

(1975) 11 KAR CK 0013
In the Karnataka High Court
Case No : Writ Petition No. 1369 of 1974

Kenche Gowda

APPELLANT

Vs

The Karnataka Revenue Appellate Tribunal and Others

RESPONDENT

Date of Decision : 17-11-1975

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Land Revenue Act, 1964 — Section 3, 94, 94 (3)

Citation : AIR 1976 Kar 127 : (1976) ILR (Kar) 637 : (1976) 1 KarLJ 124

Hon'ble Judges : K. Jagannatha Shetty, J

Bench : Single Bench

Advocate : S.K. Venkataranga Iyengar, for the Appellant; N.V. Ramachandra Rao, for the Respondent

Judgement

1. Kencke Gowda, the petitioner, wants to repair a dilapidated Gokatte situate in S. No. 49 of Anammahalli village, Kanakpur taluk, by raising a Thope in about two acres of land, for the use of men and cattle. He applied to the Deputy Commissioner for permission and the Deputy Commissioner thereupon consulted the local Panchayat and subordinate revenue officials. All of them had no objection for the petitioner being given permission for the Philanthropic act. On 9th April , 1962, the Deputy Commissioner granted the required permission subject to the condition that the grantee should, not have any personal interest in such Katte and Thope except collecting usufruct from the trees thereon. The said order was set aside by the Divisional Commissioner in appeal preferred by respondents 3 to 5 before me. The Divisional Commissioner directed that the land being gomal land should be preserved as such and the respondents should be evicted therefrom. The petitioner took up the matter in an appeal before the Tribunal. The Tribunal allowed the appeal setting aside the order of the Divisional Commissioner. Against the order of the Tribunal, the petitioners preferred Civil Petition No. 156 of 1967 in this Court under Article 227 of the Constitution. While dismissing the petition this Court observed that if the land in the unauthorized occupation of respondents 3 to 5 was the very land granted, to the petitioner for

raising Thope and constructing Gokatte, the revenue authorities might seek to evict them, with an opportunity to put forward their contentions. Pursuant to the above observation, the Tahsildar issued notice calling upon respondents 3 to 5 why they should not be evicted from the land. After holding a formal enquiry, on 12th October, 1972, he made an order of eviction. Against that order, the said respondents preferred revision petitions to the Tribunal. The Tribunal by a common order dated 30th March, 1973 allowed the petitions setting aside the order of eviction solely on the ground that the revenue authorities have no jurisdiction to evict the unauthorised occupants from the gomal land which has been vested in the panchayat, and it would be for the Panchayat to take appropriate action. In this petition under Articles 226 and 227, the petitioner challenges the correctness of the view taken by the Tribunal.

2. The primary question that falls for decision is that who should evict an unauthorised occupant from the land vested in the village panchayat? Is it the duty of the revenue authorities, or the function of the village panchayat?

3. There appears to be no direct decision on the point. Mr. N. V. Ramachandra Rao, counsel for respondent 3, relying on the decision of this Court in Nidige Group Village Panchayat v. Mysore Revenue Appellate Tribunal (1967 (2) Mys LJ 249) urged that the revenue authorities have no jurisdiction over the matter, so long as the land remains vested in the panchayat.

4. The case in Nidige Group Village Panchayat was pertaining to the grant of gomal land which was vested in the village panchayat. The said gomal land before its appropriation and resumption was granted by the revenue authorities. The grant was challenged by the village panchayat on the ground amongst others that the revenue authorities have no jurisdiction to make the grant. That contention was upheld by this Court. I do not think that the ratio of that decision can be of any assistance to the question debated before me as I am not concerned with the grant of gomal land.

5. There is no provision under the Karnataka Village Panchayats and Local Boards Act, 1959 conferring power on the village panchayat to take eviction proceedings against the unauthorised occupant. Section 60 to which a reference was made by counsel for respondent 3 also does not deal with the problem of such eviction. It is concerned with the removal of obstructions and encroachments upon public streets and open sites and R. A. Tribunal (Shetty J.) not in respect of gomal land. As far as I could see, section 94 of the Karnataka Land Revenue Act, 1964 is the only provision providing for eviction of unauthorised occupants of land which has been set apart for any special purpose or any unoccupied land which has not been alienated. Section 94(3) provides thus:-

"Notwithstanding anything contained in the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1961 (Karnataka Act 3 of 1962), the person unauthorisedly occupying any such land shall also be summarily evicted by the Deputy Commissioner and any crop including trees, raised in the land shall be

liable to forfeiture, and any holding, or other construction erected thereon shall also, if not removed by him after such written notice as the Deputy Commissioner may deem reasonable, be liable to forfeiture or to summary removal."

The land concerned in the instant case has been set apart for a special purpose like grazing. It is a land covered by the provisions of Section 94, and notwithstanding anything contained in the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, the Deputy Commissioner of the District could evict the unauthorised occupants therefrom. It makes little difference whether such land is vested in the panchayat or in any other local authority, so long as it has not been given by outright grant. The land in question was vested in the panchayat by Notification issued u/s 49 (1) of the Karnataka Village Panchayats: and Local Boards Act , 1959. It was not an absolute vesting it was placed under the control of the panchayat, and the Government could at any time resume that land by Notification issued u/s 49 (2). It is relevant to remember that in respect of all lands, the State Government is the chief controlling authority u/s 3 of the Land Revenue Act. Hence it is proper that the power to evict has been preserved only to the revenue authorities constituted u/s 94(3) of the Land Revenue Act. The view to the contrary taken by the Tribunal cannot, therefore, be sustained.

6. This takes me to the question whether it is now necessary to remit the matter back to the Tribunal for reconsideration, as it was urged for the respondents. In my view, it is unnecessary. There remains nothing for the Tribunal to reconsider the matter. It has come to the conclusion that the Tahsildar has already given opportunities to the petitioners before they were ordered to be evicted. On the merits, respondents-3 to 5 have no case.

7. In the result, the rule is made absolute quashing the order of the Tribunal without an order as of costs.

8. Order accordingly.