
(2015) 11 KAR CK 0179

In the Karnataka High Court

Case No : Writ Petition No. 205698/2014 (KLR-RES)

Babusab

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:

Citation : (2015) 11 KAR CK 0179

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : Huleppa Heroor, Advocate, for the Appellant; Shivaputra S. Udbalkar, HCGP, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The petitioner is before this Court assailing the communication dated 06.05.2009 and 27.01.2013 at Annexures-N and

V to the petition. The petitioner in that view is seeking issue of mandamus to direct the respondent No. 2 to regularize the site which is in

possession of the petitioner from the time of his father in the year 1960.

2. The petitioner is an Ex-serviceman having retired from service on 12.11.1974. The case of the petitioner is that his father was in possession and

enjoyment of the property bearing CTS No. 1862/32 and CTS No. 1862/33 for more than 50 years and as such the petitioner subsequent to his

retirement from service is also in possession and occupation of the said property. The petitioner in that view has sought for allotting the said

property in the name of the petitioner.

3. In view of the request made by the petitioner, the petitioner claims that in addition to the recommendation which had been made by the Assistant

Commissioner on 15.01.1977, the Zilla Sainik Board had also recommended the allotment of the same to the petitioner who is an Ex-serviceman through its recommendation dated 18.01.1977. At an earlier point the consideration of the application being made was also intimated to the petitioner by the Special Deputy Commissioner through the communication dated 13.10.1982. However, presently by the impugned communication at Annexures-N and V the Deputy Commissioner has intimated the petitioner that the request of the petitioner cannot be considered in view of the amendment brought to Rule 108-I of the Karnataka Land Revenue Rules, 1966 (for short "the Rules"). In that view, the petitioner had been intimated that the property being within the limit of the city/town cannot be allotted to the petitioner. The petitioner claiming to be aggrieved by the same is before this Court.

4. The learned counsel for the respondents would seek to sustain the order with reference to the amendment made to Rule 108-I of the Rules. The reason as has been assigned by the Deputy Commissioner is put forth to contend that since admittedly the plot in which the petitioner claims to be in possession is situate within the city/town limits, the case of the petitioner cannot be considered. In that view the learned counsel for the respondents seek to sustain the order/intimation letter issued by the Deputy Commissioner to the petitioner.

5. In the above background, I have heard the learned counsel for the parties and perused the petition papers. The reason assigned in the impugned orders at Annexures-N and V would disclose that the Deputy Commissioner has expressed the difficulty to consider the case of the petitioner for allotment of the plot in the name of the petitioner in view of the amendment that has been brought by the Rule 108-I of the Rules.

6. In order to consider the said rule in its correct perspective, a perusal of the notification dated 25.04.2005 by which the said rule was brought into force would indicate that the said rule has come into force from the date of the publication. The publication even if taken as with effect from 25.04.2005 the consideration of the request of the petitioner in the background is to be taken into account.

7. There can be no dispute that from the said date a fresh consideration for regularization cannot be made in respect of land in city/town limit.

However, the facts of each case would have to be taken into consideration in that background. While taking note of this aspect of the matter what

is also to be kept in view is that the reliance placed is on the provision contained in the Land Revenue Rules. What cannot also be lost sight is that

the consideration could have also arisen under the Land Grant Rules since the petitioner was seeking the said allotment claiming the benefit not only

as a person who had been in occupation of the said property from the time of his father but in the light of the petitioner having served in the army

and had indicated that as Ex-serviceman he has to be accommodated. This aspect of the matter is fortified by the letter that had been addressed by

the Zilla Sainik board on 18.01.1977. In addition, the Assistant Commissioner as well as the Deputy Commissioner had indicated that the

petitioner's request was being considered, by the communications dated 15.01.1977 and 13.10.1982.

8. Therefore, the request of the petitioner for grant of such land was under active consideration as far back as in the year 1977 itself. If in that

direction the application of the petitioner had received consideration, in a normal course, the consideration would have ended in the grant of the

property to the petitioner much earlier to the amendment that is made to the Rules which is relied upon by the Deputy Commissioner. That apart as

already noticed by me the consideration was also required under the Land Grant Rules.

9. Therefore, if all these aspects of the matter are kept in view and when the consideration of the request of the petitioner had been initiated as far

back as on 15.01.1977 and when there cannot be serious dispute to the fact that the petitioner has been in continuous possession of the said

property for more than 5 decades, the nature of the consideration as made, by applying the amendment which is given effect subsequently and that

too as recent as in the year 2005 would not be justified.

10. Therefore, the order/communication dated 06.05.2009 and 27.01.2013 impugned at Annexure-N and V to the petition are quashed. A

direction is issued to the second respondent to consider the request of the petitioner and allot the site in favour of the petitioner on collecting the

requisite fee/charges if any, that is payable in that regard. The consideration in that regard shall be made as expeditiously as possible but not later

than three months from the date on which a copy of this order is furnished to the second respondent.

Petition is accordingly disposed of.