

(2012) 05 KAR CK 0007

In the Karnataka High Court

Case No : Writ Petition No. 12620 of 2009 (KLR-REG)

Eshwarappa Since Dead By His LRs. (Smt Rathnamma,
Nagaraja and Umesh)

APPELLANT

Vs

The Deputy Commissioner Shimoga, The Assistant
Commissioner Shimoga Sub-Division Shimoga, The
Tahasildar Bhadravathi and Hanumanthappa

RESPONDENT

Date of Decision : 22-05-2012

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 50

Citation : (2012) 6 KarLJ 103

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : B Rudragowda, for the Appellant; Akkamahadevi, Government Advocate for R1 to R3, Sri S B Totad, For M/s. BSPS Assts. for R4, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Mr Justice D.V. Shylendra Kumar

1. Writ petition is by persons who claim to be in possession and cultivation of an extent of 1 acre 20 guntas of land in Sy No 38/23 of Sanyasi Kodamagge village, Bhadravathi taluk, Shimoga district, since 1979 or before and earlier through their predecessors. Writ petitioners are aggrieved by the order dated 25-3-2009 passed by the Karnataka Appellate Tribunal, Bangalore in Revision Petition No 305 of 2005, dismissing the revision petition and affirming the order dated 16-4-2005 passed by the Deputy Commissioner, Shimoga district in RA No 4/2003-04. Writ petitioners have sought for quashing both these orders.

2. Order dated 16-4-2005 passed by the Deputy Commissioner was in an appeal that had been preferred by the fourth respondent u/s 50 of the Karnataka Land Revenue Act, 1964 [for short, the Act] and was in turn directed against the order dated 21-2-2003 passed by the Assistant Commissioner, Shimoga sub-division in

RA No 6/2001-02, under which order the Assistant Commissioner had in turn affirmed the order dated 10/27-8-1998 passed by the tahsildar. Bhadravathi taluk in LND(1)NCR.CR.6/98-99, granting an extent of 1 acre of land in the very survey number in favour of the writ petitioner on his application in form No 50 and regularizing his unauthorized cultivation in respect of this extent of land.

3. The Deputy Commissioner having set aside this grant made in favour of the writ petitioner at the instance of fourth respondent and having remanded the matter to the tahsildar to hold a fresh enquiry and to consider the application of the writ petitioner for regularization of his unauthorized cultivation only after the tahsildar decides afresh an earlier cancellation of grant order, cancelling the grant of 1 acre 9 guntas of land in favour of fourth respondent's father, which was a grant made in the year 1977. This grant had come to be cancelled by the tahsildar as per order dated 10-11-1987 for the reason that the grantee was not actually cultivating the land and also in violation of the terms of the grant had transferred the subject land in favour of writ petitioner by way of mortgage and during spot inspection it was found that the writ petitioner was in cultivation of the land and not the original grantee.

4. It is subsequent to the cancellation of the grant in favour of the fourth respondent by the tahsildar and affirmed by the Assistant Commissioner, the writ petitioner had filed an application in form No 50 seeking for regularization of his cultivation as an unauthorized occupant of the land and had been found so by the committee for regularization of unauthorized cultivation and the tahsildar issued saguvali chit/grant certificate in respect of 1 acre of land and which was challenged by the fourth respondent before the Assistant Commissioner, but without success, as the Assistant Commissioner had dismissed this appeal as per his order dated 21-2-2003.

5. It is because this order of the Assistant Commissioner has been set aside by the Deputy Commissioner in the appeal at the instance of the fourth respondent and affirmed in a further revision by the tribunal, the present writ petition by the petitioners.

6. Appearing on behalf of the petitioners, submission of Sri B Rudragowda, learned counsel, is that the Deputy Commissioner while examining the appeal against orders resulting in grant of land in favour of the writ petitioner on an erroneous impression that the proceedings are still at large before the tahsildar in respect of cancellation of the grant in favour of fourth respondent had set aside the grant made in favour of the petitioner also and had remanded the matter to the tahsildar with a direction that the application filed by the writ petitioner in form No 50 should be considered only after the proceedings for reexamination of the cancellation of grant in favour of fourth respondent is finalized and subject to the outcome of the same.

7. Sri Rudragowda submits that this order is erroneous in the face of it, for the reason that no proceedings for examination of the cancellation of grant made in

favour of the fourth respondent, a grant which had been cancelled in the year 1987 by an order of the tahsildar and affirmed in appeal as per the order dated 2-5-1989 by the Assistant Commissioner, was at large before the tahsildar; that the proceedings in respect of cancellation of the grant of land as against the fourth respondent had attained finality way back in the year 1989; that the fourth respondent had not pursued the matter further, but some other similar persons had pursued the matter, the Deputy Commissioner under an erroneous impression that even in the case of fourth respondent the matter was before the tahsildar after cancellation order had been set aside and it is because such erroneous impression, the Deputy Commissioner has set aside the grant made in favour of writ petitioner and the order, therefore, the order of the Deputy Commissioner suffers from one such mistaken assumption and is illegal and liable to be quashed etc.

8. Appearing on behalf of the fourth respondent, submission of Sri S B Totad, learned counsel, is that under the impugned order, the Deputy Commissioner has only remanded the matter to the tahsildar for a de novo enquiry; that it is only a logical that the application for regularisation of unauthorized cultivation or any other application in respect of the land by the writ petitioner can be considered only on the resumption of the land in favour of government is finalized; that the subject land had already been granted in favour of the father of fourth respondent way back in the year 1977 and even assuming that the fourth respondent himself had not preferred an appeal, the Deputy Commissioner having, at the instance of similar other grantees whose grants had also been set aside, entertained their appeal and having set aside the order of cancellation, no harm will be caused if the case of fourth respondent is also considered and till such time the application for regularisation of his unauthorized cultivation is kept in abeyance.

9. A perusal of the impugned order and earlier orders cancelling the grant in favour of fourth respondent first by tahsildar and affirmed in appeal by Assistant Commissioner very clearly points out that in so far as the cancellation of the grant in favour of fourth respondent is concerned, proceedings had attained finality in terms of order dated 2-5-1989 passed by Assistant Commissioner vide Annexure-B to the writ petition. therefore, there was no remand and in so far as cancellation of the grant made in favour of fourth respondent is concerned, the matter was not at large before the tahsildar for any reexamination. When this is the factual position and this position is, in fact, noticed by the Deputy Commissioner also in the impugned order dated 16-4-2005, as noticed in the following terms:

the Deputy Commissioner, nevertheless, falls back on the reasoning that cancellation orders in the first instance by the tahsildar and affirmed in appeals by the Assistant Commissioner as per his order dated 2-5-1989, having been set aside by the Deputy Commissioner, that includes the cancellation order as against the fourth respondent also, and therefore the matter requires remand etc.

10. In so far as orders passed under the statutory provisions of the Act are concerned and particularly relating to orders by the committee followed up by supporting order for issue of saguvali chit by the tahsildar and appeals against that order to the Assistant Commissioner at the first instance and to the Deputy Commissioner later and possible revision to the tribunal, are all statutory orders passed by the respective statutory authorities exercising appellate/revisional jurisdiction, who act as quasi-judicial functionaries. Said orders are not in the nature of administrative orders, which can be reviewed or modified or cancelled at any point of time later by the authority who had originally passed the order.

11. In so far as the orders which are made subject matter of appeals and revisions are concerned, once an appellate order is passed and it is allowed to rest at that as between the parties, it attains finality and such orders cannot be disturbed by statutory functionaries in other proceedings against some other order.

12. In an appeal preferred by the fourth respondent before the Deputy Commissioner in RA No 4/2003-04 and directed specifically against the order dated 21-2-2003 passed by the Assistant Commissioner in RA No 6/2001-02, the Deputy Commissioner could not have, that too on an erroneous presumption, disturb the order dated 2-5-1989 passed by the Assistant Commissioner subject to condition in so far as the order relating to interest of fourth respondent, who was fifth appellant in that appeal before the Assistant Commissioner in RA No 33/1987-88, when the order relating to this appeal had attained finality and therefore cancellation of the grant in favour of the fourth respondent also had attained finality.

13. The order passed by the Deputy Commissioner obviously suffers from illegality for not only proceeding on an erroneous presumption, but in embarking to annul/set aside past orders relating to some earlier proceedings in a totally different proceedings. In so far as the part of the order against the writ petitioner, forming part of the impugned order of the Deputy Commissioner and affirmed in revision by the tribunal is concerned, it is one clearly without jurisdiction and therefore deserves to be quashed by issue of a writ of certiorari.

14. It is for this reason, this writ petition is allowed, impugned orders at Annexure-M and N are quashed by issue of writ of certiorari and regrant proceedings in favour of writ petitioner is sustained as per the order of the tahsildar and affirmed in appeal by the Assistant Commissioner. Rule issued and made absolute.