

(2000) 10 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 7238 of 1988

H.T. Siddappa and Others

APPELLANT

Vs

S. Gangappa and Others

RESPONDENT

Date of Decision : 09-10-2000

Acts Referred:

Mysore Panchayats Acquisition and Transfer of Movable and Immovable Property
Rules, 1960 — Rule 6
Mysore Village Panchayats and Local Boards Act, 1959 — Section 200, 206, 50

Citation : (2001) 1 KCCR 101

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : G. Lingappa, for the Appellant; A. Padmanabhan, A.G.A. for Respondents 16 to 18, M.P. Eshwarappa, for Respondents 1 to 11 and 13 to 15, K.G. Nayak, for Respondents 1 to 3 and G.S. Visweswara, for Respondents 12(a) to (e) and Respondent 15, for the Respondent

Final Decision : Dismissed

Judgement

V. Gopala Gowda, J.—The Petitioners are residents of Yerehosur village in Chickmagalur District. They have filed this writ petition seeking to quash the order at Annexure-F dated 9-11-1987 passed by the Divisional Commissioner and a direction is sought to the 18th Respondent-Mandal Panchayat not to act upon the resolution at Annexure-B dated 21.10.1982.

2. In an extent of 1 acre 24 guntas of land in Sy. No. 56/1 of yerehosur Village, certain sites had been formed and by Resolution dated 15.12.1958 the Gram Panchayat decided to allot the same to the villagers. In the year 1982 the Petitioners filed a petition before the Assistant Commissioner alleging that the sites had been allotted to the close relatives of the then chairman. Upon verification of records and spot inspection, the Assistant. Commissioner by his order at Annexure-D dated 12.8.1983 directed distribution of sites only in an extent of 35 guntas of land and to reserve the remaining portion of land for play ground. Against that order Respondents 1 to 15 herein filed an appeal before the

Divisional Commissioner u/s 206 of the erstwhile Karnataka Village Panchayats and Local Boards Act, 1959. The said appeal was allowed and the order of the Assistant Commissioner was set aside. The Petitioner are seeking to quash the said order.

3. Detailed statement of objections is filed on behalf of contesting Respondents 1 to 15. Having perused the same, I am constrained to hold that the Petitioners are not entitled to the reliefs sought for in this writ petition for the reasons recorded hereinafter.

4. Apart from the prayer to quash the order of the Divisional Commissioner at Annexure-F, the Petitioners have also sought for a direction not to give effect to the resolution at Annexure-B is dated 21.10.1982 by filing this writ petition in the year 1988 after a lapse of 6 years. In paragraph 6 of the writ petition the Petitioners have stated that "in the year 1982 this fraudulent act of the Respondents 1 to 15 has come to light". Petitioners have not assigned any reasons for the delay in approaching this Court after a lapse of 6 years from the date of Knowledge of the alleged fraudulent act. The writ petition is liable to be dismissed on the ground of delay and laches.

5. I have perused the impugned order at Annexure-F. It is a well-considered order. The Divisional Commissioner has assigned valid, plausible and cogent reasons for setting aside the order of the Assistant Commissioner. In fact, the Divisional Commissioner had rightly quoted the statement of Assistant Commissioner that "I recommend that the sites should not be given to the proposed persons to hold that if the order was passed u/s 200 of the Act, it does not meet the requirements of the said provision. In fact, the Assistant Commissioner has no authority to make such a recommendation at all. The Divisional Commissioner was right in setting aside such an order and no fault can be found with it.

6. The Divisional Commissioner has also found fault with the last sentence in the order of Assistant Commissioner to the effect "the remaining 35 guntas of land may be distributed as free sites to siteless and houseless families or it may also be put to fresh auction and sold to private persons if no sites less person is found". The Assistant Commissioner has totally ignored the fact that the land was acquired for distribution of sites to the persons from whom the compensation amount for the land acquired had been collected and paid to the land owner. It was for the Gram Panchayat to take a decision in respect of its properties and Assistant Commissioner has no authority or power to issue the aforementioned direction. Virtually the Assistant Commissioner has exceeded his jurisdiction while passing the order at Annexure-D and the Divisional Commissioner has rightly set aside the same. Since the order passed by him is legal and valid, the same cannot be quashed at the instance of the Petitioners.

7. The contention of Mr. G. Lingappa, learned Counsel for the Petitioners that the Resolution at Annexure-B is contrary to Mysore Panchayats (Acquisition and

Transfer of Movable and Immovable Property Rules, 1960.

Section 50 of the Act and Rule 6 of the rules is wholly untenable. Such a contention was not raised in the writ petition. More over, the allottees of the sites are in possession and enjoyment for the last several decades. At this juncture the settled position need not be disturbed.

8. The further contention of learned Counsel for the Petitioners that the order of Assistant Commissioner is not appealable, is not tenable. Since sites had been cancelled by the Assistant Commissioner in his order, appeal was rightly filed before the Divisional Commissioner and in the appeal the order of the Assistant Commissioner was set aside. In the circumstances, this Court declines to exercise its extraordinary jurisdiction especially in view of the fact that the matter is of 50 years old and matters have to be allowed to settle atleast at this juncture.

9. Even on merits of allotment of sites is concerned, it is to be noted that Annexure-R1 is the resolution of the Gram Panchayat dated 20.8.1950. It reveals that a decision was taken that sites should be allotted to the applicants after collecting the compensation amount payable to the land acquired. Annexure-R2 contains the receipts for having paid the said amount by the allottees of the sites. By another resolution as per Annexure-R4 dated 1-12- 1958 the Gram Panchayat resolved to give Hakkupatras to the allottees. It was followed by another Resolution dated 21.10.1982 vide Annexure R-7 (Annexure-B) which is sought to be quashed by the Petitioners. The basis for Annexure-B is Annexure-R1 which is dated 20.8.1950. Petitioners have not sought for quashing of the same. Even if Annexure-B is quashed, Annexures R-1 dated 20.8.1950 and Annexure R-4 dated 1.12.1958 remains in force. Thus, mere quashing of Annexure-B does not serve the purpose.

10. Viewed from any angle, the Petitioners are not entitled to the reliefs sought for in this writ petition and the petition is liable to be dismissed for the reasons recorded above.

11. Accordingly, this writ petition is dismissed.