
(1996) 10 KAR CK 0002

Karnataka High Court

Case No: Writ Petition No. 31170 of 1992

Vijaya Mines and
Minerals

APPELLANT

Vs

State of Karnataka and
Others

RESPONDENT

Date of Decision: Oct. 8, 1996

Acts Referred:

- Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 - Section 4, 4 (1), 4 (2), 5 (1)

Citation: (1997) ILR (Kar) 1541

Hon'ble Judges: P. Vishwanatha Shetty, J

Bench: Single Bench

Advocate: G.V.P. Das, for the Appellant; M. Siddagangaiah, HCGP for R-1 to R-3, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P. Vishwanatha Shetty, J.

Though this petition is listed for preliminary hearing in "B Group", with the consent of the learned Counsel for the petitioner and the learned High Court Government Pleader for respondents 1 to 3, it is taken up for final hearing and disposed of by this order. Respondent-4, though served, has remained absent. Notices to other respondents are dispensed with.

2. This petition is directed against order dated 3.8.1992, a copy of which has been produced as Annexure-E, passed by the second respondent confirming order dated 25.11.1991, a copy of which has been produced as Annexure-D, passed by the third respondent declaring the transfer of land bearing Survey No. 301/2 situated at Ponnachi

village, Kollegal Taluk, Mysore District, in favour of the petitioner, as null and void and further directing that possession of the land in question should be handed over to respondents 4 to 7, in exercise of the power conferred on him u/s 5(1) of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as "the Act.").

3. Sri G.V.P. Das, learned Counsel appearing for the petitioner, submitted that the land in question was granted in the year 1962 and the sale of the land in question was effected on 8.12.1980, that is, after the expiry of 15 years of the prohibited period and, therefore, respondents 2 and 3 have seriously erred in law in declaring the sale of the land in question as null and void and directing resumption of the land in question from the petitioner. He submitted that though Sub-section (2) of Section 4 of the Act provides that no person shall, after the commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government, the said sub-section must be read along with Sub-section (1) of Section 4 of the Act and if it is so read, it must be held that subsection (2) will apply only in cases where sale is made either in violation of the terms of the grant or the law providing for the grant. Therefore, according to the learned Counsel, the view taken by respondents 2 and 3 is unsustainable and consequently, the orders impugned are liable to be quashed.

4. I am unable to accept the submission made by the learned Counsel for the petitioner. Sub-section (1) of Section 4 of the Act provides for declaration of sale of granted land as null and void under two circumstances. Firstly, if the sale of the granted land is made either in contravention of the terms of the grant or the law providing for the grant, the sale of the granted land is required to be declared as null and void. Secondly, if the sale of the granted land is made in contravention of Sub-section (2) of Section 4 of the Act, then also it is required to be declared as null and void. Sub-section (2) of Section 4 of the Act provides that no person shall, after the commencement of the Act, transfer or acquire by transfer any granted land without the previous permission of the Government. The language employed in Sub-section (2) of Section 4 is in the nature of a positive injunction issued to a person restraining him from purchasing a granted land. Further, Section 6 of the Act provides that notwithstanding anything in the Registration Act, 1908, on or after the commencement of the Act, no registering Officer shall accept for registration any document relating to the transfer of, or to the creation of any interest in, any granted land included in a list of granted lands furnished to the registering Officer except where such transfer is in accordance with the Act or the terms of the grant of such land or the law providing for such grant. Section 8 of the Act further provides for imposition of penalty on a person who acquires any granted land in contravention of the provisions of Sub-section (2) of Section 4 of the Act. Therefore, I am of the view that after the commencement of the Act, that is, on 1.1.1979, there is a total bar contained in the Act prohibiting transfer of any granted land without the permission of the Government. Further, in view of Sub-section (2) of Section 4 of the Act, even after the expiry of the non-alienability period fixed either in the grant order or the law governing the grant, it is not permissible for

alienation of a granted land without the previous permission of the Government.

Admittedly, in the instant case, previous permission of the Government had not been obtained before the sale of the land in question. Under the circumstances, respondents 2 and 3 were justified in declaring the sale of land in question as null and void. I do not find any infirmity in the orders impugned.

5. For the aforesaid reasons, this petition fails and is accordingly dismissed.

6. However, Sri G.V.P. Das submitted that the petitioner may be granted at least a year's time to hand over possession of the land in question, without prejudice to the petitioner's right to prefer an appeal against this order.

7. Though I have been granting time wherever hardship is pleaded by the purchaser of the granted land, I am of the view that this is not a fit case for grant of time to the petitioner to hand over possession of the land in question. Even according to the petitioner, the petitioner is carrying on mining operations on the land in question. If time sought for by the petitioner is granted and the petitioner is allowed to carry on the mining operations, the land in question will become virtually useless as it would totally change the nature of the land. Hence, I decline to grant any time to the petitioner to hand over possession of the land in question. Consequently, I direct the third respondent to implement the order Annexure-D as expeditiously as possible and at any event of the matter, not later than three months from the date of receipt of this order. However, the petitioner is at liberty to remove the machinery stated to have been installed by it on the land in question.

8. Office to communicate a copy of this order to the third respondent forthwith.

9. Sri M. Siddagangaiah, learned High Court Government Pleader, is permitted to file his memo of appearance within four weeks from to-day.