

K.T. HUCHEGOWDA

v.

DEPUTY COMMISSIONER AND ORS.

MARCH 18, 1994

[A.M. AHMADI, N.P. SINGH AND YOGESHWAR DAYAL, JJ.]

*Karnataka Scheduled Caste and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978—Sections 4 & 5—Grant of Land—Transfer in contravention of terms of grant—Application for restoration—Title by prescription—Period of limitation—To be determined considering facts of case—Matter remanded back to High Court.*

Father of the third respondent was granted some land by the State Government, with the condition that he shall not alienate the said land for a period of 15 years from the date of the grant. However, the land was transferred before the expiry of the period of 15 years. The Assistant Commissioner declared the alienation of the land as null and void and directed restoration of land to the respondent being the heir of the original grantee. The Deputy Commissioner dismissed the appeal filed on behalf of the appellant. The appellant claimed to be in peaceful possession of the said land. However, the Writ Application filed on behalf of the appellant, was dismissed by the High Court holding that in order to defeat the claim of the third respondent, the appellant had to prove adverse possession over the land not only for a period of 12 years but for a period of 30 years, i.e. the period prescribed in respect of the lands belonging to State Government. This appeal has been filed for setting aside the order of the High Court, rejecting the claim of the appellant, that being in possession over the lands dispute for more than 12 years, he had perfected his title by prescription.

Disposing of the appeal, this Court

HELD : 1.1. In cases 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 the granted lands by prescription by long and continuous enjoyment thereof in accordance with law before the commencement of the Act, has to be read, for purpose of determining the period

A of limitation in respect of lands granted with absolute ownership, to mean 12 years and grant by way of allotment without transfer of the ownership in favour of the grantee, to mean 30 years. [p. 158-E-G]

*Sunkara Rajyalakshmi v. State of Karnataka*, (1985) 1 Scale 445 and *Manchegowda v. State of Karnataka*, AIR (1984) SC 1151, relied on.

B 1.2. For the purpose of determining whether the period of 12 years or 30 years limitation is to be applied, each case has to be examined on its own merit. In the instant case, High Court has to examine the claim made by the appellant on the materials produced in support of the said claim. C The object and scheme of the Act is to protect the interest of the members of the Scheduled Castes and Scheduled Tribes and the transfer in favour of the appellant being in contravention of the terms of the grant, heavy onus rests on the appellant, to show to the court that by his continuous and adverse possession, the right, title and interest of the grantee has been D extinguished before the commencement of the Act. [p. 158-H; 159-A-F]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2099 of 1994.

E From the Judgment and Order dated 7.11.90 of the Karnataka High Court in W.A. No. 2167 of 1990.

Gobinda Muktoty, S.S. Javali, Naresh Kaushik, Ms. Lalita Kaushik and B. Veerbhadrapa for the Appellant.

F M. Veerappa, Kh. Notin Singh, Anip Sachthey, Chave Badri Nath Babu, R.N. Keshwani, K.V. Mohan, S.Wasim A. Qadri, L.R. Singh, Dr. R.B. Masodkar, K.L. Taneja and S.N. Bhat for the Respondents.

The Judgment of the Court was delivered by

N.P. SINGH, J. Leave granted.

G This appeal has been filed on behalf of the appellant, for setting aside an order passed by the High Court of Karnataka, rejecting the claim of the appellant, that, being in possession over the lands in dispute for more than 12 years, he had perfected his title by prescription, as such there was no H scope for restoring the lands to the concerned respondent, in accordance with the provisions of the Karnataka Scheduled Castes and Scheduled

Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as the "Act").

According to the appellant, the father of the respondent No. 3 (hereinafter referred to as the "Respondent") was granted 4 acres of land in village Karakachi on 29.3.1957 by the State of Karnataka, with the condition that he shall not alienate the said land for a period of 15 years from the date of the grant. However, the father of the said respondent transferred 2 acres 20 guntas out of the 4 acres in favour of one Ismail Saheb by a registered sale deed dated 24.4.1965 i.e. before the expiry of the period of 15 years. The said Ismail Saheb in his turn transferred the said land in favour of the appellant by a registered sale deed dated 20.7.1979. The appellant claims to be in peaceful possession of the said land. He also claims to have invested huge sum in the development and cultivation and construction of a residential house over the land in question.

The Act aforesaid came into force from 1.1. 1979, the primary object of which is to declare the transfer of any granted land, made either before or after the commencement of the said Act, in contravention of the terms of the grant null and void. It vests power in Assistant Commissioner, if he is satisfied, that the transfer of any granted land was null and void, to take possession of such land after evicting all persons in possession thereof, in such manner as may be prescribed and to restore such land to the original grantee or to his legal heir. As in the instant case, admittedly, the father of the respondent had alienated the land, granted to him, in contravention of the terms of the grant, inasmuch as before the expiry of the period of 15 years, on an application, being filed on behalf of the respondent, the Assistant Commissioner, declared by an order dated 13.5.1988, the alienation of the land aforesaid as null and void and directed restoration of land to the respondent being the heir of the original grantee.

The Deputy Commissioner dismissed the appeal, filed on behalf of the appellant. The Writ Application, filed on behalf of the appellant, was dismissed by the High Court. The High Court was of the view that in order to defeat the claim of the respondent, the appellant had to prove adverse possession over the land in question not only for a period of 12 years but for a period of 30 years i.e. the period prescribed in respect of the lands belonging to the State Government. This was based on an order passed by

A this Court in the case of *Sunkara Rajayalakshmi v. State of Karnataka*, (1985) 1 Scale 445.

B It may be mentioned that earlier several writ applications had been filed before the High Court of Karnataka, questioning the constitutional validity of sections 4 and 5 of the Act aforesaid, which were dismissed by the High Court. This Court in the case of *Sri Manchegowda v. State of Karnataka*, AIR (1984) SC 1151 = [1984] 3 SCC 301, examined the different provisions of the Act, as to whether they were violative of Article 19(1)(f) and Article 31 (which were then in force) or Articles 14 and 31A. It was held that the provisions were constitutionally valid and there was no infirmity because the object of the Act was speedy restoration of granted lands to the members of the weaker communities i.e. members of the Scheduled Castes and Scheduled Tribes. Having rejected the challenge to the validity of the provisions of the Act, it was said :-

D "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 long and continuous enjoyment thereof in accordance with law before the commencement of the Act, such granted lands would also not come within the purview of the present Act, as the title of such transferees to the granted lands has been perfected before the commencement of the Act. Since at the date of the commencement of the Act the title of such transferees had ceased to be voidable by reason of acquisition of prescription rights on account of long and continued

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user for the requisite period, the title of such transferees could not be rendered void by virtue of the provisions of the Act without violating the constitutional guarantee. We must, therefore, read down the provisions of the Act by holding that the Act will apply to transfers of granted lands made in breach of the condition imposing prohibition on transfer of granted lands only in those cases where the title acquired by the transferee was still voidable at the date of the commencement of the Act and had not lost its defeasible character at the date when the Act came into force. Transferees of granted lands having a perfected and not a voidable title at the commencement of the Act must be held to be outside the pale of the provisions of the Act. Section 4 of the Act must be so construed as not to have the effect of rendering void the title of any transferee which was not voidable at the date of the commencement of the Act."

Although, it was said by this Court, that the provisions of the Act shall not be applicable where the transferee, who had initially acquired only a voidable title in such granted lands, had perfected his title in the granted lands by "a prescription by long and continuous enjoyment thereof", it was not clarified in that judgment as to whether this period of continuous enjoyment by the transferee shall be for a period of 12 years or for a period of 30 years, in order to defeat the application for restoration by the grantee of such lands. It appears that later a review application was filed, which was disposed of by an order referred to above in the case of *Sunkara Rajyalakshmi v. State of Karnataka*, (supra). While clarifying the question regarding the period of prescription, it was said by this Court :-

"We may also make it clear that so far as the second exception laid down by us in our Judgment dated 17.4.84 is concerned, namely that the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 will not apply where the transferees have perfected their title in the granted land by prescription of long and continuous enjoyment before the commencement of the Act, the period of limitation which has to be taken into account for the purpose of determining whether the title has been perfected by prescription is that which runs against the State Govt. and therefore it would be 30 years and not 12 years."

A As the appellant and other similarly situated persons were not parties to the aforesaid case which had come to this Court or to the review application, they have questioned the direction of this Court, that for the purpose of determining whether the title has been perfected by prescription, the period would be 30 years and not 12 years. According to the appellant, once the State Government granted the land to any person, being a member of Scheduled Caste or Scheduled Tribe, the title to such land passed to such person and there is no question of applying the period of 30 years, for determining whether the transferee has perfected his title by prescription against such person. It will be only 12 years, as is applicable to any other class of citizens.

C Section 3(b) of the Act defines "granted land" 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." Relevant part of Section 4 is as follows :-

D "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 conveyed by such transfer.

E (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."

F Sub-section (1) of Section 5 of the Act with which, we are concerned says:-

G "5. *Resumption and 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.-

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(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."

On a plain reading, granted land will mean, any land granted by the Government to a person, who is a member of the Scheduled Castes or Scheduled Tribes which includes land allotted to such persons. Grant may be of different types; it may be by absolute transfer of the interest of the State Government to the person concerned; it may be only transfer of the possession of the land, by way of allotment, without conveying the title over such land of the State Government. If by grant, the transferee has acquired absolute title to the land in question from the State Government, then subject to protection provided by the different provisions of the Act, he will be subject to the same period of limitation as is prescribed for other citizens by the provisions of the Limitation Act, in respect of extinguishment of title over land by adverse possession. On the other hand, if the land has been allotted by way of grant and the title remains with the State Government, then to extinguish the title that has remained of the State Government by adverse possession, by a transferee on basis of an alienation made in his favour by an allottee, the period of limitation shall be 30 years. Incidentally, it may be mentioned that some of the States in order to protect the members of the Scheduled Tribes from being dispossessed from the lands which belong to them and of which they are absolute owners, for purpose of extinguishment of their title by adverse possession, have prescribed special period of limitation, saying that it shall be 30 years. In Bihar, vide regulation No.1 of 1969, in Article 65 of the Limitation Act, it has been prescribed that it would be 30 years in respect of immovable property belonging to a member of the Scheduled Tribes as specified in Part III to the Schedule to the Constitution (Scheduled Tribes) Order,

A 1950.

There is no dispute that so far as the Act with which we are concerned, no special period of limitation has been prescribed, in respect of lands which have been granted to the members of the Scheduled Castes and Scheduled Tribes with absolute ownership by the State Government.

B In this background, when this Court in the case of *Sunkara Rajyalakshmi v. State of Karnataka*, (supra) said that the period of limitation, which has to be taken into account for the purpose of determining, whether the title has been perfected by prescription, shall be that which runs against the State Government and therefore it would be 30 years and not 12 years, has to be read in context with the lands, the ownership whereof, has not been transferred absolutely, to the members of the Scheduled Castes and Scheduled Tribes; the lands having been only allotted to them, the title remaining with the State Government. The cases where the transfer by the State Government by way of grant has been absolute, then unless there is an amendment so far the period of limitation is concerned, it is not possible to apply the special limitation of 30 years, so far such grantees are concerned, when the question to be determined, is as to whether a transferee in contravention of the terms of the grant, has perfected his title by remaining in continuous and adverse possession. The transferee, who has acquired the land from the grantee, in contravention of the terms of the grant shall perfect his title by adverse possession by completing the period of 12 years. When this Court said in its main judgment, in the case of *Sri Manchegowda v. State of Karnataka*, (supra), that in cases 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 long and continuous enjoyment thereof in accordance with law before the commencement of the Act, has to be read, for purpose of determining the period of limitation in respect of lands granted with absolute ownership, to mean 12 years and grant by way of allotment without transfer of the ownership in favour of the grantee, to mean 30 years.

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It is obvious that for the purpose of determining whether the period of 12 years or 30 years limitation is to be applied, each case has to be examined on its own merit. The High Court has dismissed the writ application as well as the appeal merely on the basis of the order passed by this

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Court in the case of *Sunkara Rajayalakshmi v. State of Karnataka*, (supra) on the review application filed before this Court. According to us, the High Court has to examine the claim made by the appellant on the materials produced in support of the said claim, especially the deed of grant in favour of the original grantee, for the purpose of recording a finding as to whether the grant was in nature of absolute transfer of the title of the State Government in favour of the grantee or it was a mere allotment for enjoyment of the lands in question, the title having remained with the State Government.

Accordingly, the order of the appellate court is set aside and the High Court is requested to examine the aforesaid question on the materials produced on behalf of the appellant and the concerned respondents. It need not be pointed out that any claim made on behalf of the appellant, that the grant by the State Government in favour of the original grantee was in the nature of absolute grant, reserving no right title interest and that transferee has perfected his title by continuous and adverse possession over such transferred land, shall be examined taking into consideration, as to whether the appellant had raised this question at the earliest opportunity i.e. before the Assistant Commissioner and what material had been produced by the appellant before the Assistant Commissioner in support of such claim. It need not be impressed that the object and the scheme of the Act is to protect the interest of the members of the Scheduled Castes and Scheduled Tribes, who shall be deemed to be a weaker section of our community and the transfer in favour of the appellant admittedly being in contravention of the terms of the grant in favour of the original grantee, heavy onus rests on the appellant, to show to the court that by his continuous and adverse possession, the right, title and interest of the grantee has been extinguished before the commencement of the Act.

Accordingly, the appeal is allowed. But in the circumstances of the case, there shall be no order as costs.

A.G.

Appeal disposed of.