

(2015) 09 KAR CK 0205

In the Karnataka High Court

Case No : Writ Petition No. 35846 of 2015 (KLR-RES)

Kota Vidya Sangha

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 22-09-2015

Acts Referred:

Citation : (2015) 09 KAR CK 0205

Hon'ble Judges : Ram Mohan Reddy, J.

Bench : Single Bench

Advocate : M.S. Rajendra, Adv. for Vivek Holla, Advocate, for the Appellant; H. Venkatesh Dodderi, AGA, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—Petitioner asserts to have obtained a lease of a certain immovable property measuring 5 acres of Sy. No. 12/4A of Gundmi village, Udupi taluk for a period of 30 years during December, 1973 and set up an educational institution, which lease when cancelled on 24.6.1997 by the Deputy Commissioner was challenged in W.P. No. 17564/1997. That petition, when allowed by order dated 1.6.1999 and proceeding remitted for consideration afresh after extending reasonable opportunity of hearing to the petitioner, on remand, it is stated that objections were filed before the Deputy Commissioner and in order to put an end to the litigation, petitioner "consented" for grant of 1 acre of land, to the Mogaveera Sangha, whence the Deputy Commissioner is said to have passed an order dated 11.2.2002 "granting" one acre of land and renewal of the lease in favour of the petitioner for the balance extent of land to be considered in accordance with law. On the premise of the said order, it is asserted that a recommendation was made to the Divisional Commissioner to accord approval for grant of one acre of land in favour of Mogaveera Sangha for a consideration of Rs. 4,26,520/- and other incidental charges. Petitioner is said to have made a representation dated 21.6.2002 to renew the lease for a period of 99 years and yet another representation Dt. 31.7.2002 to consider a

permanent grant as petitioner is imparting education and the land utilized is for a college. That Deputy Commissioner, it is stated, considered the representation, conducted a spot inspection, drew a mahazar, published a notice and passed an order dated 16.7.2003 "recommending" to the State Government to grant land measuring 4 acres in Sy. No. 12/4A in terms of Rule 18(3) of the Land Grant Rules, 1969, for short "Rules", at the rate of Rs. Four lakhs per acre. The Deputy Commissioner, it is said, addressed another letter dated 9.3.2004 to the State Government to consider a grant in favour of the petitioner at the rate of Rs. 4,26,520/-, being the rate at which one acre of land was granted to Mogaveera Sangha. In the light of the Government having issued new guidelines/regulations with regard to grant of land, the Deputy Commissioner is said to have submitted a further detailed revised recommendation to the Government recommending grant of four acres of land in Sy. No. 12/4A in favour of the petitioner for a consideration of Rs. 4,26,520/- per acre on 14.6.2005. The State Government, by order dated 17.01.2006, Annexure-"K", is said to have considered the recommendation and accorded its approval for grant of four acres of land in favour of the petitioner to be used as a playground for an English Medium High School, after calculating the market value.

2. The Deputy Commissioner addressed a letter dated 11.10.2006 to the petitioner to deposit Rs. 1,00,87,300/- being value of the land calculated at the rate of Rs. 25 lakhs per acre being the market value, aggrieved by which petitioner made a representation dated 23.10.2006 to reduce the value, who, in turn, addressed a letter dated 15/18.12.2006 to the State Government for permission to grant the land at the rate of Rs. 4,26,520/- per acre and yet another letter of recommendation dated 17.12.2007. Since there was no response from either the Deputy Commissioner or State Government, hence this petition for a writ of mandamus to direct respondents to calculate the value of the land as fixed by the Deputy Commissioner vide his order/recommendation dated 16.7.2003 at the rate of Rs. Four lakhs per acre and issue a formal order of grant pursuant to the order dated 17.1.2006 of the State Government.

3. Writ of mandamus is not a writ of right for the mere asking unless petitioner establishes a legal right and even if he establishes one, there is no compulsion on the writ Court to issue the writ.

4. The Deputy Commissioner exercised a jurisdiction under Rule 18 of the "Rules" while recommending grant of 4 acres of land in Sy. No. 12/4A of Gundmi village in favour of the petitioner at the rate of Rs. Four lakhs per acre. For a better understanding of the said Rule, it is appropriate to extract the same which reads thus:

"18. Grant of building sites.--

(1) xxxx

(2) xxxx

(3) Notwithstanding anything contained in these rules, the Deputy Commissioner, may grant sites on payment of upset price fixed by him for any educational or charitable institution or to a public authority and free of charge to persons belonging to (Scheduled Castes or Schedule Tribes or to a siteless person of the village whose annual income including that of his family, does not exceed (rupees eight thousand and four hundred.)

xxxx."

(emphasis supplied)

5. The aforesaid rule invests in the Deputy Commissioner a jurisdiction to grant a "site" on payment of upset price fixed by him for any Educational or Charitable institution or to a public authority and free of charge to persons belonging to scheduled caste/scheduled tribe or siteless persons of the village, whose annual income does not exceed 8,400/-. In other words, power invested in the Deputy Commissioner is to grant only a "site". This being the jurisdiction under the Sub-rule, there can be no recommendation of the Deputy Commissioner for grant of four acres of land to the petitioner. The nomenclature to Rule 18 of the Rules is grant of sites and not land.

6. In that view of the matter, it is not known as to how a recommendation for grant of land emanated, which by any stretch of imagination cannot be construed as a "site". The State Government oblivious of the jurisdiction of the Deputy Commissioner, it is said, by the order dated 17.1.2006 Annexure-K, while accepting the recommendation, though without jurisdiction, nevertheless directed the payment of market value of the said lands. It is no doubt true that the order Annexure-K of the State Government is not called in question. The state's direction to the Deputy Commissioner to grant the land on payment of market value has resulted in the letter dated 11.10.2006 to pay Rs. 1,00,87,300/- being the market value of the land at the rate of Rs. 25 lakhs per acre.

7. In the circumstances, though petitioner seeks to invoke the extra ordinary writ jurisdiction of this Court, for issue of a writ of mandamus, nevertheless, in the absence of a legal right no writ of mandamus, lies.

In the result, this petition must fail and is, rejected.