

Manchegowda and Others

Vs

State of Karnataka and Others

Civil appeals No. 3116, 2608, 3123-49, 3272-76, etc. of 1983; Appeals arising out of Special Leave Petitions Nos. 1732-24, 3424, 9355, 9628, 4603-09, 7492-96, etc. of 1983 and Civil Miscellaneous Petition Nos. 26552 and 26553 of 1983

(P. N. Bhagwati, Amarendra Nath Sen, Ranganath Misra JJ)

17.04.1984

JUDGMENT

AMARENDRA NATH SEN, J. -

1. The question for consideration in Civil Appeal No. 3116 of 1983 by certificate granted by the High Court is whether the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as the Act for the sake of brevity) is constitutionally valid or not.
2. The writ petition out of which this appeal arises was filed in the High Court along with a number of other writ petitions filed by various other parties challenging the validity of the Act. The High Court for reasons recorded in the judgment upheld the validity of the act and dismissed this writ petition and also the other writ petitions. The High Court granted certificate under Article 132 and 133 of the Constitution and this appeal has been field with the certificate granted by the High Court. As the identical question is involved in all these appeals and special leave petitions, this judgment will also dispose of all the appeals and special leave petitions.
3. Inasmuch as the vires of the Act has been challenged essentially on legal grounds, it does not become necessary for us to set out the fact at any great length. The broad facts common to all the writ petitions which were filed in the High Court may, however, be briefly noted. The petitioners are purchasers of lands which had been originally granted by the State to persons belonging to Scheduled Casters or Scheduled Tribes. Such lands had been originally granted to persons belonging to Scheduled Castes and Scheduled Tribes under the provisions of law or on the basis of rules or regulations governing such grant. After the passing of the Act in question notice have been issued by the appropriate authority to the transferees of such lands to show cause as to why the lands transferred to them should not be resumed for being restored to the original grantees or their legal heirs or for distribution otherwise to the members of Scheduled Castes and Scheduled Tribes in accordance with the provisions of the statute,
4. Before we proceed to deal with the various contentions raised on behalf of the appellant and the other petitioners in the other writ petitions, it would be appropriate to set out the relevant provisions of the Act.
5. Granted land is defined in Section 3 (b) of the Act to mean "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 ceiling or abolition of Inams, other than that relating to hereditary offices or rights and the word granted shall be construed accordingly.

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

Section 4. 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 converted 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 any award or order of any other authority.

Section 5. Resumption or 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.

(2) Any order passed under sub-section (1) 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.

7. The validity of the Act has been challenged mainly because of the provisions contained in Section 4 and 5 of the Act which purport to declare transfers 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 null and void and confer powers on the authority to take possession of such land after evicting all persons in possession thereof and to restore such lands to the original grantee or his legal heirs and where it is not reasonably practicable to so restore the land to a person belonging to the Scheduled Castes or Scheduled Tribes in accordance with the rules relating to the grant of such land. It may be noted that the validity of the Act insofar 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 grante

8. The main grounds on which the validity of the act has been challenged are :

1. Granted lands which as been transferred by the grantee in contravention of the prohibition imposed on the transfer of any granted land under the terms of the grant, under the rules relating to such grant, or under any law governing such grant, renders the transfer voidable and not void and it is not permissible to nullify such transfers and to declare them void by any provisions of the Act;
2. The power conferred on the authority to recover possession of the granted land on the basis of the provision contained in the Act defeating the vest rights of the purchases who have acquired such land bona fide for consideration and have been in enjoyment and possession thereof for years is unconscionable, unjust and invalid;
3. Section 4 and 5 of the act which empower the authority to take possession of the granted lands without payment of any compensation are violative of Article 19 (1) (f) of the Constitution.
4. Section 4 and 5 of the Act contravene Article 31 and the second proviso of clause (1) of Article 31-A of the Constitution and are, therefore, void.
5. Invalidation of transfers of land granted to persons belonging to only Scheduled Castes and Scheduled Tribes and resumption of only such granted lands are discriminatory and they infringe Article 14 of the constitution.

9. It may be noted that the very grounds were urged before the High Court has carefully considered all the arguments advanced on behalf of the appellants who were the petitioners in the writ petitions filed before it. The High Court in its judgment discussed the various decisions which were cited before it. The High Court for reasons stated in the judgment negative all the contentions to the aforesaid grounds a rather ground has also been urged before us and the said ground is that as that Act in question does not provide for an appeal against the order of the competent authority, the Act should be held to be unreasonable, unjust and unconscionable and should, therefore, be struck down.

10. Before we proceed to examine the contentions raised before us, it will be appropriate to refer to the objects and reasons for the passing of this particular enactment. The Objects and Reasons run as follows :

The non-alienation clause contented 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 property 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 fulfil the purpose of the grant, the land even if it has been aliened, 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.

11. It is no doubt true that before the passing of the present Act any transfer of granted land in breach of the condition reaction to prohibition on such transfer would not have the effect of rendering the transfer void and would make any such transfer only voidable. The present Act seeks to introduce a change in the legal position. The prohibition on transfer of granted land had been imposed by law, rules or regulations governing in such grant or by the terms of the Grant. The relevant provisions imposing such prohibition by rules, regulations and laws have been referred to in the judgment of the High Court. It is quite clear that the condition regarding prohibition of transfer of granted land had been introduced in the interest of the grantees for the purposes of upkeep of the grants and for preventing the economically dominant sections of the community from depriving the grantees who belong to the weaker sections of the people of their interests against any exploitation by the richer sections in regard to

12. In pursuance of this policy, the Legislature is undoubtedly competent to pass an enactment providing that transfers of such granted lands will be void and not merely voidable for properly safeguarding and protecting the interests of the scheduled Castes and Scheduled Tribes for whose benefit only these lands had been granted. Even in the absence of any such statutory provisions, the transfer of granted lands in contravention of the terms of the grant or in breach of any law, rule or regulation converting such grant will clearly be voidable and the resumption of such granted lands after avoiding the voidable transfers in accordance with law will be permitted. Avoidance of such voidable transfers and resumption of the granted lands through process of law is bound to take time. Any negligence and delay on the part of the authorities entitled to take action to avoid such transfer through appropriate legal process for resumption of such grant may be further impediments in the matter of avoiding such transfers and

13. We may note that the competence of the Legislature to declare any transfer of granted land in contravention of the terms of grant of such land or any rule, regulation or law providing for such grant or without the previous permission of the Government in case of transfers after the passing of the Act has not been seriously disputed and cannot possibly be disputed.

14. What has been strongly urged before us is that the provisions contained in Section 4 insofar as the same seek to nullify transfers effected before the Act had come into force, are invalid.

15. Any person who acquires such granted land by transfer from the original grantee in breach of the condition relating to prohibition on such transfer must necessarily be presumed to be aware of the prohibition imposed on the transfer must necessarily be presumed to be aware of the prohibition imposed on the transfer of such granted land. Anybody who acquires such granted land in contravention of the prohibition relating to transfer of such granted land cannot be considered to be a bona fide purchaser for value; an every such transfer acquires to his knowledge only a voidable title to the granted land. The title acquired by such transfer is diffusible and is liable to be defeated by an appropriate action taken in this regard. If the Legislature under such circumstances seek to

intervene in the interests of the weaker section of the community and choose to substitute a speedier and cheaper method of recovery of these granted lands which were otherwise liable to be resumed through legal process, it cannot, in

16. The next contention that Sections 4 and 5 of the Act empowering the authority to take possession of the granted lands without payment of any compensation are violative of Article 19 (1) (f) of the Constitution is without any merit. Article 19 (1) (f) which was in force at the relevant time provided that all citizens shall have the right "to acquire, hold and dispose of property".

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 land 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 g

18. The transfers of the granted lands from the original grantees, acquired the lands improperly and illegally in contravention of the condition imposed on such transfers. Such transfers must have been made and must in any event be deemed to have been made with full knowledge of the condition regarding the prohibition on transfer and they cannot be considered to be bona fide transferees for value. Such persons acquired in the granted lands only a voidable title which was liable to be defeated and possession of such lands could be resumed from such transferees. Such a person who only acquires a defeasible legal right cannot make a grievance of any violation of Article 19 (1) (f) of the Constitution, when the defeasible legal right is, in fact, defeated by appropriate legal action or by any suitable provision enacted in an Act passed by the competent Legislature. It may further be noted that in most cases such transferees have after the transfer, which is liable to be avoided in accordance with law, enjoyed for a sufficiently long

19. We have earlier noticed that the title which is acquired by a transferee in the granted lands, transferred in contravention of the prohibition against the transfer of the granted lands, is a voidable title which in law is liable to be defeated through appropriate action and possession of such granted lands transferred in breach of the condition of prohibition could be recovered by the grantor. The right or property which a transferee acquires in the granted lands, is a defeasible right and the transferee acquires in the granted lands, to lose his right or property which a transferee renders himself liable to lose his right or property at the instance of the grantor. We have further observed that by the enactment of this Act and particularly Section 4 and Section 5 thereof, the Legislature is seeking to defeat the defeasible legal action with a view to speeded resumption of such granted lands for distribution thereof to the original grantee or their legal representatives and in their absence to other members

20. In the case of *Emir Sings v. Custodian, Evacuee Property, Punjab*, this Court while considering the provisions of Administration of Evacuee Property Act, 1950 (31 of 1950) and the nature of right in the property allotted to a quasi-permanent allottee held that the interests of a quasi-permanent allottee did not constitute property within the meaning of Articles 19 (1) (f), 31 (1) and 31 (2) of the

Constitution. This Court observed at p. 834 :

Learned counsel of the petitioners has strenuously urged that under the quasi-permanent allotment scheme the allottee is entitled to a right to possession within the limits of the relevant notification and that such right to possession is itself 'property'. That may be so in sense. But it does not affect the question whether it is property so as to attract the protection of fundamental rights under the Constitution. If the totality of the bundle of rights of the quasi-permanent allottee in the evacuee land constituting an interest in such land, is not property entitled to protection of fundamental rights, mere possession of the land by virtue of such interest is not on any higher footing.

21. With the enactment of the Act, the voidable right or title of the transferee in the granted lands becomes void and the transferee is left with no right or property in the granted lands. The lands which are sought to be recovered from the transferees of the granted lands are lands in which the transferees cease to have any interest or property. The effect of the provisions contained in sections 4 and 5 of the Act is that the defeasible right or interest of the transferees in the granted lands is defeated and the voidable transaction is rendered void. We have earlier held that it is clearly open to the legislature to declare void the transfer of granted lands in contravention of the condition of prohibition on transfer. As soon as such transfers are rendered void by virtue of the provision of the Act, the transferee does not have any right in the granted lands so transferred and possession is sought to be recovered of such lands in which the transferees have lost their right and interest. Therefore, the

22. The next contention urged is that Sections 4 and 5 of the Act are violative of article 14 of the Constitution inasmuch as these sections make special provisions only with regard to scheduled Castes and scheduled Tribes to the exclusion of persons belonging to other communities. This Act has undoubtedly been passed for the benefit of members of the Scheduled Castes and Scheduled Tribes who are recognised and backward citizens and weaker sections in the country. There cannot be any manner of doubt that persons belonging to Scheduled Castes and Scheduled Tribes who are recognised as backward citizens and weaker sections in the country. There cannot be any member of doubt that persons belonging to Scheduled Castes and Scheduled Tribes can be considered to be separate and distinct classes particularly in the matter of preservation and protection of their economic and educational interests. In view of the peculiar plight of these two classes, the Constitution in Article 15 (4) makes specific mention of

23. The last contention raised is that the Act should be considered to be unjust and unreasonable as no provision has been made of any appeal against the order of the authority concerned. It is true that there was no provision of any appeal in the original Act. It may be that such a provision was not originally made, as the Legislature might have felt that providing of an appeal would unnecessarily prolong the proceeding as and might defeat the purpose of the Act. In course of the hearing, the learned counsel for the State had however submitted that in the interest of justice a provision regarding appeal would be incorporated in the Act by an appropriate amendment of the Act. It has subsequently been brought to our notice that by the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) (Amendment) Act, 1984 (Karnataka Act 3 of 1984) which received the assent of the Governor on February 29, 1984, and came into force

24. Though we have come to the conclusion that the Act is valid, yet, in our opinion, we have to

make certain aspects clear, Granted lands which had been transferred after the expiry of the period of prohibition do not come within the purview of the Act, and cannot be proceeded against under the provisions of this Act. The provisions of the Act make this position clear, as Sections 4 and 5 become applicable only when granted lands are transferred in breach of the condition relating to prohibition on transfer of such granted lands. Granted lands transferred before the commencement of the Act and not in contravention of prohibition on transfer are clearly beyond the scope and purview of the present Act. Also in case where granted lands had been transferred before the commencement of the Act in violation of the condition regarding prohibition on such transfer and the transferee who had initially acquired only a voidable title in such granted lands had perfected his title in the granted lands by prescription by any transferee which was not voidable at the date of the commencement of the Act.

25. We may further observe that as the provision of appeal has been incorporated by the Amending Act which received the assent of the Governor on February 29, 1984 and first came to be published in the Karnataka Gazette Extraordinary on March 3, 1984, the Deputy Commissioner to whom the appeal will be presented will to doubt take this fact into consideration in deciding the question of limitation in regard to any appeal which may be filed against an order of the Assistant Commissioner; if any appeal is preferred within a period of three months from the date the amended provision conferring the right of appeal came into force, the Deputy Commissioner taking into consideration the fact that a period of three months has been prescribed for preferring an appeal from the date of the order of the Assistant Commissioner, may have no difficulty in entertaining the appeal by condoning the delay under Section 5 of the Limitation Act in terms of the power conferred on the Deputy Commissioner under the said Section 5-A,

26. With these observations we dismiss the appeals and the special leave petitions with no order as to costs.

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