

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 2166 OF 2009

VIVEK M. HINDUJA & ORS.

APPELLANT(S)

VERSUS

M. ASHWATHA AND ORS.

RESPONDENT(S)

WITH

CIVIL APPEAL NO. 2167 OF 2009

CIVIL APPEAL NO. 7208 OF 2011

O R D E R

1. These three appeals arise out of a common judgment of the Karnataka High Court, in which the appellants before us were held to be disentitled to the granted land purchased by them. The High Court in its judgment upheld the order of the single judge in view of the social welfare legislation, Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (for short, "the Karnataka Act"), and on the ground that the original grantee of the lands was a member of the Scheduled Caste community, restored the lands back to the legal representatives of the original grantee.

2. The chronology of the events in the three appeals

before us is different. The area of the lands and the original grantees are also different. The number of times the lands changed hands is also different. But a common feature of all these cases, which enable us to deal with them at the same time is the fact that after the Karnataka Act came into force on 01.01.1979, the competent authorities did not take any action till the year, 1998. It was then that they apparently took *suo motu* action and served notices on the appellants to show cause as to why the lands should not be resumed by them and why the proceedings under which the rights for the lands were acquired should not be annulled.

3. The original grantees in these cases, who were members of the scheduled caste community, were granted the lands by a common grant sometime in the year 1946-1947. By that grant each of the grantees was given two acres of land. The successors of the grantees or the grantees themselves transferred the lands to certain individuals sometime in the year 1967. These transferees further transferred the lands after 8/10 years to different persons. The present appellants are purchasers from the land transferees.

4. Arguments have been addressed before us at length on whether the present appellants had perfected their titles on the date of the coming into force of the Karnataka Act. We are not inclined to go into this question because the instant matters can be decided on an aspect settled by this Court in the case of *Chhedi Lal Yadav and Ors. vs. Hari Kishore Yadav (D) Thr. Lrs. and Ors.*¹, and *Nekkanti Rama Lakshmi vs. State of Karnataka and Anr.*². In these two decisions, one of which arose under the Karnataka Act, this Court has held that the authorities entrusted with the power to annul proceedings purported to have been made by the original grantees, must exercise their powers to do so, whether on an application, or *suo motu*, within a reasonable time since no time is prescribed by law for taking such action. In the decided cases, action had been initiated after about 20 to 25 years of the coming into force of the Karnataka Act.

5. In the present cases, it is undisputed that the action had been initiated after almost 20 years from the coming into force of the Karnataka Act. In

¹ 2017(6) SCALE 459

² C.A. No. 1390/2009, decided on 26.10.2017

principle, we do not see any reason why the delay in the present cases should be considered to be reasonable. There is no material difference between the period of delay in the present cases and the decided cases.

6. Relying on some observations in the case of *Manchegowda and Ors. vs. State of Karnataka and Ors.*³ and *Sunkara Rajyalakshmi & Ors. vs. State of Karnataka*⁴, Shri Sunil Fernandes, learned counsel on the respondents' side submitted that the outer limit for initiating action should be 30 years.

7. We, however, find that the observations in those cases are not apposite and are made with reference to the period of prescription in respect of Government properties under the Limitation Act, 1963.

8. It was also submitted on behalf of the respondents that Section 4⁵ of the Karnataka Act *proprio vigore* annuls a transfer made in contravention of itself. Therefore, it makes no

³ (1984) 3 SCC 301

⁴ (2009) 12 SCC 193

⁵ Sec. 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.

(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.

(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 of any award or order of any other authority.

difference if the proceedings are initiated even after 20 to 25 years.

9. We do not find it possible to accede to this submission. This Court in the case of Board of Trustees of Port of Kandla vs. Hargovind Jasraj and Anr.⁶ reiterated the necessity of an order of a competent Court or Tribunal before which the impugned order can be declared as null and void. The Court relied on the oft-quoted passage in Smith Vs. East

Elloe Rural District Council⁷ which reads as under :

"...An order, even if not made in good faith, is still an act capable of legal consequences. *It bears no brand of invalidity on its forehead.* Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.' (Smith Case, AC pp.769-70)

(emphasis supplied)

This must be equally true even where the brand of invalidity is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed out(sic) repeatedly in the House of Lords and Privy council without distinction between patent and latent defects (Ed. Wade and Forsyth in Administrative Law, 7th Edn.1994."

In the case of Pune Municipal Corporation vs. State

⁶(2013) 3 SCC 182

⁷1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855 (HL)

of Maharashtra⁸, this court reproduced the following observations with regard to the declaration of orders beyond the period of limitation as invalid:

"39. Setting aside the decree passed by all the courts and referring to several cases, this Court held that if the party aggrieved by invalidity of the order intends to approach the court for declaration that the order against him was inoperative, he must come before the court within the period prescribed by limitation. *'If the statutory time of limitation expires, the Court cannot give the declaration sought for'.*"

(emphasis supplied)

10. We are in respectful agreement with the aforesaid observations. It is, however, necessary to add that where limitation is not prescribed, the party ought to approach the competent Court or authority within reasonable time, beyond which no relief can be granted. As decided earlier, this principle would apply even to *suo motu* actions.

11. We find from the impugned judgments that the High Court has not given due regard to the period of time within which the action was taken in the present cases. The competent authorities in all these cases had declined relief to the respondents and had refused to annul the transfers. In the circumstances, the impugned judgment(s) and order(s)

⁸ (2007) 5 SCC 211

passed by the High Court are set aside.

12. Accordingly, the appeals are allowed.

.....J.

[S.A. BOBDE]

.....J.

[L. NAGESWARA RAO]

NEW DELHI,

DECEMBER 06, 2017.

ITEM NO.104

COURT NO.7

SECTION IV-A

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Civil Appeal No. 2166/2009

VIVEK M.HINDUJA & ORS.

Appellant(s)

VERSUS

M.ASHWATHA & ORS.

Respondent(s)

WITH

C.A. No. 2167/2009 (IV-A)

(With appln.(s) for condonation in filing substitution, for substitution of Lrs. of rr.1)

C.A. No. 7208/2011 (IV-A)

(With IA No.120413/2017-impleading party)

Date : 06-12-2017 These appeals were called on
for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE
HON'BLE MR. JUSTICE L. NAGESWARA RAO

For Appellant(s)

Mr. Ranjit Kumar, Sr. Adv.
Mr. V. Giri, Sr. Adv.
Mr. Rajesh Mahale, AOR
Mr. Sharan Thakur, Adv.
Mr. Amit A. Pai, Adv.
Mr. Krutin Joshi, Adv.
Mr. Rishiraj Sharma, Adv.

Mr. Krishnan Venogopal, Sr. Adv.
Mr. Amit Dhingra, Adv.
Mr. Munawwar Naseem, Adv.
Mr. Tejas S.R., Adv.
Mr. Amadeep Bawa, Adv.
Mr. Suryveer Beri, Adv.
for M/S. Dua Associates, AOR

For Respondent(s)

Mr. V. N. Raghupathy, AOR
Mr. Parikshit P Angadi, Adv.
Md. Apzal Ansari, Adv.

Mr. Irshad Ahmad, AOR

Mr. Guntur Prabhakar, AOR

Mr. P.N. Misra, Sr. Adv.
Mr. E.C. Vidya Sagar, AOR
Mr. Subhash Chandra Sagar, Adv.
Mr. Jennifer John, Adv.

Mr. Nagmohan Das, Sr. Adv.
Mr. Anand Sanjay M. Nuli, Adv.
Mr. Dharam Singh, Adv.
Mr. Surajm Adv.
for M/S. Nuli & Nuli, AOR

Mr. R. D. Upadhyay, AOR

Ms. Jennifer John, Adv.
Mr. L.R. Singh, Adv.

Mr. Sunil Fernandes, AOR
Ms. Astha Sharma, Adv.
Mr. Anju Thomas, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Delay condoned.

Application for substitution is allowed

As prayed for application for impleadment is dismissed as withdrawn.

The appeals are allowed in terms of the signed order.

[Charanjeet Kaur]
A.R. -cum-P.S.

[Indu Kumari Pokhriyal]
Asstt. Registrar

[Signed order is placed on the file]