

IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH

DATED THIS THE 25<sup>TH</sup> DAY OF SEPTEMBER 2019

PRESENT

THE HON'BLE MR.JUSTICE S.N. SATYANARAYANA

AND

THE HON'BLE MR.JUSTICE P.G.M. PATIL

WRIT APPEAL NO.100022/2015 (SCST)

Bhangarya Bista Naik Dasan

v/s.

The Deputy Commissioner Uttar Kannada District, Karwar

JUDGMENT

The 1<sup>st</sup> respondent in W.P.No.24411/2005 (SC/ST), on the file of learned single Judge of this Court, has come up in this appeal impugning the order dated 15.12.2014, passed therein.

2. The brief facts leading to this intra-Court appeal are that, the aforesaid writ petition was filed by 3<sup>rd</sup> respondent herein, challenging the order of Assistant Commissioner, Sirsi Sub-Division, Sirsi, in proceedings No.PTCL-Viva-1/04-05, which was filed by the 3<sup>rd</sup> respondent herein under section

4 and 5 of Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 ( PTCL Act, for short), in seeking restoration of land to an extent of 8 acres 19 guntas, in Sy.No.232 of Kanthraji village of Sirsi taluk, from the appellant herein namely Bhangarya Bista Naik (Dasan).

3. Admittedly the aforesaid land was granted in favour of the husband of 3<sup>rd</sup> respondent herein namely Fakira Chalavadi, on 30.7.1958. Thereafter the said land was in possession, cultivation and enjoyment of Fakira Chalavadi up to 29.7.1972, on which day he sold the aforesaid extent of land in favour of the appellant Bhangarya S/o.Bista Naik (Dasan) under a registered sale deed which is executed subsequent to securing permission from the Assistant Commissioner of Sirsi, on 25.7.1972, i.e., four days prior to execution of sale deed in favour of the appellant herein. Thereafter the said extent of land was mutated in the name of appellant herein vide M.E.No.1320, vide order dated 20.5.1973.

4. It is seen that the said position continued till the demise of 3<sup>rd</sup> respondent' s husband Fakira Chalavadi, without there being any resistance to the

possession, cultivation and enjoyment of land in question by the appellant herein from the original grantee who had sold the land in favour of the appellant in the year 1972. It is after the death of Fakira Chalavadi who died on 18.12.2002, his widow 3rd respondent herein approached the 2nd respondent Assistant Commissioner of Sirsi Sub-Division, Sirsi, by application dated 22.3.2003 seeking restoration of aforesaid land on the ground that there is violation of grant condition by her husband in conveying the land in question in favour of the appellant herein, which is subsequently held to be invalid pursuant to the enactment of PTCL Act, 1978, coming into force where liberty was reserved to the grantees to seek restoration of lands, which are conveyed in favour of 3rd parties even prior to the said Act coming into force.

5. Though it is invoking aforesaid provision, the application is filed. In the application there was allegation of fraud being committed by the purchaser of the land against the vendor Fakira Chalavadi, who is original grantee. It is seen that the application which was filed by 3rd respondent herein is registered as proceedings No.PTCL 1/04- 05, wherein after

conducting an enquiry the 2nd respondent Assistant Commissioner has come to a conclusion that the sale transaction between the original grantee and appellant herein is subsequent to securing necessary permission from the 2nd respondent, which was granted in favour of the vendor on 25.7.1972 as required under Rule 9 of Karnataka Land Grant Rules and accordingly the application which was filed by the 3rd respondent was rejected by order dated 3.11.2004.

6. It is seen that against the order of 2<sup>nd</sup> respondent Assistant Commissioner in PTCL 1/04-05, the 3<sup>rd</sup> respondent approached the 1<sup>st</sup> respondent Deputy Commissioner, in Appeal No.3/2004-05, which came to be dismissed by order dated 19.9.2005, which was subject matter of challenge before the learned single Judge of this Court in W.P.No.24411/2005.

7. In the said proceedings, the learned single Judge by interpreting the provisions of Rule 40 of Mysore Land Grant Rules, 1968 and also the standing orders, which are issued with reference to the land grant, proceeded to set aside the order of the Deputy Commissioner and as well as the Assistant Commissioner and consequently directed

restoration of the land, which was sold in favour of appellant herein, which is sought to be challenged by the 1<sup>st</sup> respondent before the learned single Judge in this intra-Court appeal.

8. It is seen that by the time this appeal came up for consideration before this Court, the right of original grantee seeking restoration of land sold in contravention of the provisions of PTCL Act was provided quietus by the Apex Court in the matter of *Chhedi Lal Yadav and others vs. Hari Kishore Yadav (D) Thr. LRs. and others*, reported in LAWS (SC) 2017-4-146, which is followed by another judgment rendered by very same Bench in *Civil Appeal No.1390/2009, in the matter of Nekkanti Rama Lakshmi vs. State of Karnataka and another*.

9. It is seen, in the 2<sup>nd</sup> judgment in the matter of *Nekkanti Rama Lakshmi*, the Apex Court while discussing the rights of the parties held as under:

*.....It is held that action whether on an application of the parties, or suo motu, must be taken within a reasonable time. That action arose under the provisions of a similar Act which provided for restoration of certain lands to farmers which were sold for arrears of rent or from which they were ejected for arrears of land from 1<sup>st</sup> January, 1939 to 31<sup>st</sup> December, 1950. This relief was granted to*

*the farmers due to flood in the Kosi River which make agricultural operations impossible. An application for restoration was made after 24 years and was allowed. It is in that background that this Court upheld that it was unreasonable to do so. We have no hesitation in upholding that the present application for restoration of land made by respondent-Rajappa was made after an unreasonably long period and was liable to be dismissed on that ground.*

.....

10. While coming to such opinion, the Apex Court expressly overruled the law as it was prevailing with reference to restoration as decided in the matter of (i) R.Rudrappa vs. Deputy Commissioner, reported in 2000(1) KLJ 523 (ii) Maddurappa vs. State of Karnataka, reported in 2006(4) KLJ 303 (iii) G.Maregouda vs. The Deputy Commissioner, Chitradurga district, Chitradurga and others, reported in 2000 (2) KLJ S.N.4B. While overruling the said judgments, it is expressed by the Apex Court that there is no limitation provided by section 5 of the PTCL Act and therefore application can be made at any time for restoration, is overruled.

11. Therefore, by applying the same analogy this Court would hold that the finding of the 1<sup>st</sup> and 2<sup>nd</sup> respondents i.e., Deputy Commissioner and Assistant Commissioner, respectively, in rejecting the

application of 3<sup>rd</sup> respondent seeking restoration is just and proper. While making such observation, this Court would further hold that the judgment rendered by the learned single Judge of this Court in W.P.No.24411/2005 (SC/ST) is also required to be set aside. While doing so, this Court would further observe that in the instant case when the 3<sup>rd</sup> respondent who is the wife of original grantee has sought restoration of land only after the death of her husband, which has taken place in the year 2002. In fact, earlier when the husband of 3<sup>rd</sup> respondent, who had sold the property in question to the appellant herein after securing permission from the 2<sup>nd</sup> respondent Assistant Commissioner was alive, he never made any attempt to seek restoration of that land to him.

12. It is also seen that it is after his death, for the first time the wife tried to seek restoration not only under the provisions of PTCL Act, 1978 but also on the ground that there was fraud committed by the appellant herein in securing the sale deed from her husband which she was not able to sustain in the proceedings before the Assistant Commissioner and as well as the Deputy Commissioner. Though the same was not pursued

before the learned single Judge, the learned single Judge has proceeded in a different tangent with reference to the provisions of Land Grant Rules and its application to the fact on hand instead of considering the prayer on its merits.

13. In that view of the matter, this Court find no justifiable grounds are made to sustain the order of the learned single Judge in W.P.No.24411/2005 which was passed in reversing the order of Assistant Commissioner in dismissing the application of 3<sup>rd</sup> respondent for restoration, which is rightly confirmed by the 1<sup>st</sup> respondent Deputy Commissioner in an appeal filed before him.

14. With such observation, this appeal is allowed by setting aside the order passed by the learned single Judge, consequently, confirming the order of 2<sup>nd</sup> and 1<sup>st</sup> respondents, in rejecting the prayer of 3<sup>rd</sup> respondent seeking restoration of land purchased by the appellant.