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**(1980) 10 KAR CK 0023**

**In the Karnataka High Court**

**Case No :** WP 16247/80

Basappa — APPELLANT

Vs

Bukkasagara Group of Village Panchayat and Others — RESPONDENT

**Date of Decision :** 31-10-1980

**Acts Referred:**
Karnataka Land Revenue Act, 1964 — Section 70

**Citation :** (1981) 1 KarLJ 183

**Hon'ble Judges :** N. D. Venkatesh, J

## Judgement

1. When this petition came up for admission, on behalf of the 1st respondent its Counsel appeared and took notice of petition. Subsequently, on behalf of respondents 1 and 2, statement of objections were filed. Counsel for the petitioner and respondents 1 and 2 agreed to argue the matter on merits, accordingly they were heard.

2. In this petition, filed under Arts. 226 and 227 of the Constitution of India, the petitioner has challenged: (i) a resolution, Annexure-K, dated 30-10-79 of the Village Panchayat of Bukkasagara, Anekal Taluk; (ii) an order dated 5-3-80, Annexure-L, of the Assistant Commissioner, Doddaballapur Sub-Division (respondent No. 4 herein); and (iii) a registered lease deed dated 23-4-1980, Annexure-O, said to have been entered into between the Village Panchayat, Bukkasagara (1st respondent) and K.V. Krishnappa of Jigini village (2nd respondent).

3. The petitioner, a resident of village Bukkasagara, owns 3 acres 07 guntas of land out of 20 acres 01 gunta comprised in Sy. No. 162 of Bukkasagara village. He acquired this land in 1973-74 having purchased the same from a certain Lakshmiah who had obtained the same on darkhast in the year 1937-38. Out of the total extent comprised in Sy. No. 162, 16 acres 34 guntas is classified as phut Kharab. Out of that about 14 acres 18 guntas is a rocky area. The phut Kharab is not assessed to land revenue.

The petitioner''s case is that since he owns the cultivated portion of this survey

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number, he should be construed also as the owner of the phut Kharab including the rocky area; that he is entitled to operate the quarry; that though it was not necessary for him to have obtained any licence in this regard from the Director of Mines & Geology (3rd respondent), as a matter of caution and on the apprehension that to remove stones from private mines also a licence is required, he had applied for a licence to remove the stones and had obtained the same; that the 1st respondent, Village Panchayat, though, has no right, title or interest over this rocky area, falsely claiming that it has such a right, granted a licence in favour of the 2nd respondent to remove the stones in a. portion of the area; that, though in this connection, he had complained to the Director of Mines and Geology-against the Village Panchayat, the Director had failed to take any action; and that by its impugned resolution and the subsequent permission to the 2nd respondent to work out in a portion of the land in question the 1st respondent has deprived him of his right to enjoy his own property. Questioning the resolution of the Village Panchayat the petitioner had approached the 4th respondent, who, by his order dated 5-3-80 (An.L) has dismissed his appeal. He preferred a further appeal to the Divisional Commissioner, who, by his order dated 24-3-80, Annexure-N, dismissed the same.

5. The learned Counsel for the petitioner argues that the 1st respondent should not have invaded upon his right in the quarry in question; that respondents 3, 4 and 6 should not have acquiesced in this act of high-handedness; and that, even otherwise, assuming but not admitting, that 1st respondent had some rights over this quarry, its resolution conferring on the 2nd respondent the right to exploit the quarry deserves to be struck down since it, the 1st respondent, had not provided the public, at large, an opportunity of offering their terms in this respect.

6. The learned Counsel for the 1st respondent in his arguments denies the claim made on behalf of the petitioner that the Village Panchayat had no right over the quarry at all. It is his case that the quarry in question, which is a mine and which belonged to the State, had vested in the Village Panchayat by virtue of a notification issued by the State Government in the year 1961 under Sec. 49 of the Karnataka Village Panchayat and Local Boards Act, 1959. According to him his client had every right to get that quarry operated in order to augment its financial resources.

7. While contending that his client was the owner of this phut Kharab, the learned Counsel for the petitioner places reliance on a decision of this Court in P. Bhimachar v. State of Mysore, WP No. 3455/77 dt. 10-7-79. It is no doubt true that in that decision this Court has observed that when an entire survey number is of the ownership of an individual the phut-Kharab, forming part of that also belongs to him and that the assumption that every phut-Kharab belongs to the Government is not correct. The ratio of that decision is not applicable to the facts of this case for two reasons. Firstly, because the petitioner does not own the entire cultivable area in this survey number and therefore, he cannot be said to

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be the owner of this entire survey number including phut kharab. The other important reason is that this is not a mere phut-kharab, but a stone quarry containing "minor minerals" as defined in Section 3(e) of the Mines and Minerals (Regulation and Development) Act, 1957. Right to mines and mineral products vested in the State Government as provided in S. 70 of the Karnataka Land Revenue Act, 1964. Even under the Mysore Land Revenue Code, 1888, such mines and mineeral products vested in the State Government (Sec. 38 of the Code). By a notification (vide Notificatin No. DRL 30 VAD 61 dated 27-12-1961) issued under S. 49 of the Karnataka Village Panchayat and Local Boards Act, 1959, this quarry came to be vested in the Village Panchayat (See the order of respondents, Annexure-L). It appears, that when this matter was pending before him, the 4th respondent had made a reference to the 3rd respondent as to the right of the State Government over this area. It is stated at Annexure-L that the 3rd respondent had clarified by his letter dated 10-2-1980, that the Village Panchayat was free, to lease the quarry vested in it. In the circumstances, there is no force in the contention of the petitioner''s Counsel that his client was the Owner of this area or that he had a right to remove stones from this quarry. The learned Counsel also places reliance on an unreported decision of this Court in (R.N. Shivananje Gowda v. State of Karnataka, (1966) 2 Kar.L.J. 184 and connected cases-d.d. 10-7-79). The facts involved in those cases are distinguishable from the facts of the present case. The question as to whether the quarries involved in those cases belonged to the Village Panchayat or not was not one of the questions for decision by this Court in those petitions. The question was as to who, between the Village Panchayats concerned and other citizens, were better entitled to quarrying leases. The ratio enunciated in those cases cannot be of any help to the petitioner in the instant case.

8. In support of his contention that the quarry in question is vested in his client (the Bukkasagara Village Panchayat), the learned Counsel for 1st respondent placed before me, at the time of the hearing, a letter written by the Director of Mines and Geology to the Chairman of the Panchayat, Bukkasagara. The said letter reads as follows: "Please refer to your letter dated 20-9-80 cited on the subject.

1. There is no such General Notification resuming all the Stone quarries from the village Panchayat to Government in the State.

2. In particular the quarries from Bukkasagara village also have not been resumed from Panchayath to Government as yet."

The above letter shows that the quarry in question belongs to the Village Panchayat and is vested in it.

9. As stated above, one of the contentions on behalf of the petitioner is that assuming that the Village Panchayath has a right to lease this quarry or any portion thereof, it should have called for tenders from the public providing an opportunity to all in-tending operators and chosen the most suitable amongst

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them. On the other hand, in the statement of objections filed on behalf of the Village Panchayath, it is asserted that the lease in favour of the 2nd respondent and also in favour of one or two others have been made by the Village Panchayath strictly in accordance with the rules and regulations. It appears that persons in whose favour permissions have been granted by the Village Panchayat to work out the quarry have been working upon it since some time. It was submitted, at the time of the arguments by the learned Counsel for the Village Panchayath, that if the Panchayath feels that by calling for tenders and auctioning the right to work out the, quarry its income is going to be further augmented, it will certainly resort to that method hereafter. Noting this assurance it is hoped that the Panchayath, while assigning quarrying rights hereafter, will strictly follow the relevant rules in this connection and will also see that the Panchayath gets the maximum benefit from these transactions.

10. In view of what is stated above, I find no merit in this petition Therefore, Rule not issued, and the petition is dismissed. No costs.

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