

IN THE COURT OF DEPUTY COMMISSIONER UTTARA KANNADA KARWAR

Present: Sri. S S Nakul, IAS,
Deputy Commissioner,
Uttar Kannada, Karwar

No. RB/PTCL/CR-10/2017-18

Between

1. Shri Vikram Vasant Borkar,
R/O Rukmini, T.S.S. Road,
Behind Madhuvana Hotel, Tq: Sirsi.
2. Shri C Manjunath Narasimhappa Chandavarkar
H.No.329 1st Block 2nd Main, 3A Cross HRBR layout
Kalyan Nagar Bengaluru.
(Represented through Advocate Sri R.V.Raikar)

.... Appellants

V/s

1. Shri Krishnanand Venkatraman Pawaskar
R/O. Sushila Nilay Vidyanagar,
Tq: Sirsi.
2. Assistant Commissioner, Sirsi
3. Tahasildar Sirsi.

.... Respondents

Sub: Appeal filed u/s 5A of Karnataka Scheduled Caste and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act 1978 against the order of Assistant Commissioner, Sirsi in file No.RTS/AP/CR-61/2015-16 dated: 22-05-2017 in respect to Sy. No. 115A plot No.14 of Sirsi Village in Sirsi Taluka.

Preamble:

The instant appeal has been filed against the order of Assistant Commissioner, Sirsi in file No.RTS/AP/CR-61/2015-16 dated: 22-05-2017. Although the case has been started in under section 136(2) the findings, reasoning and final order passed by Assistant Commissioner, Sirsi in file No.RTS/AP/CR-61/2015-16 dated: 22-05-2017 are in PTCL act 1978. Advocate for the appellant filed amended appeal memo under u/s 5A of Karnataka Scheduled Caste and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act 1978 Notices were issued to both parties.

The brief facts of the case are as follows:

The suit land Sy. No.115A plot No. 14 an extent of 0-3-2 (A-G-A) of Sirsi Village in Sirsi Taluka was purchased by the appellant No.2 Shri C.Manjunath Narasimhappa Chandavarkar from appellant No.1 Shri Vikram Vasant Borkar of Sirsi Taluka as per registered sale deed No.SRS-1-02166/2014-15 dated:30-03-2015. Respondent No. 1 Shri Krishnanand Venkatraman Pawaskar file an appeal before Assistant Commissioner, Sirsi that the Sy. No. 115A plot No.14 an extent of 0-3-2 (A-G-A) was granted to Harijan housing society and the appellant No.1 Shri Vikram Vasant Borkar have sold the property without taking prior permission of the Govt. which is violation of PTCL Act. Assistant Commissioner, Sirsi heard the case, allowed the appeal and rejected the mutation entry No.H-249/2015-16 and vested the land in the name of "Karnataka Sarkara". Being aggrieved by this order the appellant file an appeal before this court.

The Advocate for the Appellant argued that.

1. Objection submitted by respondent No. 1 Shri Krishnanand Venkatraman Pawaskar does not have locus-standi, since he is not having any rights in the land Sy. No.115A Plot no. 14 and respondent No.1 is not at all connected to the mutation entry H-249/20185-16.
2. The said Sy No. 115 is originally granted as per Govt. Order No.RD-49/LGO-58 dated 26-2-1959 by then Assistant Commissioner, Sirsi by his order No.GEN-64 dated 25-4-1959 to Harijan Co-operative Housing Society Sirsi. Harijan Co-operative Housing Society Sirsi allotted this land to one Shri Venku Bangari Kanade as per mutation entry No. 7102 dated 20-4-1991. Allotment of land to Shri Venku Bangari Kanade by Harijan Co-operative Housing Society Sirsi was as per law and there was no such condition regarding restriction to alienate or transfer of the land. Subsequently Shri Venku Bangari Kanade sold the said land Sy. No. 115A plot No.14 an extent of 0-3-2 (A-G-A) to appellant No.2 Shri C.Manjunath Narasimhappa Chandavarkar as per registered sale deed No 304 dated 2-7-1991 and as per mutation entry No. 7257 dated 01-10-1991 of Sirsi village in Sirsi Taluka. All these transactions are not affected by the provisions of

- PTCL Act, and as such the Sub- registrar Sirsi has registered the said transactions as there was no violation of any provisions of P.T.C.L. Act, as provided under Sec.6 of the said Act. Unfortunately the learned Assistant Commissioner wrongly raised the points for consideration and passed baseless order which is challenged in this appeal.
3. Tahasildar Sirsi has rightly observed the register sale deed and has approved mutation entry No.249/2015-16.
 4. The Respondent No.1 Shri Krishnanand Venkatraman Pawaskar has wrongly informed that this land comes under PTCL act since this land was not granted directly to Shri Venku Bangari Kanade but land was originally granted to Harijan Co-operative Housing Society Sirsi as per Assistant Commissioner, Sirsi order No.GEN-64 dated 25-4-1959. Further Harijan Co-Operative Housing Society is registered society and as per by-law No. 28 "any sale for enforcing a lien in purpose exercises of the power here in before given the committee may cause the XXXXXX name to be entered in the register in respect of the XXXX rights sold, and the purchaser shall not be bound to XXXXX the regularity of the proceedings on the application of the purchased money, an after his name has been entered in the register in respect of such forfeited rights the validity of the same shall not be impeached by any person, and the remedy of the person aggrieved by the sale shall be in damage only XXXXX the society exclusively" has every right to sell.
 5. The land was granted to the Sirsi Harijan Co-Operative Housing Society in the years 1959 much prior to the PTCL Act come to force, where as the PTCL Act was introduced in 1978, is retrospective in nature and is consider as ex-post facto law, aiming to protect and provided land for the poor members of the scheduled tribes and caste.
 6. As per Air 1984 Hon'ble Supreme Court 1151 (E) Karnataka Schedule Caste and Schedule Tribes Prohibition of Transfer of the Certain Lands) Act (2 of 1979) Section 4, 5-Scope - Transfer not contravened- Section 4 and 5 not attracted. Section 4 and 5 become applicable only when granted lands are transferred in breach of the condition relating to prohibition on transfer of such granted lands. Granted lands transfer before the commencement of the Act and not in contravention of prohibition on transfer are clearly beyond the scope and purview of the present Act. Therefore the Act will not apply to transfers of granted lands made in breach of the condition imposing prohibition on transfer of granted lands only in those cases where the title acquired by the transferee was still voidable at the date of the commencement of the Act and had not lost its defeasible character at the date when the Act came into force. Transferees of granted lands having a perfected and not a voidable title at the commencement of the act must be held to be outside the pale of the provisions of the Act.
 7. If at all the PTCL Act is applicable to this case then also this land was first alienated in the year 1991 which is 32 years after grant of the land according to law. The transfer of land from Shri Venku Bangari Kanade to Shri C.Manjunath Narasimhappa Chandavarkar is within the family members i.e. from father-in law to son-in law.
 8. Here the grantee namely Harijan Co-Operative Housing Society is not a person which can be termed as person belonging to Schedule Caste & Schedule Tribe as it is not a natural person and it is only a juristic Person.
 9. As per ILR 2008 Kar 3528 Smt.H.S.Lakshamma V/s Sri K.K. Ahammed Kutty and others - Code of Civil Procedure, 1908-Sec 100-RSA- Karnataka Schedule Castes and Schedule Tribes (Prohibition of Transfer of Certain Lands) Act 1978 Section 4-&7 - Purchase of SC/ST land in an auction sale by the Co-operative Agricultural and Rural Development Bank -Whether the transaction is hit by the provisions of Section 4 of the Act- Held, The Provisions of Sub-Section (3) of Section 4 will be applicable only in respect of the decree or order of a Civil Court or of any award obtained by the purchase in his private individual capacity against the guarantee. But the said sub-section (3) has no application in respect of the purchase of the land by and auction purchaser in an auction sale - FURTHER HELD , If the action to sell the granted land is taken by the Government itself or Central Government or Local Authority or a Bank, to such case, sub-section (3) of section 4 has no application - section 7 of the PTCL Act clearly exempts the application of the said Act in respect of transfer of granted land in favour of a Bank and the purchaser being the Co-operative Agriculture and Rural Development bank is entitled for exemption as per Section 7 of the PTCL Act - The lower appellate Court is justified in invoking section 7 of the PTCL Act in reversing the Judgment and decree of the Trial Court. RSA is dismissed.

10. As per 2017 to Kar.L.R 395 Sri. Basavaradhya V/S D.C. Kolar, Karnataka Land Revenue Act 1964- Section 49 and 136 Violating Conditions of grant - Deputy Commissioner has arbitrarily exercised power - Deputy Commissioner thereby entries in the revenue records as Gomal land - Present petition field - Held : The Deputy Commissioner has no Power to go into the legality or Correctness of the validity of the sale deed executed way back in the year 1960, If there was any irregularity in execution of the sale deed by Violating conditions of grant, aggrieved person of for that matter, the competent authority on his own could have invoked the jurisdiction within a reasonable period to interfere in the Matter. After lapse of 55 years, the Deputy Commissioner cannot assume power to field out whether there was any violation of the terms of grant while executing the sale deed in the year 1960 and on the ground that there was such violation, could not have declared the sale as illegal or null or void - Petition allowed.
11. Respondent No.1 Shri Krishnanand.V.Pawaskar filed an appeal before Assistant Commissioner Sirsi under Section 136 of KLR Act. But Assistant Commissioner, Sirsi have passed the orders under PTCL Act which is contrary to law and illegal.
12. This land does not come under PTCL Act and Assistant Commissioner, Sirsi has not heard the case in the light of natural justice and he has not taken any statement from Harijan Housing Society Sirsi.
13. The Said land Sy No. 115A is granted to Harijan Housing Society yane Sant Ravidas Housing Society and Harijan Housing Society has sold these plots to many eligible persons. If transaction made by Harijan Housing Society at the time of sale of the property is illegal then all sale transaction made from the beginning has to be rejected. Hence he requested to allow the appeal.

The Respondent No. 1 has submitted letter that.

1. That the appeal filed by the appellant is not as per the fact of the case, hence it is liable to be rejected.
2. That the second respondent Assistant Commissioner, sirsi rightly holds that the land in question Sy. No.115A measuring 0-3-2 of Sirsi Village is well within the meaning of granted land under the PTCL Act.
3. The intention of grant of land to Harijan Housing Society Sirsi was for the betterment and development of poor and backward Harijan Community. But some rich Harijan people purchased the land without prior permission of the Government. Hence the order passed by Assistant Commissioner Sirsi is correct and as per law. This order has to be upheld in the light of natural justice.

Issues to be answered:

1. Whether there is violation of Sec. 4 of PTCL Act 1978 by the appellant.
2. If so what order?

Findings:

Issue No. 1. In the Negative

Issue No. 2. As per final order.

Reasons

Issue No.1. On perusal of lower Court records and written arguments of both parties it is clear that land bearing Sy.No. 115A of Sirsi Village was granted to the Harijana Co-operative Housing Society Sirsi in the year 1959 as per mutation entry No. 7102 with intention to allot the plots to its members for their bonafide residential purpose subject to condition that the society shall not sell or in any way transfer by mortgage lease etc. any of the plots to any persons other than its members without obtaining prior approval by the Deputy Commissioner in writing. It is also not in dispute that the Shri Venku Bangari Kanade sold 0-3-2 (A-G-A) plot No. 14 in the said survey number to Shri C.Manjunath Narasimhappa Chandavarkar as per registered sale deed 304/91-92 dated:2-7-1991 in mutation entry No. 7245 dated: 1-10-1991. This property is subsequently purchased first by Shri Venku Bangari Kanade and then by the Shri C.Manjunath Narasimhappa Chandavarkar under two separate registered sale deeds which according to respondent No. 1 Shri Krishnanand.V.Pawaskar is in violation of Sec. 4 of PTCL Act, 1978.

Admittedly the land was originally granted to the society. No land was granted to Shri Venku Bangari Kanade. The term "granted land" is defined in Sec. 3(b) as hereunder:

"Granted Land" means any land granted by the Government to a person belonging to any of the Scheduled Castes or the Scheduled Tribes and includes

land allotted or granted to such person under the relevant law for the time being in force relating to agrarian reforms or land ceilings or abolition of inams, other than that relating to hereditary offices or rights and the word "Granted" shall be construed accordingly.

From the above definition it is clear that PTCL Act applies only to the lands granted by the government to a person belonging to any of the Scheduled Castes or the Scheduled Tribes. In other words the Act applies only to the persons belonging to Scheduled Caste and Scheduled Tribes. The Act has no application to the lands granted to any societies or institutions. In this regard Sec.3 (d) of the Act stipulates that "Scheduled Castes" and "Scheduled Tribes" shall have the meanings respectively assigned to them in the Constitution. A society does not come under Sec. 3 (d) and also constitution has not defined a society as a "person". In other words the Act applies to natural person and not to a society. In the case on hand the land was originally granted to the society and the society in term sold portions of the land to Shri Venku Bangari Kanade and subsequently Shri Venku Bangari Kanade sold this land to Shri C.Manjunath Narasimhappa Chandavarkar and again this land was sold to Shri Vikram Vasant Borkar. Therefore they became purchasers and not grantees U/s 3 (b) of PTCL Act. Therefore subsequent transfer of these properties under registered sale deeds to the appellant does not come within the prohibition of Sec. 4 of PTCL Act. Hence in my opinion there is no violation of Sec. 4 of PTCL Act. Consequently I answer issue No. 1 in the negative.

But the violation of condition of grant no.2, 7 and 8 is taken in to the consideration.

Condition No. 2 The Society shall not sell or in any way transfer by mortgage, lease etc any of the plots to any person other than its members or let any tenements to non-members without obtaining previous approval of the Deputy Commissioner in writing. The Deputy Commissioner will permit such letting provided that in this behalf first preference is given to the Backward Class persons, who have no houses of their own. But the no such permission has been taken by society from Deputy Commissioner.

Condition No. 7 Any one in possession of the plots shall be liable to be evicted from the plot in respect of which a breach of any of the conditions has occurred without compensation on the Deputy Commissioner's giving notice of the breach and the party concerned failing to remedy the breach within six months from the date of the notice.

Condition No. 8 The lands shall be liable to be resumed to Government without any compensation for breach of any of the conditions on the Deputy Commissioner's giving notice of the breach and the society failing on remedy the same within six months from the date of the notice.

Issue No. 2 In view of my finding the land does not come under the preview Sec. 4 of PTCL Act 1978 but grantee has violated the grant conditions. Hence I proceed to pass the following order:

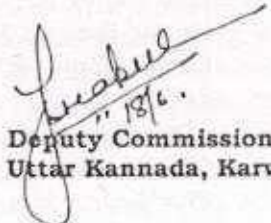
No. RB/PTCL/CR- 10/2017-18

Date: 18-06-2018

Order

Appeal is dismissed. Assistant Commissioner, Sirsi in file No.RTS/AP/CR-61/2015-16 dated: 22-05-2017 is upheld.

(Order dictated to the Stenographer, got computerized, verified and pronounced in open court on 18-06-2018)


18/6/18
**Deputy Commissioner,
Uttar Kannada, Karwar**

Copy to:-

1. Advocate Sri. R. V Raikar, for information.
2. Assistant Commissioner, Sirsi for information and for further necessary action. With Lower court file No.RTS/AP/CR-61/2015-16 dated:22-05-2017. Page No.1to page No. 71.
3. Tahasildar Sirsi for information and necessary action