

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

Petition(s) for Special Leave to Appeal (Civil) No(s).27640/2008

(From the judgement and order(s) in WA No. 232/2008 dated 11/04/2008 of The HIGH COURT OF KARNATAKA AT BANGALORE)

B.M.FAROOQ

Petitioner(s)

VERSUS

SPECIAL DY.COMMISSIONER & ANR.

Respondent(s)

(With appln(s) for permission to file additional documents and prayer for interim relief and office report)

(FOR FINAL DISPOSAL)

Date: 25/11/2011      This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s)      Mr. K. Ramamoorthy, Sr. Adv.  
                                 Mr. C. Paramasivam, Adv.  
                                 Mr. Rakesh K. Sharma, Adv.

For Respondent(s)      Mr. L. Nageswara Rao, Sr. Adv.  
                                 Mr. George Kurian, Adv.  
                                 Mr. A. Raghunath, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Whether Hanumaiah (respondent No.2), who is now represented by his legal representative Sri Kalinga could have sold 2 acres land comprised in survey No.124 of Malathahalli village, Yeshwanthapura Hobli, Bangalore within three months of the regularisation of grant made in his favour in 1941 under 'grow more

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food scheme' is the question which was considered and answered by the learned Single Judge and the Division Bench of the Karnataka High Court in negative.

The petitioner has questioned the impugned judgment mainly on the ground that the High Court committed an error by interfering with the concurrent finding recorded by the Assistant Commissioner and the Special Deputy Commissioner that the grant made in favour

of respondent No.2 did not attract the prohibition against transfer of the land for a period of 15 years and the sale deed executed by him immediately after regularisation of the grant was not nullity.

Hanumaiah was granted the land vide order dated 24.5.1941 under 'grow more food scheme' on temporary basis. After about 24 years, the grant was regularised vide order dated 2.3.1965/16.3.1965. Within two months, Hanumaiah sold the land to Venkatagiriappa by executing sale deed dated 10.5.1965. This was in clear violation of the condition of grant which prohibited transfer of land for a period of 15 years.

During the pendency of the proceedings initiated by Hanumaiah for restoration of the land under Section 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (for short, 'the Act') read with Rule 43-G of the Karnataka Land Revenue (Amendment) Rules, 1960 (for short, 'the Rules'), Venkatagiriappa sold the land to respondent Nos. 6 and 7 by two separate deeds.

The application made by Hanumaiah for restoration of the land was allowed by Assistant Commissioner, Bangalore vide his order  
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dated 26.7.1982. That order was set aside by the High Court in Writ Petition Nos. 33192 and 33193 of 2008 filed by those who had purchased the land from Vankatagiriappa. After few more rounds of litigation, the Assistant Commissioner passed order dated 12.6.2001 and rejected the application of respondent No.2. The appeal filed against that order was dismissed by the Special Deputy Commissioner. However, Writ Petition No.25386/2004 filed in the name of Hanumaiah through his legal representative was allowed by the learned Single Judge and the land was ordered to be restored to the legal representative of the deceased. The learned Single Judge took cognizance of order dated 2.3.1965/16.3.1965 vide which the grant made in favour of respondent No.2 had been regularised, sale deed dated 10.5.1965 vide which respondent No.2 sold the land to Venkatagiriappa and held that the transaction was violative of the prohibition contained in Rule 43-G(4) of the Rules. The learned

Single Judge also relied upon the judgment of this Court in Guntaiah and others v. Hambamma and others (2005) 6 SCC 228 and held that sale deed dated 10.5.1965 executed by respondent No.2 was nullity and the Assistant Commissioner and the Special Deputy Commissioner committed serious error by refusing to restore the land to the grantee by exercising power under Section 5 of the Act.

The petitioner challenged the order of the learned Single Judge in Writ Appeal No.232/2008, but could not convince the Division Bench to overturn the finding recorded by the learned Single Judge that transfer made by respondent No.2 in 1965 was nullity. The Division Bench referred to the Full Bench judgment of

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the High Court wherein it was held that the provisions of the Act are not attracted to the grants like the one made in favour of respondent No.2 and observed that once the judgment of the Full Bench was reversed by the Supreme Court, the same could not be relied upon for sustaining the orders passed by the Assistant Commissioner and the Special Deputy Commissioner. The Division Bench examined the record and reiterated the finding recorded by the learned Single Judge that respondent No.2 had sold the land to Venkatagiriyappa in violation of the prohibition contained in Rule 43-G of the Rules.

Shri K. Ramamoorthy, learned senior counsel appearing for the petitioner made efforts to convince us that the learned Single Judge committed a serious error by upsetting the concurrent finding recorded by the Assistant Commissioner and the Special Deputy Commissioner that sale deed dated 10.5.1965 executed by respondent No.2 did not violate the prohibition contained in Rule 43-G because the grant was covered by Rule 43-J, but we have not felt impressed.

Since there is no dispute between the parties that the grant made in favour of respondent No.2 under 'grow more food scheme' was regularised in 1965 and no evidence was produced before the High Court to show that the regularisation was made on payment of market price, the learned Single Judge rightly concluded that the grant was made to respondent No.2 free of cost and the prohibition

contained in Rule 43-G(4) of the Rules will apply to such grant.

The Division Bench concurred with the learned Single Judge that

transfer of land by respondent No.2 was in violation of the

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prohibition contained in Rule 43-G(4) and respondent No.2 was

entitled to restoration of the land.

In our opinion, the view taken by the learned Single Judge and the Division Bench of the High Court on the issue of applicability of Rule 43-G(4) of the Rules qua the grant made in favour of Hanumaiah is correct and the impugned judgment does not call for interference under Article 136 of the Constitution.

We may add that when the judgment of the Full Bench of the High Court was reversed by this Court in Guntaiah and others v. Hambamma and others (supra), the same could not be made basis for declaring that the transfer made by respondent No.2 within three months of the regularisation of allotment was legal.

In the result, the special leave petition is dismissed.

(Satish K.Yadav)  
Court Master

(Phoolan Wati Arora)  
Court Master