SUPREME COURT OF INDIA

Chinde Gowda

Vs.

Puttamma

(Dr. Arijit Pasayat and P. Sathasivam JJ.)

14.12.2007

JUDGMENT

Dr. ARIJIT PASAYAT, J.

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 'High Court Act'). Challenge in the writ appeal was to the order passed by a learned Single Judge in Writ Petition No. 180897/95 dated 9.9.1998.
3. Factual background in a nutshell is as follows:-

The Government land measuring 30 guntas in extent in Sy. No.96/12 of Heggur village, T.N.Pura Taluk was originally granted temporarily to R-1's husband Lingaiah on 26.9.1959 for upset price at the rate of Rs. 500/- per acre allowing him to pay the same within the specified time and subject to the condition that on payment thereof the grant shall be confirmed in his favour. It transpires from the impugned orders of the authorities below that because of poverty the grantee could not make payment of the upset price in time and the same was, therefore, made payable in three equal instalments by order dated 24.8.1961. On payment of the said price, the temporary grant of the land was confirmed in his favour by order dated 10.10.1962 imposing the condition that the same shall not be alienated by him for a period of 15 years. In violation of this condition the said land was sold by the grantee on 16.2.1965 to one Manche Gowda whose children, in turn, sold the same to appellant on 22.5.1972.

After the Scheduled Caste and Scheduled Tribe (Prohibition of Transfer of Certain Lands Act (the Act in short) came into force, R-1 made his application to Respondent No. 2 Asst. Commissioner seeking resumption of the said land under Section 5 of the Act on the ground that the same had been alienated by her late husband in breach of the said non- alienation condition. On enquiry, the order dated 19.7.1993 was passed by the Asst. Commissioner holding the said sale null and void and directing appellants eviction from the land for its restoration to Respondent No. 1, since her husband grantee was undisputedly a member belonging to the Scheduled Caste. On appeal by the appellant, the said order of Asst. Commissioner came to be confirmed by respondent No.3 Deputy Commissioner by his order dated 13.3.1995. The appellant, therefore, sought for quashing of both orders on the ground that both the authorities below have erred in declaring null and void the said sale dated 16.2.1965 made by the grantee in favour of Manche Gowda on application of sub- rule (4) of Rule 43-G of Mysore Land Revenue (Amendment) Rules, 1960.

4. The stand of the appellant before the High Court was that Rule 43 G(4) was inapplicable in respect of the said granted land, as the correct rule applicable was sub-rule (J) of Rule 43. It was stated that the Deputy Commissioner had indicated that the land was initially granted on the basis of temporary lease which came to be confirmed by a subsequent order in favour of the lessee. Since the initial grant was on lease basis which came to be confirmed by a subsequent order, the correct Rule applicable in that event is Rule 43(J) and not Rule 43G(4). It was further canvassed that once the grant was under Rule 43(J) any condition imposing ban on alienation thereof will be inopeative and unenforceable. The stand of the State Government was that the grant of land in favour of respondents late husband was made not under Rule 43-J but it was in fact under Rule 43-G. The High Court held the authorities were right in holding that the grant of land was under Rule 43-G and not under Rule 43-J. Accordingly, the writ petition was dismissed. Before the Division Bench of the High Court, the stand taken before the learned Single Judge was reiterated but was rejected.

5. In support of the appeal, learned counsel for the appellant submitted that the correct Rule is Rule 43-J and not 43 (G) (4). Therefore it is submitted that a different scheme is applicable.

6. Similar issue was considered by this Court in Guntaiiah & Ors. Vs. Hambamma & Ors. (2005 (6) SCC 228). In para 14 it was stated as follows:

14. It 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 adverting 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) 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 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 particula r 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.

7. In view of the aforesaid decision, this appeal is without merit and dismissed. There shall be no order as to costs.