

(1991) 03 KAR CK 0002

Karnataka High Court

Case No: Writ Petition No. 10957 of 1985

Basappa

APPELLANT

Vs

Special Deputy Commissioner

RESPONDENT

**Date of Decision:** March 27, 1991

**Acts Referred:**

- Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 - Section 4, 5
- Mysore Land Revenue (Amendment) Rules, 1960 - Rule 43 (8), 43-G (4)

**Citation:** (1991) ILR (Kar) 1321 : (1991) 2 KarLJ 480

**Hon'ble Judges:** M. Ramakrishna, J

**Bench:** Single Bench

**Advocate:** M. Shivappa, for the Appellant; M. Jagannath, Government Advocate for R-1 and 2 and Umesh R. Malimath, for R-3, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

M. Ramakrishna, J.

The matter having been posted to-day for being spoken, I heard Sri Shivappa, learned Counsel for the petitioner and Sri Jagannath, learned Government Advocate appearing for respondents 1 and 2. The Order made on 1-2-1991 is recalled.

2. The petitioner, in this Writ Petition, has challenged the legality and correctness of the Order, Annexure-C, dated 30-4-1985 made by the Special Deputy Commissioner, Chitradurga District, Chitradurga, respondent-1 herein, in case No. SC. PTL.(A) 148/84-85 confirming the order made by the Assistant Commissioner, respondent-2 herein, in case PTL.32/83-84 dated 25-4-1984 holding that the alienation made by respondent-3 in favour of the petitioner in respect of the land in question was null and void u/s 4 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (the Act for short).

### 3. The matter arises this way:

The undisputed facts as disclosed in the pleadings as well as the impugned orders are that Hanumanthappa s/o Kyathappa, respondent- 3 herein, was granted 3 acres of land in Sy.No.47 situated in Dogganal village, Holalkere Taluk, Chitradurga District, on 28-10-1963 by the Competent Authority under the Karnataka Land Grant Rules then prevailing in Karnataka, subject to one of the conditions that the granted land shall not be alienated for a period of 15 years, and that, however, the said land came to be sold in favour of the petitioner by respondent-3 under a registered Sale Deed dated 26-12-1976 for a valuable consideration. It is the case of the petitioner that ever since the date of sale, he has been in actual possession and enjoyment thereof.

4. After coming into force of the Act, respondent-3 approached the Assistant Commissioner, respondent-2 herein, seeking relief under Sections 4 and 5 of the Act. The Assistant Commissioner having held an enquiry, by his order dated 25-4-1984, allowed the application of respondent-3 declaring that the alienation made in favour of the petitioner was null and void u/s 4 of the Act as it was made in contravention of the condition of the Act and thereby directing u/s 5 of the Act restoration of the possession of the land in favour of respondent-3.

5. Aggrieved by the said order, the petitioner preferred an appeal before the Special Deputy Commissioner, respondent-1 herein, who, by his order made as per Annexure-C, dismissed the appeal. Hence this petition.

6. Two contentions have been urged by Sri Shivappa, learned Counsel for the petitioner. They are: (1) the land in question was granted in favour of respondent-3 on payment of upset price and not free of cost and therefore the imposition of the condition of non-alienation for a period of 15 years cannot be sustained and (2) since, according to the order of grant, the grant was made on payment of upset price of Rs. 50/- per acre and the said amount had been paid, it must be construed as the market value of the land granted; therefore, the imposition of prohibition of 15 years cannot also prevail. In other words, his contention is that in view of the payment of upset price, the prohibition that can be imposed against alienation is for 10 years; therefore, both the Authorities below have wrongly concluded in favour of respondent-3.

7. Dealing with the first contention, there is no difficulty, at the outset, to point out that the land in question came to be granted in favour of respondent-3 on 28-10-1963. Therefore, the question is whether the imposition of non-alienation clause for a period of 15 years is valid. Indeed, both the Assistant Commissioner and the Deputy Commissioner held that the imposition of the condition for a period of 15 years non-alienation was valid. The relevant Rule governing the grant in the present case is Sub-rule (4) of Rule 43-G of 1960 Rules under the Mysore Land Revenue Code. It reads:

"(4) Where the grant is made free of cost or is made at a price which is less than the full market value, the grant shall be subject to the condition that the land shall not be alienated for a period of fifteen years from the date of the grantee taking possession of the land.

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8. In the instant case, undisputedly, the Competent Authority that granted the land in exercise of the powers conferred on it under the Rules referred to above, did impose the condition as stated above viz., not to alienate the land for a period of 15 years.

9. Admittedly, the grant made in favour of respondent-3 is not a free grant. Before coming to the real issue in question, it is necessary for me to state briefly the history of the Rules, pertaining the grant of lands particularly to the persons belonging to Scheduled Castes and Scheduled Tribes, which underwent many changes right from 1938 till 1969.

10. According to the original Sub-rule (8) of Rule 43 of the Rules under the Mysore Land Revenue Code which came to be introduced by the Notification No. R. 2828-LR. 89-38-10, dated 13th December, 1938, the prohibition is for ever. It reads:

"43(8) - Occupancies granted to applicants belonging to Depressed classes under Rule 43(5) above and those granted by Government free of upset price or reduced upset price to poor and landless people of other communities or to religious or charitable institutions, shall not be alienated and the grantees shall execute Mutchalikas in the form prescribed by Government. This shall not, however, prevent lands granted to Depressed classes under Rule 43(5) being accepted as security for any loan which they may wish to obtain from Government or from a Co-operative Society for the bona fide purposes of improving the land.

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11. The above provisions of the Rule came to be amended for the first time from 1938 by the Notification No. R. 7594-604-LR. 266- 53-2 dated 4-8-1953 relaxing the condition of alienation. It reads-

"Sub-rule (8) - the grant of lands under Sub-rule (1) and (2) to persons belonging to Depressed classes for an upset price or reduced upset price and to poor persons not owning any land shall be subject to the condition that the land granted shall not be alienated for a period of twenty years from the date of the grant and the grantees shall also execute mutchalikas in the form prescribed by Government."

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12. Here I may mention that Sub-rule (2) of Rule 43 of the above Rules, defines "upset price". It reads:

"(2) The "upset price" shall not be arbitrarily fixed but shall represent the actual market value of the land, as nearly as it can be ascertained by local enquiries and by the examination of records of sales of similar lands in the neighbourhood, and if necessary, of the registration statistics relating to them.

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13. Sub-rule (5) of Rule 43 of the above Rule reads that the Deputy Commissioner may grant to applicants belonging to the depressed classes who are bona fide agriculturists or propose to cultivate the land themselves, lands at half the upset value, the amount being recovered in not more than five annual instalments. Where half the upset price is below Rs. 50, the price to be recovered from the grantee may be limited to the excess, if any, of the estimated value of the land over Rs. 50/-. In cases where the upset value does not exceed Rs. 50/- he may waive the recovery of price altogether. However, sub-rules (5), (6) and (7) of the above Rules came to be omitted by the notification No. R6.5536.46-L.R. 266-53-B dated 6th July, 1955 which again amended Rule 43 relating to grant of lands. In place of Sub-rule (5) supra, Clause (d) of Rule (1) of 1955 Rules came to be introduced. It reads:

"(d) In the case of grant of land to persons belonging to the Scheduled Castes and the Scheduled Tribes who are poor, out of the upset price payable two hundred rupees may be waived, the balance, if any, being payable in annual instalments not exceeding three."

14. Likewise, Sub-rule (8) came to be amended again by substituting Clauses (a) and (b) as follows:

"(8)(a) Every grant of land under sub-rule shall be subject to the condition,

(i) where the grant is made free of cost that the land granted shall not alienated for a period of fifteen years from the date of the grant; or

(ii) where the grant is made for an upset price or for a reduced upset price, that the land granted shall not be alienated for a period of ten years from the date of the grant:

Provided that nothing in this sub-rule shall apply to-

(i) the alienation of any land in favour of the Government or a Co-operative Society as security for loans obtained for improvement of the land or for buying cattle or agricultural implements for the cultivation of the land; or

(ii) the leasing of any land by a person who is a widow, a minor or who is subject to physical or mental disability.

(b) If the provisions of Clause (a) are contravened, the land granted may be summarily resumed by the Government, and such land shall vest in the Government free from all encumbrances and neither the grantee nor the alienee, if any, shall be entitled to any compensation."

15. In these Rules called Mysore Land Revenue Rules, 1955, though Sub-clause (ii) of Clause (a) of Sub-rule (8) of Rule 43 rests on the word "upset price", it has not been defined therein. Therefore, to know what is upset price, we have to fall back to the definition of the word "upset price" extracted above.

16. Though there is once again an amendment effected in the year 1958 by Notification No. RD 262 LGB 57 dated 20-10-1958, conditions regarding alienation of the lands granted are not altered. But, in these Rules, Sub-rule (3) of Rule 43 states what is upset price which is as quoted above.

17. In the present case, since the land is granted in favour of respondent - 3 on 28-10-1963, the provisions of the Rules applicable to the case are that of 1960 introduced by the Notification No. RD 4 LAD 1960 dated 10th May, 1960. By the said Notification, elaborate amendments have been made to Rules 41, 42 and 43 of the Rules. Rule 43-G for which we are concerned in this petition is amended as follows:-

"43-G. Grant of lands under the preceding rules shall be subject to the following conditions: (1) In the case of grant of lands to applicants belonging to the Scheduled Castes and Scheduled Tribes and to other applicants, who are unable to pay the occupancy price on account of poverty, the occupancy price may be waived upto rupees two hundred and the balance recovered in three annual instalment.

(2) (3)                      xxx   xxx                      xxx

(4) Where the grant is made free of cost or when the grant is made at a price which is less than the full market value the grant shall be subject to the condition that the land shall not be alienated for a period of fifteen years from the date of the grantee taking possession of the land-Provided further that nothing in this clause shall apply to:

(a) the alienation of any land in favour of the State Government or Co-operative Society as security for loans obtained for improvement of the land or for buying cattle or agricultural implements for the cultivation of the land, or alienation of any land in favour of the Indian Coffee Board as security for loans advanced by the Indian Coffee Board under the Coffee Development Plan;

(b) the leasing of any land by a person who is a widow, a minor or who is subject to physical or mental disability or who is a serving member of the armed forces."

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18. What is market value in relation to the grant of land is nowhere defined. However, I deal with it afterwards.

19. After the Mysore Land Revenue (Amendment) Rules, 1960 supra, as already stated, separate and independent Rules called the Mysore Land Grant Rules, 1968 came to be made by the Notification No. G.S.R. 92 dated 21st March, 1968. In these Rules also, the condition as to the grant of land to persons belonging to Scheduled Castes and Scheduled Tribes is as provided in 1960 Rules, and the word "market value" is not defined.

20. Next comes the Karnataka Land Grant Rules, 1969 framed under the Karnataka Land Revenue Act, 1964. Even in these Rules, the word "market value" is not defined. Thus tracing the history of the Land Grant Rules particularly the Rules relating to grant the lands to persons belonging to Scheduled Castes and Scheduled Tribes, it has to be seen how far the contention of the learned Counsel for the petitioner that the upset price of Rs. 50/- per acre paid in the present case has to be construed as the market value, can be accepted.

21. It is not for the first time in this Writ Petition I have been called upon to deal with the questions involved in this case. In SMT. SHARADAMMA v. GIRIYIAH AND ORS., W.P. No. 14383 of 1965 DD 21-11-1966 I have held in paragraph-11 as follows:-

"Sub-rule (4) of Rule 43G of the Land Grant Rules provides:

"Where the grant is free of cost or is made at a price which is less than the full market value, the grant shall be subject to the condition that the land shall not be alienated for a period of 15 years from the date of grantee taking possession of the land."

Therefore, the view expressed in Hepegowda's case that there was no provision for imposition of a condition not to alienate for any period or for ever, if the land is granted on payment of upset price, is not correct. Sub-rule (4) of Rule 43G clearly provides for that. Secondly, the Deputy Commissioner rightly pointed in his order that, under Rule 43(1)(d) of the Rules framed under the Land Revenue Code, 1888, in the case of grant of land to persons belonging to SC/ST, upset price payable upto Rs. 200/- is waived and balance if any collected in three annual instalments. Therefore, wherever upset price determined was less than Rs. 200/-, the grant of land was free of cost and the period of non-alienation was 15 years. Since the Assistant Commissioner has specifically pointed out in his order, Annexure- A, that in the saguvali chit there is a mention of non-alienation clause of 15 years, then the presumption is that the land came to be granted in favour of respondent-1 free of cost. Even if the land was granted at an upset price, as contended, there might be an order made by the Deputy Commissioner waiving the upset price upto Rs. 200/- in which case also, the non-alienation clause of 15 years as referred to by the Deputy Commissioner is applicable. Once it is proved that the grant of land, in the instant case, is under Sub-rule (4) of Rule 43G, then I must hold that there is a

non-alienation clause imposed under the said Rule. Therefore, it is not possible to accept the contention of the learned Counsel for the petitioner that the grant of land, in the instant case, was on payment of upset price and that therefore no condition could be attached. In view of the above, the ruling in Hepegowda"s case cannot be applied to this case."

22. In PALANI GOUNДАР v. THE STATE OF KARNATAKA AND ORS., W.P. No. 3979 of 1988 DD 12-10-1988 referring to the contentions urged, I have held at pages 10 and 11 as follows:-

"The submission of Sri Veerabhadrappe that the land was not granted free of cost but on payment of upset price, and that therefore the condition u/s Sub-rule (4) of Rule 43(G) cannot be applied, has no force. By a perusal of Saguvali Chit, Annexure-A, it is clear that a sum Rs. 36-50 was imposed on the grantee during the course of the grant. Let us presume that the amount is paid before taking possession of the land. The question is as to whether the said amount can be said to be the market value of the land in question. On a perusal of Sub-rule (4) of Rule 43(G), it is clear that when the upset price or reduced upset price is less than the full market value of the land, then the land shall not be alienated for a period of 15 years. The land in question is said to have been situated in a place where there is a big irrigation project. If that is so, the meagre payment of Rs. 36-50 cannot be said to be price equivalent to the market value. Therefore, it is not possible to accept the contention of Sri Veerabhadrappe that the grantee has paid full market value and therefore Sub-rule (4) of Rule 43(G) cannot be applied. Having regard to scheme and language employed in the Rules, I am of the opinion that the amount imposed and paid in the instant case cannot be said to be the price which is equivalent to the market value of the land in question."

23. Sri Shivappa, with a view to drive home the point, has placed reliance on the definition of the word "upset price" occurring in Sub-rule (2) of Rule 43, which has already been extracted in paragraph-12 of this order. He submitted that the Granting Authority having understood the scope of Sub-rule (2) of Rule 43 imposed the amount of Rs. 50/- per acre as the upset price and therefore whatever may be the amount that has been imposed and collected, it must be construed as equivalent to the market value.

24. Stroud"s Judicial Dictionary (4th Edition) gives at page 1628 the meaning of the word "market value" as follows:-

"Market value: (1) The market value of property means what it would fetch in the market under the state of things for the time being existing; e.g., the market value of the reversion of a public-house within Lands Clauses. Consolidation Act 1845 meant what the reversion of the premises as a public house would fetch and not merely the reversionary value calculated on the rental of the premises apart from the license."

Another meaning assigned by the Author in a contract for the sale of goods is:

"Market Value" means the price in the market to an ordinary customer, irrespective of the particular contract."

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Further meaning assigned by the Author is:

"The "market value" means the price at which what is lost could be expected to be bought and sold as between willing buyer and willing seller, even though there may be only one seller and one buyer, and even though one or both may be hypothetical rather than real."

25. In K.J. Aiyer's Manual of Law Terms and Phrases, Vth Edition, at page 394, explaining the terms "Market value", the Author says that the price for which the goods can be had in the market irrespective of any contract regarding the price between the parties.

26. According to the Law Lexicon by TP. Mukherjee and K.K. Singh, 1971 Edition at page 81, "Market value" means that the legal conception of market value in relation to lands is that it is the price, which an owner who is willing but not obliged to sell might reasonably expect to obtain from a willing and prudent purchaser.

27. Referring to the market value as arising u/s 23 of the Land Acquisition Act, the Supreme Court in RAHUBANS NARAIN SINGH v. THE UTTAR PRADESH GOVERNMENT THROUGH COLLECTOR OF BIJNO AIR 1967 SC 465 has held as follows:-

"Market value on the basis of which compensation is payable u/s 23 of the Act means the price that a willing purchaser would pay to a willing seller for a property having due regard to its existing condition with all its existing advantages, and its potential possibilities when laid out in its most advantageous manner excluding any advantage due to the carrying out of the scheme for the purposes for which the property is compulsorily acquired."

28. In Prem's Judicial Dictionary, Volume III, 1964 Edition at page 1010, the market value has been defined as under: -

"The market value of property means what it would fetch in the market under the state of things for the time being existing."

29. In view of the several meanings assigned as above by several Authorities including Authors and looking at Sub-rule (2) of Rule 43, whether the upset price or reduced upset price imposed and collected in view of the grant of land is equivalent to the market value of the land in question, is the question to be considered.

30. The Authority that granted the land in question in favour of respondent-3 and imposed a sum of Rs. 50/- per acre as upset price did not make an attempt to

ascertain its market value as nearly as it can be ascertained as provided under Sub-rule (2) of Rule 43 of the Rules, because, if it did so, the upset price imposed in the case on hand would have been more than what has been levied and in such a case, there would not have been the prohibitory condition that the land shall not be alienated for a period of fifteen years. Secondly, if the Competent Authority had seen the situation, fertility and potential power of the land, the upset price would have been different. Unfortunately, Saguvali Chit or other records are silent about the view taken by the Granting Authority on this aspect. Therefore, the only presumption that can be drawn is that what is levied and collected is only a nominal sum and not the actual market value; therefore, the condition that the grantee shall not alienate the land for a period of 15 years is rightly attached to the grant.

31. It is contended that the land in question is a dry land situated in Doddanal village, Holalkere Taluk, Chitradurga District, without irrigation facilities or other sources of water and therefore the market value of it would not have been more in 1963 when the land was granted. The petitioner has not produced any documentary evidence in support of this contention muchless records of sales of similar lands in the neighbourhood. As observed above, if Rs. 50/- per acre was actually the market value of the land as on 28-10-1963, the authorities could not have imposed the non-alienation clause for 15 years. When such a clause is there, it cannot be said that the sum imposed is equivalent to market value; but it is only a nominal sum. Therefore, the Granting Authority rightly imposed the condition of non-alienation for 15 years. Admittedly, the land in question came to be sold in favour of the petitioner on 26-12-1976 i.e., within the prohibitory period. Therefore, the Authorities below were right in declaring the alienation as null and void u/s 4 of the Act. I do not see any good ground to interfere with the said conclusion.

32. In the result, for the reasons stated above, this Writ Petition is dismissed; but without any order as to costs.