

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8TH DAY OF MARCH 2004

BEFORE

THE HON'BLE MR. JUSTICE D.V. SHYLENDRA KUMAR

WRIT PETITION No.4925/2004(SC-ST)

BETWEEN:

Sri B.N.Prabhakara Prabhu,
S/o Sri Narayana Prabhu,
Aged about 57 years,
Hariyappa Street,
Chickmagalur.

....Petitioner.

(By Sri. K.Chandranath Ariga., Adv.)

AND:

1. Sri Gopala,
S/o Thimmaiah,
Ramanahalli, Post:Ramanahalli,
Chickmagalur.
2. Asst. Commissioner,
Chickmagalur Sub-Division,
Chickmagalur.
3. Deputy Commissioner,
Chickmagalur District,
Chickmagalur.

....Respondents.

(By Sri. M.G.Anjanamurthy, HCGP for R-1 & 2)

This Writ Petition is filed under Articles 226 & 227 of the Constitution of India with a prayer to quash the order by the D.C., Chickmagalur, dated 11/8/2003 vide Annex.E and the order by the A.C. dated 14/2/2001 vide Annex.D and reject the application filed by R-1.

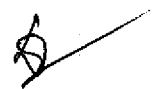
This Writ Petition coming on for Prly. Hearing this day, the Court made the following: -

ORDER

Petitioner claims to be a legal heir of a purchaser, who had purchased a granted land, which had been sold in favour of the vendor of the petitioner's-predecessor.

2. Petitioner is aggrieved by the orders of the 2nd respondent-Assistant Commissioner and 3rd respondent-Deputy Commissioner passed under the provisions of the Karnataka Schedule Castes and Schedule Tribes (Prohibition of Transfer of Certain Lands) Act, 1978.


3. A piece of agricultural land measuring an extent of two acres in Sy.No.151 of Ramanahalli Village, Chickmagalur Taluk, had been granted to one Thimmiah as per a grant made on 29.9.1952 and as a person belonging to depressed class.



Such a land had been sold in favour of one Sheikh Ahmed as per a sale deed dated 5.9.1961 executed by the wife and son of the original grantee, as by that time the original grantee had demised.

4. It appears thereafter the said Sheik Ahmed sold the land as per a sale deed dated 26.11.1966 to one Smt. Sharada Bai and after her death the land had been mutated in favour of her husband Sri. Narayana Prabhu and subsequent to the death of Sri. Narayana Prabhu, the land had been transferred to Sri. B.N. Prabhakara Prabhu the present petitioner in this writ petition who had acquired possession of the land.

5. In respect of this piece of land, an application came to be filed under the provisions of the Act by the 1st respondent Sri.Gopala, claiming to be the son of the original grantee and the application made to the Assistant Commissioner inter alia averred that the sale effected by himself and his mother in 1961 was in violation of the terms of the grant and as such invalid, which in turn would also invalidate the subsequent sales and requested for restoring the land in favour of the applicant –



petitioner. Assistant Commissioner who held an enquiry, was of the view that the first sale in the year 1961 was in violation of the terms of the grant, particularly as the grant was in favour of a person belonging to schedule caste and which had been sold within 9 years from the date of the grant and accordingly declared the transactions to be null and void, directed restoration of the land to the applicant. The purchaser appealed to the Deputy Commissioner but without success. It is aggrieved by these two orders the present writ petition is filed before this Court.

6. Sri. Chandranath Ariga, learned Counsel appearing for the petitioner submits that no proper enquiry was held by the Assistant Commissioner and that no proper opportunity had been given to the petitioner before passing the order on 14.2.2001; that the appeal preferred to the Deputy Commissioner has also met the same fate and it is the deprivation of proper opportunity to the petitioner that has given cause to the petitioner to approach this Court. Learned Counsel submits that the order requires to be set aside and remanded to the lower authority.



7. The factum of the grant to the original grantee on 29.9.1952 and that the grantee belonged to scheduled caste was not a matter in dispute at any point of time. The first sale that has taken place is in 1961 i.e. even within 10 years from the date of the grant. These two facts clearly establish that there is a violation of the conditions of the grant by the sale of the land on 5.9.1961 and the provisions of the Act are very much attracted. Under the Act, necessary conclusion is that the sale transaction is to be invalidated and the land restored to the legal heirs of the original grantee.

7. Under the impugned orders this is precisely what the authorities have done. Even if there is a minor irregularity here and there and a discrepancy in the manner of holding enquiry, ⁱⁿ that/itself is not a criteria for setting aside or quashing such orders which in fact has achieved the purpose and object of the Act. There cannot be a mere remand for the sake of a remand, unless the remand order can serve a useful purpose. In the instant case, I do not see any worthwhile object or purpose will be served by passing a remand order, even assuming that there are some discrepancies and irregularities.

In the circumstances, I am not inclined to interfere in exercise of writ jurisdiction. Writ petition is rejected.

Sd/-
Judge

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