

(1981) 11 KAPT CK 0001
In the Karnataka Appellate Tribunal
Case No : Appeal 279/81 (Rev. I)

Gangappachar and Others.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 21-11-1981

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 70

Citation : (1981) 1 KarLJ 187

Hon'ble Judges : K. V. Narayana Raju, Member; R. Shankarappa, J

Judgement

Per K.V. Narayana Raju, M.-This appeal under S. 49 of the Karnataka Land Revenue Act is from the order dated 18-12-1980 passed by the learned Special Deputy Commissioner, Mangalore in Dis. LND. 1/566/80 81 extinguishing or withdrawing the Kumki privileges over Sy. No. 384/1B of Shiroor village, Coondapur Taluk in respect of Sy. Nos. 35/5E, 35/6 etc., of the appellants.

2. 2 acres 53 cents out of So. No. 384/1B was proposed to be taken over for construction of Ice Plant, Community Hall and Staff Quarters for the Fisheries Department of the State Government. Under the Madras Revenue Board's Standing Order Volume I, Order 15 Rule 40 and the Rules under the Madras Forest Act the privileges of the Kumkidar could be extinguished by the Deputy Commissioner in exercise of his discretion. The Supreme Court in *State of Mysore v. K. Chandrasekhara Adiga*, AIR 1973 SC 853, has declared that although styled as "privileges", Kumki rights are recognised by Statutory Rules and the Standing Orders. They are property rights within the contemplation of Arts. 19 and 31 of the Constitution, notwithstanding the fact that their scope is restricted and their exercise is subject to these Statutory Rules.

3. It is not denied that the Deputy Commissioner has the power to extinguish the privileges and that he can do so using his discretion. "Discretion" means the action of discerning or judging; judgment; discrimination; the faculty of discerning; the power to decide, within the limits allowed by positive rules of law, as to punishments, remedies, or costs. It is well known that discretion is to be

exercised in a sound and judicial manner capable of correction by a superior authority. A Court or authority which is empowered to affect the rights of a person is required to state reasons.

4. In the case of extinguishing or withdrawing Kumki privileges, the Deputy Commissioner must weigh the private right against public interest and when he finds that the public interest should predominate or over ride the private right he can put an end to the Kumki privileges. It is needless to say that the order he passes should be a speaking one dealing with the competing rights and how he finds that there is a public need which should outweigh the privilege of Kumkidar. We are of the opinion that in all such cases the Deputy Commissioner must give reasons and demonstrate that the privileges are being extinguished to achieve public good.

5. In the present case as a preliminary to extinguishing the Kumki privileges the Deputy Commissioner caused issue of notices to the holders of the shares in Sy. No. 35 and in the first instance notice was not served on first appellant Gangappa Achar the holder of Sy. No. 35/7A. It is agreed that the whole of Sy. No. 35 before it was sub divided enjoyed Kumki privileges within 100 Yds. of Sy. No. 384/1B. The Deputy Commissioner and his assistants appear to have thought that when the holding which enjoyed Kumki privileges in Fasli 1276 (1886 A.D.) was sub divided, any sub division which was more than 100 Yds. from the Kumki land would cease to possess such privilege. Appellants 1 and 3 preferred appeal from the order passed on 16-1-1979 and this Tribunal by judgment dated 31-3-80 in Apl. 30/80 rejected the contention that first appellant's share 37/7A situated beyond 35/7B adjacent to the Kumki land no longer enjoyed Kumki privileges, and the whole case was remanded for a decision of the matter after giving notice to all persons holding lands in Sy. No. 35.

6. After remand appellant I was not served notice personally but there is a report that since he was absent the notice was served on the land in question. It is admitted that notices to show cause against the proposed action were served on the other appellants. They have contended that they sent replies dated 14-10-1980 under certificate of posting. Such replies are not found in the record and the learned Deputy Commissioner has said that none of them appeared and in the circumstances he found no reason to pass an order different from the one passed earlier. He has said that he was confirming the earlier order dated 16-1-1979 which was set aside by the Tribunal. We should mention that the order dated 16-1-1979 also was not a speaking order and the Deputy Commissioner then had only said that the objections were untenable. There was nothing to indicate that the Deputy Commissioner had considered the rival claims of the holders and the State and had tried to adjust the right. We would have certainly set aside the order and remanded the matter once again to the learned Deputy Commissioner to consider the claim of the appellants in an objective manner and decide for himself whether public interest demanded the

extinguishment of Kumki privileges if really necessary. We have perused the record and heard the counsel for the appellants: with all the anxiety to find out if the appellants had a right to see that the privileges are not extinguished. We find enough material on record which justifies the extinguishment of the privilege.

7. On 9-11-1978 the Revenue Inspector in the presence of 45 residents of the village has drawn up the mahajar stating that there were only thorny bushes and that the trees standing were not yielding any green leaves or timber worth the name, and that the land was eminently suited for Ice Plant for the Fisheries Department and that most of the villagers were fishermen and Muslims,

8. None of the appellants filed objections. However the learned counsel for the appellants has said that some of them had filed objections even before the first show cause notice was issued and that in fairness the learned Deputy Commissioner ought to have considered those objections and taken a decision. We have perused all such objections dated 30-9-78, 6-10-78 etc. Some of the appellants and certain others have stated that their families were large and growing and that the land in question was providing green manure, that the same may be required for the passage of cattle, etc. It is not their case that this particular land is being selected with ulterior motives to victimise them. We are satisfied that the need of the Fisheries Department is more important than retaining Sy. No. 384 for providing so called privileges to the appellant. We see no reason to differ from the villagers that there were no mentionable trees providing green manure, fuel or timber to the appellants. In fact their own case is that the land may be required in future for constructing houses. The cattle can now find other ways.

9. For the foregoing reasons, we hold that there is no need to reverse the order passed by the Deputy Commissioner though we take strong exception to the manner in which the matter has been disposed of by the learned Deputy Commissioner. The appeal is dismissed.