
(2005) 09 KAR CK 0055
In the Karnataka High Court
Case No : Writ Petition No. 14048 of 2005

Holeyappa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 22-09-2005

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 67, 69, 71
Karnataka Land Revenue Rules, 1966 — Rule 108I

Citation : (2005) ILR (Kar) 5437 : (2006) 5 KarLJ 200 : (2006) 1 KCCR 11 SN

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

Bench : Single Bench

Advocate : A. Nagarajappa, for the Appellant; Bharamagouda and B. Goudar, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ Petition by persons who claim to be in unauthorised possession and cultivation of certain extents of land in Sy. No. 32 of Chikka Sakuna Village, Soraba Taluk, Shimoga District praying for issue of a writ of mandamus to the respondents to direct them to consider the application of the petitioners for regularisation of their unauthorised possession and cultivation.

2. It is the version of the petitioners that they have been in possession and cultivation of these lands for the past over 20 years; that the petitioners have also filed application in Form No. 53 praying for regularization of their unauthorised cultivation; that such applications are pending before the authorities.

3. It is further averred that on the filing of the applications the authorities had taken steps for verifying the claim of the petitioners; that the matter had progressed up-to the stage of preparing a sketch by spot inspection of the land by certain lower level officials of the office of the Taluk Surveyor, Soraba Taluk; that the Taluk Surveyor had demarcated the land identifying the land, extent available for distribution etc.. At this stage, due to certain political rivalry in the

village the applications have not been processed by the committee set up for regularising the unauthorised occupation and cultivation and under such circumstance appropriate directions be issued to compel the respondents to consider the applications and dispose of the same in terms of the provisions of Section 94A of the Land Acquisition Act, 1964 read with Rules 108 B to N comprised in Chapter XIII-A of the Karnataka Land Revenue Rules, 1966 and therefore, a writ of mandamus is necessary to compel the committee constituted for purpose of regularisation of unauthorised cultivation into action.

4. It is also the version of the petitioners that the Tahsildar, Soraba Taluk had caused issue of notices Annexure-C series dated 21.6.2004 to the petitioners calling upon the petitioners not to carry on any agricultural activities in the lands in question as there was considerable opposition in the village by the villagers that lands meant for grazing of the village cattle earmarked as gomal land was being unauthorisedly used by some persons to the detriment of the entire village; that such activities should be stopped and on such representation the Tahsildar in order to maintain law and order called upon the petitioners to stop the agricultural activities on the lands. It is at this stage petitioners have approached this Court praying for issue of a writ of mandamus. This Court while issuing notice to the respondents granted an interim order directing the respondents not to dispossess the petitioners from the land in question for a period of eight weeks, initially in terms of the order dated 28.4.2005. The said interim order was continued from time to time.

5. Respondents have entered appearance and also filed statement of objections and filed an application praying for vacating the interim order and this is how the matter had come up before this Court for consideration of the applications for vacating the interim order dated 28.4.2005, continued from time to time. The matter was heard and at the request of the learned Counsel for the petitioners as well as learned Government Pleader, is taken up for final disposal itself instead of passing orders on the interim stay.

6. In the statement of objections it is averred on behalf of the respondents that the petitioners have no locus-stand to file a writ petition and the petition itself is not tenable; that there is nothing on record to indicate that the petitioners are in unauthorised occupation and cultivation; that the said development of preparing sketch, etc., are way-back of the year 1993 and had been done at the lower level, without proper authorisation and directions; that it does not matter one way or the other nor does it create any right in favour of the petitioners. Petitioners personally have or right to seek for regularization of unauthorized cultivation in respect of a land that is the gomal land.

7. On the other hand the land which is a gomal land has been the hotbed of disputes, rivalry and quarrels amongst villagers; that villagers were using a portion of the land as burial ground for common use of the village and as the petitioners have started cultivation, many villagers have complained to the Tahsildar of Sorab Taluk, it became necessary for the Tahsildar to take action

apprising the petitioners not to carry on the agricultural activities in terms of the notices served. The action was justified and very necessary, there is no occasion for notices to be quashed, the writ petition has to be dismissed.

8. It is also averred in the statement of objections that the petitioners though have again filed Form No. 53 applications after certain changes in the law relating to regularization of unauthorised cultivation, it is found that the land in question is a gomal land.

9. I have heard Sri. Nagarajappa, learned Counsel appearing for the petitioners and Sri. Bharamagouda, learned Government Pleader appearing for the respondents.

10. The respondents have also made an application praying for vacating the interim order on the premise that the petitioners taking advantage of the interim order dated 28.4.2005, have now prevented the villagers from using the particular piece of land which had been earmarked as burial ground and this has only escalated the quarrels amongst the members of the different communities in the village; that this has become a controversial issue in the village leading to law and order problem and it is very necessary the interim order is vacated right away and the authorities are permitted to ensure that peace and harmony is maintained in the village.

11. The submission of Sri. Nagarajappa, learned Counsel appearing for the petitioners is that petitioners in fact are unauthorised cultivators for a long time; that their applications had been processed and was pending, but it is only due to certain political rivalry and due to two political factions in the village, applications are not considered; that the petitioners have a right to seek for regularization of their unauthorized cultivation in terms of the provisions of Section 94A of the Act; that even if the land is a gomal land the provisions of Rule 108-I of the Karnataka Land Revenue Rules specifically provides for diverting even such gomal land by de-reserving the extent earmarked for proposes of pasteurizing the village cattle; that even under Rule 108-I there is no prohibition for granting a land like gomal land to such unauthorised occupants and cultivators as the procedure for regularization of unauthorized cultivation in gomal lands is separately governed under Sections 71 of the Act read with Rule 97 of the Rules; that there is every scope for de-reserving the extent of gomal land if the entire extent of land that had been reserved for that purpose is not so required now and to that extent it can be regularized in favour of the petitioners; that said action can be taken even by the Deputy Commissioner himself and there is no obligation on the part of the Deputy Commissioner to seek any further permission from any other authorities as is required under proviso to Sub-rule (4) of Rule 97 as proviso (iii) to Sub-rule (4) of Rule 97 itself makes an exception of such requirement of permission etc., and therefore, the writ of mandamus can be issued to direct the authorities to regularise the unauthorised cultivation or to dispose of the applications.

12. Learned Government Pleader appearing for the respondents however submits that the land in question is gomal land earmarked for the purpose of retaining it for the grazing of the village cattle; that it is the land which is set apart for fee pasteurization in the village; that it has been done by the revenue authorities after verifying the extent of land for such requirement; that in a given case where, on facts, it is found that there is scope for de-reserving some extent of such reserved land and if the Deputy Commissioner finds justifications, he may do it; that there is no compulsion on the part of the Deputy Commissioner to take such action just because some people want some of their unauthorised cultivation to be regularised; that in the first instance, there is no right given in favour of persons like the petitioners either u/s 94A of the Act or under the Rules.

13. The land in question being a land which has already been identified and earmarked as gomal land in terms Section 71 of the Karnataka Land Revenue Act, the mandate of the provision is that the said land assigned for the purpose shall not be otherwise used without the sanction of the Deputy Commissioner, which means, the rule is that the land should be retained as gomal land and the exception is whether it can be otherwise used but subject to sanction by the deputy Commissioner again subject to de-reserving such portion of the reserved land, which is subsequently on factual verification found to be not so necessary in view of relevant developments like the cattle population of the Village having come down etc., The exception cannot be worked as the rules in all the cases where people go and just occupy such gomal lands unauthorisedly and seek for regularisation. In fact, the provisions of Section 71 has been expressly indicated to be an exception to disposal of lands or other properties belonging to the State Government. In fact, the provisions of Section 71 being exception to the Provisions of Sections 67 & 69 is very clear. Even a reading of Rule 108-I specifically indicates that the Provisions of Chapter 13-A of the Rules meant for regularisation of unauthorised occupation and cultivation, are not applicable to such lands which are earmarked for special purposes u/s 71 including lands in the nature of gunduthop. burial ground, etc., and a gomal land being one such. It is only action as provided under Rule 97(4) that can come into play and where action as indicated under Rule 97 for excluding any land, which has been described as gomal land has not been taken, no person can claim a right for regularization of his authorised or unauthorised cultivation of such gomal land and therefore, the applications of the petitioners praying for regularization in terms of Sections 94A read with chapter 13A are not tenable and are liable to be dismissed.

14. Learned Government Pleader submits that at any rate, petitioners cannot to seek a writ of mandamus from this Court to compel the respondents to consider and pass orders on applications as petitioners in the first instance have no legal right at all.

15. Learned Government Pleader further submits that such legal position apart, even factually also the record does not indicate the continued cultivation of the

lands by the petitioners; that part of the land, which was burial ground, is also sought to be possessed by the petitioners taking advantages of the interim order leading to further law and order problems in the village and therefore, the interim order is to be vacated and the writ petition be dismissed.

16. Though Sri. Nagarajappa, Learned Counsel appearing for the petitioners would contend that the petitioners are in possession of the land in question, by drawing attention of the Court to the very notices issued by the Tahsildar, Soraba Taluk, directing them not to cultivate and that by itself is an indication that the petitioners are in possession of the land, the notices cannot be construed as a supporting piece of evidence one way or the other nor is it a notice issued for evicting the petitioners. In the light of the disturbed situation in the village petitioners were asked not to carry on any further activities in the land in question and nothing more can be gathered from the notice.

17. The Provisions of the Karnataka Land Revenue Act provides for the identification of all assessable land for determining the land revenue payable, maintenance of such records and for collection of revenue to the State by the authorities under the Act. It also provides for distribution of government lands to the needy persons and to encourage cultivation as lands hitherto, which were not revenue lands, which if converted to revenue lands and assessment, it augments revenue to the government. The 1964 Act is only a successor of the various Karnataka Agrarian laws or laws governing such agricultural lands and as a measure of codification by assimilating the provisions of several such statutory laws which prevailed in the different parts of the present State of Karnataka, viz., in old Mysore area, Bombay presidency area, Madras Presidency area, Hyderabad area, etc., The said provisions in the erstwhile Mysore state were essentially contained in the Mysore Land Revenue Code, 1888. These laws were made at a time when land was available in plenty, the person cultivating lands were scarce, production of food was meagre and such persons needed encouragement for bringing more and more lands into cultivation and agricultural operations so that more food was produced to feed the hungry masses. We have come a long way since 1888 and it is almost 60 years since independence and 57th year of republic and unfortunately we have not realised the changes that have come in, not mere changes, but the vast changes that have taken place over a period of century or so after the Mysore Code was passed. But now; the scenario has undergone a total change and there is a paradigm shift, in that land has become scarce and notwithstanding this it is ironical that the statutory provisions which have been outdated and have become irrelevant are still religiously adhered to and are put into operation without much application of mind or thought.

18. Provisions of Section 69 of the Act had a very laudable object of distributing the surplus lands for the purpose of encouraging the landless people who utilise such lands for agriculture. industry or such other public utilities. Likewise, the provisions of Section 71 of the Act has still more laudable object to ensure that lands which had been assigned for special purpose would not be diverted.

Earmarking a land for free pasteurization of village cattle sub-serves the interest of the community in a country that is essentially agriculture based. It is very necessary that such facilities have to be accorded to the farmers, as farmers by themselves are not capable of growing grass or producing fodder for their cattle for want of sufficient extent of their own lands. Then cattle invariably used to stray into the neighbouring lands or forest area etc., with a view to avoid such situations, reservation for gomal land was done. Over a period of time, no doubt the number of cattle might have got reduced but villagers still remain agricultural based and farmers continue to depend on cattle. Areas available for grazing of cattle, greenery, have got reduced over all on account of vast extents of lands becoming urbanised and rapid urbanisation has not spared villages either. Non agricultural activities have proliferated and the demand for land has increased day by day. Vast extents of land which has been earmarked for such community purposes like gomal land have become the prime target of the greedy. Local politicians eye on it for their personal gains, set up people to grab such lands; applications are made by syndicates in benami and what not. Available lands are grabbed by the powerful and greedy persons and the like at the cost of community even when there is absolute need for maintaining such lands as gomal lands and to ensure that they subserve the common interest of the community. Without any application of mind or thought and at the behest of greedy political bosses, bureaucrats throw to winds the relevant statutory provisions, subvert the provisions and virtually sell away government lands in the guise of granting of lands. To further compound the situation such persons even seek aid of the Court praying for issue of directions to the respondents to legitimise their illegal activities and directions and mandamus are issued by this Court. More often than not such directions come in handy for conniving and fraud intent officials to put a seal of legitimacy for their arbitrary and illegal actions.

19. The present situation is a typical example of such a scenario. A writ of mandamus is sought for by the person claiming to be in unauthorised cultivation of gomal land, which is primarily meant for the common need of the community for the use of the cattle in the village. Instead, it is sought to be used by humans. Greed of human beings has no limit. After earmarking areas to a specified group unscrupulous people and for their personal gains political parties, political rivals set up their henchmen to grab lands. In the present case, even as submitted by the learned Counsel for the petitioner, one group sets up some people and the other group sets up some other people. Applications, rival applications, whether they are bona-fide or not are filed seeking for grant of land in the name of unauthorised cultivation, etc.,

20. Such factual background apart, even legally there is no scope for issue of a writ in the nature of mandamus at the request of the petitioners. As noticed, the land in question undisputedly is a gomal land governed by the provisions of Section 71 of the Act and Rule 97 also operates. It is not even the case of the petitioners that any part of the gomal land has been de-reserved and has become available for distribution by way of regularization of unauthorised

cultivation under Chapter 13-A of the Rules and Section 94A of the Act. On the other hand, it is the specific case of the respondents who are opposing the writ petition that no action has been taken for -de-reserving any part of this land in terms of the provisions of Rule 97(4) of the Rules. If such factual background and legal position is taken into consideration, there is no occasion for this Court to compel the respondents to consider their applications, though that might have been filed in Form No. 53 in terms of the provisions of Chapter 13-A read with Rule 94 -A of the Act, to consider the said applications for regularization as there is no scope in law to regularise.

21. Even assuming that the petitioners are in unauthorised occupation or cultivation of such lands, to regularize such unauthorized occupation the land in question has to be taken out of the sweep of the provisions of Section 71 and also Rule 97 and has to be brought within the scope and ambit of Section 94A governed by the provisions of Chapter 13-A of the Rules. Sections 67, 69 and 71 of the Karnataka Land Revenue Act, 1964 read as under:

"67. Public roads, etc., and all lands which are not the property of others belong to the Government-(1) All public roads, streets, lanes and paths, bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water mark and of rivers, streams, nallas, takes and tanks and all canals and water-courses and all standing and flowing waters, and all lands wherever situated which are not the property of individuals or of aggregate of persons legally capable of holding property, and except in so far as any right of such persons may be established, in or over the same, and except as may be otherwise provided in any law for the time being in force, are and are hereby declared to be with all rights in or over the same or appertaining thereto, the property of the State Government.

Explanation: In this section, "high-water mark" means the highest point reached by ordinary spring tides at any season of the year.

(2) where any property or any right in or over any property is claimed by or on behalf of the State Government or by any person as against the State Government, it shall be lawful for the Deputy Commissioner or a Survey Officer not lower in rank than a Deputy Commissioner, after formal inquiry to pass an order deciding the claim.

(3) Any person aggrieved by an order made under sub-section (2) or in appeal or revision therefrom may institute a civil suit contesting the order within a period of one year from the date of such order and the final decision in the civil suit shall be binding on the parties.

69. Disposal of lands or other property belonging to State Government u/s 67 Subject to such rules as may be made in this behalf, the State Government, the Divisional Commissioner, the Deputy Commissioner, the Assistant Commissioner incharge of a Taluk or Taluks and the Tahsildar, may dispose of land or other property belonging to the State Government u/s 67 or otherwise, for purposes of

agriculture, industry or any public utility and subject to the provisions of Chapter XII for the construction of buildings.

71. Lands may be assigned for special purposes and when assigned, shall not be otherwise used without sanction of the Deputy Commissioner- Subject to the general orders of the State Government, Survey Officers, whilst survey operations are preceding under this Act, and at any other time, the Deputy Commissioner, may set apart lands, which are the property of the State Government and not in the lawful occupation of any person or aggregate of persons in any village or portions of a village, for free pasturage for the village cattle, for forest reserves or for any other public purpose; and lands assigned specially for any such purpose shall not be otherwise use without the sanction of the Deputy Commissioner, and in the disposal of lands u/s 69 due regard shall be had to all such special assignments."

Rules 97 and 108-I of Karnataka Land Revenue Rules, 1966 read as under:

"97. Providing free pasturage -

(1) Government land shall be set apart for free pasturage for the cattle of each village at the rate of twelve hectare as for every hundred heads of cattle. Explanation- In calculating the heads of cattle or goats, sheep or calves or cow or buffalo shall be taken as equivalent to one head of cattle.

(2) If there is sufficient forest area in the village concerned or in the adjoining village to enable the village cattle to graze, the area to be set apart as free pasturage may be reduced correspondingly.

(3) If there is no grazing land available in a village, or the land available falls short of the extent prescribed under sub-rule (1) the deficit may be made up by setting apart Government land available in the adjacent village.

(4) The Deputy Commissioner shall determine the extent of land necessary to be set apart for free pasturage in any village. If in the opinion of the Deputy Commissioner the extent of pasturage should exceed the minimum prescribed in Sub-rule(1) he may so set apart such larger extent as may be necessary. If on the contrary he considers that the area already so set apart is much larger than what is really required he may reduce it to the prescribed minimum. Where, he considers that the extent of free pasturage may be reduced below the prescribed limit, he should do so only after obtaining the prior permission of the Divisional Commissioner provided that no such permission shall be necessary where the reduction below the prescribe limit is for the purpose of;

(i) distribution of house sites to the site less person; and

(ii) grant of land to persons belonging to Scheduled Castes and Scheduled Tribes, for agricultural purposes, who are ordinarily residents of such village. (iii) regularization of unauthorized cultivation under Chapter XIII-A

108-I Certain lands not to be granted-Notwithstanding anything contained in this

chapter, lands assigned for special purposes u/s 71 of the Act, and lands described in revenue records, as Devarakadu, Urduve, Gunduthop Tankbed, Phut Karab Kharab halla, datereserve, burial grounds and such lands, which in the opinion of the Government is required for public purpose, shall not be granted; Provided that the provisions of this rule shall not apply to lands set-apart for free pasturage u/s 71 of Karnataka Land Revenue which will be governed by Rule 97."

(Underlining Supplied)

22. There is neither any occasion to quash notice as the petitioners have only been asked not to carry on their activities, as such activities had hitherto created law and order problems in the village and was a hurdle to maintain peace and tranquility in the village nor is there any occasion for issue of a writ in the nature of mandamus as the petitioners have no legal/statutory right in their favour. Writ Petition has to be dismissed.

23. Respondents are directed to take further action in accordance with law in pursuance of the notices they have issued to the petitioners. It is specifically made clear that a writ of mandamus cannot be issued from this Court to direct the respondents to regularise any unauthorised cultivation of any gomal land or any other reserved land which has been reserved under the provisions of Section 69 of the Karnataka Land Revenue Act. No writ lies for issuing directions to the Government or the officials of the Government to compel them to act contrary to the statutory provisions. Respondents are directed to ensure that if any standing crop was there, it is harvested and the proceeds given to such persons who had raised the crop and to ensure that henceforth the land is retained as a gomal land; that no unauthorized encroachments are allowed on the land and land is preserved for the common utility of the community of the village. It is hereby directed that the respondents are bound to maintain the land as gomal land.

24. Interim order earlier granted is vacated. Writ petition is dismissed.

25. The Registry is directed to forward copies of this order to all the Deputy Commissioners in the different districts of the State, the Secretary to Government, Department of Revenue and the Chief Secretary, Government of Karnataka to ensure necessary follow up action, in the light of the legal position as indicated in this order.