

(1998) 11 KAR CK 0013
In the Karnataka High Court
Case No : Writ Petition No. 25114 of 1997

H. Gopala Gowda and Another

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 11-11-1998

Acts Referred:

Karnataka Land Grant Rules, 1969 — Rule 2 (15), 2 (8)
Karnataka Land Revenue Act, 1964 — Section 71

Citation : (1998) ILR (Kar) 4144

Hon'ble Judges : G.C. Bharuka, J;Chidananda Ullal, J

Bench : Division Bench

Advocate : Sundram, for K.N. Subbareddy, for the Appellant; Vidya, HCGP for R.1 to R.5 and C.G. Gopal Swamy, for R.6 to 10, 13 to 22, 24 to 29, for the Respondent

Final Decision : Dismissed

Judgement

Chidananda Ullal, J.—Two agriculturists of Channarayapatna village of Devanahalli taluk, Bangalore Rural District, had resorted to the instant Writ Petition as a Public Interest Litigation. In filing the same, they prayed for issue of a writ, Order or direction in the nature of Certioraris or any other appropriate writ to quash the Official Memorandum No. LND/SR/(1)/ 16/1976-77 dated 25.5.79, passed by the respondent No. 5 Tahsildar, Devanahalli taluk, Devanahalli, copy as at Annexure "F" to Writ Petition and also for issue of an order or direction in the nature of Mandamus directing the respondents No. 1 to 5 to consider the legitimate grievance of the petitioners as enumerated in their representations, copies as at Annexures "B" and "C" to Writ Petition and further to retain the status quo condition of the gomal land in Sy. No. 163 or for grant of any other appropriate writ.

2. We heard the learned Counsel for the petitioners Sri Sundaram appearing along with Sri K.N. Subbareddy, the learned High Court Government Pleader Smt. V. Vidya appearing for the respondent No. 1 - State and the authorities -

respondents No. 2 to 5 and Sri C.G. Gopalaswamy appearing for the respondents No. 6 to 10, 13 to 22 and 24 to 29. We have also perused the case records.

3. We feel it proper to give a brief narration of the public grievance of the petitioners aired in the instant Writ Petition in the form of PIL.

4. That, there existed reserved gomal lands to an extent of 66 acres and 13 guntas in Sy. No. 181 and an extent of 77 acres 33 guntas in Sy.No. 183 in Channarayapatna Village in Devanahalli taluk within the revenue jurisdiction (Taluk) of respondent No. 5 - the Tahsildar, Devanahalli Taluk. That, according to the petitioners there were no other lands earmarked as "gomal". That the villagers suffered for want of sufficient land for grazing their cattle. That, the respondents No. 6 to 31 who held and possessed considerable properties had made applications to the respondent No. 5 Tahsildar, seeking grant of gomal land in Sy. No. 183 and that arbitrarily, the respondent No. 5 Tahsildar had granted the lands to the respondents No. 6 to 31 by his order dated 25.5.79, copy as at Annexure "F" to the Writ Petition. The said order is under challenge before this Court, it is the grievance of the petitioners that the respondent No. 5 -Tahsildar without considering the genuineness and the legitimate grievances of the villagers and in utter disregard of the land grant rules, governing the land, had granted the subject land to the respondents No. 6 to 31 and further more, the said order came to be passed by the Tahsildar overlooking the resolution dated 19.12.77 passed by the Village Panchayat, copy as at Annexure "B" to Writ Petition. According to the petitioners, the subject land would have been used for the betterment of the community at large by earmarking the same for the purpose of construction of Hospitals, Nada Kacheri, Schools, playgrounds, and other civil amenities. That Channarayapatna is a Hobli head quarters and also a Mandal Panchayat head quarters. Therefore, they prayed that the impugned order, copy as at Annexure "F" to Writ Petition be quashed.

5. The contesting respondents No. 6 to 10, 13 to 22 and 24 to 29 represented by the learned Counsel Sri Gopalaswamy had chosen to file a detailed objection statement as against the Writ Petition. In filing the same, they denied all the contentions of the petitioners. According to them, the instant case in hand is a classic example of the "haves" preventing the "have nots" from availing the social benefits programmed by the Government in the matter of grant of agricultural lands to the landless or the land-poor. It is also submitted by them that the petitioners herein are the disgruntled residents of the village and they in fact had got filed earlier W.Ps. in W.P. Nos. 12471-12489/1979 to challenge the very same order of grant of land to the respondents No. 6 to 31 and having failed in their attempt with the dismissal of the said writ petitions, they had resorted to the instant Writ Petition yet again. It was also contended by them in their detailed objection statement that the lands were granted to the respondents No. 6 to 31, either land-poor or the land-less and the same was done in consonance with law, inasmuch as the respondent No. 5 -Tahsildar had followed all the formalities in the matter of grant of lands to the respondents No.

6 to 31 at 2 acres each for agricultural purposes and that ever since the grant of the lands, the respondents No. 6 to 31 had been in possession and enjoyment of the granted lands and they have been cultivating the same for long. For the said reasons, they prayed that the instant Writ Petition be dismissed with cost.

6. On the other side the respondent No. 1 State and its Authorities, the respondents No. 2 to 5 in filing their statement of objection had contended that the instant petition lacks bonafides. They also denied that the land granted to the respondents No. 6 to 31 was illegal. They further stated therein that if at all the land was required by the villagers for the purposes as set out by the petitioners, land is very much available in Sy.No. 181. They also denied that the respondents No. 6 to 31 were not eligible for grant of land. In para 4 of the objection statement they also stated that the respondents No. 6 to 31 and 5 other persons who have been granted with lands at the rate of 2 acres each under the impugned order were insufficient holders and landless labourers and as such, they were eligible for the grant of the land in their favour under the relevant land grant Rules. It was further contended by them that subsequent to the grant of the subject land under Annexure "F", Saguwali chits, were also issued in the names of the said grantees and further their names also came to be registered in the mutation register of Channarayapatna village during the year 1979-80 and the lands were also "phoded". They also added that the sanction was also accorded by the respondent No. 4 - Assistant Commissioner, Doddaballapur sub-division, u/s 71 of the Karnataka Land Revenue Act, 1964 vide his order dated 25.10.78, whereby the gomal land in the survey number in question came to be provided for agricultural purposes and as per the said order, an extent of 66 acres in the Sy. No. 183 in question was deemed to have become an agricultural land. In para 5 of the objection statement, the respondents No. 1 to 5 also had stated that the petitioners were guilty of suppression of fact of the filing of the earlier writ petitions bearing W.P.No. 12471 to 12489/1979 by the villagers of Channarayapatna village, challenging the very grant made by the said respondents in favour of respondents No. 6 to 31 and 5 others.

7. In para 7 of the objection statement, they also, stated that the subject land was made over to the grantees and that all the 31 grantees are in possession and enjoyment of the same with the issue of the saguwali chits in their favour. In the said circumstances, they denied that the order of grant was not given effect to by the respondent No. 5 as contended by the petitioners. For the aforesaid reasons, the respondents No. 1 to 5 also prayed that the instant Writ Petition be dismissed as against them.

8. The learned Counsel for the petitioners while urging the grounds made out in the Writ Petition canvassed the following points:

- (i) That, the respondents were not eligible for grant of the land as they have got the lands in their names" and they have got income more than Rs. 8,000/- p.a.
- (ii) That, the subject land was a gomal land, evidenced by the pahani extracts

produced at Annexure "J" to Writ Petition and that the impugned order came to be passed in total violation of the Land Grant Rules.

(iii) That, though the impugned order came to be passed in the year 1979, the subject land had not been made over to the grantees even to this day.

(iv) That, the petitioners being public spirited persons have resorted to the instant Writ Petition to safeguard the public interest of the public at large of Channarayapatna village and that the subject land would have been made use for public purposes such as Hospitals, Nada Kacheri, Schools and playgrounds and other civic amenities.

9. The learned Counsel for the petitioners to buttress his argument had also cited before us the following decisions:

(i) B. Sidramappa Vs. State of Karnataka,

(ii) B. VEERANNA v. STATE OF KARNATAKA ILR 1992 Kar. 1983

(iii) K.P. Nanjunath and Others Vs. State of Karnataka and Others, .

(iv) G.B. BIJAPUR v. STATE OF MYSORE 1967(1) Mys. L.J. 201

(v) Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, .

(vi) P.N. KAUSHAL AND ORS. v. UNION OF INDIA AIR 1978 SC 1451

10. Both the respondents No. 1 to 5 represented by the learned Government Pleader as well as the contesting respondents No. 6 to 32 have countered the above said contentions of the petitioners before this Court in filing detailed objection statement referred to above. They also argued before us in tune with their respective detailed objection statements.

11. It is to be pointed out here that having been served with the copies of the objection statements filed by the respondents No. 1 to 5 on the one hand and the respondents No. 6 to 31 on the other, they have not chosen to join issues by filing rejoinder thereto. In this context we have also to point out that the villagers of Channarayapatna village, the public spirited persons as that of the petitioners herein, had challenged the impugned order at the earlier opportunity in the year 1979 itself in filing W.P.Nos. 12471 to 12489/ 79. In connection with the instant Writ Petition before us, we have also collected the records in the said Writ Petitions. On going through the same, we have observed therein that the said writ petitions came to be dismissed for default. We do not rule out that both the petitioners herein were also behind the said move by the villagers. If their petitions have failed in the earlier round, of course for default, we do not think the petitioners herein can yet again resort to the instant Writ Petition with the very same prayer and on the very same grounds for and on behalf of the villagers, that too after long lapse of 18 to 19 years since.

12. Now to come to the merit part, we have to state here that the impugned order came to be passed by the respondent No. 5 -Thasildar as long back as in

the year 1979 and that the public spirited persons in the petition herein had come up before this Court to challenge the same almost after 19 years, that too when physical possession of the subject lands was made over to the respondents No. 6 to 31 and 5 others and further more they are cultivating the subject land for over 19 years since the year of grant and the revenue entries too have been mutated in the name of the respondents and the lands were "phoded" as contended by the respondents No. 1 to 5, the State and the Authorities and further that the respondents No. 6 to 31 in filing their detailed objection statement. Hence, even on the ground of delay and laches, the instant Writ Petition is liable to be dismissed in limine.

13. Yet another aspect of the case is that though the petitioners have made a claim that the respondents No. 6 to 31 were not eligible for the grant of the land in the hands of the respondent No. 5 as they were land-rich and that they were having an annual income of Rs. 8,000/- or more rendering themselves as ineligible for grant of the" lands in their names, they have not produced even a scrap of paper in support of such a claim made by them in resorting to the instant Writ Petition. On the other hand, the respondent No. 1 - State and the Authorities respondents No. 2 to 5 had averred in their objection statement that the respondents No. 6 to 31 and 5 others were all either insufficient holders or landless and they were eligible for grant of the subject lands and that 2 acres each was granted to them in following the Land Grant Rules. The Land Grant Rules they refer to is the Karnataka Land Grant Rules, 1964. We feel it appropriate to quote here what respondents No. 1 to 5 had stated in para (4) of the objection statement. The same reads as hereunder:

"4. The contentions of the petitioners that the respondents 6 to 31 are not eligible for grant of land is false and incorrect. It is respectfully submitted that the respondents 6 to 31 and 5 others (who are not parties in the above Writ Petition) were landless persons and they were insufficient holders of lands. Thus being eligible for the grant of lands in their favour. The respondents 6 to 31 are the residents of the village Channarayapatna. The eligibility of respondents 6 to 31 and 5 others after being examined by the then Tahsildar and after a thorough enquiry and being fully satisfied the grant is made on 25.5.79 in their favour. Pursuant to the grant, the grantees are being given Saguwali Chits in the year 1979. Subsequently, the grantees came to be in possession except respondents No. 30 and 31 of the granted land. Subsequent to the grant of the Saguwali chits, the names of the respondents have been entered in the mutation register of Channarayapatna village during the year 1979-80. Sanction was also accorded by the Assistant Commissioner u/s 71 of the Karnataka Land Revenue Act, 1964, vide its order dt. 25.10.78, appropriation of gomal land for agricultural purpose. As per this, an extent of 66 acres in Sy.No. 183 is deemed to have become an agricultural land."

14. We have got no reason to disbelieve the above said contentions of the respondents No. 1 to 5, they being the State and its Revenue Authorities having

quasi-judicial powers.

15. Let apart, we have also closely scrutinised the impugned order of grant at Annexure "F" to the Writ Petition. In that exercise, we have observed that out of the 32 persons in the list to whom the respondent No. 5 had granted agricultural lands of 2 acres each, 15 belonged to the S.Cs., 5 belonged to the S.Ts. 11 to the B.Cs. and 1 to ex-servicemen category. In this connection, we further scrutinized the land holding particulars of the 27 persons (out of 32 herein) made available at Annexure "A" to the Writ Petition. From the same, one thing is clear that they are either "insufficient holders" as defined u/s 2(8) of the Karnataka Land Grant Rules, 1964 or totally landless. It is relevant to observe here that u/s 2(8) of the Land Grant Rules, 1964, the term "insufficient holder" had been defined as a person who is not a "sufficient holder" and as per Section 2(15) of the said Rules, "sufficient holder" had been defined as a person who owns not less than 4 hectares of garden land or 8 acres of dry land or rainfed wet land. We are therefore convinced that the petitioners were eligible for the grant of land under the Land Grant Rules. Therefore it is clear that the petitioners have come up before this Court with false pleas thereto.

16. In the facts and circumstances of the case it appears to us that it is a case of heart-burning by the "haves" as against the "have-nots" or the less-haves", totally forgetting the social obligations they should have to the less fortunate ones. All the more, one cannot forget that social justice is the very Constitutional scheme of ours and that being so, in the act of distribution of the lands to the landless or the land-poor in passing the impugned order by the respondent No.5 Tahsildar, he had only acted in aid of that Constitutional scheme of the respondent No. 1 State. In giving the special sanction in the case in hand for grant of land to the respondents No. 6 to 31 and others, the State and its Authorities in fact had discharged that Constitutional obligation to the society, of which the respondents No. 6 to 31 and 5 other non-party applicants were part and parcel. In this context, we want to discuss few lines about the social justice, vis-a-vis, the social obligation of the public spirited persons and the social activists as that of the petitioners herein, as we thought it appropriate to do and befitting to the occasion.

17. The term "social justice" in the Indian context has got history and heritage. The term "social justice" had emerged from the "social injustice" in-built in our society due to its working system, thinking and prejudices. According to Justice P. Venugopal, the former Judge of Madras High Court, the "social justice" is the product of "social injustice" and that imparting social justice will bring cohesiveness by removal of the source of very disunity and disharmony in the society. In his book under the title, "Social Justice and Reservation" (at pg.1 1990 publication), Justice Venugopal had philosophically but with genuine-concern for the amelioration of the vulnerable section of the society observed, probably rightly, as hereunder:-

"Social Justice is the product of social injustice and seeks to remove social

disability by birth resulting, in social and economic inequality. It ensures equality of status, equality of opportunity and developmental facilities to all, It has a vital social content intended to promote Public Welfare. It not only provides for a just society, but also removes all patent sources of disunity and disharmony. Thus Social Justice is of great value in providing a stable society and securing the unity of India."

18. In this context, we may also recall what Dr. B.R. Ambedkar, the chief architect of our Constitution, who is well-known not only as a Constitutionalist and a Parliamentarian, but also as a Scholar and a great social reformer stated in the Constituent Assembly in the matter of social inequality in our society and its removal at the earliest. To quote it, the same reads as hereunder:

"On 26th January, 1950, we will have equality in politics and inequality in social and economic life. We must remove this contradiction at the earliest moment, or else those who suffer from it will blow up the structure of political democracy."

19. From the above, message, is clear. Let the "haves" not be intolerant, but on the other hand, act in aid for the betterment and upliftment of the "have nots" and the "less haves" bearing in top of their minds the larger interest of the society as a whole. After all society is our make, ill in it has to be removed by the society itself and by none from outside. We may add here that, poverty and squalor somewhere is poverty and squalor everywhere and the same is a bane to society and its orderly growth. It is not out of place to observe here that the slow pedaling and lukewarm attitude in the matter of the agrarian reforms in different states had led to unrest, at times leading to violence and extremist activities. Suffering mass appear to be restless and insecure. Let us read the writing on the wall. Time is ticking and running out alarmingly.

20. The above note we have added to frighten none, but by way of caution to all the concerned. In doing that, we have only shown our concern of the society we live in and to some extent bit of social frame of mind of ours, for we cannot forget for a moment that we are part of the society, no matter Judges we are, holding high Offices. We fondly hope, our discussion on the topic in a passing way may serve only as food for thought.

21. With a note on social chemistry vis-a-vis social justice, now we come back to the subject in hand. In the case before us, as it appears, it can be said with certainty that the respondents No. 6 to 31 were either the land-less or the land-poor and as such, they deserved every sympathy and support in the hands of the respondents No. 1 to 5. It is to be pointed out here that the contesting respondents categorically stated in para 2 of their counter that none of them suffered any disqualification in the matter of grant of land in the hands of the respondent No. 5 - Tahsildar, as on the relevant date, when the majority of them were marginal holders, rest of them were land-less.

22. The Learned Counsel for the petitioners Sri Sundaram had also cited six decisions referred to in para (8) supra. They are of this Court as well as of the

Apex Court. On going through the same, we do not think they are in any way relevant for the purpose of the case in hand. Therefore, we do not think it is necessary for us to advert to the same.

23. We have observed yet another contradiction in the case of the petitioners. In filing the Writ Petition, they have averred in one place that the subject land was needed for the villagers for the purpose of grazing their cattle as they all suffered for want of sufficient grazing area in the subject land, but in another place, they have averred that the subject land was needed by the villagers for the purpose of construction of hospitals, "Nada Kacheris", schools, play grounds and other civil amenities. When the former purpose is agricultural, the latter purpose is non-agricultural. Therefore, we are convinced to say with certainty that the petitioners are coming before this Court with false pleas with ulterior motives in filing the instant PLI.

24. In that view of the matter, we do not find any merit in the instant Writ Petition. The Writ Petition therefore has to fail.

25. In the facts and circumstances of the case that the poor grantees had to come up yet again before this Court, we deem it fit to award a cost of Rs. 5,000/- each as against the petitioners. Let that cost be paid by the petitioners to all the contesting respondents No. 6 to 10, 13 to 22, 24 to 29 within 6 weeks from this date. It is also added here that in the event of non-payment of the cost herein awarded on the petitioners as directed as above, the said contesting respondents are at liberty to recover the same from the petitioners in the process known to law.

26. The Writ Petition is dismissed with cost as above. Rule issued earlier stands discharged.