

HARISHCHANDRA HEGDE

v.

STATE OF KARNATAKA AND ORS.

DECEMBER 18, 2003

[S.B. SINHA AND ARUN KUMAR, JJ.]

*Karnataka Scheduled Castes and Scheduled Tribes*

*(Prohibition of Transfer of Certain lands) Act, 1978:*

*Ss.4 and 5—Restoration of land to grantee—Transferee's claim for value of improvements made in the land—Government grantee—Alienating land in 1962—Act declaring void the alienations made in contravention of terms of grant—Land restored to original grantee—Transferee claiming that order passed u/s. 5 of the Act would be subject to his right to claim value of improvements as prescribed u/s. 51 of Transfer of Property Act—Held, consequences contained in s.5 of the Act apply automatically in the event an order u/s. 4 is passed—S.4, which contains a non-obstante clause, would apply notwithstanding anything contained in any agreement or any other law for the time being in force—S.51 of Transfer of Property Act applies to **inter vivos** transfers—It does not apply to a transfer made by operation of law—If a judicial order is passed restoring the land back to a member of Scheduled Tribes in terms of the purport and object of the statute, the provisions of Transfer of Property Act cannot be applied in such a case—On facts, the matter is governed by special statute i.e., the Act, whereas Transfer of Property Act is a general Act—Unless there exists a provision in the Act, an order passed thereunder cannot be supplanted or supplemented with reference to another statute—S.51 of Transfer of Property Act cannot be held to have any application in the case—Transfer of Property Act, 1882—S.51.*

*Manchegowda & Ors. v. State of Karnataka & Ors., [1984] 3 SCC 301, relied on.*

*Amrendra Pratap Singh v. Tej Bahadur Prajapati & Ors., JT (2003) 9 SC 201 and Krishnappa S.V. & Others v. State of Karnataka & Others, ILR (1982) 2 Kar., 1310, referred to.*

**A** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5385 of 1997.

From the Judgment and Order dated 16.2.96 of the Karnataka High Court in W.A. No. 1045 of 1992.

**B** Girish Ananthamurthy and P.P. Singh for the Appellant.

Kavin Gulari and Sanjay R. Hegde for the Respondents.

The following Order of the Court was delivered :

**C** The short question which falls for consideration in this appeal arising out of a judgment and order dated 16.2.1996 passed by the High Court of Karnataka in Writ Appeal No. 1045 of 1992 is as to whether Section 51 of the Transfer of Property Act is applicable in the cases covered by Sections 4 and 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (the Act, for short).

**D** On or about 1.5.1961, two acres of land in Survey No. 134/110 were granted by the Government of Karnataka in favour of one Smt. Gangamma. The appellant purchased the said land from her through a registered sale deed for valuable consideration on 13.9.1962 and allegedly invested a lot of money for improvement thereof. The Act came into force w.e.f. 1.1.1979.

**E** By reason of Section 4 of the Act all the alienations made in contravention of the terms of Grant were declared as void and all such lands were resumed and restored to the original grantee in terms of Section 5 of the Act. On or about 11.9.1986, the original grantee made an application for initiation of a proceeding under Section 4 of the Act, in pursuance whereof the proceeding was initiated against the appellant. An order of restoration of the land in favour of the original grantee was made by the Assistant Commissioner on 29.5.1987. The appellant preferred an appeal before the Deputy Commissioner thereagainst which was also dismissed on 25.3.1989. The appellant thereafter filed a writ petition which was marked as Writ petition No. 23216 of 1990 for a declaration that any order passed by the Assistant Commissioner under Section 5 of the Act for restoration of land would be subject to the right of the transferee to claim

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the value of the improvements as prescribed under Section 51 of the Transfer of Property Act. The said writ petition was dismissed by the learned Single Judge. The writ appeal filed by the appellant was also dismissed by reason of an order dated 16.2.1996. A

The learned counsel appearing on behalf of the appellant would submit that having regard to the fact that the appellant herein purchased the land in question as far back as on 13.9.1962, he is entitled to the benefit of Section 51 of the Transfer of Property Act. B

Sections 4 and 5 of the Act read as under :

“Section 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. C D

(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. E

(3) The provisions of sub-sections (1) and (2) shall apply also to the sale of any land in execution of a decree or order of a civil court or any award or order of any other authority. F

*Section 5. Resumption or 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. – G

(a) by order take possession of such land after evicting all persons in possession thereof in such manner as may be prescribed: H

A Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard;

B (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 rules relating to grant of land.

C (2) Any order passed under sub-section (1) shall be final and shall not be questioned in any court of law and no injunction shall be granted by any court in respect of any proceeding taken or about to be taken by the Assistant Commissioner in pursuance of any power conferred by or under this Act.

D (3) For the purposes of this section, where any granted land is in the possession of a person, other than the original grantee or his legal heir, it shall be presumed, until the contrary is proved, that such person has acquired the land by a transfer which is null and void under the provisions of sub-section (1) of Section 4.”

E The High Court in its impugned judgment noticed that the validity of the Act was upheld by the High Court in *Krishnappa S.V. & Others v. State of Karnataka & Ors.*, ILR (1982) 2 Kar, 1310, stating :

F “Thus, if an alienee of a granted land is evicted by the Assistant Commissioner under Section 5 of the Act, the alienee may remove standing crops and fixtures put by him in such land. He may sue his alienor for the return of the purchase money. He can also claim from the original grantee or his heirs to whom such land is restored, the value of the improvements made by him in that land. The right to get such return of the purchase money and the right to claim the value of such improvements, will mitigate to some extent the hardship caused to the alienee of a granted land when he is evicted therefrom under Section 5 of the Act.”

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This Court in *Manchegowda & Ors. v. State of Karnataka & Ors.*, [1984] 3 SCC 301 while considering the vires of various provisions of the Act, including the rights of the transferee, payment of compensation, etc. held that such grants being crown grants the question of asserting of compensation and till then to continue the transferees in possession as not tenable. This Court held that when a transaction is against public policy as in case of transfer of land by grantees belonging to weaker sections to others, such a transfer is rendered void. On these findings the writ petition was dismissed.

THE ACT :

The Act was enacted with the object enshrined in the preamble of the Constitution including the directive principles of the State policy viz., for improving the social and economic conditions of persons belonging to weaker sections of the society and in particular those belonging to SC and ST categories. The State by reason of the provisions of the Act has been empowered to resume the land and restore the same to the grantees in the event it is found that any transfer thereof has taken place in violation of the terms of the grant. Such order of resumption is required to be passed with a view to avoid unnecessary delay or protracting the proceedings.

In *Manchegowada* (supra) it was held:

“Transferees of granted lands with full knowledge of the legal position that the transfers made in their favour in contravention of the terms of grant or any law, rule or regulation governing such grant are liable to be defeated in law, cannot and do not have in law or equity, a genuine or real grievance that their defeasible title in such granted lands so transferred is, in fact, being defeated and they are being dispossessed of such lands from which they were in law liable to be dispossessed by process of law.”

The Transfer of Property (Act No. 4 of 1882) was enacted for the purpose of amending the law relating to the transfer of property by act of parties.

Section 2(d) of the Act reads thus :

A "2. *Repeal of Acts – Saving of certain enactments, incidents, rights, liabilities, etc.* – In the territories to which this Act extends for the time being the enactments specified in the Schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained be deemed to affect –

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(d) save as provided by section 57 and Chapter IV of this Act, any transfer by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction;

C and nothing in the second Chapter of this Act shall be deemed to affect any rule of Muhammadan Law.”

Section 51 of the said Act reads thus :

D "51. *Improvements made by bona fide holders under defective titles.* – When the transferee of immovable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell interest in the property to transferee at the then market value thereof, irrespective of the value of such improvement.

F The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

G When, under the circumstances, aforesaid, the transferee has planted or sown on the property crops which are growing when he evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.”

H By reason of an order passed under Section 4 of the Act, the lands are directed to be restored in the event the illegalities specified therein are

discovered. The consequences contained in Section 5 of the Act applies automatically in the event an order under Section 4 of the Act is passed. Section 4 of the Act contains a *non obstante* clause. The said provision would, thus, apply notwithstanding anything contained in any agreement or any other Act for the time being in force. The Act is a special Act whereas the Transfer of Property Act is a general Act and in that view of the matter also Section 51 of the Transfer of Property Act will have no application and the consequences contained in Section 5 would prevail.

The Court in *Manchegowda* (supra) while interpreting the scope of Sections 4 and 5 of the Act, held :

“With the enactment of the Act, the voidable right or title of the transferee in the granted lands becomes void and the transferee is left with no right or property in the granted lands. The lands which are sought to be recovered from the transferees of the granted lands are lands in which the transferees cease to have any interest or property. The effect of the provisions contained in Sections 4 and 5 of the Act is that the defeasible right or interest of the transferees in the granted lands is defeated and the voidable transaction is rendered void. We have earlier held that it is clearly open to the Legislature to declare void the transfers of granted lands in contravention of the condition of prohibition on transfer. As soon as such transfers are rendered void by virtue of the provisions of the Act, the transferee does not have any right in the granted lands so transferred, and possession is sought to be recovered of such lands in which the transferees have lost their right and interest....”

Yet recently in *Amrendra Pratap Singh v. Tej Bahadur Prajapati & Ors.*, JT (2003) 9 SC 201 this Court following *Manchegowda* (supra) and a large number of other cases, held :

“Tribal areas have their own problems. Tribals are historically weaker sections of the society. They need the protection of the laws as they are gullible and fall pray to the tactics of unscrupulous people, and are susceptible to exploitation on account of their innocence, poverty and backwardness extending over centuries.

A The Constitution of India and the laws made thereunder treat tribals and tribal areas separately wherever needed. The tribals need to be settled, need to be taken care of by the protective arm of the law, and be saved from falling pray to unscrupulous device so that they may prosper and by an evolutionary process join the mainstream of the society. The process would be slow, yet it has to be initiated and kept moving. The object sought to be achieved by the 1950 Act and the 1956 Regulations is to see that a member of an aboriginal tribe indefeatably continues to own the property which he acquires and every process known to law by which title in immovable property is extinguished in one person to vest in another person, should remain so confined in its operation in relation to tribals that the immovable property of one tribal may come to vest in another tribal but the title in immovable property vesting in any tribal must not come to vest in a non-tribal. This is to see and ensure that non-tribals do not succeed in making in-roads amongst the tribals by acquiring property and developing roots in the habitat of tribals.”

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This Court further observed that the expression ‘transfer’ should be given a broader meaning.

E Section 51 of the Transfer of Property act applies to *inter vivos* transfers. It, as noticed hereinbefore, does not apply to a transfer made by operation of law. If a judicial order is passed restoring the land back to a member of Scheduled Tribes in terms of the purport and object of the statute, the provisions of the Transfer of Property Act cannot be applied in such a case. The matter is governed by a special statute. Unless there exists a provision therein, an order passed thereunder cannot be supplanted or supplemented with reference to another statute.

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We are, therefore, of the opinion that Section 51 of the Transfer of Property Act, cannot be held to have any application in the instant case. There is no merit in this appeal, which is accordingly dismissed. No costs.

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R.P.

Appeal dismissed.