

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 21ST DAY OF JUNE 2004

BEFORE

THE HON'BLE MR.JUSTICE RAM MOHAN REDDY

WP NO 26056-26059 OF 2001 (SC/ST)

BETWEEN:

1. BAPTIST D'SOUZA
S/O I.D'SOUZA
MAJOR, WORKING AS CLERK
KARNATAKA BANK LTD
DAVANAGERE BRANCH, BALAJI
BUILDING, H.M.ROAD
DAVANAGERE 577 001

2. YASHODA
W/O LATE KARUNAN
MAJOR, R/AT
JEEPINAMOGARU VILLAGE
MANGALORE

3. SHAFI, S/O P.IBRAHIM KUNNI
MAJOR, R/AT JEPPINAMOGARU
VILLAGE, MANGALORE

4. DONALD D'SOUZA
S/O LATE JOSEPH D'SOUZA
MAJOR, 5TH CROSS
SOUTERPETE POST
JAPPINAMOGARU VILLAGE
KANAKANADY, MANGALORE 575 003

---- Petitioners

(By Sri T S KRISHNA BHAT, ADV.,)

AND:

1. STATE OF KARNATAKA
REP BY ITS SECRETARY
REVENUE DEPARTMENT
M.S.BUILDING
BANGALORE 560 001

2. THE DEPUTY COMMISSIONER
DAKSHINA KANNADA
MANGALORE, MANGALORE DIST.

3. THE ASST COMMISSIONER
MANGALROE SUB DIVISION
MANGALORE TQ., MANGALORE DIST

4. KITTA MAISTRY
S/O THANIYA, MAJOR
KADRI MUNDANA HOUSE
BEJAI POST,
MANGALORE-575 001.

----- Respondents

(By Sri BASAVARAJAIAH, HCGP FOR R1-R-3.
R4 SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 & 227
OF THE CONSTITUTION OF INDIA PRAYING TO- QUASH VIDE
ANX. B DT 18.5.92 BY R3 AND ANX. D DT. 22.5.2001 BY R2.
GRANT STAY VIDE ANX.B AND D AND ETC.,

THIS WRIT PETITION COMING ON FOR HEARING THIS
DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioners have called in question the legality and
validity of the Order of resumption and restoration passed under

Section 5 of the Karnataka Schedule Castes and Schedule Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (for short the 'Act').

2. Briefly stated facts are as under:

The petitioners are owners in possession of land measuring 2 cents, 2.5 cents, 3 cents and 2.5 cents respectively in Sy.No.120/23 of Jappinamogaru village, Managalore, presently situated within the Municipal limits of Mangalore city. Petitioners claim to have purchased these lands under registered sale deeds dated 5.5.1988; 4.12.1975; 30.10.1987 and *01.08.1977 respectively. The 4th petitioner's father, by name Joseph D'Souza, who had purchased the property, died on 20.05.2001.

3. Respondent No.3 initiated proceedings against the petitioners under the Act, on the ground, that the lands in question were granted to one Thaniya, under the depressed class darkhast rules in the year 1925 and the sale transaction being in violation of the provisions of the Act, was liable to be declared void and the lands resumed. The proceedings before the Assistant

Commissioner was resisted by the petitioners. The Assistant Commissioner, by his Order dated 18.5.1992 in ADIS.PTLCR.34/91-92 allowed the petition, held the sale transaction void and directed restoration of the land in favour of the 4th respondent who is the son of the grantee. Being aggrieved by the said order, petitioners preferred appeal numbered as A.dis.SC/ST/ITCL-14/92-93, which came to be dismissed, confirming the Order of the Assistant Commissioner, by Order dated 8.3.1994. Being aggrieved by the said Order, the petitions preferred Writ Petitions No.11338-341/1994 before this Court. This Court by Order dated 19.11.1996 set-aside the Order in appeal and remitted the proceedings to the 2nd respondent for disposal in accordance with law and to consider the contentions advanced by the petitioners, as stated therein. The 2nd respondent, on remand, passed an Order dated 22.5.2001 dismissing the appeal. It is against this Order that the petitioners have come up by way of writ proceedings.

4. It is not in dispute that the lands measuring 10 cents in Sy.No.120/23 was granted to one Thaniya under depressed

class darkhast rules as per No. Taluk.DDR.3;35 dated 31.7.1925.

It is also not in dispute that the conditions of grant were not available except for the DDR.3/35 that the grant was made under Board Standing Order 15.

5. It is contention of Sri.Krishna Bhat that clause (f) of the Standing Order No.15(38) prohibiting alienation to any person other than the members of the depressed class was not in existence in the year 1925 and that the said clause was inserted by G.O No.889 (Rev) dated 1.6.1926; 2nd para of clause (f) was inserted by G.O. MS 2557 (Rev) dated 22.12.1932 and the 3rd para of clause (f) was inserted by G.O. MS.3092 (Rev) dated 12.12.1940, so also, the 4th para of clause (f) was inserted by G.O. 1877 Rev. dated 25.7.1939. The Board's Standing Order did not contain any bar prohibiting or restricting the alienation. Learned counsel would draw my attention to Section 4 of The Karnataka Schedule Castes and Schedule Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, to contend, that, it declares the transfer as void only if the granted land is transferred in contravention of the terms

of the grant of such lands or the law providing for such transaction.

6. The learned counsel for the petitioners would place reliance upon the Division Bench ruling of this Court in the case of **BAPTIST DALMEDA & ANOTHER -VS- PARAMESHWARA & OTHERS**¹ to contend that facts in the said case were similar to the facts of this case and therefore, the findings recorded by the Division Bench applied on all its fours to the case of the present petitioners. It is not in dispute that the land measuring 10 cents of Jappinamogaru village was granted to one Thaniya under No. Taluk. DDR.3;35 dated 31.7.1925. This Court in the case referred to supra considered a similar grant made as per DDR 3/1335 in favour of one koje, on 31.7.25. In the said case, the Division Bench having considered the facts and circumstances of the grant having been made in the year 1925 and the inclusion of clause (f) to the Board Standing Order No.15 in the year 1926 and other such clauses during later years ending with the year 1940, observed that in the absence of the order of grant or record of the

¹ ILR 2002 Kar 5313

terms of the grant, it has to be assumed that the grant was in accordance with the Rules that govern the grants at the relevant point of time. Considering the terms set out in the Board Standing Order No.15, the Division Bench further held that there was no prohibition or restriction in regard to alienation of grant made under grant in favour of said Koje.

7. As can be seen from the records and the facts laid out by the petitioner and as admitted by the respondents, the finding of the Division Bench that there were no conditions attached to the grant made in the year 1925 equally applies to the present case.

8. Following the said judgment and the reasons assigned therein, the petitions will have to necessarily succeed. The sale deeds dt 5.5.1988; 4.12.1975; 30.10.1987 and *01.08.1977, cannot be held to be transfers in contravention of the any of the terms of the grant. Hence Section 4(1) of the Act is not attracted. Both the authorities, the assistant Commissioner and the Deputy Commissioner were not, therefore, justified in holding that the alienation as invalid.

For the reasons set out supra, the petitions are allowed. The orders dated 18.05.1992 of the respondent No.3 and the order dated 22.05.2001 of the respondent No.2, are quashed.

**Sd/-
JUDGE**

ln