

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF DECEMBER, 2024

PRESENT

THE HON'BLE MR. N.V. ANJARIA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE K.V. ARAVIND

WRIT APPEAL NO.949 OF 2023 (SC-ST)

BETWEEN:

1 . SRI G.J. VENKATESH
S/O JAGADISH K
AGED ABOUT 20 YEARS
R/OF MATHRUCHAYA
APPORVA LAYOUT, PURLE
SHIVAMOGGA - 577 22

... APPELLANT

(BY SRI A.T. MALLYA, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS
SECRETARY
REVENUE DEPARTMENT
VIDHANA SOUDHA
BANGALORE - 560 009

2 . THE TAHASILDAR
TALUK OFFICE
SH-25, BASAVANAGUDI
SHIVAMOGGA - 577 201

3. THE ASSISTANT COMMISSIONER
D.C. OFFICE
SIR M.V. ROAD
SHIVAMOGGA - 577 201

4. SRI G.P. KRISHNA SWAMY
S/O LATE G. PUTTASWAMY
MAJOR
R/OF 1ST CROSS, MILAGHATTA
AMBEDKAR NAGAR
SHIVAMOGGA - 577 201
5. SMT. G.P. INDIRA
D/O LATE G. PUTTASWAMY
MAJOR
R/OF 1ST CROSS, MILAGHATTA
AMBEDKAR NAGAR
SHIVAMOGGA - 577 201
6. SMT. G.P. UMADEVI
D/O LATE G. PUTTASWAMY
MAJOR
R/O 1ST CROSS, MILAGHATTA
AMBEDKAR NAGAR
SHIVAMOGGA - 577 201
7. THE DEPUTY COMMISSIONER
D.C. OFFICE, SHIVAMOGGA DISTRICT
SHIVAMOGGA - 577 201

... RESPONDENTS

(SRI K.S. HARISH, GOVERNMENT ADVOCATE FOR RESPONDENT
NOS.1 TO 3 AND 7
SRI S.V. PRAKASH, ADVOCATE FOR RESPONDENT NOS.4 TO 6)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO CALL FOR THE RECORDS AND EXAMINE THE LEGALITY AND CORRECTNESS OF THE IMPUGNED ORDER PASSED BY THE LEARNED SINGLE JUDGE DISMISSING THE WRIT PETITION IN WP NO.5617/2021 (SC/ST) DATED 03.07.2023 AND SET ASIDE THE SAME.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE THE CHIEF JUSTICE MR. JUSTICE
N. V. ANJARIA
and
HON'BLE MR JUSTICE K.V. ARAVIND

C.A.V. JUDGMENT

(PER: HON'BLE THE CHIEF JUSTICE
MR. JUSTICE N. V. ANJARIA)

Heard learned advocate Mr. A.T. Mallya for the appellant, learned Government Advocate Mr. K.S. Harish for respondent Nos.1 to 3 as well as respondent No.7 and learned advocate Mr. S.V. Prakash for respondent Nos.4 to 6.

2. The appellant is the original petitioner who has challenged the legality and validity of judgment and order dated 03.07.2023, whereby the writ petition came to be dismissed. The challenge before learned Single Judge was to the endorsement issued by respondent No.2-*Tahasildar*.

2.1 The *Tahasildar* in his endorsement opined that the land in question was vast, therefore it would require survey before the order of the Assistant Commissioner-respondent No.3 herein would be implemented, whereby the land was restored to the original grantee upon the application. The case of the petitioner was that the endorsement of the *Tahasildar* was without affording opportunity to the petitioner.

2.2 As noted, the Assistant Commissioner had allowed the application of the grantee of the land and directed restoration of the land in question by his order dated 11.12.1985. The said order came to be confirmed by the Deputy Commissioner-respondent No.7 herein as per his order dated 09.08.1990.

3. Noticing the basic facts, the appellant-petitioner happens to be grandson of one S. Krishnamurthy who purchased the land on 28.02.1957, the land was Survey No.134/6 admeasuring 2 Acres of Hasoodi Village, Nidige-1 Hobli, Shivamogga *Taluka*. By making application under Section 5 of the Karnataka Scheduled Caste and Scheduled Tribe (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred as "the Act") the possession of the said land was claimed by the legal representatives of the original grantee.

3.1 The original grantee sold the land to the said Krishnamurthy as aforesaid. The Assistant Commissioner as per the order dated 11.12.1985 accepted the prayer for restoration. The appeal preferred against the said order came to be dismissed by the Deputy Commissioner on 09.08.1990.

3.2 The above named Krishnamurthy bequeathed the said land in favour of the appellant through a testamentary disposition on 08.12.2003. In the year 2003, the said Krishnamurthy passed away.

3.3 On 27.03.2017, respondent Nos.4 to 6 who are the heirs of the original grantee filed an application for possession of the land in their favour under Section 5 of the aforesaid Act. Respondent No.3-Assistant Commissioner directed the *Tahasildar* to take action for restoration of the land. Though the *Tahasildar* was of the view that the location of the land could not be identifiable, the very authority on 19.12.2000 changed the revenue entry. The said action on part of the authorities came to be challenged by the appellant before learned Single Judge. The writ petition was dismissed which gave raise to the present appeal.

4. Learned Single Judge in paragraph 4 of the judgment noticed that restoration of the land was allowed by order dated 11.12.1985 by the Assistant Commissioner, which order was confirmed by the Deputy Commissioner on 09.08.1990. The petitioner did not challenge the said orders and the order of restoration of the land in favour of the grantee had attained finality.

The sale deed in favour of the petitioner was declared to be null and void. It was observed that the petitioner did not have any *locus standi*, therefore, to resist the proceedings.

4.1 It was observed by learned Single Judge that the Assistant Commissioner is competent to evict the purchaser after ordering restitution and restoration of the granted land. Learned Single Judge reserved liberty to the contesting respondents to seek possession in terms of Rule 3(6) of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Certain Lands) Rules, 1979.

5. It is correct to conclude and there is no gainsaying that restoration of land had attained finality. The orders by the Assistant Commissioner and the Deputy Commissioner passed in the years 1985 and 1990 restoring the land and confirming such restoration were never been challenged by the petitioner. The orders were accepted by the petitioner by his conduct of acquiescence and inaction. The petitioner does have the *locus standi* to challenge the subsequent actions taken by the revenue authorities. Learned Single Judge has observed about the liberty to secure possession in accordance with Rule 3(6) of the aforesaid Rules, 1979.

6. In the facts of the case, the view taken by learned Single Judge is proper and the judgment and order does not book any error.

7. The appeal is meritless and the same is dismissed.

In view of dismissal of the appeal, the interlocutory application, as may be pending, would not survive and it stands accordingly disposed of.

**Sd/-
(N.V. ANJARIA)
CHIEF JUSTICE**

**Sd/-
(K.V. ARAVIND)
JUDGE**

AHB