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(1983) 01 KAR CK 0014

Karnataka High Court

Case No: Writ Petns. No''s. 10674, 10710, 14026, 16439, 18842, 22387 and 23024 of 1980, 3250, 17567 and 17568 of 1981 and 16663 and 17101 to 17103 of 1982

Laxmamma and etc., etc.		APPELLANT
	Vs	
State of Karnataka and Others		RESPONDENT

Date of Decision: Jan. 10, 1983

Acts Referred:

- Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 - Section 3, 4 (1), 5, 5 (1)
- States Reorganisation Act, 1956 - Section 7

Citation: AIR 1983 Kar 237 : (1983) 1 KarLJ 417

Hon'ble Judges: K. Bhimiah, C.J; K.S. Puttaswamy, J

Bench: Division Bench

Advocate: B. Rudra Gowda, C.B. Srinivasa, G.S. Visweswara, M. Rama Bhat, Umesh R. Malimath, S. Chandrashekharaiah, S. Shivaram, S. Sreepathy and K.S. Gowrishankar, for the Appellant; Pandurangaswamy, Govt. Pleader, T.N. Raghupathy and N.B. Nijalingappa, for the Respondent

Judgement

Puttaswamy, J.
On a reference made, these cases are posted before us for disposal.

2. As the petitioners in all these cases have challenged the validity of one and the same enactment and the different orders made thereunder in which various interconnected questions arise for consideration, they can conveniently be disposed of by a common order. We therefore, propose to dispose of them by a common order.

3. On 1-11-1956. the new State of Mysore now called ''Karnataka'' was formed comprising the territories referred to in S. 7, States Reorganisation Act. 1955 (Central Act 37 of 1956).

4. Prior to 15-8-1947, on which day India attained independence and thereafter, the respective Governments of the erstwhile States of the new Karnataka State had introduced various ameliorative measures for the advancement of the members of the Scheduled Castes and Scheduled Tribes (hereinafter referred to as SC/ST) and one of them was Government lands were granted to them free of cost or at concession price imposing restrictions n the rights of grantees to dispose of the lands granted to them. The new State also has pursued the same policy with greater vigour.

5. Before independence and thereafter also large extent of lands had been granted to SC/ST by the erstwhile States and the new State also, with the fond hope that they would retain them personally cultivate and improve their economic conditions. But, in actual practice, it was found that large extent of lands had been sold by the members of SC/ST for paltry sums and possession delivered to the purchasers in contravention of the terms of the grant made to them. In order to remedy that evil. The state enacted the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (Karnataka Act 2 of 1979 hereinafter referred to as the Act) which came into force on 1-1-1979.

6. On the passing of the Act a large number of aliens that had received show cause notices from the Assistant Commissioners of the areas (hereinafter referred to as the AC) or the orders made by them, challenged the validity of the Act, the show cause notices or the orders thereto made against them. The petitioners against whom final orders have been made by the respective A. Cs. have challenged the Act and the orders made against them.

7. Before we formulate the general or special questions that arise for determination in these cases in so far as they relate to the orders impugned, it is necessary to briefly notice the facts of the cases.

8. Writ Petition No. 10674 of 1980 :-

(a) On 2-4-1952 land bearing Sy. No 432/A measuring 0.64 cents of Dasanur village, Siraguppa Taluka. Bellary District which was then part of the erstwhile Madras State but was merged in the erstwhile State of Mysore w.e.f. 1-10-1953 under the Andhra States Act of 1953 was granted to respondent 3, a member of SC with a condition that it should not be alienated to any person who was not a member of a depressed class which class is designated as a SC.

(b) On 4-2-1961 respondent 3 sold the said land to the petitioner for valuable consideration from which date she is in possession of the same.

(c) Under the Act, the AC issued a show cause notice to the petitioner and considering the objections filed by her, he has made an order on 22-1-1980 (Annexure A) voiding the sale on the ground that she was not a SC. In that order, the A.C. has also directed the Tahsildar to take possession of the land and handover the

same to respondents 3. But, in pursuance of the interim order of stay granted by this Court, the possession of the petitioner has not been disturbed.

9. Writ Petition No. 10710 of 1980:-

(a) On 13-2-1951 an extent of 3 acres in Sy. No. 38 of Singlikapura village, Koratagere Taluk, Tumkur District was granted to respondent 3, a member of SC with a condition that it should not be alienated by him forever. But, in contravention of that clause, respondent 3 sold the said land to the petitioner on 3-5-1961.

(b) On 12-6-1980 (Annexure A) the A.C., Madhugiri after notice to the petitioner has voided the same holding that the alienation had been made in any event, within 15 years from the date of grant.

10. Writ Petition No. 14026 of 1980 :-

(a) On 20-11-1956 an extent of 4 acres of land in Sy. No 29/12 of Oyigowdanahalli village, Hunsur Taluk, Mysore District was granted to respondent 3, a member of SC/ST with a condition that it should not be alienated by him for a period of 15 years. But, in contravention of that clause, respondent 3 sold an extent of 2 acres of land on 5-6-1969 to the petitioner.

(b) On 25-7-1980 (Annexure A) the A. C., Hunsur, has voided the sale made to the petitioner holding that the alienation had been made within the prohibited period of 15 years.

11. Writ Petition No. 16439 of 1980:-

(a) Some time in June, 1959, respondent 3. a member of SC was granted 4 acres of land in Sy. No. 46/1B of Manuganahalli village, H. D. Kote Taluk, Mysore District with a condition that it should not be alienated for a period of 15 years. But, in contravention of the same, respondent 3 has sold the said land on 21-5-1963 to the petitioner.

(b) On 4-8-1980 (Annexure A) the A.C., Hunsur has voided the sale made to the petitioner and has directed the restoration of the land o respondent 3.

12. Writ Petition No. 18842 of 1980:-

(a) On 22-11-1951 an extent of 2 acres 07 guntas of land in Naravi village of Balthangady Taluk. Dakshin Kannada District was granted to respondent 3. a member of SC/ST with a condition that is should not be alienated to members other than SC/ST. On 29-3-1974 respondent 4 sold that the said land to the petitioners who are Muslims by religion.

(b) On 28-4-1980 (Annexure D) the A. C., Puttur, has voided the sale on the ground that the alienation was in contravention of the conditions imposed in the grant certificate. In pursuance of the said order of the A. C., the Tahsildar, Belthagady has issued an eviction notice on 11-7-1980 to petitioner 2 (Annexure C).

13. Writ Petition No. 22387 of 1980:-

(a) On 11-7-1951 an extent of 2 acres of land in Sy. No. 23 of Chakenahalli village of Kunigal Taluk, Tumkur District was granted to one Nanjappa, a member of SC/ST with a condition that it should not be alienated forever.

(b) On an application made by respondent 3 who claimed to be the legal representative of Nanjappa, the A.C., Tumkur Sub-Division, Tumkur by his order dated 13-6-1980 (Annexure A) has voided the sale made to the petitioner as violative of the terms of the grant with a direction to the Tahsildar, Kunigal to take possession of the land.

14. Writ Petition No. 23024 of 1980:-

(a) An extent of 2 acres of land in Sy. Nos. 24/4 and 26/4 of Bydagotta village, Somwarpet Taluk, Coorg District had been granted to one Harijan Uddaraiah who is stated to be the father of respondent 3 under the Coorg Land Grant Rules with a condition that those lands should not be alienated without obtaining the prior permission of the A.C. in that behalf. But, without obtaining the prior permission the said Uddaraiah has sold 1 acre of land to the petitioner in Sy. No 24/4 and the other extent to one Sri Mariyappa.

(b) On 20-9-2980 (Annexure A) the A. C. has voided the said sales made to the petitioner and Mariyappa as violative of the terms of the grant and has directed the Tahsildar to restore the lands to respondent 3, the correctness of which is challenged by the petitioner to the extent it affects him.

15. Writ Petition No. 3250 of 1981:-

(a) On 19-6-1942 an extent of 4 acres of land in Sy. No. 71 of Manuganahalli village of H. D. Kote Taluk, Mysore District was granted to respondent 3, a member of SC/ST with a condition that it should not be alienated forever. But, in contravention of the same respondent 3 has sold the said land to the petitioner on 4-5-1971.

(b) On 29-1-1981 (Annexure A), the A.C., Hunsur Sub-Division. Hunsur, has voided the sale as violative of the permanent non-alienation clause with an observation that the same had been sold within 20 years from the date of grant.

16. Writ Petition No. 17567 of 1981:-

(a) Some time in 1942-43 an extent of 2 acres of land in Sy. No. 225 of Hodigere village, Chennagiri Taluk, Shimoga District was granted to respondent 3. a member of SC/ST with a condition that it should not be alienated for a period of 20 years from the date of grant. But, in contravention of that clause, respondent 3 sold the said land sometime in 1951 to the petitioner.

(b) On 31-7-1981 (Annexure A) the A. C., Shimoga Sub-Division. Shimoga has voided the sale made to the petitioners as made within the prohibited period.

17. Writ Petition No. 17568 of 1981 :-

(a) Sometime in 1944-45 an extent of 6 acres 07 guntas of land in Sy. No. 18 of Megalavaddarahatti village, Arsikere Taluk, Hassan District was granted to one Poojari Venkataiah, a member of SC/ST with a condition that it should not be alienated forever. But, in contravention of the same the said Venkataaiah sold an extent of 3 acres of land on 30-11-1961 to the petitioner.

(b) On an application made by respondent 3, who claimed to be the son of Poojari Venkataiah, the A.C. Hassan by his order dated 6-3-1981 (Annexure B) has voided that said sale as made in contravention of the non-alienation clause.

18. Writ Petition No. 16663 of 1982:-

(a) On 30-7-1953 an extent of 0.38 acres of land in Sy. No 257/4E of Suratkal village, Mangalore Taluk, Dakshina Kannada District was granted to respondent 1 a member of SC/ST with a condition that it should not be alienated to any other person other than members of SC/ST But, in contravention of the same. respondent-1 sold the said land to one M. Abbubakar on 23-5-1970, from whom the petitioner has purchased the said land.

(b) On 16-3-1982 (Annexure A), the A.C., Mangalore has voided the sale and directed the restoration of land to respondent 1.

19. Writ Petitions Nos. 17101 to 17103 of 1982:-

(a) On different dates, respondents 3 to 5, who are members of SC/ST were granted small extends of lands in Nokya village of Ponnampet Taluk, Coorg District, with a condition that the same should not be alienated by them without obtaining the prior permission of the A.C. under R.122 (3). Coorg Land Revenue and Regulation. 1899. But, those respondents without obtaining the prior permission of the A. C. have sold the said lands to the petitioner

(b) By different but identical orders (Annexures A to C), the A.C., Madikere has voided the sales made to the petitioner as made in violation of R. 122 (3) of the Rules.

20. On issuing rule nisi in all these cases, this Court has stayed the operation of the impugned orders, as a result of which the possession of the petitioners has not been disturbed.

21. The Act is challenged as violative of Arts. 14, 19 and 31 of the Constitution.

22. The petitioners, as purchasers from the guarantees or their alienees, have asserted that they are innocent purchasers. They have urged that the conditions imposed or provided by law defeating their rights and voiding the transfers in their favour, were all void and non est. On these premise they have urged that the orders voiding the transfers in their favour are illegal and unjustified.

23. The petitioners have also urged that on the promulgation of R. 29A . Karnataka Land Grant (Amendment) Rules, 1974 (hereinafter referred to as the 1974 Amendment Rules). published in Karnataka Gazette dated 17th October, 1974, the condition that the grantees shall not sell the land to persons other then members of SC/ST stood deleted and the transfers made in defiance of that condition were legal.

24. Alternatively, the petitioners have urged that the longer periods of absolute restraints on alienation, it any, imposed in the grant certificates, not authorised by law that prevailed at the time of grant were void, in its entirety and in any event to the extent they were not authorised by law and any alienation made thereto has to be adjudged with reference to the law prevailing at the time of grant only and not with reference to the conditions imposed in the grant certificates.

25. The petitioners have also urged that in respect of grants made before the 1960 Land Grant Rules were promulgated the period of non-alienation had to be computed from the date of grant and not from the date of issue of the grant certificates as provided in the later rules.

26. Lastly, the petitioners have urged that it was not open to the A.Cs to authorise any of their subordinates like the Tahsildar to execute their orders.

27. In justification of the Act and the provisions challenged the State had filed its return in the connected cases. But, so far as the orders impugned in these cases with which we are primarily concerned, none of the respondents have filed their return.

28. In S. V. Krishnappa v. State of Karnataka (1982 (2) KarLJ 339) a Division Bench of this Court consisting of the then learned Chief Justice Chandrashekar and Venkatachala, J. rejecting the very contentions urged in these cases has upheld the validity of the Act.

29. Firstly, the decision of the Division Bench in Krishnappa''s case is binding on us. Secondly, learned counsel for the petitioners have not urged any new ground even to doubt the correctness of that decision. Even otherwise, we are of the opinion, that there are no grounds on which a different view can be taken by us. We, therefore, reject the challenge of the petitioners to the Act.

30. On an examination of the pleadings and the contentions urged with reference to the orders impugned, the following general questions arise for our determination:

I. Whether the conditions like - (I) that a grantee shall not alienate the land forever or a permanent restraint on alienation; (ii) that the alienation, if any, shall only be to the members of SC/ST; (iii) that an application shall not be made without obtaining prior permission of Government or the authorised officer; and (iv) that a grantee shall not alienate for a limited period except in favour of Government or a Co-operative Society and cultivate the same personally, were void and unenforceable?

II. Whether a condition imposed touching on alienation if not authorised by law then in force, is void in its entirety or void only to the extent it violated the law?

III. What is the true scope and ambit of Rule 29-A of the 1974 Amendment Rules? Whether the said Rules has the effect of deleting the conditions imposed on all earlier grants made prior to that date?

IV. Whether the period of alienation should be computed from the date of grant or from the date of issue of the grant certificate to the grantee?

V. Whether an Assistant Commissioner can authorise his subordinates like the Tahsildar to execute his order?

31. Before we deal with the above general questions in their order and any other special question that arises in any particular case, it is useful to briefly analyse the Act and some of its important provisions as that will facilitate us to answer the above and other questions that arise in the cases.

32 The statement of objects and reasons accompanying the bill that later became the Act sets out the object of enacting the Act in these terms.

"The non-alienation clause contained in the existing Land Grant Rules and the provisions for cancellation of grants where the land is alienated in contravention of the above said provisions are found not sufficient to help the Scheduled Castes and Scheduled Tribes grantees whose ignorance and poverty 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 purposes of the grant, the land even if it has been alienated, should be restored to be 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".

33. A preamble to an Act opens the key to the Act. The preamble to the Act states that the object of the Act is to provide for the prohibition of transfer of certain lands granted by Government to persons belonging to the Scheduled Castes and Scheduled Tribes in the State and for restoration of such lands to such persons.

34. Section 2 of the Act that contains a declaration is not material for our purpose.

35. Section 3 of the Act defines certain terms. Clauses (b), (d) and (e) of Section 3 that define the terms ''granted land'', ''Scheduled Castes'' and ''Scheduled Tribes'' and ''transfer'' are material for our purpose.

36. The term ''granted land'' means any land granted by 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 of land ceilings or abolition of inams, other than that relating to hereditary offices or rights.

37. The terms ''Schedule Castes'' and ''Scheduled Tribes'' shall have the meaning respectively assigned to them in the Constitution.

38. The term ''transfer'' means a sale, gift, exchange, mortgage (with or without possession), lease or any other transaction not being a partition among members of a family or a testamentary disposition and includes the creation of the charge or an agreement to sell, exchange mortgage or lease or enter into any other transaction.

39. Section 4 is the key section of the Act and, therefore, calls for a close analysis.

40. Section 4(1) of the Act declares that an alienation already made by a member of a Scheduled Caste or Scheduled Tribe in contravention of the terms of the grant or the law providing for such grant as null and void and that no right, title or interest shall pass to an alliance or the person claiming under him. The declaration made in Section 4(1) of the Act is given overriding effect over other laws, contracts and transactions.

41. Section 4(2) of the Act provides that transfer of granted lands from 1-1-1979 on which day the act came into force shall be made with the permission of Government and not otherwise. Any transfer of granted lands made after 1-1-1979 without the previous permission of Government is void.

42. Section 4(3) of the Act provides that sub-sections (1) and (2) of Section 4 shall apply to a sale of any land in execution of a decree or order of a civil court or of any award or order at any other authority. Sub-section (3) invalidates sales made in execution of a decree of a Civil Court, an award or order of any authority also. A sale made in pursuance of a decree of a civil Court or award or order of any other authority is not beyond the pale of the Act and its validity has to be adjudged with reference to the provisions made in the Act.

43. Sub-section (1) of Section 5 provides for resumption by the Assistant Commissioner, of granted lands on an application by an interested person or on information in writing given by any person or suo motu, after holding an enquiry in which the person affected by resumption shall be given a reasonable opportunity of being heard. That sub-section further provides that such lands shall be restored to the original guarantees or their legal heirs, that where it is not practicable to restore to them, such lands shall vest in the State free from all encumbrances and that the Government may grant such lands to person belonging to any Scheduled Castes or Scheduled Tribes in accordance with the Rules relating to grant of lands.

44. Sub-section (3) of Section 5 provides for a presumption, until the contrary is proved, that where any granted land is in possession of a person other than the original grantee or his legal heir, such person has acquired the land by transfer which is null and void.

45. Sections 7, 8, 9 and 10 that provide for exemptions, penalties, protection of action taken in good faith and the power to make rules are not material for our purpose.

46. Section 11 of the Act removes all doubts and gives overriding effect to the provisions made in the Act. Section 11 provides that the provisions of the Act, shall have effect notwithstanding anything inconsistent therewith contained in any other law or decree or order of a Court, Tribunal or other authority.

47. In dealing with cases arising under the Act, if an Assistant Commissioner finds that an alienation is in contravention of the terms of the grant made or law providing for such grant made to a member of a Scheduled Caste or Scheduled Tribe, he is bound to give effect to the same by ignoring any decree or order made by a civil Court, Tribunal or any other authority.

Re. Point No. 1:

48. Learned Counsel for the petitioners and others that intervened, at the forefront have contended that Government grant was in all respects a disposal by a private person and was no better than that and, therefore, the permanent restraint on alienation imposed in the order of grant or grant certificates, was violative of Section 10, Transfer of Property Act, (Central Act 14 of 1882) (hereinafter referred to as the TP Act) or the legal principle of rule against perpetuity incorporated in that Section, was void and had to be ignored.

49. Learned Counsel for the respondents refuting the contention, urged that Section 10 of the TP Act or the Rule against perpetuity had no application to Government grants.

50. A State and its Government, irrespective of the nature of its policy, can never be equated to an individual or a juristic person. Lands and properties owned by the State or its Govt. cannot be held to be owned by an individual exercising his rights of ownership over the same. The disposal of State property can and must be in conformity with law.

51. On any principle a Government grant cannot be equated to a disposal by a private person in favour of another private person.

52. With respect, we find it difficult to subscribe to the very broad proposition stated by Tukol, J. to the contrary in Sheetha Reddy v. P. Subba Reddy (1963 (1) Mys LJ 538).

53. The preamble to the T. P. Act states that it proposes to regulate the law relating to transfer of property by act of parties or individuals which necessarily includes

juristic persons. Section 5 of the Act which defines transfer of property also contemplates transfer between living persons. A grant made by Government or by its authorised officer in accordance with law, cannot be treated as a transfer within the meaning of Section 5 of the T. P. Act. On this conclusion alone, Section 10 of the T. P. Act has no application to Government grants.

54. The legal principle of rule against perpetuities or that an absolute restraint on alienation being opposed to public policy is void as has been incorporate in Section 10 of the T. P. Act can hardly be doubted. But, that legal principle has always been held to be inapplicable to Government grants.

55. In The Secretary of State for India in Council Vs. Mahaboob Sir Frazvant Sri Raja Parthasarathy Appa Rao Savai Aswarao Bahadur Zamindar Garu and Others, a Division Bench of the Madras High Court consisting of Venkatasubba Rao and Srinivassa Ayyangar, JJ. by separate but concurring judgments on an exhaustive consideration of the question with reference to the validity of the Crown Grants Act, 1895, now called as the Govt. Grants Act, 1895 and its scope and ambit have ruled that rule against perpetuity had no application to Government grants. We are not concerned with the validity of that Act. But, on that, the scope of that Act and the applicability of the Rule against perpetuities, the learned Judges have expressed thus:

"It is first contended that the restrictive covenant in question is void. This would be so under the general law, but grants from the Crown are governed by the Crown Grants Act (XV of 1895). Doubts having arisen as to the power of the Crown to impose restriction upon grants made by it, the Act was passed to remove such doubts.

Section 2 makes the Act having a retrospective effect. It says:

"Nothing in the Transfer of Property Act shall ..... be deemed ever to have applied to any grant ..... heretofore made ..... by or on behalf of Her Majesty the Queen Empress or Her heirs or successors ..... but every such grant shall be construed.....as if the said Act had not been passed".

Section 3 enacts:

"All ..... Restrictions ..... contained in any such grant shall ..... take effect according to their tenor, any rule of law ..... to the contrary notwithstanding."

XX XX XX XX

It is urged that the Crown cannot create an estate unknown to the law and that the estate created by the grant is of this description. Mr. Anantakrishna Ayyar, the learned Government Pleader, answers that this is not an estate unknown to the ordinary law, and relies upon the passage at 487 of Vol. VI, Halsbury''s Laws of England.: "A grant by the Crown may contain a condition against alienation."

His second answer is, that this estate is in any event not unknown to the Indian Law and in support of this he cites Gulabdas Jugjivandas v. Collector of Surat (ILR 1879 Bom 186). In the view I have taken it is unnecessary to deal with these points. Granting that the Crown cannot create an estate of this kind, the Crown Grants Act expressly confers this power upon the Crown and this leads to the consideration of the question whether the Crown Grants Act is ultra vires of the Indian Legislature. Section 22 of the Indian Council''s Act, 1861, enacts that the Governor-General in Council shall have power to make laws for all persons and for all places and things in the Indian territories. But, the plaintiff relies upon the proviso that the Governor-General is council shall not have the power of making any laws which may affect the authority of Parliament. How does the Crown Grants Act affect the authority of Parliament? The prerogative of the Parliament remains unaffected and notwithstanding the Act, it can create estates unknown to the law. Further, if the Parliament itself could have passed the Statute, why should not the Indian Legislature created by an Act of the Imperial Parliament, have the same power? As observed by their Lordships of the "Judicial Committee in Empress v. Burah ILR (1879) Cal 172, the Indian Legislature has powers expressly limited which created it and when acting within the limits prescribed, it has plenary powers of legislation, as large and of the same nature as, those of Parliament itself.
See also Hodge v. The Queen (1884 9 AC 117) and Powell v. Apollo Candle Co. (1885 10 AC 282).

XX XX XX XX

But assuming that the sanad should be deemed or regarded as the source of the plaintiff''s title to the village in question and that therefore the nature and extent of the rights with regard to the prayers in the plaint should be determined by the sanad itself and the terms therein set out, the contentions were even more ingenious and strenuous which were put forward by the learned vakil for the plaintiffs to establish that the plaintiff''s right to the village should be adjudged to be absolute and untrammelled by any conditions.

The first argument had reference to the Crown Grants Act, Act XV of 1895. It was not in its true nature so much an argument as an answer by way of anticipation. The learned vakil for the plaintiffs assumed that for the defendant the Crown Grants Act will be referred to and relied upon as enabling or justifying the alienation and began by assailing it in limine. But looking at the preamble and considering the purpose of the Act it cannot be doubted that the Act was rather declaratory in its nature than enabling or enacting. It had to be enacted, so says the preamble, because doubts had arisen as to the extent and operation of the Transfer of Property Act of 1882. Prior to the Transfer of Property Act, there was no statutory enactment of the Indian Legislature regulating transfers of property. But after that Act was passed apparently doubts came to be expressed or entertained whether that was an Act governing transfer of property by act of parties who were subjects of the Crown or

whether the provisions of the Act applied also to transfers of property by the Crowns. Taking the terms of the Crown Grants Act, the inference seems to be irresistible that prior to the Transfer of Property Act there was no doubt whatever as to the power of the Crown to make a transfer of property in any terms, or under any of the conditions whatsoever. Apart from one argument which shall be referred to hereafter, the learned vakil for the plaintiffs did not refer to any limitations on the powers of the Crown to create or transfer estates previous to the passing of the Transfer of Property Act. The personal law of the Hindus or Mohammadans or other communities in India could not possibly affect the rights of the Christian sovereign power. If all Acts of legislature owe their origin to the sovereign power whatever, that may be in the absence of clear indication to the contrary, the provisions of statutory law should be regarded as governing transactions only of the subjects of the sovereign power and not of the sovereign power itself. Further the rules of law whether statutory or otherwise, governing and regulating transfers of property as between subject and subject of the sovereign power, are based or should be deemed, to be based on principles which cannot in any wise be regarded as applicable to a transfer by the sovereign power itself.

As I read the Crown Grants Act, it became necessary for the legislature to pass such an Act altogether declaratory in its nature, merely because of the doubts which came to be entertained after the passing of the Transfer of Property Act. The meaning and significance of Crown Grants Act of 1895 is merely a restatement of the principle underlying Section 3 thereof, namely that the Crown is entitled to impose any restrictions, conditions or limitations over, whatsoever, in any grant or transfer it may make whether such restrictions, conditions or limitation over, would be legal or valid or not in any grant or transfer made by one subject to another, and it became necessary for the legislature to restate and reaffirm the principle only because of the doubts that arose subsequent to the passing of the Transfer of Property Act. I cannot, therefore, regard the Crown Grants Act as an enacting or enabling measure of the legislature or even as a ratifying Act with retrospective effect making legal that which was not so. An explanatory and declaratory Act cannot be regarded or construed as if it were an enactment creative or regulative or rights or obligations."

We are of the view that the principles stated in Appa Rao''s case are correct and with respect we are in complete agreement with the same.

56. As pointed out in Appa Rao''s case, the Crown Grants Act is only a declaratory Act and has been enacted only to remove doubts. Even if the Government Grants Act was not in force in any of the integrating areas, or the said Act has been extended by the new State with effect from 14-6-1973 by enacting the Government Grants (Karnataka Extension) Act, 1972, that does not really make any difference to hold that the Rule against perpetuities, has no application to Government Grants.

57. On the above discussion, we hold, that Section 10 of the T. P. Act or the rule against perpetuities does not apply to Government grants. Hence, it follows that a condition not to alienate forever or permanent restraint on alienation of granted lands, if authorised by law regulating such grants was not a void but a valid condition.

58. In accordance with the Board Standing Orders of the Madras Board of Revenue, which was empowered to issue them, a condition not to alienate lands granted to SC/ST to persons other than SC/ST had been imposed.

59. In the Land Grant Rules made by the erstwhile States of Mysore and Coorg, a rule had been made that Lands granted shall not be alienated without obtaining the prior permission of Government or the authorised officer.

60. In the erstwhile State of Mysore, Rules had also been made stipulating that the grantees shall not alienate the lands for a limited period of 10, 15 and 20 years as the case may be.

61. At the highest, the above restrictions or conditions were all in the nature of a partial restraint on alienation. Both under the T. P. Act and the general legal principles provisions for partial restraint on alienation could be validity and legally made and imposed. From this it follows that partial restraints on alienations, if authorised by law, were valid.

62. Our answer to point No. 1 is that conditions for permanent or partial restraint were not void but were valid.

Re : Point No. II:

63. We have noticed earlier that Government grants and the terms and conditions to be imposed thereunder are regularised by law or the executive orders made by Government.

64. When there is a law or a general order, made regulating the grants and imposition of conditions, the officer functioning thereunder willy-nilly is required to incorporate only those conditions and no other. At least one of the primary objects of law itself is to secure uniformity. The terms and conditions to be imposed must be in conformity with the law or general orders made by the competent authority. It is not open to an officer to invent or impose conditions that he considers proper. Acceptance of the contentions that it is open to each granting authority to impose such conditions as he deems proper, without reference to the law or the orders that have the force of law, would create a chaotic situation and that would be the very antithesis of the rule of law. We are, therefore, of the opinion that the restrictions or conditions to be imposed must only be in conformity with law regulating the grants and imposition of conditions.

65. But, in some cases, it appears the granting authorities have imposed a longer period than the one that is contemplated by law then in force say 15 or 20 years as against 10 or 15 years as the case may be.

66. Earlier we have found that the granting authorities should have imposed only the terms and conditions provided by law and no other.

67. Assuming that a granting authority had imposed a longer period than the one provided by law, it is difficult to hold that that condition in its entirety would be a void condition and cannot be enforced for the period it should have been lawfully imposed. What is objectionable is imposition of a longer period and not the condition itself. After all the condition to the extent it violates the law is clearly severable. On the foregoing discussion, we hold that any condition imposed to the extent it is in derogation of law, would be void and the conditions to the extent they are permitted by law would be valid. We are of the view that Section 4 of the Act incorporates the same principle.

Re : Point No. III.

68. The uniform Land Revenue Act of 1964 (Karnataka Act No. 12 of 1964) enacted by the new State repealing the corresponding laws in the integrating areas, came into force on 1-4-1974. Under that Act, Government on 21-3-1968 framed the uniform Land Grant Rules called the Mysore Land Grant Rules of 1968 (hereinafter referred to as the 1968 Rules). Rule 40 of the 1968 Rules, corresponding to Section 6, General Clauses Act, repeals the Land Grant Rules that were in force in the integrating areas of the new State and saves previous operation of the Rules and the actions taken thereunder. As a result of the above, the conditions imposed in accordance with law in the erstwhile integrating areas and notably in the old Madras area to the effect that the lands should not be alienated except to members of SC/ST undoubtedly continued to be in force.

69. But, on 27-9-1974 Government framed Rule 29-A which reads thus:-

"29A. Certain conditions not to apply: Notwithstanding anything contained in rule 40 of the Karnataka Land Grant Rules, 1969, the provisions of any rule (repealed by the said rule), that the land granted shall not be alienated except to the members of the Scheduled Castes or Scheduled Tribes shall, with effect from the commencement of the Karnataka Land Grant (Amendment) Rules, 1974 cease to operate."

By virtue of Clause (2) and Section 5 of the Karnataka General Clauses Act, this rule came into force on 17-10-1974, on which day the notification was first published in the Karnataka Gazette.

70. Rule 29 A which opens with a non obstinate clause, declares that the provisions of any Rules that provided that the land granted shall not be alienated except to the members of Scheduled Castes and Scheduled Tribes shall cease to operate from the date that rule comes into force. The language of the Rule divorced from the context,

provides for repealing the rules hat provided for a prohibition of alienation only to members of SC/ST from 17-10-1974, though the corresponding Rules in that behalf had earlier been repealed by the 1968 Rules itself.

71. Rule 29A did not contemplate repealing a rule that had earlier been repealed, though that would be the textual meaning of that Rule divorced from the context. A literal meaning defeating the purpose of framing the Rule cannot be placed and the Court must endeavour to ascertain the real intendment and object of framing the Rule and place a construction that would achieve the object of framing the Rule. On such a construction, we are of the opinion that in framing Rule 29 A, Government has provided to delete the conditions imposed in the grant certificates to the effect that lands granted to members SC/ST shall not be alienated to any other person other than the members of SC/ST from the date that Rule came into force i.e., from 17-10-1974. Even the learned Government Pleader appearing for the State supported this construction only.

72. On the above discussion, we hold that on and from 17-10-1974, the condition imposed in the grant certificates issued to members of SC/ST to the effect that they shall not be alienated to persons other than members of SC/ST stands deleted and any alienation made thereafter to persons other than SC/ST would be valid.

Re : Point No. IV.

73. Learned counsel for the petitioners have urged that wherever the Rules read ''the date of grant'' in particular in respect of the Rules that were in force in the old Mysore area before 1960, the period of non-alienation should be computed ''from the date of grant'' only and not from the date of issue of the grant certificates to the grantees.

74. On an application made for grant before the competent officer, the same is processed by him and thereafter an order is made by him or appellate or the revisional authority that deals with the same. When a grant in made, a grant certificate, a little deed or a saguvali chit is issued to the grantee demarcating the extent and the boundary of the land granted to him. Without such a grant certificate or title deed, the guarantee cannot enter on the land and cultivate the same, though there is a grant order in his favour. A grant and a grant certificate cannot be treated as two different and distinct matters divorced from each other. Without a grant certificate, the grant is not really effectuated. From this, it follows that the construction suggested by the learned counsel for the petitioners on the Rules and more so on Rule 43(B)(5) of the Mysore Land Revenue Rules before their amendment in 1960, is too literal and will not carry out the scheme and object of the Rules.

75. On the above discussion, we hold that even where the Rules employ the terms ''the date of the grant'', those terms should be read as the date from which the grant certificate is actually issued to the grantee and not from the date the order is

made in this favour.

Re : Point No. V.

76. Learned counsel for the petitioners have urged that the power to make orders and enforce them is exclusively conferred on the A. Cs and it was not open to them to direct their subordinates to enforce any of the orders made by them.

77. In some of the orders, the A. Cs have directed their subordinates like the Tahsildars to execute the orders made by them. In pursuance of those orders, the Tahsildars have issued eviction notices calling up the alliances to deliver possession to Government or to be grantee as the case may be.

78. Section 5 of the Act exclusively empowers the AC of the area to decide the matters under the Act and take possession of the land evicting all persons who are in possession thereof. Rule 3 (6) of the Rules framed under the Act exclusively empowers the AC to execute his orders.

79. The Act and the Rules exclusively confer power on the AC to make orders and execute them. The Act and the Rules do not empower the AC to delegate his powers to any of his subordinates and call upon them to execute his orders. A specially designated authority to administer the Act, cannot delegate his power to any other officer or authority. Any power conferred on a specially empowered authority must be exercised only by that authority and not by any other authority.

80. On the above discussion, we hold that it is not open to the A Cs to delegate their powers either to their Tahsildars or other officers to execute their orders. But this conclusion of our should not be understood by the A. Cs. as this Court stating that it is not open to them to take the assistance of their subordinates or other public authorities to execute their orders. Undoubtedly, it is open to the A. Cs to take the assistance of their subordinates and such other public authority to enforce their orders in accordance with law.

81. With the findings recorded on the general questions, we now proceed to examine the orders impugned in each case and any special question that arises in such case.

Writ Petition No. 10674 of 1980.

82. Admittedly, the petitioner has purchased the land granted to respondent 3, a member of SC/ST before Rule 29A was framed by Government.

83. Before the AC, the petitioner claimed that she was a member of caste called ''kabbur'' and that caste was a SC and, therefore, the alienation made in her favour was valid.

84. But, on an examination of that plea, the AC has found that Kabbar was not a scheduled caste and the alienation made in her favour was void. Even though the

petitioners has disputed, this finding of the AC, she has not placed any material before this Court to take a different view.

85. Under our Constitution, only castes and tribes that are so recognised either in the Presidential orders or the Parliamentary legislation are entitled to be treated as SC or ST. In any of the Presidential orders issued or the Parliamentary legislation made, the case "Kabbar" in the District of Bellary has not been recognised as a Scheduled Caste. In this view, the finding recorded by the AC is unexceptionable. We, therefore, reject this contention of the petitioner.

86. While rightly voiding the sale, the AC has directed the Tahsildar to take possession and deliver the same to respondent 3. On the finding recorded by us on point No. 5, it follows that this part of the order of the AC is illegal and is liable to be quashed. But, this does not prevent the AC from enforcing his order in accordance with law.

Writ Petitions Nos. 10710 of 1980 and 3250 of 1981 :

87. In the opening part of his orders, the ACs state that the grant made by the Tahsildar and Saguvali chits issued to the grantees on 13-2-1951 and 19-6-1942 respectively contained a condition to the effect that the grantees should not alienate the lands forever. But, in another part of their orders the ACs state that the alienation made was in any event within 15 and 20 years respectively and, therefore invalid, which apparently is self contradictory.

88. The law prevailing at the time of grant was Rule 43 (8). Mysore Land Revenue Rules, and that rule directed the imposition of a condition to the effect that the grantee shall not alienate the land forever. In this view, the condition imposed by the Tahsildars was a valid condition and the alienation made in violation of the terms of the grant and the law prevailing at the time of the grant was invalid. On this view, there is no justification for us to interfere with the orders of the A. C. We, therefore, hold that these writ petitions are liable to be dismissed.

Writ Petitions Nos. 14026 and 16439 of 1980 :

89. In both these cases the AC has held that the non-alienation clause was for a period of 15 years and the alienations had been made within the period and were therefore, void.

90. But, the petitioners have urged that having regard to the nature of the grants and the law prevailing at the time of the grant, the period of non-alienation was only for a period of 10 years and not 15 years.

91. In his orders, the AC has not set out the nature of the grants and the law prevailing at the time of the grant and the conditions that should have been lawfully imposed by the granting authority.

92. When there is no dispute, it is open to the AC to rely on the terms and conditions found in the grant certificate and void the same. But, when there is a dispute on the terms and conditions that should have been imposed, the AC is under legal obligation to ascertain the same and record his clear findings. Unfortunately, the AC has not addressed himself to this question and, therefore, there is no alternative for this Court except to quash his orders and remit the cases to him for fresh disposal.

Writ Petitions Nos. 18842 of 1980 and 16663 of 1982:

93. In his orders, the AC has found that the alienation had been made to the petitioners who are muslims by religion in defiance of the clause that prohibited alienations to persons other than SC/ST.

94. Rule 29-A of the Rules deleting the conditions, came into force on 17-10-1974. As on the day the alienations were made the condition imposed in the grant certificate that the lands should not be sold to persons other than SC/ST was in force. Hence, the alienations made to the petitioners were invalid and the impugned orders of the ACs do not call for our interference.

95. But, the direction of the AC to the Tahsildar and the eviction notices D/-11-7-1980 (Annexure-C) issued by the Tahsildar, Belthangady and 17-4-1982 (Annexure-E) issued by the Tahsildar Mangalore challenged in Writ Petitions Nos. 18842 of 1980 and 16663 of 1982 respectively are liable to be quashed on our answer to Point No. V.

Writ Petition No. 17567 of 1981:

96. In his order the AC has found that the grant was made in 1942-43 with a condition that it should not be alienated for a period of 20 years from the date of the grant.

97. The law prevailing at the time of grant was Rule 43 (8) Mysore Land Revenue Rules and that rule directed the imposition of a condition to the effect that the grantee shall not alienate the land forever. On this view, the alienation made was invalid and the order made by the AC voiding the same requires to be affirmed on this ground and not on the ground stated by him. We, therefore, hold that this writ petition is liable to be dismissed.

Writ Petitions Nos. 22387/1980 and 17567 of 1981:

98. When the grants were made, the Mysore Land Revenue Rules empowered the granting authorities to direct the grantees not to alienate forever and accordingly such a condition had been imposed in the grant certificates. But, in contravention of that clause the alienations had been made to the petitioners.

99. On the conclusions reached by us on point No. 1, the orders made by the ACs are legal and these writ petitions to that extent are liable to be dismissed. But, however, the direction of the AC in Writ Petition No. 22387 of 1980 to the Tahsildar

to take possession, on the finding recorded by us on point No. V, is only liable to be quashed.

Writ Petitions Nos. 23024/1980 and 17101 to 17103/1982 :

100. In his orders the AC has found that the alienations had been made in contravention of Rs. 122 Coorg Land Revenue Rules, which directed that the alienation should not be made without obtaining permission.

101. Before the AC or before this Court, the petitioners have not alleged much less proved that they had obtained the prior permission of the AC for purchasing the lands from the grantees.

102. Even though the orders made by the AC are somewhat unsatisfactory, it is clear that he has voided the sales on the ground that the purchasers had not obtained the prior permission of the authority as required by R. 122, Coorg Land Revenue Rules. In this view, there are no grounds to interfere with the impugned orders made by the AC. But, however, the direction issued by the AC in W. P. No. 23024 of 1980 to the Tahsildar to take possession only calls for our interference.

103. Our above discussion concludes the questions that arise in all these cases. But, we consider it proper to state our views on certain aspects to enable Government and the ACs dealing with the cases to examine them and initiate necessary remedial steps on those aspects.

104. In most of the cases, the show cause notices issued by the ACs do not set out any of the details required by the Rules.

105. Before issuing the show cause notices to the alliances, it is proper for the ACs to collect all such information as they can and clearly set out all the grounds on which the alienation is proposed to be annulled, so that the alienee can satisfactorily state his case also before the authority.

106. An order made under the Act, results in serious civil consequences to an alliance. But, generally we have found the orders made by the ACs do not deal with their objections, the crucial questions like the date of grant, the terms and conditions of the grant, the law prevailing at the time of grant and the violation if any justifying the voiding of the sales. With regret we must observe that money of the orders made by the ACs are not speaking order and are made in a casual and callous manner. Any order to be made under the Act, which is subject to judicial review by this Court must adequately deal with the questions that arise in the case. We sincerely hope that the ACs will realise the necessity to pass speaking orders at least in future and avoid needless remands on that scope.

107. The new State consists of 5 integrating areas; with different laws that also continued till the uniform Land Revenue Act and uniform Land Grant Rules were framed in 1968. In examining the case arising under the Act the ACs are required to

examine them with reference to the law prevailing at the time of the grant and the conditions that should have been imposed under those laws.

108. We have found it extremely difficult to ascertain the Land Grant Rules or the orders that were prevailing in different areas from time to time. Even now we are not in a position to state with certainly the laws that were in force in the different areas before the uniform Land Revenue Act and Land Grant Rules came into force in 1968, which were repealed and replaced by the 1969 Rules.

109. A large number of cases, some of which have been remitted by this Court are still to be decided by the ACs who are required to ascertain the laws prevailing at the time of the grant. We seriously doubt whether the ACs and easily ascertain the laws that were in force in the area concerned if not the entire State. In order to facilitate the ACs to properly administer the ACs and satisfactorily decide the cases that arise before them, it would be proper for Government to bring out a compendium of the Land Grant Rules and orders that were in force prior to the uniform Land Grant Rules were promulgated and publish the same for the benefit of one and all. We earnestly hope that Government will bring out such a compendium with expedition.

110. An order made by the AC under Act is regrettably made final compelling the aggrieved person to approach this Court or the Supreme Court for relief. In the majority of cases, the orders made by the ACs are far from satisfactory and are even perfunctory.

111. Every legal system accepts the principle of providing at least one appeal against a original decision of a Court or an administrative authority. A provision for an appeal itself acts as antidote to arbitrariness by the original authority and commands respect to the very system. At least one appeal is a necessity though plurality of appeals and revisions are considered a luxury. We are of the considered opinion that a provision for an appeal preferably to the District Judge of the area would undoubtedly be in the interests of proper and efficient administration of justice and the State also. When an appeal is provided, it is proper to empower the appellate authority to record additional evidence and finally determine all questions of fact and law that arise in such an appeal. We, earnestly hope that Government will seriously examine this aspect and initiate necessary steps for the amendment of the Act without any loss of time.

112. In the light of our above discussion, we make the following orders and directions:

I. W. Ps. Nos. 10674, 18842, 22387, 23024 of 1980 and 16663 of 1982 :

(I) We quash the directions of the Assistant Commissioners in the orders impugned in these cases is so far as they direct the Tahsildars to take possession of the lands;

(ii) We quash eviction notices Nos. (a) LND 2 CR 4/80-81 dated 11-7-1980 (Annexure-C in W. P. No. 18842 of 1980) and (b) LND (2) 14/82-83 dated 17-4-1982

(Annexure-E in W. P. No. 16663 of 1982);

(iii) We dismiss these writ petitions in all other respect. But, this order does not prevent the Assistant Commissioners from enforcing their orders in accordance with law and in the light of the observations made in this order.

II. W. Ps. Nos. 14026 AND 16439 OF 1980:

(I) We dismiss these writ petitions in so far as they relate to the validity of the Act;

(ii) We quash the orders impugned in these writ petitions and direct the Assistant Commissioners to restore the cases to their original file and redetermine them in accordance with law and in the light to the observation made in this order.

III W. Ps. Nos. 10710 of 1980, 3250, 17567, 17568 of 1981 and 17101 to 17103 of 1982:

(I) We dismiss these writ petitions and discharge the rule.

113. Writ Petitions are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.

114. We direct a copy of this order be communicated to the Secretary to Government, Revenue Department, within 10 days from this day to examine the proposals made at paras 109 to 111 of this order and initiate appropriate actions in the behalf. We also direct a copy of this order be furnished to the learned Government Advocate within the same time.

115. After we pronounced our common order in these cases, learned counsel for the petitioners seek for a certificate of fitness to appeal to the Supreme Court under Arts. 132 and 133 of the Constitution and for stay of the operation of our order for a period of three months.

116. We have rejected the challenge of the petitioners to the Act following a Division Bench ruling of this Court in Krishnappa''s case. In Krishnappa''s case, the Division Bench has granted a certificate of fitness to appeal to the Supreme Court under Arts. 132 and 133 of the Constitution. For the reasons stated in Krishnappa''s case, we grant a certificate of fitness to appeal in these cases to the Supreme Court under Arts. 132 and 133 of the Constitution.

117. In Krishnappa''s case the Division Bench has granted stay for a period of three months. we are also of the opinion that it is just and necessary to grant stay of our order for a period of three months from this day. We, therefore, stay the operation of our order in these cases for a period of three months from his day.

118. Order accordingly.