

(2015) 10 KAR CK 0190

In the Karnataka High Court

Case No : Writ Petition Nos. 21849/2015 (KLR-RR/SUR), 28347-348/2015 (KLR-RES), 27746/2015 (KLR-RES), 27198/2015 (KLR-RR/SUR), 40436-438/2015(KLR-RES) and 34753-760/2015(KLR-RES)

Concord India Private Limited and Others

APPELLANT

Vs

Assistant Commissioner, Bangalore North Sub-Division and Others

RESPONDENT

Date of Decision : 14-10-2015

Acts Referred:

Karnataka Industrial Areas Development Act, 1966 — Section 1(3), 3(1)
Karnataka Land Revenue Act, 1964 — Section 127, 128, 129, 136, 136(2)

Citation : (2016) 2 KarLJ 227

Hon'ble Judges : Ram Mohan Reddy, J.

Bench : Single Bench

Advocate : R.V.S. Naik, Adv. for T. Suryanarayana, Advocate, for the Appellant;
D.S. Ramachandra Reddy, Spl. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—Since common questions of law and that of fact arise for decision making, with the consent of the learned Counsel for the parties, petitions are clubbed together, finally heard and disposed of by this order.

2. In all these petitions, the challenge is over the official memorandum dated 23.4.2015 whereunder the Assistant Commissioner, Bangalore North Sub-Division, Bengaluru, directed:-- (i) Tahsildar, Bengaluru East Taluk, to mutate by recording the name of "Government Forest Department" in respect of Sy. No. 1 measuring 711 acres of Kadugodi Plantation, Bidarahalli Hobli, Bengaluru East Taluk, against Column No. 9, and 12 (2) while against column 11 to record "Dinnur colony" in the RTC pahani, in accordance with Rules and regularize such entries; (ii) transfer of the said lands to the Forest Department and; (iii) liberty to the Revenue Department to exercise jurisdiction under Section 71 of the Karnataka Land Revenue Act, 1964, (for short "KLR Act"), in the event, the Forest Department does not utilize entire extent of land, in so far as left over

portion to be utilized for any public purpose and re-appropriate that portion for such public purpose as may be warranted, a deeming fiction that Forest Department had surrendered/transferred the lands to the Revenue Department.

3. The grievance of the petitioners, in common, is that the State Government exercising jurisdiction under Section 3(1) of Karnataka Industrial Area Development Act, 1966 (for short "KIAD Act") declared 148 Acres 20 guntas of land in Sy. No. 1 of Kadugodi Plantation by notification dated 4/10-8-1970 as an industrial area and by another notification dated 5/10-8-1970, declared that Chapter VII of the said Act would come into force, prior to coming into force of Karnataka Forest (Conservation) Act, 1980 with effect from 25th October 1980 and therefore, neither the revenue department of the State nor the Forest Department have any right, title or interest over the said lands. It is the further allegation of petitioners that the Assistant Commissioner had neither jurisdiction nor competence to pass the order impugned, under the "KLR Act".

4. Learned counsel for petitioners in each of the petitions, while reiterating the averments in the memorandum of writ petitions submit that on an earlier occasion, action initiated by the Forest Department claiming the said lands as reserve forest, some of the petitioners filed W.P. 7200/2008 called with W.P. 29765-66/2009, whence, by common order dated 25th May 2012, recorded findings of fact that the land in Sy. No. 1 of Kadugodi Plantation was not "reserve forest" which order, subject matter of challenge in W.A. Nos. 4283/2012 c/w 4205/2012 filed by the State is pending before the Division Bench. Learned counsel further submit that State having suffered the order, the Assistant Commissioner without applying his mind, on the basis of an order dated 13.4.2010 in W.P. No. 12322/2008 which was set-aside in W.A. No. 2650-58/2010 by order dated 18th November 2010 passed the order impugned, contrary to the findings recorded in W.P. No. 7200/2008 and connected petitions by order dated 25th May 2012, subject matter of pending writ appeals.

5. Learned counsel further submit that the order impugned suffers from an error apparent on the face of the record due to violation of principles of natural justice, in not affording an opportunity of hearing to the petitioners. In addition, it is submitted that the Assistant Commissioner without authority of law directed reserving liberty to the revenue department to invoke Section 71 of the "KLR Act", in the event Forest Department did not utilize the entire portion of the land and put to use the non-utilized portion for public purpose while deeming it to have been surrendered/transferred to the revenue Department.

6. On 13.07.2015 the following order was passed in W.P. 21849/2015:

"Sri D.S. Ramachandra Reddy, learned counsel submits that he is the Special Counsel entrusted with the present petition to represent the respondent State and its authorities.

Petitioner claims to be the lessee in possession of plot bearing No. 6 carved out of Sy. No. 1 in Block No. 73 of Kadugodi Industrial Area, Bidarahalli Hobli,

Bengaluru East Taluk, Bengaluru, admeasuring 78.548 acres bounded on the-
North by: Agricultural land and Sy. No. 1 (P);
South by: Bengaluru-Whitefield Main Road;
East by : Agricultural land;
West by: Alfred Herbert (India) Limited and KIADB Land.

According to the petitioner, the aforesaid land when sought to be taken over by the Forest Department of State of Karnataka, W.P. No. 7200/2008 was filed, whence, notice initiating proceeding under the Karnataka Forest Act, 1963, against the petitioner in respect of the said property was quashed with an observation that the land was not forest land, despite which, it is alleged that action is taken by another wing of the State Government/respondent herein to interfere with the peaceful enjoyment of the petition schedule property by the petitioner in the guise of the order dated 23.04.2015 of the Assistant Commissioner, Bengaluru North Sub Division, Bengaluru/respondent No. 1 issuing directions to the Tahsildar/respondent No. 2:-- to take immediate action to mutate the land measuring 711 acres in Sy.No. 1 of Kadugodi Plantation, Bidarahalli Hobli, in the name of Government-Forest Department; to make necessary entries in the name of Government-Forest Department in column Nos. 9 and 12(2) of RTC as per Rules and regularize the said entries; that the lands shall stand transferred to the Forest Department; to make entries in column No. 11 of the RTC to record the words "Dinnur Colony"; liberty is reserved to the Revenue Department under Section 71 of the Karnataka Land Revenue Act, 1964, in case, the Forest Department does not utilize the entire extent of land, the left over part of the land, if any such occasion to utilize any portion of the said land for any public purpose to reappropriate such part or portion of the land for such public purpose as may be occasioned and/or warranted" and; "In such a circumstance, the Forest Department shall deemed to have surrendered/transferred that such portion/part of the land to the Revenue Department." The order is signed by N. Mahesh Babu, Assistant Commissioner, Bengaluru North Sub Division.

(emphasis supplied)

The genesis of the proceeding followed by reasons as observed in the order is that pursuant to the order dated 13.04.2010, in W.P. No. 12322/2008 of this Court confirming the order dated 29.09.2006 of the Special Deputy Commissioner on the basis of the decision in a meeting of the Tahasildar of Bangalore East Taluk, Karnataka Public Land Corporation Limited, directing transfer of entries in Sy. No. 1 of Kadugodi Plantation, in the name of Forest Department by notification dated 29.05.1896.

W.P. No. 12322/2008 filed by certain persons against the Commissioner and Secretary to Government, Forest Department, Special Deputy Commissioner and Tahsildar, was to set-aside the order dated 29.09.2006 of the 3rd respondent/

Special Deputy Commissioner observing that the land claimed by the petitioners in Sy. No. 1, Block No. 43 of Kadugodi Plantation was based on possession entrusted to them by The Kadugodi Saamuhika Vyavasaya Seva Sahakara Sangha ("Sangha" for short) of which petitioners were members. It was contended that the 3rd respondent came to a wrong conclusion that the land in question in Sy. No. 1 of Kadugodi Plantation in the heart of the city and ITPL park was, infact, an industrial area. Petitioners claimed to be in occupation of the said property for over 53 years and that W.P. No. 14649/2007 when filed, acquisition of the land in Sy. No. 1 by Karnataka Industrial Area Development Board ("KIADB" for short) was upheld and therefore, question of treating the said land as forest land did not arise.

Per Contra the 3rd respondent/Deputy Commissioner in the said petition contended that Sy. No. 1 of Kadugodi was declared forest land and the Government granted permission to hand over the land to the "Sangha" whereas, that order was later on annulled by another order to resume the land to the Government.

In the circumstances, the learned single Judge framed the question as to "Whether the possession of the land handed over to the "Sangha" and in turn, to its members for cultivation and development for over several decades conferred rights on petitioners and whether the land can be resumed by Government at that distance of time and therefore, was there a need to interfere with the order of the Special Deputy Commissioner/3rd respondent?".

The learned single Judge noticed two relevant facts, one that the land in Sy. No. 1 was declared State Government land by notification dated 29.05.1896, whereas, Government Order No. AF 2715 dated 19.06.1950 released the land to the Revenue Department who assigned the land to the "Sangha". Learned single Judge further noticed that in terms of Section 2 of the Karnataka Forest (Conservation) Act, 1980, land when declared forest land, without permission of the Central Government, the question of taking over the property by revenue or any other department does not arise. Regard being had to the order in T.N. Godavarman Thirumulkpad Vs. Union of India and others, , that forest land cannot be diverted or deviated for any other purpose by the State without prior permission of the Central Government, the acquisition of the said land by KIADB was void ab initio. It was further held that the Government committed an illegality in handing over possession of the land to the "Sangha" while the members of the "Sangha" had spent huge sums of money for improving the land. Following the aforesaid observations, petition was dismissed.

That order when carried in W.A. Nos. 2650-58/2010 by KIADB, was allowed. The direction of the learned single Judge to hand over possession of the land to the Forest Department was set-aside reserving liberty to the State and the Forest Department to initiate appropriate proceedings, if they intend to recover possession of the land from KIADB which meet the ends of justice.

It appears that SLP Nos. 4089-4098/2013 by the State Government was dismissed on the ground of delay and also on merits, by order dated 22.02.2013.

(emphasis supplied)

In the light of the aforesaid orders of the Division Bench and that of the Apex Court in SLP, it is not known as to how the Assistant Commissioner in the Order, Annexure-Q, placed reliance on the order dated 13.04.2010 in W.P. No. 12322/2008 which was quashed, to come to a conclusion that the lands in Sy. No. 1 are forest lands. Either the Assistant Commissioner has no knowledge of law or there is something more than what meets the eye.

Court is informed that Assistant Commissioners are Senior Gazetted Officers of the State and have maturity in thinking, knowledge and experience and have the ability to understand directions issued by Courts and also orders passed in appeal. If that is so, then, prima facie it is not ignorance or misunderstanding, but there is something more than what meets the eye calling forth an enquiry.

Yet again, directions in the order give the impression that it is not a straight jacket formula over declaring the land as forest land to be handed over to the Forest Department, since liberty is reserved to make use of the land at a later date in exercise of power under Section 71 of the Karnataka Land Revenue Act, 1964. The said Section provides for assignment of lands for special purposes and not otherwise used without the sanction of the Deputy Commissioner. The Assistant Commissioner, sought to make use of the very same alleged forest land, for some other purpose with ulterior motive. Such an order is impermissible, while the revenue department has no business to have anything to do with forest land. The perseverance of the Assistant Commissioner for reasons undisclosed, prima-facie, again calls forth enquiry. The Assistant Commissioner, appears to me, to have the wisdom of youth, but has exercised impropriety in decision making. It is not known under what law, muchless, the provisions of Karnataka Land Revenue Act, 1964, that the Assistant Commissioner could exercise a jurisdiction to reserve liberty in case of future happening of events more appropriately, over alleged forest land. Yet again, prima-facie, order of the Assistant Commissioner is questionable.

Annexure-R is the extract of the change of entries in the mutation registers in respect of petition schedule property which forms part of the large extent of 711 acres. The order, Annexure-Q, of the Assistant Commissioner is dated 23.04.2015, while Annexure-R changing entries in the Mutation register is dated 06.05.2015, hence undue haste in the matter since Governmental agencies are known to procrastinate. Petitions before this Court have always been given a cold response by the Assistant Commissioners, Deputy Commissioners and Tahsildars in the Court's experience. Day in and day out legal officers representing State seek time in petitions for Writ of Mandamus to direct change of entry in the mutation records and such requests are pending since several years. If such petitions are languishing before this Court, it is not known as to why the

extraordinary speed in changing entries in revenue records in the present case. Prima-facie, yet another reason for an enquiry.

Sri D.S. Ramachandra Reddy, learned Special counsel for the respondents contends that petitioner is not the person to whom the order marked as document No. 2 to I.A. No. 1/2015 for impleading is addressed. Since the said order is directed against two persons who are not connected with the petitioner, hence the statement of objections calling upon the petitioner to state as to why proposed respondent No. 7/Forest Department is necessary and proper party in the absence of a challenge to the Document No. 2. According to the learned counsel, document No. 2 when not addressed to the petitioner, the persons to whom it is addressed alone could challenge the order and not the petitioner.

In response to the said submissions, Sri Nayak, learned counsel for petitioner submits that party No. 2 to whom document No. 2 is addressed is none other than the Director of the petitioner Company, though in his personal capacity. As to whether such representative is also interested in the company known as Embassy Group, there is a need to secure instructions.

Be that as it may, the fact that petition schedule property is subject matter of claim by the State Forest Department is not seriously disputed. The controversy seems to have now changed its focus from the property in question to persons to whom the notice document No. 2 to I.A. No. 1/2015 is issued. In the light of the admission of the fact that document No. 2 is issued to one party none other than the Director of petitioner Company then it is for the petitioner to explain about the other party. The author of the said order is present before Court as identified by special government counsel, and submits that he has to look into the records to find out as to what information is available over Embassy Group officials to be in possession of the petition schedule property or whether it is some property other than the petition schedule property. The question whether Sy. No. 1 from out of which the petition schedule property is carved out is a forest land as asserted by the Forest Department is no more *res integra*, although a Writ Appeal is pending against the order of the learned Single Judge holding to the contrary. The authority is trying to over reach the orders of this Court, as is evident from the pendency of Writ Appeal instituted by the very same State Forest Department against the order of this Court observing that the land in Sy. No. 1 is not forest land. Prima-facie, the order marked as document No. 2 is contrary to the order of this Court, perhaps bordering around contempt of Court.

Enough and more public time is consumed in an understanding of the case. Since all facts were necessary for a clear understanding of case of the parties a myopic view (narrow view) without going into all necessary material facts and circumstances, since parties have been litigating in the past, would lead to many unnecessary question to be decided and therefore the necessity to dwell into the relevant facts, *supra*.

If the forest department and revenue department have suffered orders of this

Court being two wings of the same State Government, the State must explain as to why such orders are being passed. This explanation should have come by now since this petition was filed on 21st May 2015 and a copy of the writ petition along with annexures was served on the advocate for the respondents and thereafter, there has been representation by the State and its authorities.

Although Sri D.S. Ramachandra Reddy, learned Special Counsel for the respondents submits that under the Writ Proceedings Rules, time is fixed for filing statement of objections, nevertheless, Rule 21(1) of the Writ Proceedings Rules, 1977, reads thus:

"21.(1) Answer if any to the rule nisi showing cause against such petition shall be made by filing into Court objections supported by an affidavit within fourteen days after the expiry of the time fixed for appearance or such earlier time as the Court may direct, and reply to the objections supported by an affidavit, may be filed by the petitioner within one week of service of a copy of the objections on him or such earlier time as the Court may direct."

Respondents received a copy of the petition with annexures on the basis of directions issued by this Court on 26.05.2015, which reads thus:

"Emergent Notice regarding Rule. Stay of further proceedings pursuant to Annexures-Q and R. The respondents 3 and 4 are restrained from interfering with the petitioner's properties."

State should have been well advised to comply with Rule 21(1) and file the objections within 14 days therefrom. That has not been done.

Respondent/State has not filed its statement of objections except for objections to I.A. No. 1/2015. In order to appreciate the averments set-out in the I.A. and also objections, thereto, there is a need to understand the real controversy between the parties requiring the State to file its objections to the petition. In that view of the matter, list on 21.07.2015 for statement of objections."

7. Ever since then, State has not filed its statement of objections in W.P. No. 21849/2015. However, Sri D.S. Ramachandra Reddy, learned Special Govt. Advocate submits that land in Sy. No. 1 of Kadugodi Plantation is and has always been a forest land, being a reserve forest and since no permission was obtained under the Karnataka Forest Conservation Act 1980 to divert forest land to industrial purpose, petitioners did not acquire absolute right, title or interest in forest land, more so, in the light of the decision of Apex Court in T.N. Godavarman Thirumulpad Vs. Union of India (UOI) and Others, . Learned counsel submits that the answer to the question as to whether land in Sy. No. 1 of Kadugodi Plantation is/was reserve forest though decided as not forest land in W.P. No. 7200/2008 and connected petitions by order dated 25th May, 2012, nevertheless, is subject matter of writ appeals pending before the Division Bench. Learned counsel hastens to add that though the Assistant Commissioner did have neither competence nor jurisdiction under the "KLR Act", has directed

recording the name of the "State Government-Forest Department" in the revenue records which in the facts and circumstances is correction of entries. Learned counsel is candid in his submission that the directions issued by the Assistant Commissioner in a loaded form are unavailable.

8. The "KLR Act" does neither invest in the Assistant Commissioner jurisdiction nor competence to issue directions to change entries in the revenue records maintained by the Tahasildar, the prescribed officer under Section 127 of the said Act. Any change is to be effected only by an order under Section 128 or 129 of the said Act in an appeal after notice to the parties to be affected and an enquiry, by the Assistant Commissioner under Section 136(2) or in a revision under sub-section (3) of Section 136 of the said Act, by the Deputy Commissioner, and not otherwise. The order impugned is not in exercise of jurisdiction under sub-section (2) of Section 136 of the Act. Even assuming that the Assistant Commissioner is vested with Appellate jurisdiction under sub-section (2) of Section 136 of the Act against an entry in the revenue record effected by the Tahsildar, recording names of parties, however, principles of natural justice require that petitioners in possession of portions of land in Sy. No. 1, are entitled to notice and an opportunity of hearing before passing the order impugned. Even otherwise, the State Government having issued notifications under Section 1(3) and 3(1) of the "KIAD Act", declared as Industrial Area the land in Sy. No. 1 following which, KIADB formed sites and allotted them to petitioners, on that score too, the Assistant Commissioner fell in error in not extending an opportunity of hearing, if not, to the petitioners but to their vendors-in- title none other than the KIADB.

9. Such reflection of a quasi judicial authority making a facilitating order which is demonstrated by order impugned. This court recorded reasons in the order dated 25th May 2001 in W.P. No. 7200/2008 c/w 29765-66/2009 in Concord India Pvt. Ltd. and others v. State of Karnataka, represented by its Principal Secretary, Forest, Ecology & Environment Department, that land in Sy. No. 1 of Kadugodi Plantation was not "forest land", which the State Government questioned in Writ Appeal Nos. 4283/2012 c/w 4205/2012 pending before the Division Bench hence, subjudice, and therefore the Assistant Commissioner of the revenue Department of the State by the order impugned has interfered without jurisdiction, which borders around contempt of court, unmindful of the legal consequence. An Authority exercising quasi-judicial functions is required, by all standards, to maintain decorum and integrity which in the facts and circumstances, is not demonstrated.

10. Suffice it to hold that the order impugned is illegal, arbitrary and is colorable exercise of power, bordering around contempt.

11. Mr. Mahesh Babu, the Assistant Commissioner, who passed the order impugned, ex facie demonstrates no knowledge of law while smacks of deliberate action obviously for considerations, unknown. It is in the interest of the State that Revenue officers of the like should not be entrusted with discharge of quasi judicial functions in the absence of aptitude to such posts unless trained in that

regard. In that view of the matter, it is for the Principal Secretary, Revenue Department, to initiate such action as is necessary on the administrative side, extend the officer reasonable opportunity of hearing and thereafterwards to take a decision over the suitability of the officer to hold posts involving exercise quasi judicial functions.

12. In the result, these petitions are allowed. The order dated 23.4.2015 of the Assistant Commissioner and all proceeding preceding thereto over initiation of proceeding stand quashed. Sequentially, order, if any, passed by the Tahsildar in terms of the directions are quashed.