

(1993) 04 KAR CK 0026

In the Karnataka High Court

Case No : Writ Petition Nos. 5535 to 5541 of 1992

Chandra Reddy and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 22-04-1993

Acts Referred:

Karnataka Land Reforms (Amendment) Act, 1990 — Section 94A

Citation : (1993) 2 KarLJ 622

Hon'ble Judges : M. Ramakrishna, J

Judgement

1. The petitioners in these writ petitions under Article 226 of the Constitution of India have sought for a writ of mandamus directing respondents 3 and 4 to consider their applications pending before them for regularisation of their unauthorised occupation of the Government lands and further respondents 3 to 6 not to evict them from the said lands till the applications are disposed of.

2. The facts and circumstances of the case, the lands, subject-matter of the petitions, and the parties being common, I propose to dispose of these writ petitions by the following common order.

3. Brief facts of the case necessary for the disposal of these petitions are as follows:

The petitioners are the residents of Sorehunse village, Varthur Hobli, Bangalore South Taluk and are agriculturists. Survey Numbers 21 and 23 situated in the said village are Government lands. Sy. No. 22 is a hiduvali land situated in between them. It is stated that the petitioners being not only residents of the village Varthur where the lands are situated but also insufficient holders have encroached upon the Government lands in Sy. Nos. 21 and 23 and have been cultivating them for quite some time.

After the enactment of the Karnataka Land Revenue (Amendment) Act, 1990 by Karnataka Act 2 of 1991 which came into force on 5-2-1991 inserting Section 94-A to the Karnataka Land Revenue Act, 1964 ("the Act" for short), they filed

applications for regularisation of their unauthorised occupation of the Government lands. Those applications have been pending consideration before the committee constituted for the purpose and before passing a final order on the said applications, the Tahsildar, respondent 4 herein, by his order dated 7-12-1990 in case No. NCR 54 of 1990-91, directed the Village Accountant, respondent 6 herein, to evict the petitioners from the lands they occupied unauthorisedly. This action, according to them, was illegal and therefore they filed an appeal in No. 7 of 1991 before the Assistant Commissioner seeking to set aside the said order of the Tahsildar. Thereafter, presuming that the said appeal was disposed of by the Assistant Commissioner, Chandra Reddy, petitioner in W.P. No. 5535 of 1992, filed an application for a certified copy of the order made in the appeal, for which the Assistant Commissioner, by his endorsement, Annexure E, dated 16-7-1991, informed him that the case in No. R.A. 7 of 1991-92 was clubbed in NCR. CR. 24/1991-92 with a direction to the Tahsildar to evict the unauthorised occupants from the Government lands and that therefore question of issuing any copy did not arise. This endorsement was the subject-matter of appeal before the Deputy Commissioner, respondent 2 herein, in Miscellaneous Appeal No. 3 of 1991-92 which came to be disposed of by an order, Annexure G, dated 31-7-1991 by setting aside the endorsement of the Assistant Commissioner and remitting the matter for fresh enquiry, in accordance with law. It is seen from the records that thereafter the Assistant Commissioner by his order dated 12-3-1992 dismissed the appeal and that order has not been challenged before the competent authority.

4. It is the case of the petitioners that thereafter respondents 4 to 6 took action to evict them from the lands in question. Hence they have filed these writ petitions seeking a writ of mandamus for a direction as stated above.

5. Sri T.R. Subbanna, learned Special Government Advocate appearing for respondents 1 to 6, has filed a detailed statement of objections. It is stated therein that Sy. Nos. 21 and 23 of Sorehunase village, Varthur Hobli, Bangalore South Taluk, are Government kharab lands reserved for issue of free sites for construction of houses under Janatha Housing Scheme, as found in the Record of Rights and Sy. No. 22 is a hiduvali land. The subject-matter of appeal in R.A. No. 7 of 1991-92 before the Assistant Commissioner was Sy. No. 22 and not by Sy. Nos. 21 and 23, as averred in the writ petitions. The Assistant Commissioner rightly dismissed the appeal holding that Sy. No. 22, subject-matter of the appeal, was a hiduvali land and not a Government land, that therefore question of granting that land in favour of the appellants, petitioners herein, would not arise and that the action taken by the Tahsildar in case No. NCR. CR. No. 24/91-92 to evict the unauthorised occupants from the Government lands in Sy. Nos. 20, 21, 23 and 24 cannot be interfered with.

6. It is also stated in the statement of objections that the subject-matter of appeal before the Deputy Commissioner was the endorsement issued by the Assistant Commissioner and not the order made in R.A. No. 7 of 1991-92 and

that therefore that order having not been challenged, become final and conclusive.

7. It is further stated in the statement of objections that after the dismissal of the appeal by the Assistant Commissioner, the authorities evicted petitioners from the lands pursuant to the notice of eviction dated 3-6-1991, formed sites under "Ashraya Scheme" launched by the Government of Karnataka and distributed them to persons belonging to weaker section of the society numbering about 150. Therefore, the petitioners being not at all in possession of the lands, question of issuing a direction not to evict them from those lands would not arise.

8. An additional statement of objections has also been filed on behalf of respondents 1 to 6 denying the allegations of mala fides made against respondents 4 to 6 by the petitioners and contending that they being Government Officers had no personal interest in the matter and they took action only in accordance with law and not due to any political pressure as alleged. The petitioners were evicted from the lands with due notice thereof and therefore they cannot contend that the impugned action of eviction was violative of the principles of natural justice. It is also denied in the statement of objections that the petitioners have fundamental rights guaranteed under Articles 14 and 19(1) (g) of the Constitution and that by the impugned action of eviction, those rights are infringed. It is further stated therein that since the petitioners were not in possession of the lands continuously at least for three years prior to 14-4-1990 as contemplated under Rule 108-F of the Rules framed under the Act, they were not eligible for grant of lands sought for by them. It is lastly stated that since the petitioners challenged neither the notice of eviction nor the subsequent the taking over of the possession of the lands from them, they cannot find fault with the procedure adopted for their eviction in these petitions.

9. The learned Special Government Advocate has also filed a memo on 5-11-1992 stating that these writ petitions may be dismissed as the reliefs sought for therein do not survive for consideration in view of the fact that the applications for regularisation alleged to be pending consideration have already been disposed of on 5-6-1992 and possession of the lands taken by evicting the persons found in unauthorised occupation.

9(a). I have heard learned counsel on both sides.

9(b). Sri Gopalagowda, learned counsel for the petitioners, strenuously argued mainly on the mala fides alleged in the writ petitions. He submitted that respondents 2 to 6 have been trying to evict the petitioners from the lands with intention to cause much trouble and harassment to them on the political influence. His argument is that although the entries in the R.T.C., are in favour of the petitioners and T.T. fines have been imposed for their unauthorised occupation of the Government lands, the Village Accountant, respondent 6, intentionally mentioned Sy. No. 22 in those R.T.C., for which lay no claim by

petitioners, instead of Sy. Nos. 21 and 23, subject-matter of claim all along. This, according to the learned counsel, shows intention and mala fide on respondent 6. So far as respondent 3, the Assistant Commissioner, is concerned, the learned counsel submits that the approach of the Assistant Commissioner in disposing of the appeal in R.A. No. 7 of 1991-92 in spite of the request made by the petitioners not to proceed with it until the disposal of the applications before him for regularisation clearly shows the mala fide intention on his part against the petitioners. He further submits that despite the stay order was issued by this court, respondents 3 to 6 were wrong in taking action to evict the petitioners from the lands in question. He again submits that without issuing notice and without affording an opportunity to the petitioners of being heard, the Assistant Commissioner disposed of the appeal in R.A. No. 7 of 1991-92 by his order dated 12-3-1992 which cannot be sustained, it being violative of principles of natural justice. His last submission is that the petitioners have been in continuous possession and enjoyment of the lands for quite some time and any action to evict them from the said lands would affect their fundamental rights guaranteed under Articles 14 and 19(1)(g) of the Constitution. In support of his contentions, the learned counsel has placed strong reliance on the following authorities:

- (1) ILR 1973 Kar. 538, Patel Singegowda and Others v Deputy Commissioner, Mandya and Another, (2) 1974(1) Kar. L.J. Sh. N. 275, Chettappa v T. Subbaiah;
- (3) 1975(1) Kar. L.J. Sh. N. 231, Bommegowda v Deputy Commissioner, Mandya;
- (4) AIR 1989 SC 997, State of U.P. and Others v Maharaja Dharmander Prasad Singh, etc.;
- (5) AIR 1989 SC 2097, Krishna Ram Mahale (dead) by his L.Rs. v Mrs. Shobha Venkat Rao.

On the above arguments, the learned counsel submits that this is a fit case in which a writ of mandamus as sought for may be issued.

10. Sri T.R. Subbanna, learned Special Government Advocate appearing for respondents 1 to 6, taking me through the detailed statements of objections, argued that the respondents in particular respondents 4 to 6 have acted in their capacity as public servants, without any personal interest in the matter, in accordance with law. The documentary evidence produced particularly revenue records are very much clear that Sy. Nos. 21 and 23 of Sorehunase are Government lands reserved for distribution of sites in favour of the persons belonging to weaker section. The said lands were found to have been encroached upon by the petitioners unauthorisedly; therefore the competent authority had to take action for their eviction from the encroached lands. There was no mala fide intention whatever on part of either the Assistant Commissioner in disposing of the appeal or the Village Accountant in making entries in the R.T.C. Thus he denied the allegations of mala fides against respondents 3 to 6. He further submits that the petitioners being encroachers of the Governments lands reserved for the public purpose, to wit., distribution of sites to the persons

belonging to the weaker section, have been evicted therefrom after following due process of law; therefore, they cannot find fault with the procedure adopted for their eviction, muchless they contend violation of fundamental rights under Articles 14 and 19(1)(g) of the Constitution. According to Sri Subbanna, even assuming for the purpose of argument that the petitioners were in unauthorised occupation of the Government lands, unless they complied with the conditions contemplated under the Act and the Rules in particular Section 94-A and Rule 108-F, for the purpose of grant, they would not be entitled to grant of lands as claimed by them. They have failed to do so; therefore they cannot seek for grant of such lands. The learned counsel lastly submits that the reliefs sought for by the petitioners have become infructuous for the reason that their applications sought to be disposed of have already been disposed of and of their having been evicted already from the lands. Thus he submits that these writ petitions do not survive for consideration and that therefore they may be dismissed.

11. The points, therefore, that arise for my consideration in these writ petitions are- (1) Whether the petitioners have made out a case to issue a writ of mandamus as prayed for by them.

(2) Whether the action taken by the authorities concerned to evict the petitioners from the lands in question could be justified.

(3) Whether the further action taken by the authorities to distribute sites carved out of the lands, during the pendency of the applications for regularisation of unauthorised occupation, could be justified.

(4) Whether the petitioners prove the mala fides alleged against respondents 3 to 6.

(5) What order?

12. First I proceed to consider Point No. 4 regarding mala fides alleged by the petitioners against respondents 3 to 6. By a careful consideration of the averments made in the petitions, it is seen that certain serious allegations of mala fides have been made against the Assistant Commissioner, the Tahsildar and the Village Accountant, respondents 3, 4 and 6 respectively. Those allegations have not been made against individual authorities by impleading them as individual persons. Further, the allegations are general in nature and vague. Of course, certain allegation has been made against the Assistant Commissioner that with the mala fide intention, he dismissed the appeal in R.A. No. 7 of 1991-92. But, this action on the part of the Assistant Commissioner is only by discharging his legal duties as the Assistant Commissioner. Though it is stated that in the colour of duties, the Assistant Commissioner intended to curtail the rights of the petitioner and to cause them trouble, I have not been able to gather any specific and clear allegations against him constituting mala fides as such. Secondly, it is stated that when the Deputy Commissioner set aside the order made by the Assistant Commissioner and remitted the matter for fresh enquiry, the latter never took action to dispose of the appeal in accordance with

law. I do not see any force in this contention also because the Assistant Commissioner has made clear in his order dated 12-3-1992 disposing of the appeal that regularisation or grant of land encroached by the petitioners was not called for because Sy. No. 22 subject-matter of appeal before him was not the Government land and on the other hand it was a hiduvali land. The second reason given by the Assistant Commissioner for dismissal of the appeal of the petitioner was that the Tahsildar took action to evict the petitioners from Sy. Nos. 21 and 23 which they encroached unauthorisedly and not from Sy. No. 22. This is one aspect. The second aspect is that in the writ petition it is averred that that order of the Assistant Commissioner was challenged before the Deputy Commissioner in Miscellaneous No. 3 of 1991-92. But by a perusal of the original records produced before me it is seen that what is challenged before the Deputy Commissioner was an endorsement issued by the Assistant Commissioner on 16-7-1991. No doubt, this endorsement came to be set aside by the Deputy Commissioner and the matter was remitted with a direction to dispose of the matter afresh, in accordance with law. In other words, the order of the Assistant Commissioner disposing of the appeal in R.A. No. 7 of 1991-92 was not at all challenged and that order was not set aside by the Deputy Commissioner and no order of the Deputy Commissioner setting aside the order of the Assistant Commissioner in R.A. No. 7 of 1991-92 has been produced before me. Therefore, there is a misconception on the part of the petitioners that the order of the Assistant Commissioner in the appeal was set aside and the matter remitted for fresh disposal. The endorsement issued by the Assistant Commissioner as also the order of the Deputy Commissioner in Miscellaneous Appeal No. 3 of 1991-92 are produced at Annexures E and G respectively.

13. The prayer as putforward in Miscellaneous Appeal No. 3 of 1991-92 before the Deputy Commissioner goes to show that the petitioners have sought for setting aside the endorsement dated 16-7-1991 relating to case No. NCR. CR. No. 24/1991-92. But unfortunately, they have not sought for setting aside the order made in appeal in R.A. No. 7/1991-92 on 12-3-1992 by the Assistant Commissioner. Thus, to reiterate, there is a confusion in the mind of the petitioners that they have challenged the order dated 12-3-1992 made by the Assistant Commissioner in appeal. The said order was not set aside by the Deputy Commissioner. In view of the above clarification, it is clear that the petitioners had been labouring under a confusion that the order of the Assistant Commissioner in appeal was set aside. That is not so. Therefore, the question is what are the mala fides that can be alleged against the authorities. Indeed there are serious mala fides alleged against the Assistant Commissioner and other authorities. But by a careful consideration of the nature of the allegations, I can see that neither there is basis for the mala fides nor is there any acceptable evidence constituting the mala fides alleged.

14. In a case where a person alleges mala fides, the onus lies heavily on him to prove it. In the instant case, the allegations made against the authorities are hardly sufficient to constitute legal mala fides. Further, in a case where a writ of

mandamus is sought for based on the mala fides, we must bear in mind the principles laid down by the Supreme Court in *Vice-Chancellor, Utkal University and Others v S.K. Ghosh and Others*, AIR 1954 SC 217. The Supreme Court held as follows:

"Held further that in mandamus petitions, the High Court and the Supreme Court would not act as court of appeal and consider and examine the facts for themselves. It was not the function of the court of law to substitute their wisdom and discretion for that of the persons to whose judgment the matter in question was entrusted by the law. The University authorities acted honestly as reasonable and responsible men confronted with an urgent situation were entitled to act. This was decidedly not the sort of case in which a mandamus ought to issue."

Thus it is clear that the object of the mandamus being simple to compel performance of a legal duty on the part of somebody or body of persons who is entrusted by law with that duty, the court in a proceeding for mandamus will never sit as a court of appeal so as to examine the facts or to substitute its own wisdom for the discretion in law of the person or body of persons against whom the writ is sought. Besides, the allegations of mala fides are denied by respondents 3 to 6 in their statement made on oath. So, in the light of the aforesaid decision and the facts as disclosed in the above paragraphs, I have no alternative but to hold that the petitioners have failed to make out a case against respondents 3 to 6 as to mala fides. Hence my answer on Point No. 4 is in the negative.

15. Dealing with Points 2 and 3, I will consider first whether the action taken by the authorities to evict the petitioners from the Government lands in Sy. Nos. 21 and 23 could be justified or not. Admittedly, the petitioners are the encroachers of the lands in question. There is no satisfactory evidence produced by the petitioners to show that they are in unauthorised occupation of the lands for at least a continuous period of not less than three years prior to 14-4-1990 as provided under Section 94-A read with Rule 108-F of the Rules framed under the Act. It is true that Section 94-A came to be inserted by the Karnataka Land Revenue (Amendment) Act, 1990 (Karnataka Act 2 of 1991) intending to regularise the unauthorised occupation of the Government lands by certain persons, but, however, subject to certain conditions. One of the conditions under Section 94-A is that no land shall be granted if it is situated within 18 kms. from the limits of the Corporation of the City of Bangalore. It is stated that the lands in question are situated within 18 kms. in the limits of the Corporation of the City of Bangalore. Therefore, the prohibition contained in the second proviso to sub-section (4) of Section 94-A would come in the way of the authorities to grant the land to the petitioners.

16. Another important condition for grant is, as already stated, that a person claiming grant/regularisation of his unauthorised occupation must have been in possession of the land, regularisation of which is sought for, at least three years

prior to 14-4-1990 as provided under Rule 108-F of the Rules framed under the Act, which reads as follows:

"108-F. Eligibility for grant.-No person shall be eligible for grant of land under this Chapter, unless,- (i) he has attained the age of eighteen years; and (ii) his gross annual income does not exceed rupees eight thousand; and (iii) he is a permanent resident within the limits of the Taluk in which the land is situated or in the adjacent Taluk; and (iv) he is in unauthorised occupation of land for at least a continuous period of not less than three years prior to the Fourteenth day of April, 1990:

Provided that in the case of persons belonging to Scheduled Castes and Scheduled Tribes, such period shall be not less than one year."

Now the question is whether the petitioners have fulfilled this condition for grant of lands sought for by them. In the additional statement of objections filed on behalf of respondents 1 to 6, it is categorically stated that the petitioners have not been in possession of the lands at least four years prior to 14-4-1990. This statement has not been controverted by the petitioners by producing acceptable evidence. Not even an iota of documentary evidence is produced by them to show that they have been in possession of the lands claimed by them four years prior to 14-4-1990. Therefore, on this ground also, the petitioners will have to fail.

17. The main case of the petitioners is that they are agriculturists and their avocation itself is agriculture and after encroachment they have been cultivating the encroached lands for their livelihood, they being small holders. There is a letter written by the Assistant Commissioner on 20-5-1991 addressed to the Tahsildar directing him to evict the encroachers from Sy. Nos. 20, 21, 23 and 24 of Sorahunase village on the ground that he found, on inspection on 30-4-1991 along with Surveyor, Revenue Inspector and the Village Accountant concerned, that after distributing sites under Janata Scheme, about 500 houses had already been constructed and the remaining lands in the said survey numbers had been encroached recently by certain persons who are big and sufficient landholders. This goes to show that the encroachments were made subsequent to 14-4-1990 and the purpose for which regularisation was sought for was not for agriculture. That apart, when the encroachments were subsequent to 14-4-1990, clause (v) of Rule 108-F would come in the way of grant.

18. Sri Gopala Gowda submits that the petitioners having cultivated the Government lands unauthorisedly for quite some time and having approached the competent authority for regularisation of their unauthorised occupation, the competent authority took action to evict those persons illegally before taking action under Section 94-A of the Act. This submission of Sri Gopala Gowda is not correct because by a careful consideration of the original records it is seen that there is no acceptable evidence muchless documentary evidence to show that the petitioners have been cultivating the lands in question four years prior to

14-4-1990. Neither there is any R.T.C. nor document to show that T.T. was imposed for unauthorised cultivation of the Government lands. Even though it is asserted during the course of arguments that some of the petitioners have been cultivating the lands right from the days of their fathers, etc., they failed to produce any document demonstrating the same. In the absence of any material evidence to show that they were cultivating the lands from the days of their fathers, their case for regularisation cannot be considered. Further, if the petitioners were found to be ineligible for regularisation of their unauthorised occupation, question of considering their applications by the committee constituted under Section 94-A would not arise. Of course, the original records disclose one or two documents to show imposition of T.T. fines. But they are not specific as to the date of imposition and against whom. They are therefore vague and hence they cannot be acted upon. Based upon the vague assumptions, allegations or documents, it is not proper for this court to record a finding on the question of fact that too when those allegations are denied by the respondents. Thus, the contention of Sri Gopala Gowda is rejected.

19. There is one more aspect which will have to be taken notice of by the court. Sri Subbanna, learned Government Advocate for respondents 1 to 6, drew my attention to the mahazar dated 12-3-1991 drawn in the presence of villagers. It is found in the original records. By a perusal of this mahazar and the subsequent report of the Revenue Inspector, which is available in the records, it is seen that these petitioners and another Krishna Reddy were found to have encroached lands in Sy. Nos. 21 and 23 to the extent mentioned therein. The mahazar and the report of the Revenue Inspector also disclose their annual income. Except Chinnaswamy and Sampangireddy, others have annual income of Rs. 8,000/- and above. Besides, they have enough lands of their own. Further, the surveyor along with the Revenue Inspector inspected the lands and found that the petitioners have their own hiduvali lands, that in 1972 and 1982 portions of lands in Sy. No. 20/2 measuring 5 acres 18 guntas, Sy. No. 21 measuring 23 acres 37 guntas, Sy. No. 23 measuring 9 acres 16 guntas, Sy. No. 24 measuring 10 acres 8 guntas and in Sy. No. 29 measuring 11 acres 27 guntas were converted into sites and they were distributed to houseless people under the Janata Housing Scheme, that the remaining lands in those survey numbers were kept apart for Hospital, burial grounds, schools, etc., and that the petitioners encroached the said vacant lands and began to cultivate unauthorisedly. The sketch prepared by the Surveyor is also available in the records, which discloses the respective survey numbers and the extent of the lands encroached by them. It is also seen from the mahazar as also the report of the Revenue Inspector that the petitioners removed the fourteen boundary stones fixed after the distribution of sites to the houseless people and began to cultivate by planting coconut seedlings, rose plants, etc. The rose plants were hardly of three months. During the course of the mahazar, the authorities removed the coconut seedlings and rose plants and took possession of the lands to the Government. These are the revelations found in the records.

20. As already stated, the petitioners are found to be sufficient holders. Except Chinnaswamy Reddy and Sampangi Reddy whose annual income is below Rs. 8,000/-, viz., 5,000/- and Rs. 3,600/- respectively, others have income of Rs. 8,000/- and above per annum. Therefore, clause (ii) of Rule 108-F would come in their way for grant of the lands encroached by them. Therefore, the above facts considered with reference to Rule 108-F, I am of the opinion, make it clear that the petitioners are not eligible for grant of the lands encroached by them. Therefore, the authorities have rightly taken action to evict them from the encroached lands. Sri Gopala Gowda has not been able to persuade me to take the view that the authorities were wrong in not taking action under Section 94-A of the Act for regularisation of the unauthorised lands. When these petitioners were ineligible and not entitled in law for grant of their unauthorised occupation, we cannot find fault with the authorities in taking action to evict them from the said lands. Accordingly, they have been evicted from the lands on 28-6-1991 as can be seen from the mahazar drawn to that effect, which is also available in the records.

21. Now the question is whether the contention of Sri Gopala Gowda that as on the date of the filing of the writ petitions, the petitioners continued to be in possession and enjoyment of the lands in question and that by virtue of the interim order of stay granted by this court, they are entitled to continue to be so till the committee constituted under Section 94-A of the Act disposes of their applications for regularisation, is correct. Therefore, I will have to verify whether the submission of Sri Gopala Gowda in this behalf is based on facts. The submission made on behalf of the State per contra is that the petitioners were evicted from the lands as far back as on 28-6-1991 as is disclosed from the mahazar, referred to above, whereas the interim stay of dispossession came to be granted on 3-3-1992 and that therefore the interim order is of no assistance to them. Indeed, it is pointed out in the application for vacating the interim order that the competent authority issued notice in accordance with law to the petitioners and thereafter evicted them from the lands by drawing a mahazar at the spot and that therefore the interim order made subsequent to the eviction of the petitioners was required to be vacated. In support of the application, they have produced the notice (Annexure R) dated 3-6-1991, the mahazar dated 28-6-1991 (Annexure R1) and other documents (Annexures R2 to R15). Indeed, respondents 8 to 15 along with their impleading application dated 8-6-1992 produced documents, viz., R.T.C. and possession certificates at Enclosures I to XI to show that on 6-1-1992 the State Government having carved out sites in the lands in question, allotted them to the houseless and siteless persons much before the grant of interim order. Therefore, the interim order would not come to the rescue of the petitioners. That apart, following the mahazar dated 12-3-1991 disclosing that the petitioners being sufficient holders and having annual income of Rs. 8,000/- and above, unauthorisedly encroached the lands in question, by removing boundary stones, the notice dated 3-6-1991 came to be issued to them to vacate the lands within a period of seven days. That notice, according to Sri

Subbanna, returned unserved, the petitioners having refused to receive them. Therefore, substituted service had to be taken by affixing a copy of the notice on the doors of the houses of the petitioners and thereafter on 28-6-1991 they were evicted from the lands by drawing a mahazar at the spot that day.

22. The submission of Sri Gopala Gowda in this context is that when the applications for regularisation of unauthorised occupation of the Government lands under Section 94-A of the Act were pending consideration, question of taking action to evict the encroachers from the said lands does not arise and in this case the fact the competent authority took action pursuant to the notice of eviction and evicted the petitioners from the lands cannot be believed. It is hard to believe this submission of Sri Gopala Gowda firstly because the petitioners were found to be ineligible for grant of lands occupied by them unauthorisedly. Secondly, the notice as to why action should not be taken to evict them from the lands was refused by them; therefore substituted service had to be taken. Thirdly, opportunity afforded was not availed of by them to have their say in the matter. Therefore, as contended for the State, action had to be taken in the month of June 1991 to evict them from the lands. The notice as well as the subsequent eviction have not been called in question. Sri Gopala Gowda has not been able to persuade me to take the view that the authorities have violated the procedure required for eviction of the petitioners from the lands. I have already held that the petitioners were ineligible for grant of their unauthorised occupation of the Government lands since they failed to comply with the conditions stipulated in Section 94-A of the Act read with Rule 108-F of the Rules framed thereunder. That being so, no useful purpose would be served in awaiting the decision of the committee constituted under Section 94-A of the Act on the applications of the petitioners pending before it for regularisation of their unauthorised occupation.

23. Under Section 94 of the Act, the Deputy Commissioner is empowered to evict summarily the person unauthorisedly occupying any land set apart for any special purpose or any unoccupied land which has not been alienated. This power of summary eviction has been taken away by insertion of Section 94-A by Karnataka Act 2 of 1991. But, however, the power of grant of unauthorised occupation conferred on the committee constituted under Section 94-A is subject to fulfilment of certain conditions. In the instant case, I have already pointed out that the petitioners failed to fulfil the conditions stated in Section 94-A read with Rule 108-F of the Rules. Therefore, awaiting the decision of the committee will not serve any purpose in the case and the authority competent to take action for eviction, in the circumstances of the case, has every power to evict the petitioners from the lands unauthorisedly occupied by them even during pendency of their applications before the committee constituted under Section 94-A of the Act, form sites therefore and distribute them to the weaker section following the scheme formulated by the Government in that behalf.

24. Here itself I want to deal with the contention of the petitioners that their

fundamental rights guaranteed under Articles 14 and 19(1)(g) of the Constitution are infringed for their eviction by respondents 2 to 6. First of all, it is fact that they are the encroachers of the Government lands. Therefore, they cannot claim as of right that they should not be evicted from the lands they occupied unauthorisedly. Further, I fail to understand how their fundamental rights guaranteed under Articles 14 and 19(1)(g) are affected because of their eviction from the Government lands unauthorisedly occupied by them, unless they are conferred substantial rights in that behalf by the statute. Of course, the Government has made a provision by enacting Section 94-A for grant of Government lands occupied unauthorisedly by certain persons in order to ameliorate the conditions of economically and socially backward community, however, subject to certain terms and conditions. I have already pointed out that the petitioners have failed to satisfy the conditions contemplated in Section 94-A and Rule 108-F of the Rules framed under the Act. Therefore, they are not entitled for grant of lands occupied by them unauthorisedly. If such persons are thrown out of the lands in accordance with law, they cannot contend that their fundamental rights are affected. Thus, I do not see any force in this contention also.

25. Now I will consider the several authorities relied upon by Sri Gopala Gowda to find out how far they are applicable to the case on hand. In Patel Singegowda's case, a Division Bench of this court considering the question whether before considering the application for grant of land, eviction was illegal, has held as follows:

"It would be not only proper but also illegal to direct the eviction of the petitioners before disposing of their applications for the grant of the very lands under their encroachments."

By a careful consideration of the decision in the above case it is seen that on facts the petitioners therein were found to have encroached large extents of lands and cultivated them for the past so many years. They made applications for grant of their unauthorised occupation in the year 1972 under Rule 3 of the Mysore Land Revenue (Regulation of Unauthorised Occupation of Lands) Rules, 1970 before the Deputy Commissioner. In the meanwhile, notices were issued seeking to evict them from the lands. The court held that Rule 3 provides for an application by an unauthorised occupant desiring that the land unauthorisedly occupied by him be granted to him. Rule 3 was material for the purpose of that case. It is necessary to mention here that plea was available to the petitioners therein as is available under Section 94-A of the Act. Section 94-A which was on the statute book earlier came to be omitted by Act No. 22 of 1976 and by Karnataka Act 2 of 1991 it came to be inserted again into the principal Act with certain conditions to be fulfilled by person seeking grant. Secondly, the rules framed under the Act also came to be amended by Notification No. RD 13 LGP 91, dated 9-4-1991 by which among others Rule 108-F came to be inserted with certain terms and conditions for grant of lands occupied unauthorisedly by

certain persons. Therefore, the question of eligibility as is provided under Rule 108-F did not arise in the aforesaid case. Therefore, as a condition precedent, unless the applicant complies with the mandatory requirements of Section 94-A read with Rule 108-F, question of consideration of the application for grant will not arise in this case. Such a question did not come up for consideration in Patel Singegowda's case. Therefore, on facts, the decision rendered by this court in Patel Singegowda's case is not applicable to the facts of this case.

26. In Chettappa's case, the question for consideration was, once the land was granted to petitioner in 1964, whether regularisation of the possession of persons in unauthorised occupation is or is not permissible under Section 94-A of the Act. It was pointed out that when the very land was granted to the petitioner in 1964, Government lost its title to it and thereafter regularisation of the possession of the persons in unauthorised occupation is not permissible under Section 94-A of the Act which is a later amendment and the Rules of 1970. Here we are not concerned with such a question because neither we are called upon to consider 1970 Rules nor the competency of the Government to consider the case of the applicants for regularisation of the possession of the lands already granted. Therefore, the ratio in the decision in Chettappa's case cannot be applied to the facts of the present case.

27. In Bommegowda's case, referred to above, the question arose for consideration was whether the action taken by the Tahsildar to evict the petitioners pending consideration of the applications for regularisation of unauthorised occupation under Rule 1970 was justified. Again in this case also, we are not concerned with the applications under 1970 Rules. We are concerned in this case with grant of lands under Section 94-A which came into force on 5th February, 1991 read with Rule 108-F of the Rules framed thereunder wherein eligibility as a condition precedent has been prescribed for grant of lands. Such a contingency did not arise in Bommegowda's case. Therefore, Sri Gopala Gowda cannot derive any assistance from the said case.

28. In Maharaja Dharmander Prasad Singh's case, referred to above, one of the relevant questions arose for consideration was whether the action taken by the State Government to cancel certain leases created in favour of the respondents was justified. In paragraphs 14 and 15 this question was considered and the Supreme Court held such an action on the part of the State Government would affect the interests of the respondents who were enjoying certain leasehold rights over the property of the State Government. I am afraid, the ruling of the Supreme Court cannot be applied to this case as a test case because here we are not concerned with any right arising out of lease or action to cancel such a lease. It is well-known that a citizen enjoying leasehold rights is entitled to certain rights arising out of a lease and such rights cannot be taken away without due process of law. In the instant case, no such question has arisen for consideration. Therefore, the ruling in the aforesaid case cannot be applied to the facts of this case.

29. The last decision relied upon by Sri Gopala Gowda is in the case of Krishna Ram Mahale, referred to above. The question arose in that case was whether the licensee was entitled to continue to enjoy the premises obtained on lease notwithstanding the expiry of the period of licence and the decree for recovery of possession. The Supreme Court held:

"It is a well-settled law in this country that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law."

Dealing with the right of the plaintiff who filed the suit for recovery of possession of premises upon which she had entered as a licensee to conduct the business of restaurant, having subsequently dispossessed by the licensor unlawfully and behind her back, the Supreme Court, having regard to the facts of the case, held:

".....She was entitled to decree for recovery of possession. Since she was unlawfully dispossessed it could not be said that the licence having expired long back and the plaintiff not being entitled to renewal of licence could only ask for damages for unlawful possession."

In the instant case, the question of a licensee to continue in possession of the property obtained on a licence after its expiry has not arisen for consideration. Here we are called upon to deal with the interest of the State in respect of its landed property occupied unauthorisedly by certain persons. It is well-known that sovereign power of the State with respect to its property cannot be curtailed by the act of an individual squatting on such land unless such individual conforms to the rules and regulations made by the Government for the purpose of granting right of cultivation over such land. Right of the State Government cannot be put on par with that of an individual with respect to landed property. Therefore, the decision in Krishna Ram Mahale's case also is of no assistance to Sri Gopala Gowda.

30. Viewed from any angle, I do not see any merit in the case of the petitioners. They have failed to make out a case to issue a writ of mandamus as prayed for in these petitions. I accordingly answer Point No. 1.

31. Respondents 7 to 15 have been impleaded in these petitions as necessary parties. Their case was that having regard to the policy decision taken by the Government to provide sites to siteless people of weaker section under Janata Housing Scheme (Ashraya Scheme), the competent authority formed sites in Sy. Nos. 21 and 23 of Sarahunase village, allotted them sites and put them in possession thereof by means of possession certificates produced in the case. It is on record that some of them have already constructed houses on the sites allotted to them and have been residing therein. I have already held in the preceding paragraphs upholding the competency of the authorities concerned to form sites and distribute them to the deserving people even during the pendency of the applications for grant of unauthorised occupation under Section 94-A of

the Act. I have also held that these petitions will have to fail for the reasons stated above. Therefore, the case of respondents 7 to 15 need not be gone into detail.

32. In the result, these writ petitions fail and are accordingly dismissed.

M. Ramakrishna, J., delivered the following on 22nd April, 1993:

After the judgment was pronounced, Sri Gopala Gowda, learned counsel for the petitioners, brought to my notice that certain application seeking to amend the grounds taken in the petitions had not been considered and no order passed in the course of the judgment. It is futile to consider the said application for amendment, inasmuch as even if the application for amendment be allowed, it is of no consequence. Therefore, the application for amendment of the grounds of the writ petitions is rejected.