2021 INSC 787

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6212/2013

SHIVANNA (DEAD) THROUGH LRS. Appellant(s)

VERSUS

STATE OF KARNATAKA & ORS. Respondent(s)

O R D E R

1. The Karnataka Scheduled Caste and Scheduled Tribes (Prohibition on Transfer of Certain Lands) Act, 1978 was enacted and brought into force from 01.01.1979 as a measure of amelioration and protection of lands granted to the SC/ST community which was sought to be purchased by third parties depriving the very objective of providing economic empowerment to these communities. So we must begin by recording that the widest amplitude must be given to protect the rights of these communities by construing the enactment liberally in their favour to achieve the objective with which it was enacted. But there can be exceptions!

2. We are faced with one such exception here in the context of the factual matrix before us. In the present case, two acres of land was granted to one Late Junjappa on 07.06.1941. Junjappa belonged to the Adi Karnataka Caste (Scheduled Caste). The land is stated to be free of cost. However, we may notice from the impugned order that apparently the records could not be produced by the revenue authorities as they were not traceable nor the document for conferment of right were produced by respondent No.4/claimant. However, conclusion was sought to be derived on the basis of the other material on record that this land was free of cost. The consequence of the land being free of cost and such allotment is contained in Rules under the Mysore Land Revenue Code. The relevant portion of the Code is as under:

> **"43(8) Occupancies granted to applicants belonging to Depressed Classes under Rule 43(5) above and those granted by Government free of upset prices 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 co-operative society for the bona fide purposes of improving the land."

The effect of the aforesaid is that there is an absolute bar to alienation.

3. On 20.12.1971, one acre of land was sold to the original petitioner/appellant Shivanna now represented by the legal heirs in violation of the Rules. In fact, for record, on 20.12.1972 the remaining one acre was also sold to one third party. That third party, in turn, is stated to have sold to respondent No.5 on 20.06.1974.

4. Post these transactions, the said Act came into force on 01.01.1979. Respondent No.4 before us claims to be the grandson of the original grantee and is stated to have been born around 1967. He would have attained majority in and around 1985. However, neither the original owner, nor his son or the grandson/respondent No.4 laid any claim for the land of the appellant for annulment of transfer till 04.10.2000 when an application was filed before the

Assistant Commissioner under Section 4 of the said Act. The Assistant Commissioner, though records were not available, passed an order on 24.09.2002 invalidating the sales and seeking to restore the land to respondent No.4. The appeal preferred by the appellant was allowed on 26.04.2004 predicated on a reasoning of non-alienation period being fifteen years. Thus, the respondent No.4 laid a challenge before the High Court by filing Writ Petition No.21473/2004 and Writ Petition No.21475/2004 in respect of both portions of the land of the appellant and respondent No.5. The Writ Petitions were however, dismissed by order dated 30.11.2004 predicated on a stated violation of Rule 43(8) of the Code. The intra-Court appeal filed by the appellant was dismissed on 30.01.2009.

5. In the Special Leave Petition filed before this Court, notice was issued on 08.07.2010 and parties were directed to maintain *status quo* with regard to the land in question. Ultimately, leave was granted on 29.07.2013 with the interim order directed to be continued.

6. The appeal has now been taken up for consideration.

7. We have heard learned counsel for parties.

8. There are various pleas raised by the appellant in defence in the proceedings below including adverse possession. However, before us, primarily, the case rested on two aspects: first, being the absence of documents and the presumption sought to be drawn under Rule 43(8) without consideration of the documents. Secondly, that the principles of delay and laches must come to the aid of the appellant(s) in view of the passage of time which has already elapsed even if the strict principles of limitation do not apply.

9. Insofar as the first aspect is concerned, it is the submission of learned counsel for respondent No.4 that, at best, the said could be a case for remand for locating the documents and consideration, though his submission is that Rule 43(8) creates an absolute bar against alienation and from the documents on record the authorities have deciphered that it was a free grant. On the second aspect it is stated that the lapse of time itself should not defeat the valuable right when the sale by his grandfather is contrary to Rule 43(8) of the Code and in the teeth of the subsequent legislation.

10. While fully appreciating the concerns expressed by learned senior counsel for respondent No.4, we are of the view that the given facts of the case require

us to take a different view. The reason for doing so, despite the clear bar of Rule 43(8) [since the transaction in question is much before the Act came into force] is the extraordinary time period which has elapsed. If we turn to the dates in question, the transaction took place on 20.12.1971, seven years before the Act came into force. The respondent No.4 was born some time in 1967 and thus, would have attained majority around the year 1985. At that stage at least he was aware and entitled to enforce the rights which he claims were deprived of by transfer of land by a registered document by his grandfather. He did not do so and in fact his father also never did so. It is after a lapse of another 12 years from even his attaining majority that respondent No.4 sought to exercise the rights.

11. In respect of the aforesaid position, learned counsel for the appellant has drawn our attention to two judicial pronouncements in a similar scenario in this behalf. In *Vivek M. Hinduja & Ors. v. M. Ashwatha & Ors.*[1] the provisions of the same Act were being considered and the grant was of the period 1946-47. The transfer took place in 1967 and thereafter also further transfers took place with the appellants being the subsequent purchasers. It was opined on the

1 **(2020) 14 SCC 228**

basis of past judicial proceedings that the exercise whether on *suo motu* or on application, must be within a reasonable time, since no time was prescribed by law for taking such action. (In those cases action had been initiated after about 20-25 years of the coming into force of the said Act). In the given case, the action was initiated after 20 years, and thus, the Court opined that no reason was seen as to why delay should be considered to be reasonable.

12. The Court took note of the observations in *Smith v. East Elloe Rural District Council*[2] 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 invalidating 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)**
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> **(emphasis supplied)**

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2 **(1956) AC 736**

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.)"

13. The other judgment referred to is the case of *Nekkanti Rama Lakshmi v. State of Karnataka & Anr.*[3], whichonce again was concerned with the same enactment. The application by the legal heir of the grantee was filed after 25 years of the Act coming into force. Once again, the original grant was not produced. The Court found with regard to Section 5 of the said Act which enables an interested person to make an application for having the transfer annulled and void under Section 4 of the Act, that it did not prescribe any period of limitation this was so whether on filing of an application or *suo motu* proceedings or by an application but opined that it must be taken within a

3 **(2020) 14 SCC 232**

reasonable time. Once again it found no cause to condone the unreasonable delay.

14. The present case is under the same Act with the period of delay being 21 years from the date the Act came into force and 30 years from the transaction and to that extent even the time periods are similar. We have already noticed that even if we take the age of majority of the respondent No.4, the application was filed 12 years after the same.

15. In view of the aforesaid facts and circumstances and following the dicta laid down in *Vivek M. Hinduja (supra)'*s case and *Nekkanti Rama Lakshmi (supra)'s* case we are of the view that inordinate delay cannot be condoned and the period of delay can by no stretch of imagination be said to be reasonable.

16. The result of the aforesaid is that the impugned orders of the Assistant Commissioner, learned Single Judge and the Division Bench are set aside and the order of the Special Deputy Commissioner is affirmed. The consequence would be that the land would continue to vest with the appellant(s).

17. The appeal is accordingly allowed leaving parties to bear their own costs.

……J.
[SANJAY KISHAN KAUL]

……J.
[M.M. SUNDRESH]

NEW DELHI,
NOVEMBER 25, 2021.