

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JUNE, 2023

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.20129 OF 2016 (SC-ST)

BETWEEN:

CHIKKAYYA DEVADIGA
S/O SOMAIAH DEVADIGA
AGED ABOUT 52 YEARS
TANTHI HONDA
NAVUNDA VILLAGE
KUNDAPURA TALUK
UDUPI DISTRICT - 576 224

... PETITIONER

(BY SRI.K.SHRIHARI, ADVOCATE)

AND

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS
SECRETARY TO THE
REVENUE DEPARTMENT
VIDHANA SOUDHA
AMBEDKAR VEEDHI
BENGALURU - 560001
2. THE ASSISTANT COMMISSIONER
KUNDAPURA SUB-DIVISION
KUNDAPURA - 576224
3. THE DEPUTY COMMISSIONER
UDUPI DISTRICT
'RAJATADRI', MANIPAL
UDUPI - 576221
4. SMT.MUTHU HARIJANA
W/O LATE RAMA

AGED ABOUT 48 YEARS
TANTHI HONDA
NAVUNDA VILLAGE
KUNDAPURA TALUK
UDUPI DISTRICT - 576224

.....RESPONDENTS

(BY SRI.VENKATASATHYANARAYANA, HCGP FOR R.1 TO R.3;
SRI.H.JAYAKAR SHETTY, ADVOCATE FOR R.4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 22.02.2016 IN PETITION ON THE FILE OF THE DEPUTY COMMISSIONER, UDUPI DISTRICT,R-2 HEREIN, AT ANNEX-A AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 12.06.2023, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned writ petition is filed by the petitioner assailing the order of 3rd respondent - Deputy Commissioner, who has ordered for eviction thereby directing the petitioner to vacate and hand over the land in question in favour of 4th respondent. The said order is under challenge.

2. Facts leading to the case are as under;

Petitioner claims that he is the absolute owner of house site granted to him by the Government through the Tahasildar, Kundapur comprised in Sy. No.219/1B measuring 5 guntas. The petitioner claimed that house site was granted to him under Section 94(c) of the Karnataka Land Revenue Act.

3. While respondent No.4 claimed that the Authorities have granted a portion of the land comprising in Sy. No.206/2 measuring 61 acres and Sy. No.206/8 measuring 34 acres. Respondent No.4 claimed that the Authorities pursuant to grant have issued saguvali chit on 27.02.1976. 4th respondent alleging that petitioner has encroached over his land filed a petition under Section 5 of PTCL Act before the 2nd respondent – Assistant Commissioner and sought for vacant possession after evicting the petitioner from the petition property.

4. 4th respondent has also lodged a complaint on 13.11.2013 under Section 3(1), 3(11), 3(5) and 3(xl) of SC/ST (Prevention of Atrocities) Act, 1989.

5. The 2nd respondent – Assistant Commissioner rejected the petition filed by 4th respondent. Assailing the order of the 2nd respondent – Assistant Commissioner, 4th respondent preferred an appeal before 3rd respondent – Deputy Commissioner. The 3rd respondent – Deputy Commissioner has allowed the appeal and directed the petitioner herein to hand over vacant possession of the property in question.

6. The learned counsel appearing for the petitioner reiterating the grounds urged in the petition would vehemently argue and contend that the Deputy Commissioner erred in exercising jurisdiction under the provisions of "PTCL Act" and therefore, he would contend that the impugned order is not sustainable as the same is passed without jurisdiction and authority. Placing reliance on the Division Bench judgment rendered in the case of **SMT.INDUMATHI HUNSAGI VS. DEPUTY COMMISSIONER, CHICKMAGALUR AND OTHERS**¹ the

¹ ILR 2013 KAR 1332

learned counsel appearing for the petitioner would contend that the controversy relating to encroachment of a granted land is no more *res-integra* and the same is given quietus by the Division Bench of this Court. Referring to the above said judgment, he would contend that the Division Bench has clearly held that the case of an encroachment does not fall within the definition of transfer defined under Section 3(e) of the 'PTCL Act' and therefore, the disputed questions of facts relating to encroachment cannot be adjudicated by a Quasi Judicial Authority under the provisions of the 'PTCL Act'. He has also placed reliance on the judgment passed by the Co-ordinate Bench of this Court in the case of **HANUMANTHAIAH VS N.RAMEGOWDA AND OTHERS**². Referring to the principles laid down therein, he would contend that to attract the provisions of Sections 4 and 5 of PTCL Act, possession has to be traceable through transactions like sale, gift, mortgage etc. Therefore, he would conclude his arguments by contending that if possession is not traced through any transaction, then such a possession has to be

² ILR 2002 KAR 2431

termed as a possession of a trespasser, which does not fall within the definition of Transfer Act defined Section 3(e). Therefore, he would contend that if there is no transfer of granted land, the provisions of 'PTCL Act' are not attracted and therefore, the order passed by the 3rd respondent – Deputy Commissioner is patently erroneous and is liable to be set-aside.

7. Learned counsel appearing for the 4th respondent – grantee however repelling the contentions advanced by the learned counsel appearing for the petitioner has also placed reliance on the judgment rendered by the Division Bench of this Court in the case of ***M.BHOOMI REDDY VS. THE SPECIAL DEPUTY COMMISSIONER, BENGALURU DISTRICT AND OTHERS***³. Referring to the law laid down by the Division Bench, he would contend that the Sub section (3) of Section 5 of 'PTCL Act' covers all disputes relating to possession of a granted land. Placing reliance on the said judgment, he would point out that if granted land is in possession of a person, other than a original

³ ILR 2003 KAR 2087

grantee, such a possession has to be deemed to be in contravention of Section 4 of 'PTCL Act' and therefore, the grantee is entitled to seek recourse to the provisions of the 'PTCL Act' and the Authorities are bound to take action and restore possession if such a contravention is complained. He has also placed reliance on the judgment rendered by the Co-ordinate Bench of this Court in the case of **VEERASWAMY VS. SPECIAL DEPUTY COMMISSIONER**⁴. Referring to Section 5(3) and Section 3(1)(e), he would point out that even in absence of instrument of a granted land, a person found to be in possession of a granted land has to be presumed that such possession is in contravention of the provisions of the PTCL Act and also in contravention of condition of grant and therefore, he would contend that the person in possession of such a granted land is not entitled to seek protection. Therefore, he would submit that the order passed by the 3rd respondent – Deputy Commissioner is strictly in consonance with the principles laid down by the Division Bench in the case of M.Bhoomi Reddy (cited

⁴ ILR 1990 KAR 1739

supra) and therefore, he would contend that no interference is warranted and therefore, prays to dismiss the writ petition.

8. Heard learned counsel appearing for the petitioner and learned counsel appearing for the respondent No.4 and learned HCGP appearing for respondent Nos.1 to 3.

9. The short point that needs consideration at the hands of this Court is;

Whether the Authorities having regard to the facts and circumstances of the case have authority to invoke jurisdiction under the provisions of the PTCL Act and decide the rival claims of the parties herein?

10. The facts are found to be quite peculiar. Petitioner is resisting the restoration petition by asserting title over the property comprised in Sy. No.219/1B measuring 5 cents. While respondent No.4 – Grantee claimed that there is a grant in his favour in Sy. No.206/2 and Sy. No.206/8. Therefore, in the present case on hand, the petitioner is not asserting any right over the property

which is granted to respondent No.4. As can be seen from the claim made by 4th respondent, there is an allegation that the petitioner has encroached over a granted land. In the present case on hand, there are no rival claims. The petitioner is asserting ownership over some other land and respondent No.4 is also asserting that the Authorities have granted land in Sy. No.206/2 and Sy. No.206/8. If these facts are taken in to consideration, then I am of the view that the respondent No.2 – Deputy Commissioner erred in entertaining a petition at the instance of 4th respondent seeking restoration of the petition land. The definition of transfer as indicated in Section 2(e) clearly indicates that Section 4 comes into play provided there is a transfer by means of gift, exchange, mortgage, lease or any other transactions, which squarely fall within the definition of a transfer.

11. In the present case on hand, the petitioner and 4th respondent are asserting title over their respective properties. The petitioner claims that the Government through Tahasildar has allotted a site in the land bearing

Sy. No.219/1B. His claim is that he has constructed a residential house with the financial assistance of Rs.15,000/- under Housing Scheme namely Rajiv Gandhi Vasathi Yojane. Since disputed question of facts are involved and since the allegations in regard to encroachment cannot be established before a Quasi Judicial Authority, more particularly, under the provisions of "PTCL Act", I am of the view that 4th respondent could not have maintained a petition under Section 5 of "PTCL Act". Section 4 of the Act prohibits transfer of land covered by the Act. Where a person has encroached granted land, it cannot be said that he has acquired it by transfer. Therefore, the provisions of the PTCL Act are not at all applicable to the present case on hand. Even if the encroachment is established, 4th respondent has to be relegated to work out his remedy before the competent Civil Court and not under the provisions of the PTCL Act. In the present case on hand, in fact, the allegation in regard to encroachment is yet to be decided and ascertained before a competent Civil Court. The 3rd respondent – Deputy Commissioner has no materials on

record, which was found to be conclusive to arrive at a conclusion that the petitioner is guilty of encroaching over a granted land. Unless the parties approached the Civil Court and there is survey of all the lands and there is a conclusive survey report demarcating the lands held by the petitioner and the lands held by respondent No.4 and unless there is a conclusive report indicating that there is an encroachment, the 4th respondent merely on apprehension could not have approached the 2nd respondent – Assistant Commissioner by invoking the provisions of the PTCL Act. All these significant details are not dealt by the 3rd respondent –Deputy Commissioner. When both the parties are supporting their claim based on a title documents, the 3rd respondent - Deputy Commissioner erred in passing an order for restoration and such an act is obviously found to be in excess of jurisdiction.

12. Therefore, the order passed by respondent No.3 – Deputy Commissioner is patently erroneous and the same is liable to be set-aside.

13. For the reasons stated supra, the order of respondent No.3 – Deputy Commissioner is one without jurisdiction and accordingly, I pass the following;

ORDER

Writ Petition is ***allowed***.

The order dated 22.02.2016 passed in Petition No.C.Dis.PTCL.SR/06/2015-16 by respondent No.3 – Deputy Commissioner as per Annexure - A is hereby set-aside.

Pending interlocutory applications, if any, do not survive for consideration and accordingly, they are rejected.

**Sd/-
JUDGE**