

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-3/07-08



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 Smt. Rajeshwari.V.Naik)

.... 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-7/06-07.

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/Viva-7/06-07 dated 28-05-2007. Notices were issued to both parties.

1. Appellant has submitted appeal memo on 12-06-2007 and the same was admitted for hearing. The defendant's side was served and their counsel has filed Vakalat Nama and written argument on 17-10-2010. The original records were called from Assistant Commissioner, Sirsi 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. 62 land measuring an extent of 6-23-0(A-G-A) of Nandikatta village in Mundgod Taluk was granted to Sri. Rajappa Yellappa Nanapur as per mutation entry No.643 dated: 26-02-1951. After 22 years the suit land was sold by Rajappa Yellappa Nanapur by sale deed to one Shri Nigappa Kotrappa Kovi a per Mutation entry No. 899 dated 26-08-1973 of Nandikatta Village. Again this land was sold to Shridhar Ragvendra Upadhaya as per sale deed Mutation entry 1041 dated 11-5-1981. Appellant purchased the land from Shridhar Ragvendra Upadhaya as per Mutation entry No. 1405 dated: 3-10-1994 as per sale deed for Rs.65000/- and now he is in possession of land Since 22 years.
3. It is also submitted that PTCL Act, 1978 came into force in 1979. The seller of this land Shridhar Ragvendra Upadhaya 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-7/06-07 dated: 28-05-2007.

4. In support of his contentions counsel for the appellant has submitted the following documents:
 - a) Certified copy of the order of Assistant Commissioner, Sirsi.
 - b) Copy of sale deed dated: 16-03-1990.
5. Respondent has been served notice and has appeared through counsel and filed written argument.

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 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.
4. Appellant has spent huge amount of money to develop these lands. So the order of Assistant Commissioner, Sirsi will cause heavy losses.
5. In 1973 one Nigappa Kotrappa 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.
6. The land not granted as the grantee Rajappa Yellappa Nanapur belonged to scheduled caste or scheduled tribe. Then also PTCL act was not in existence.
7. 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 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.

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.

On perusal of the Lower Court paper written argument of both parties it is evident that Land bearing Sy No. 59 an extent of 6-23-0(A-G-A) of Nandikatta village Mundgod Taluk came to be granted to Shri Rajappa Yellappa Nanapur as per mutation entry No. 643 dated: 26-02-1951 as per Prant Hukum No. TR 5160 dated: 23-06-1950 his name got mutated. In the year 1955, as per mutation entry No. 677 dated: 01-08-1955 Sy No. 59 was renumbered as 62. In 1973, Shri Nigappa Kotrappa Kovi, purchased the same land and Mutation entry No. 899 dated: 26-08-1973 was entered. Again Nagappa Ningappa Kotagunsi, Again Sy.No. 62 an extent of 6-23-0 was purchased by Shridhar Ragvendra Upadhaya as per sale deed from Nigappa Kotrappa Kovi as per Mutation entry No. 1041 dated 11-5-1981. Appellant Purchased the land from Shridhar Ragvendra Upadhaya as per Mutation entry No.1405 dated 3-10-1994 as per sale deed. Assistant Commissioner, Sirsi as per the order dated: 28-5-2007 set aside the mutation entry No. 899,1041 and 1405 and 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: 02-06-2006 which belongs to Smt. Parvati bai Ganapathi Gayakwad 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 Ganapathi but in the Assistant Commissioner, Sirsi in his order, her name is shown as Smt. Davani bai 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 Ganapathi Gayakwad and Davani bai there is no mentioning of Rajappa Yellappa

Nanapur as referred in the Mutation. One more cast certificate is
Tahasildar Mundgod dated 11-3-1997 which belongs to Smt Sundarav
Hanumantappa Nanapur, Assistant Commissioner, Sirsi came to the
conclusion that the family of Rajappa Yellapa Nanapur belong to Scheduled
caste but there is no documentary evidence that Sundaravva
Hanumantappa Nanapur is related to Rajappa Yellapa Nanapur. 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 document 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.
62 an extent of 6-23-0(A-G-A) of Nandikatta village Mundgod Taluk came to
be granted to Shri Rajappa Yellappa Nanapur as per mutation entry No. 643
dated: 26-02-1951 as per Prant Hukum No. TR 5160 dated: 23-06-1950 his
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Kovi, purchased the same land and Mutation entry No. 899 dated: 26-08-
1973 was entered. Again Nagappa Ningappa Kotagunsi, Again Sy.No. 62 an
extent of 6-23-0 was purchased by Shridhar Ragvendra Upadhaya as per sale
deed from Nigappa Kotrappa Kovi as per Mutation entry No. 1041 dated 11-5-
1981. Appellant Purchased the land from Shridhar Ragvendra Upadhaya as
per Mutation entry No.1405 dated 3-10-1994 as per sale deed. So on perusal
of the entire records and on hearing the arguments of both sides admittedly
first sale transaction was taken place on 26-08-1973, 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. 899 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 appellant 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:

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Date:24-10-2016

Order

Appeal filed by appellant is hereby allowed.

It is further ordered that the order passed by Assistant Commissioner, Sirsi order No. PTCL/Viva-7/06-07 dated: 28-05-2007 is quashed.

(Order dictated to the Stenographer, got computerized, verified and pronounced in open court on 24-10-2016)



[Signature]
24/10/16
**Deputy Commissioner,
Uttar Kannada, Karwar**