in favour of the Gungaiah was for the full market value or for any price lesser than that. The argument of the appellant's counsel is that upset price was fixed at Rs. 500 per acre and that clearly reflected the full market value of the land. Our attention was also drawn to Rule 43(2) of the Mysore Land Revenue Code 1940 describing the mode in which the upset price shall be fixed. It says that:

"The "upset price" shall not be arbitrarily fixed but shall represent the actual market value of the land, nearly as it can be ascertained by local enquiries and the examination of records of sales of similarly lands in the neighbourhood, and if necessary, of the registration statistics relating to them."

From the above rule, it is not possible to assume that upset price would always be the market value of the land. The upset price and market price are certainly different concepts and it may be true that in certain cases upset price may be the market value of the land. But that does not mean that upset price fixed shall always be equivalent to the market value of the land. There are no materials placed before us to show that Rs. 500 fixed by the authorities was equivalent to the market value for this land. It is also relevant to note that the appellant himself purchased this land within a period of three years from Gungaiah for a total sum of Rs. 3,000. Therefore, we are unable to hold that the upset price fixed at Rs. 500 per acre was really the market value of the land. If that be so, the prohibition under Rule 43-G would apply. The appellant who had filed the objections before the Assistant Commissioner, did not take a plea that the upset price for the grant was really the market value of the land. The main contention raised before the first authority was that the grant did not contain a specific clause prohibiting alienation. Nevertheless the grant contained a clause that the further enjoyment of the land was subject to Land Revenue Code and Rules thereunder for the time being in force and other laws. Evidently, the provisions contained in the Mysore Land Revenue Code are applicable and the assignment in favour of the appellant was in contravention of section 4 of the Act and we do not find any merit in the appeal. It is accordingly dismissed.

Counsel for the appellant lastly submitted that after the assignment, the appellant effected several improvements to the property and he is entitled to reasonable compensation. It is upto the appellant to file appropriate application before the Assistant Commissioner. In case such an application is filed, the same shall be disposed of in accordance with law.