

**(1999) 07 KAR CK 0011**

**In the Karnataka High Court**

**Case No :** Writ Petition No"s. 38521 and 38522 of 1998 connected with Writ  
Petition No"s. 38523 to 38526 of 1998

K. Jayamma and Others

APPELLANT

Vs

Tahsildar and Another

RESPONDENT

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**Date of Decision :** 02-07-1999

**Acts Referred:**

Karnataka Land Revenue Act, 1964 — Section 128 (4), 129, 25  
Karnataka Land Revenue Rules, 1966 — Rule 65, 66, 67

**Citation :** (1999) ILR (Kar) 3250 : (1999) 5 KarLJ 554

**Hon'ble Judges :** T.N. Vallinayagam, J

**Bench :** Single Bench

**Advocate :** Sri M.R. Achar, for the Appellant; Sri B. Veerappa, High Court  
Government Pleader, for the Respondent

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## **Judgement**

1. In these batch of writ petitions, the prayer made by the petitioners is to direct the respondent 1-Tahsildar, Anekal Taluk, to enter the names of petitioners in the mutation register and record of rights in respect of schedule mentioned lands.

2. The case of the petitioners are that they are residents of Jayanagar, Bangalore-11 and they are entitled to purchase agricultural lands under the provisions of Karnataka Land Reforms Act and there is no bar against them for purchasing agricultural land. The petitioners under various registered sale deeds registered on different dates which are detailed in the petition have purchased and on the basis of sale deeds they applied to first respondent to enter their names within the meaning of Sections 128(4) and 129 of the Karnataka Land Revenue Act, 1964 and the officer declined to enter their names. Therefore, the writ petitions are filed.

3. It is contended by the learned Advocate Mr. Achar that without going into the validity of the sale deeds, once intimation of registration of sale is sent to the first respondent, it is their primary duty to enter the name in the register and they cannot avoid to perform the duty which is imposed on them by statute and

law. In the statement of objections filed by the Government, it is contended that on receipt of J-form it is form of intimation of registering of sale deed the authorities found that the lands are Government lands and said lands were not granted to the vendors of petitioner. It appears respondent has submitted report in this connection to the Deputy Commissioner to initiate action in connection with the bogus entries and they are pending consideration before the Deputy Commissioner. The Special Deputy Commissioner has already initiated proceedings by issuing notice to the vendor of the petitioner. It is further submitted that the entries are bogus entries found in the name of vendor of the petitioner and when the very same entries are subject-matter before the Deputy Commissioner the entry cannot be made in the mutation register. In the rejoinder filed by the petitioner, it is submitted that the lands were granted to the predecessors of the vendor of petitioner decades back in 1935-36 and 1939-40. Necessary entries had been made in the revenue records and on the basis of revenue entries the petitioners have purchased lands in question from the vendors who are legal heirs of the original grantees.

4. The respondent is now raising objections that grants were made in collusion with revenue authority which the petitioners are unaware. It cannot be said that Revenue Department was ignorant of the grant and enjoyment of the land by the grantees and their legal representatives till the petitioners obtained sale deed. The defence taken in the statement of objections is only out of extraneous consideration and to harass the petitioners. Written endorsement rejecting the request of the petitioner has been sent to the petitioner. It is further submitted that question raised in the statement of objections are outside the scope of provisions of Section 128 of the Karnataka Land Revenue Act. Merely because the authorities have issued some notices making some wild allegations, it does not prevent the respondent to perform statutory duty cast on him. Such question has to be raised before appropriate forum and not in proceedings under the provisions of Chapter II of the Land Revenue Act. This High Court in various decisions has held that such questions cannot be raised by the Tahsildar or the other authority acting under this chapter. Even otherwise, it is submitted that the making of mutation of entries does not affect the right of the authorities, if any, to agitate the same.

5. Heard Mr. Achar for the petitioner as well as the Government Pleader.

6. The submission made by Mr. Achar was that his clients have made claim upon the entries made in the mutation register which according to him is available in 1935 onwards till date. If really the entry was made on wrong or bogus basis it should have been rectified long ago and they cannot wake up at the time of registration of sale deed is taken up for entry of mutation in the registers. Accordingly, they have frankly said that if the authority has right to question the grant, it is always open to them, but they cannot act de hors the provisions of Sections 128 and 129(4) and authorities are bound to follow the procedure and the law laid down. They cannot independently raise question, certainly not within

the meaning of Karnataka Land Revenue Act. The learned Government Advocate would on the other hand contend that the orders are about to be passed in the matter by the Deputy Commissioner. I do not know how such orders could be passed. Therefore, according to him, once the Government comes to the conclusion that there are bogus entries and their grants are not available on record, they are entitled to proceed on to find out the truth or otherwise of the entries.

7. The only question to be decided in these batches of writ petitions is:

"Whether the Government, even if they find that there is something wrong in the original entries made about 60 years ago, refuse to act under Sections 128(4) and 129 of Karnataka Land Revenue Act?"

Section 128 contemplates acquisition rights to be reported. The word used u/s 128(1) is "purchase" and it is mandatory on the person who purchases such property shall report orally or in writing, this acquisition of such right to the prescribed officer of the village. Now Section 128(4) contemplates read with Rules 63 and 64 which are extracted separately, that on receipt of a document for registration as acquisition of any right it is mandatory on the part of the registering authority to make a report and mandatory on the part of the prescribed officer to enter in the register of mutation any such report received. The failure of the registering authority to report and the prescribed officer to make entries cannot be allowed to prejudice the purchaser.

"Section 128(4): "The registering authority shall make a report of the acquisition of the right to the prescribed officer".

Rule 63: Registrar and Sub-Registrar to send intimation slips to the Village Accountant through the Tahsildar.

Rule 64: Publication of entries in mutation register.--(1) On receipt of intimation slips in Form 10 and as soon as intimations or information in Forms 19 and 20 are received the mutation shall be entered in chronological order of receipt, in Register of Mutations in Form 12 to be maintained for the purpose for each village.

(2) After the entry is made in the mutation register, a complete copy of the entries in the mutation register shall be prepared and exhibited by Village Accountant in the Chavadi for a period of thirty days".

Section 129(1) contemplates the prescribed officer shall enter in the Register of Mutations every report made to him. Section 129(2) contemplates that after making an enquiry the entry shall be published in a conspicuous place in the chavadi and intimation shall be given to all the persons concerned. Section 129(3) contemplates "should there be any objection to any entry made under sub-section (1) in the Register of Mutations it should be made either orally or in writing to the prescribed officer, it shall be the duty of the prescribed officer to enter the particulars of the objections in the Register of Disputed Cases".

Therefore, it is clear now that the Government wants to put the cart before horse. They should allow the entry to be made u/s 129(2) and after due publication they can object to the same and convert the entry into disputed case, then embark upon the enquiry as mentioned in sub-clauses (4), (5), (6) and (7). In fact, Rule 63 also clearly mentions that the Registrar or Sub-Registrar shall on receipt of information send to the Tahsildar, daily intimation slips in Form 10 of all transactions relating to lands registered in his office, compiled separately each village, from the Registrar, the Tahsildar shall cause the slips to be entered in register. Rule 64 contemplates entering in chronological order and then only under Rule 64(2) such copies of the entries in the mutation register shall be exhibited by the Village Accountant in the chavadi for a period of 30 days. If there is any objection, under Rules 65, 66 and 67 such objections can be certainly looked into and dealt with in accordance with law by the authorities. Therefore, the present objections made by the Government-respondent cannot be sustained. They have no discretion u/s 129(1) to refuse to register the entry itself because the word used is "shall". Their power and force can come into play only after an entry is made in the Register. Therefore, there can be no difficulty in ordering the writ petitions and granting the prayer therefore.

8. Incidentally, it is brought to my notice by Mr. Achar the dictum of this Court in *Sri Anna Rao and Others Vs. Sri Gundareddy and Others*, , which is extracted below:

"It is not permissible for the Revenue Officer to order for correction of the entries in the Record of Rights and Pahanies by deleting the names of the petitioners and in its place, by entering the name of the State Government after about 43 years from the date of the entry made in the revenue records, in exercise of the power conferred on him u/s 25 of the Act.

The names of the petitioners continued to exist in the Record of Rights and Aphanites ever since the year 1950-51 up-to-date. The period of limitation to claim adverse possession against the State is 30 years. Even assuming that Section 25 of the Act confers power on the second respondent to direct rectification of entries in the revenue records, the said power was required to be exercised by the second respondent within a reasonable time from the date of the entry made in the revenue records entering the names of the petitioners. It is well-settled principle of law that when power is conferred on an authority to effectuate a purpose, it has to be exercised in a reasonable manner and the exercise of power in a reasonable manner inheres the concept of its exercise within a reasonable time".

Apart from that, the Division Bench of this Court in Writ Petition No. 6169 of 1997 has observed that the powers for cancellation of a grant cannot be exercised after serious lapse of time. In that case, the Division Bench has referred to the dictum of Supreme Court in *The State of Gujarat Vs. Patil Raghav Natha and Others*, , which is to the following effect:

"The power of the Commissioner to revise order u/s 65 is also covered by limitation. The power must be exercised within few months and Commissioner himself also gives reason for his conclusion".

In the light of these decisions, according to Mr. Achar, the Government cannot even say that the entry made about 60 years ago is a fraudulent or bogus entry. The dicta is certainly binding on the authorities. I think in my opinion there is considerable force in the submission made by the learned Senior Counsel and I am confident that the Deputy Commissioner before embarking upon the enquiry should give notice to the parties and shall keep in mind the above dicta.

9. It is also equally made clear, that liberty is open to the Government to initiate whatever action they deem fit to take under law and necessary as circumstances may warrant. But any action if taken shall be after giving due notice to the present petitioners and not merely to their vendors.

10. In this view, writ petitions are allowed and authorities are directed to make entry u/s 128(4) of the Karnataka Land Revenue Act.