

(1997) 06 KAR CK 0052
In the Karnataka High Court
Case No : WP. No. 3616 of 1989

A.C. Siddappa

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 24-06-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Land Grant Rules, 1969 — Rule 10 (3)
Karnataka Land Revenue Act, 1964 — Section 91, 93

Citation : (1998) ILR (Kar) 880

Hon'ble Judges : Chandrashekariah, J

Bench : Single Bench

Advocate : V. Tarakaram, Senior Advocate, A.K. Subbaiah and C.R.V. Sawmy for R-5 and R-6, A. Nagarajappa, HCGA for R-1 to 4, M. Shivaprakash, for R-7, Vinod Prasad, H. Thipperudrappa, for R-3, C.R.V. Swamy, for R-4, M.N. Pramila and K. Lakshminarayana Rao for R-4, S. Shivaswamy, for R-5, H.L. Krishnamurthy, C.B. Srinivasan, for R-3 and S. Shivaswamy, for R-4, for the Respondent

Final Decision : Allowed

Judgement

Chandrashekariah, J.—The petitioners have filed these Writ Petitions by way of public interest litigation.

2. The land in Sy. No. 27 of Koudenahalli village, Krishnarajapuram Hobli, Bangalore South Taluk is classified as a tank as per the Revenue Records. The 5th respondent moved the State Government for grant of 10 acres out of the Total extent of 24 acres 18 guntas in Sy.No. 27 of Koudenahalli village. On the said application, the Government accorded approval to grant this land in favour of the 5th respondent by its order dated 25.11.88. Thereafter, the Deputy Commissioner by his order dated 6.1.89 levied the conversion fee to use the said land for non-agricultural purpose. On the basis of this order, the petitioners have filed this Writ Petition assuming that there is a grant in favour of the 5th respondent, challenging the grant, if any, in favour of the 5th respondent.

3. The records produced before me show that this land is classified as a tank as per the entries in the revenue records for the year 1976-77 to 1979-80. The Deputy Commissioner on the basis of the order passed by the State Government according to the approval, passed an order permitting to use the said land for non-agricultural purpose subject to the payment of 50% of market value and other charges as per the rules. Thereafter, the Revenue officials entered the Government Order No. RD 135 LGE 88 dated 22.7.88 in Column No. 10 of the R.T.C. This entry appears to be the cause for the petitioners to challenge the grant, if any, made by the State Government or by the Deputy Commissioner in favour of the 5th respondent. The 5th respondent also has paid a sum of Rs. 6,25,000/- towards the conversion fee as per challenge dated 16.1.89.

4. It is in the submission of the Learned Counsel for the petitioners that the land has been shown to be reserved as a park in the C.D.P and therefore without their being a change in the land use under the provisions of the Karnataka Town and Country Planning Act, the said land ought not to have been granted in favour of any person to use the same for the purpose other than the purpose shown in the C.D.P. It is further submitted that neither the Government nor the Deputy Commissioner has followed the Land Grant Rules while granting the land. Therefore, according to the petitioners the grant of land if any is invalid. The further submission on behalf of the petitioners is one Basava Samithi had made an application for grant of land in Sy.No. 27 but the said application was rejected by the authorities on the ground that this land is required for the purpose of park. It is in the further submission of the petitioner's counsel that in respect of this land and other lands the State Government constituted a Committee called Lakshman Rao committee to go into all these aspects and make a recommendation regarding the feasibility or otherwise of retaining this land either for a tank or for any other public purpose. The Committee after notifying the same in the gazette submitted its recommendation stating that the land in question is required for a park and open space, to one of the petitions, it is stated that the Head Master of the Government Kannada Primary & High School, Ramamurthynagar requested the State Government to grant this Land but it was rejected on the ground that the said land is required for a park. On these facts it is contended that the grant of land, if any, made by the authorities is illegal and liable to be quashed.

5. In reply to the said submission Sri Tarakaram, Learned Senior Counsel submitted that at the instance of parents of the school children the land measuring 10 acres which is not being used for any purpose has been granted in favour of the 5th respondent for the purpose of establishing an educational school as the said school is required in a locality and further submitted that the grant of the said land is for a public purpose and therefore the petitions filed by the petitioners by way of public interest litigation are liable to be dismissed, as the grant of the said land has in no way affected the interest of general public. Further, it is submitted that the order of the State Government dated 6.1.89 itself is an order of grant and consequent to the said order the grant certificate

has been issued by the Deputy Commissioner as per Annexure.R-3 produced alongwith the additional statement of objections.

6. In order to resolve the controversy between the parties it is just and necessary to consider whether there is infact a grant of land in favour of the 5th respondent either by the Government or by the Deputy Commissioner.

7. The order dated 25.11.88 is order by the Government according permission under Rule 10(3) of the Karnataka Land Grant Rules (hereinafter referred to as Rules). After obtaining the said approval, the question that is required to be considered is whether there is any grant made by the Deputy Commissioner as provided under the Rules. The order of the Deputy Commissioner dated 6.1.1989 reads as follows:-

"In the circumstances stated above the land measuring 10-00 acres in Sy.No. 27 of Koudenahalli village, K.R. Pura Hobli, Bangalore South Taluk is sanctioned for non-agriculture purpose in favour of St.Anne's Educational Society, No. 4, Miller Road, Bangalore subject to payment of 50% of the market value and other charges as per rules and subject to the condition laid down in the said Government letters which are enclosed strictly in accordance with the provisions of K.L.G. Rules and the Circular instructions issued by Government time to time.

The Tahsildar, Bangalore South Taluk to recover the market value and other charges and handover the possession to the institution".

The subject mentioned in the said order relates to the grant of land. But, ultimately the order relates to use the land for non-agricultural purpose subject to payment of conversion fee as, required to be paid under Rule 108 of the Rules. As stated earlier Sri Tarakaram, Learned Senior Counsel contended that this order itself is an order of grant pursuant to the approval accorded by the State Government. In this context it is useful to refer to some of the provisions of the Karnataka Land Grant Rules.

Sub-Rule 1 of rule 7 of the Rules provides for grant of land by the Revenue Officers for agricultural purpose. Sub-rule 2 of Rule 7 provides that the Deputy Commissioner and the Divisional Commissioner may grant lands for the purpose of cultivation of plantation crops. Sub Rule 3 of Rule 7 reads as follows:-

"Rule 7(3) :- For non-agricultural purposes other than building sites the following Revenue officers may subject to the provisions of Rule 10(3) grant lands to the extent noted against each on collection of market value which should include conversion fine also to be determined by them.

i) Deputy Commissioner - Upto an extent of four hectares.

ii) Divisional Commissioner:- Exceeding four hectares but not exceeding eight hectares.

iii) In any other case in excess of the extent specified in Sub-clause(ii) the proposals shall be submitted to Govt. for sanction".

Under the above said rules the Deputy Commissioner or the Divisional Commissioner may grant land subject to the provisions of Rule 10(3) of the Rules for non-agricultural purpose. Rule 10(3) reads as follows:-

"Rule 10(3):- Notwithstanding anything contained in Rules. 7(3) and 18, lands within the radius specified in Sub-rule (2) shall not be granted for non--agricultural purposes without the previous approval of the State Government".

From the reading of Rule 7(3) and Rule 10(3) of the Rules it is clear that the Deputy Commissioner or the Divisional Commissioner may grant land for non-agricultural purpose with the previous approval of the State Government under Rule 10(3) of the Rules. In the instant case the Government has passed an order according approval under Rule 10(3) of the Rules. Thereafter, there is no order either by the Deputy Commissioner or the Divisional Commissioner granting this land in favour of "the 5th respondent. The grant certificate which is produced as Annexure-R.3 alongwith the additional statement of objections by the petitioners is in Form No. 7.

Rule 29 of the Rules reads as follows:-

"Rule 29:- Form of Permission:- Permission granted, u/s 93 of the Act shall be in Form VII. A sketch of the land granted shall be annexed to the said form, the cost of the sketch shall be recovered from the grantee.

This follows the certificate of grant may be issued in respect of the permission granted u/s 93 in Form No. 7. Section 93 of the Karnataka Land Revenue Act, reads as follows:-

"Section 93: Permission for taking up unoccupied land:

- 1) No person shall take up an unoccupied land which is not alienated unless he has obtained, before entering upon such occupation, the permission in writing of the Tahsildar of the taluk in which such land is situated.
- 2) Subject to the provisions of Section 91, and such Rules as may be made by the State Government in this behalf, the Tahsildar may grant to any person desirous of taking up an unoccupied land the permission required under Sub-section (1)."

The case of the 5th respondent is that though they requested the Government for grant of land in its favour, the authorities have not issued the grant certificate but have issued the Certificate in Form No. 7. Form No. 7 relates to permission to occupy the un-occupied land. If that is so, the certificate issued in Form No.7 under Rule 29 cannot be treated as a grant certificate. This shows that the Authorities were in hurry to favour the 5th respondent ignoring the law governing the grant of land.

8. As stated earlier there is no order of grant by the Deputy Commissioner or by the Divisional Commissioner consequent on the approval granted by the State Government under Rule 10(3) of the Rules, in favour of the 5th respondent. After

hearing for some time in the light of the allegations made by some of the petitioners in their petitions, I directed the State Government to produce the file relating to the Government Order dated 25.11.1988 according approval under Rule 10(3) of the Rules. Pursuant to the said directions the learned Government Advocate has produced a memo before me stating that the file relating to the said Government Order is destroyed. Therefore, I directed the Government Advocate to file affidavit of the Revenue Secretary explaining under what circumstances the file has been destroyed. In obedience to the said direction, the Government Advocate has filed the affidavit of the Revenue Secretary. In the said affidavit, it is stated that the said file was classified as (C) record. It was sent to general records on 6.3.1990. Further, it is stated that on requisition made to the concerned on 5.6.87 it has been reported that the record has been destroyed. From the said affidavit, it is not known for what reasons the said record is destroyed. The very fact that the records relating to the file according approval has not been produced shows that there is something fishy in this matter. Therefore, I am of the considered view that the steps taken by the State Government to grant the land in favour of the 5th respondent shows that it is only to favour the 5th respondent ignoring the claim of others who are also similarly situated as that of the 5th respondent.

9. Under the Rules referred to above, there must be a prior approval in order to grant land for non-agricultural purpose as required under Rule 10(3) of the Rules. No doubt, as stated earlier there is an order according approval, but consequent to the said approval the Deputy Commissioner has not passed any order granting the land in favour of the 5th respondent. Further, the order dated 6.1.89 cannot be treated or construed as an order granting land.

10. As stated earlier the Government has rejected the request of the Basava Samithi and that of the Head Master of the High school seeking for the grant of land in the aforesaid Sy.No. 27 on the ground that the said land is required for a park. This statement has not been denied by the State Government by way of filing objections. When such being the case it is not known how the State Government has taken steps to accord approval to grant this land in favour of 5th respondent. Further, it is not known how the Deputy Commissioner would fix the conversion fee under Rules 198 of the Rules in the absence of any grant made by him.

11. The Learned Counsel for the petitioners submitted that the above said land has been show as reserved for park in the C.D.P. and therefore the said land cannot be used for any purpose other than the purpose for which it has been shown in the C.D.P. In the C.D.P. the land in Sy.No. 27 is shown as reserved for a park and a tank. If the land is reserved for a park it cannot be used for any purpose other than the purpose for which it has been earmarked in the C.D.P. until and unless the change of land use is ordered by the Authority concerned; under the provisions of the Karnataka Town and Country Planning Act. In the case on hand there is no order for change of the land use and it is continued to

be shown as earmarked for park in the C.D.P. Therefore the Government or the Deputy Commissioner have no authority whatsoever to grant the said land for any purpose other than the purpose for which it has been earmarked in the C.D.P. No doubt, in the C.D.P it is also mentioned as a tank. If the land is shown to be a tank, it cannot be utilised for any other purpose until and unless there is an order de-reserving the same under the provisions of Karnataka Land Revenue Act. Therefore, under any circumstances the said land cannot be and could not be granted in favour of 5th respondent.

12. Assuming that the land in Sy.No. 97 is available for grant, then it is the duty of the granting authority to notify the said land as available for grant before taking any steps to grant the land in favour of any individual. In the instant case neither the Government nor any of the authorities under the Land Grant Rules have notified the said land stating that the land is available for grant. When such being the case it could not have been granted in favour of the 5th respondent ignoring the claim of other citizens of this country. The State Government when it is taking steps to distribute the larges ought to have followed certain norms and the rules regulating the grant of land. In the instant case no norms have been observed, no rules are followed and therefore the steps taken by the State Government or by the Deputy Commissioner itself is arbitrary and resulted in discrimination. Even on this ground also the proceedings relating to the grant in favour of the 5th respondent are liable to be quashed.

13. The Learned Counsel for the 5th respondent submitted that the grant of land in favour of the 5th respondent is for a public purpose and therefore it is not a case for interference under Article 226 of the Constitution of India. The 5th respondent is a body or an association registered for the purpose of running an educational institution. There are other similar associations which are engaged in running similar institutions for the benefit of the public. When such being the case the Government ought to have notified the land as available for grant to the public before taking any steps to grant the land in favour of any person or individual. Therefore, it cannot be said the grant of land in favour of the 5th respondent ignoring the claim of others as valid assuming it is for a public purpose.

14. For the reasons stated above, I pass the following order:-

The Writ petitions are allowed.

The proceedings relating to grant of land in Sy.No. 27 of Koudenahalli village in favour of 5th respondent are quashed.

Parties to bear their own costs.

Since I have allowed the Writ Petitions on merit, there is no need to pass any order on IA-II. Accordingly, IA-II is rejected.