

(1995) 03 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 9780 of 1995

Hanumanthappa Sannappa Myadeneri APPELLANT
Vs
State of Karnataka RESPONDENT

Date of Decision : 27-03-1995

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 70

Citation : (1995) ILR (Kar) 1867 : (1995) 2 KarLJ 472

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : D.A. Udayakumar, for the Appellant; Meena Kumari, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

Hari Nath Tilhari, J.—By this Writ Petition, the petitioner has prayed for grant of a Writ of Mandamus restraining the respondents from interfering with the petitioner's right to quarry/mine and dispose of the granite found in the land mentioned in the schedule to this Writ Petition, namely, the piece of land bearing Sy.No. 98 with an area of 4 acres and 38 guntas situate in Village Arasanakeri Village in Irakalagada Hobli, Koppal Taluk, Raichur District.

2. The petitioner in this Writ Petition has asserted that he is an agriculturist and that the revenue entries stand in his name relating to his ownership of the land Sy.No.98 to an extent of 4 acres and 38 guntas.

3. The learned Counsel for the petitioner placed reliance on Annexure-A to this Writ Petition, namely, the copy of the revenue records. The entry in column-10 per se indicates the source of possession of the land by the petitioner as read and explained by the learned Counsel for the petitioner, that the land had been granted to the petitioner in the year 1978-79, by the Tahsildar, Koppal Taluk which per se shows that the land originally belonged to the Government and had been granted by or on behalf of the Government by the Tahsildar and whatever

the right the petitioner has got on that land, it is on the basis of the grant made by the Tahsildar on behalf of the Government and it is contended by the petitioner that in view of the earlier Full Bench Decision of this Court in the case of State of Karnataka Vs. Dundamada Shetty, , he is entitled to excavate the granite and other minerals of the land and the Government or Government authorities have got no right to interfere with his excavating of the granite or transporting of the same, thereby, the learned Counsel for the petitioner placed before this Court that Decision as just now mentioned.

I have applied my mind to the contentions of the learned Counsel for the petitioner. Before I proceed further, it would be just and appropriate to quote Section 70 of the Karnataka Land Revenue Act, which reads as under:

"Save as otherwise expressly provided under any law in force before the commencement of this Act or under the terms of any grant made, or any other instrument of transfer executed by or on behalf of the Government for the time being, the right to mines, minerals and mineral products shall vest absolutely in the State Government and the State Government shall, subject to the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 (Central Act No. 67 of 1957), have all rights necessary for proper enjoyment and disposal of such rights."

A bare reading of this Section per se shows the intention of the Legislature to be that as regards the Government lands which have been granted by the Government or on behalf of the Government ordinarily, the rights with respect to the mines, minerals and mineral products shall vest absolutely in the State Government and the State Government has been given right and power which are necessary for its enjoyment and disposal of such rights subject to provisions of Mines and Minerals (Regulation and Development) Act of 1957. As per scheme of that Section, the lands belonging to Government in respect of which Grant or any disposal is made by way of transfer, the right to minerals shall ordinarily vest in the State Government. A further reading of this Section clearly discloses exceptions, namely, by user of expression "save as otherwise expressly provided under any law before the commencement of this Act" (Karnataka Land Revenue Act, 1964) or "save as otherwise expressly provided in the terms of grant made or the transfer executed by Government itself etc", it means if under the terms of earlier law or the Grant, specifically to any one right to excavate or right to mines or quarry given by or on behalf of the Government, then the general principle of law to the effect that right to mines and minerals shall expressly vest in the State Government, may not apply, otherwise, if there is no case pleaded by the party to the effect that under some Special Law or under the terms of Grant itself, he had been granted the right to excavate the mines and minerals, no person, in whose favour the Grant of land has been made without any such terms as to Grant of right over minerals, can claim any right to excavate the mines and minerals from the land belonging to the Government, on the basis of simple Grant made by or on behalf of the Government granting any land to

anyone.

4. Dealing with the question of the effect of Section 70 of the Karnataka Land Revenue Act, the Hon"ble Judges constituting the Full Bench observed:

"Now remains the question as to what is the effect of Section 70 of the Karnataka Land Revenue Act, 1964. As noted earlier, on coming into force of Section 70 of the Act, rights to mines and mineral products were statutorily vested in the Government absolutely, save and except as otherwise expressly provided by any law in force before commencement of the Act."

Further dealing with the right of the pattadar, in whose favour patta had been granted by the Ex-Mysore State, their Lordships after making reference to the right which had been granted to the occupants by the State namely, Mysore State observed as under;

"These vested rights were expressly saved by Section 70 of the Karnataka Land Revenue Act which was enacted in 1964. Therefore, it must be held that even after coming into force of the Karnataka Land Revenue Act, 1964, so far as the occupants of patta lands in Ex-Mysore State Lands territory which were subsequently comprised in Karnataka State concerned, rights over the minor mineral granite found in the sub-soil of their patta lands continued to vest in them."

Applying these basic principles to the facts of this present case, I do not find any merits in the present case, for the reasons, firstly that it appears from perusal of Annexure-A, this land had been granted in favour of the petitioner in the year 1978-79. The Grant was made by the Officer of the State, namely, Tahsildar of Koppal Taluk as per entry in the revenue record and the Tahsildar must have been acting as the Officer on behalf of the Government of the State. This is not a case where, it can be said that really, the petitioner had any pre-existing right under some document of title of transfer from some authority prior to constitution of New State of Karnataka or enforcement of the Act. Secondly, there is no proof nor it has been asserted that Government granted this land and specifically provided under that Grant or transfer, the petitioner will have the rights over mines and minerals products underneath the land or any sub-soil. There is no such term nor has any been shown or proved nor the Grant is of the period prior to the coming into force of the Karnataka Land Revenue Act, the petitioner has no case as to, any Grant having been made subsequent to the coming into force of the Karnataka Land Revenue Act u/s 70 by the State Government or on behalf of the State Government by the Government authorities, conferring the right over mines and mineral products so far is concerned. That in view of the language of Section 70 as well as the law laid down by the Full Bench Decision of this Court referred above, right to mines and mineral products absolutely remains vested with the Government and as such, petitioner did not get any such right to excavate anything from the sub-soil or any mineral products of the sub-soil.

5. It is well settled principle of law as regards grant of Writ of Mandamus that person must first establish his rights and reciprocal duty to be on the part of the State or its officer, that officer has refused to perform or takes some action on behalf of or on the part of the State contrary to the petitioner's right, then only, if inspite of request being made by the petitioner to the authority or authorities, they do not take any action or do act of illegal interference with his rights. That person may be entitled to file a Writ Petition but as in the present case, the petitioner has neither got any right or title as claimed by him to excavate the granite from the land belonging to the Government irrespective of the fact that the land had been granted to the petitioner, in my opinion, the petitioner is not entitled to grant of any relief, and this Petition is without force.

Having thus considered, I hereby dismiss this Writ Petition, as the one which is misconceived and not maintainable.

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