

IN THE COURT OF DEPUTY COMMISSIONER UTTARA KANNADA KARWAR

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

No. RB/LND-II/PTCL/CR-5/07-08



**Between**

Chennabasappa Ningappa Kotagunsi  
Taluk Mundgod.  
(Represented through Advocate Sri N S Bhat)

.... Appellant

V/s

1. Tahsildar Mundgod
2. Assistant Commissioner, Sirsi
3. Ramesh Rajappa Nanapur  
Deceased by his LRs
  - a) Yellappa Rajappa Nanapur
  - b) Suresh Rajappa Nanapur
  - c) Sundaravva Rajappa Nanapur
  - d) Sushilappa Rajappa Nanapur
  - e) Gouravva Rajappa Nanapur
  - f) Davanibai Rajappa NanapurAll are R/o. Nandikatta, Taluk Mundgod  
(Represented through Advocate Rajeshwari Naik for R3, 5 and 6) .... Respondents

**Sub:** Appeal filed u/s 5(a) of Karnataka Scheduled Caste and Scheduled Tribes (PTCL) Act against the order of Assistant Commissioner, Sirsi dated: 28-05-2007 in file No. PTCL/Viva-4/06-07.

**Preamble:**

The appeal came to be filed u/s 5(a) of the Karnataka PTCL Act against the order of Assistant Commissioner, Sirsi No. PTCL/CR-7/06-07 dated 28-05-2007. Notices were issued to both parties.

1. Appellant has submitted appeal memo on 16-06-2007 and the same was admitted for hearing. The defendant's side was served and their counsel has filed Vakalat Nama and written argument on 23-8-2010. The original records were called from Tahsildar, Mundgod and same has been received. Respondent side was given opportunity to file objections and thereafter argument of both sides heard. Perused the documents filed by both parties.
2. Appellant states that Sy. No. 64 land measuring an extent of 4-7-0(A-G-A) of Nandikatta village in Mundgod Taluk was granted to Sri. Rajappa Yellappa Nanapur as per mutation entry No. 565 dated: 25-08-1943. The said Rajappa was the family head of Respondent No's 3 (a) to (f). After 30 years the same land was sold to Sri. Bhimsingh Parashuram Singh Kittur under sale deed and Mutation entry No. 898 was entered on 26-08-1973. Again this land was sold to appellant Nagappa Ningappa Kotagunsi and Mutation entry No. 1270 dated: 18-04-1990 and now he is in possession of the land since 17 years. It is also submitted PTCL Act, 1978 came into force in 1979. The seller of this land Bhimsingh Kittur doesn't belong to SC/ST, so there was no violation of provisions of PTCL Act and therefore prayed for allow the appeal and to set aside the order of Assistant Commissioner, Sirsi order No. PTCL/Viva-4/06-07 dated: 28-05-2007.
3. In support of his contentions counsel for the appellant has submitted the following documents:

- a) Copy of sale deed dated: 16-03-1990.
  - b) Death certificate of Ramesh (R3) and it shows he died on 08-06-2009
  - c) Inheritance register copy.
  - d) Certified copy of the order of Assistant Commissioner, Sirsi.
4. Respondent has been served notice and has appeared through counsel and filed written argument.

Since the land granted was before 1-1-1949 i.e, 25-08-1943 is accepted by both sides. Hence, PTCL Act is not attracted.  
The appeal memo of the appellant and his written arguments are as follows.

1. The order passed by Assistant Commissioner, Sirsi is contrary to rule and facts of the case.
2. It is not true that the sale deed is against the provision of Karnataka PTCL Act 1978.
3. The appellant purchased the land from the original grantee through Registered sale deed. And this transaction has been rectified by mutation entry in the Revenue records and the appellant is enjoying the rights over the land. Appellant has spent huge amount of money to develop these lands. So the order of Assistant Commissioner, Sirsi will cause heavy losses.
4. In 1973 one Ningappa Kovi purchased the suit land from the original grantee. In 1981 Shridhar Upadhyay purchased this and finally the appellant purchased the property in 1994 through sale deed being registered and mutation entry being taken on the sale transaction and certified.
5. The land not granted as the grantee belonged to scheduled caste or scheduled tribe. Then also PTCL act was not in existence.
6. As per the citation published in ILR 2010-KAR-2011 after the expiry of non-alienation period, the land continues to be granted land.

Hence he requested to allow the appeal.

Advocate for the respondent argued that:

1. The original land owners means the respondents belongs to scheduled caste it is evidenced by the certificate issued by concerned Tahsildar. The land was granted to original owner late Rajappa Nanapur. The property was alienated after a period of 15 years. But before alienating the land, prior permission from the Government was not taken. Hence the sale is invalid. In this case first sale is void. Hence the subsequent sales are not valid.
2. According to the appellant PTCL Act is not applicable to this case. But it is wrong. The section 4 and 5 of the PTCL Act is applicable only when the granted lands are transferred in breach of condition relating to prohibition on transfer of such granted lands. So there is no difference whether the sale of granted land took place before or after enforcement of this act.
3. The purpose of this act is to restore the lands to the weaker section who deprived of their land.
4. Section 4 of this Act any agreement contract or instrument for transfer of granted land made either before or after commencement of the Act made in contravention of terms of grant is therefore declared void. Any transfer or occupation of the said land without previous permission from the Government shall therefore be void. Section 5



*[Handwritten signature]*

of the Act enables the interested person to make an application before the Assistant Commissioner who after enquiry as he deems necessary and is satisfied that the granted land is null and void by an order may take possession of such land.

5. Alienation before 26-1-1950 are also invalidated under the Act. As per the citation published in 2011(6) KLJ 529 obalappa by his LR v/s K V Lakshmina and others the provisions of this Act even in respect of pre-constitutional grant orders when the particular community was not identified as SC/ST.

As per the citation published in 1991(4) KLJ 116 ILR 1991 KAR 4369 S Billigouda v/s Deputy Commissioner where granted land came to be sold in favour of petitioner on 2-08-1971 the said sale was declared as invalid and also as per the citation published in 2014(1) KCCR 474 (DP) Eramma @ Muni Veeramma by LR v/s State of Karnataka the gomal land granted in 1955 to a person of SC with non-alienation period of 20 years was sold in 1960. Also this alienation is declared as null and void.

With the above citations the Advocate for the respondent requested to dismiss the appeal.

On perusal of the Lower Court paper written argument of both parties it is evident that Land bearing Sy No. 71 an extent of 4-7-0(A-G-A) of Nandikatta village Mundgod Taluk came to be granted to Shri Rajappa Yellappa Nanapur as per mutation entry No. 565 dated: 25-08-1943 as per Prant Hukum No. TR 569/1061 dated: 25-08-1943 his name got mutated. In the year 1955, as per mutation entry No. 676 dated: 20-04-1955 Sy No. 71 was renumbered as 64. In 1973, Bhimsingh Parashuram Singh Kittur purchased the same land and Mutation entry No. 898 dated: 26-08-1973 was entered. Again Nagappa Ningappa Kotagunsi purchased the land on 18-04-1990 as per Mutation entry No. 1270 and sold it to appellant Assistant Commissioner, Sirsi as per the order dated: 28-5-2007 set aside the mutation entry No. 898, 1270 reverted the suit land to the legal heirs of the original grantee.

**Issues to be answered:**

1. Whether the original grantee in this case belongs to the scheduled caste.

Ans: As per the caste certificate issued by the Tahsildar, Dharwad dated: 04-11-2000 which belongs to Smt. Gowri Banasode and on that basis Assistant Commissioner, Sirsi came to the conclusion that the family of Rajappa Yellappa Nanapur belong to Scheduled Caste. However, on careful perusal of the xerox copy of the Form-I i.e, caste certificate which shows her name and address are nor legible and xerox copy of voters list shows she is the wife of Prabhakar but in the Assistant Commissioner, Sirsi in his order, her name is shown as Smt. Gowri legal representative of deceased Rajappa Yellappa Nanapur. Assistant Commissioner, Sirsi came to the conclusion that she belongs to Scheduled caste. However the copy of the ration card belonged to that Prabhakar Banasode and Gowri there is no mentioning of Rajappa Yellappa Nanapur as referred in the Mutation. Therefore, absolutely there is no documentary evidence to hold that they belonged to Scheduled caste.



2. Does the appellant prove that the land is 'granted land' as per Sec 3(b) of the Act?

Ans: On perusal entire records it shows said land has been granted to Rajappa Yellappa Nanapur as only land less person. Absolutely there is no reliable documents it was granted to him as he belonged to Scheduled Caste/ Scheduled Tribe as discussed in the above point it is already held that there is no evidence to prove that grantee belongs to Scheduled Caste/ Scheduled Tribe.

3. Does the appellant prove that there have been sale/transfers of the granted land in violation of Sec 4 of the Act?

Ans: Admittedly this grant was made in the year 1943. As discussed on the above points first of all absolutely there is no evidence to show grantee belongs to Scheduled Caste/ Scheduled Tribe. Secondly, PTCL Act came into force 1978 as cited above Section 4 (2) of the PTCL, Act. Land bearing Sy No. 71 an extent of 4-7-0(A-G-A) of Nandikatta village Mundgod Taluk came to be granted to Shri Rajappa Yellappa Nanapur as per mutation entry No. 565 dated: 25-08-1943 as per Prant Hukum No. TR 569/1061 dated: 25-08-1943 his name got mutated. In the year 1955, as per mutation entry No. 676 dated: 20-04-1955 Sy No. 71 was renumbered as 64. In 1973, Bhimsingh Parashuram Singh Kittur purchased the same land and Mutation entry No. 898 dated: 26-08-1973 was entered. Again Nagappa Ningappa Kotagunsi purchased the land on 18-04-1990 as per Mutation entry No. 1270 and sold it to appellant. So on perusal of the entire records and on hearing the arguments of both sides admittedly first sale transaction was taken place on 23-06-1950, whereas this PTCL Act came into force in the year 1978. On perusal of the provision of Section 4 (2) of PTCL Act which reads as "**No person shall, after commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government**". Further the grant was made prior to the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act coming into force on 01-01-1978. Also the sale via registered sale deed was made as per Mutation entry No. 898 dated: 26-08-1973 which is very prior to act coming into force. In the decision of Muniswamy v/s Deputy Commissioner (1993) by the Hon'ble High Court of Karnataka in Para 5 is mentioned below:

There is later decision of the Supreme Court, clarifying the earlier decision i.e, Sunkara Rajlakshmi, Supra. In Para 2 of that decision it has been laid down as under:

*" We may also make it clear that so far as the second exception laid down by us in our judgment dated: 17-04-1984 is concerned namely, that the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 will not apply where, the transferees have perfected their title in the granted land by prescription of long and continuous enjoyment before the commencement of the Act, the period of limitation which has to be taken into account for the purpose of determining whether the title has been perfected by*



prescription is that which runs against the State Government and therefore it would be 30 years and not 12 years".

Read in conjunction with Muniswamy v/s Deputy Commissioner case, Supreme Court has made it abundantly clear that if a transferee of land covered by the sweep of the Act had completed adverse possession for the period of 30 years prior to the date of coming into force of the Act then only he would not be touched. All other transfers, otherwise voidable, but falling within Section 4(1) of the Act would be liable to be proceeded with under the Act. To elucidate further, it is held that only those transfers of lands by Scheduled Castes persons which have taken place on or before 1-1-1949, i.e, when transferee have completed adverse possessions prior to 1-1-1949 would be saved from the sweep of the Act. All other transaction would be liable to answer the requirements of the Act and would fall through on the anvil of the Act, on the condition precedent to Section 4 being attracted.

Therefore, it leads to the conclusion that there is no violation of Section 4 of the PTCL Act and hence this point is held as negative.

4. Does the appellat establish that he is the legal heir of the original grantee?

Ans: As discussed on point No. 1 the caste certificate, ration card, Voter list are not showing their relationship of the original grantee. Absolutely there is no reliable documents to that effect. Therefore, I have no hesitation to hold this point as negative. When the PTCL Act itself is not attracted by its sweep based on judgments stated above, I proceed to order as follows:

**No.RB/LND-II/PTCL/CR-5/07-08**

**Date: 19-09-2016**

**Order**

Appeal filed by appellat is hereby allowed.

It is further ordered that the order passed by Assistant Commissioner, Sirsi order No. PTCL/Viva-4/06-07 dated: 28-05-2007 is quashed.

(Order dictated to the Stenographer, got computerized, verified and pronounced in open court on 19-09-2016)



*J. S. S. S.*  
19/9  
**Deputy Commissioner,  
Uttar Kannada, Karwar**