

(2002) 06 KAR CK 0022

In the Karnataka High Court

Case No : Writ Petition No. 36598 of 2000 (KLR-RR-SUR)

K.P. Jayaraj

APPELLANT

Vs

Deputy Commissioner, Hassan District, Hassan and Others

RESPONDENT

Date of Decision : 07-06-2002

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 94 A

Citation : (2002) 4 KarLJ 570 : (2002) 4 KCCR 2509

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : N.P. Kallesh Gowda, for the Appellant; M.N. Ramanjaneya Gouda, Government Advocate for Respondents 1 to 3 and H.C. Kavitha, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—With the consent of the learned Counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents 1 to 3 and the learned Counsel appearing for respondent 4, the matter is taken up for hearing.

2. The petitioner is assailing the legality and validity of the order dated 23-6-1998 passed by the 2nd respondent and the order dated 31-7-2000 in R.A. No. 20/98-99 passed by the 1st respondent.

3. The case of the petitioner is that he is in possession of the land bearing Sy. No. 158 measuring 2 acres 30 guntas situated at Kamathi Village, Alur Taluk, Hassan District, since more than 20 years. He has filed an application in Form 50 before the 3rd respondent for regularisation of his unauthorised cultivation on the ground that he does not own any other land except 2 acres in Sy. No. 28 situated at Kerehalli Village. After enquiry, the 3rd respondent by imposing TT regularised his unauthorised cultivation by an order dated 23-6-1994. In pursuance of the said order, the katha was changed in the name of the petitioner

in MR No. 2/96-97. From the date of the grant the petitioner is in possession of the land and improved the same by spending huge amount. The land in question is a survey number and not a gramatana land.

4. Further, the case of the petitioner is that the respondents 4 to 8 who are residents of Kamathishetty Halli being not satisfied with the improvements made by the petitioner to the land in question, by the influence of politically motivated people had filed an application/appeal before the 2nd respondent bearing Appeal No. NCR 10/97-98 requesting him to cancel the grant dated 23-6-1994 made by the 3rd respondent in favour of the petitioner. In pursuance of the said appeal filed by the respondents 4 to 8, the 2nd respondent issued notice to the petitioner, who appeared and contended that he did not possess any land except Sy. No. 28 and the land granted in his favour by the 3rd respondent measuring 2 acres 30 guntas in Sy. No. 158. The petitioner has stated that the RTC extract produced by the respondents 4 to 8 stands in the name of Puttarudregowda and not in his name. These facts are not at all taken into consideration by the 2nd respondent and passed the order contrary to the material records produced by the petitioner and cancelled the grant made in his favour by its order dated 23-6-1998. Assailing the said order passed by the 2nd respondent the petitioner has filed an appeal before the 1st respondent who after hearing both the sides has dismissed the appeal by its order dated 31-7-2000 and confirmed the order passed by the 2nd respondent. Assailing the correctness of the orders passed by the respondents 1 and 2 the petitioner has presented this writ petition.

5. The principal submission canvassed by the learned Counsel appearing for the petitioner is that, the petitioner has made out a case before the respondents 1 and 2 that except holding an extent of 2 acres in Sy. No. 28 of Kerehalli Village he do not possess any lands and being a small holder he is entitled to file his application for regularisation of his unauthorised cultivation of the land measuring 2 acres 30 guntas in Sy. No. 158 of Kamathi Village, in pursuance of the amendment to Section 94-A of the Karnataka Land Revenue Act. The request of the petitioner was rightly considered by the 3rd respondent and granted the same in his favour. The 1st and 2nd respondents without application of mind and without taking into consideration all the material facts available on record, that the petitioner has got only an extent of 2 acres of land and he being a small holder is entitled for regularisation of his unauthorised occupation of land in Sy. No. 158 measuring 2 acres 30 guntas have proceeded on the basis of the pahani extracts produced by the respondents 4 to 8 which are standing in the name of one Puttarudregowda and come to the conclusion that the petitioner is not a small holder and he owns an extent of 9 acres 34 guntas of land and therefore he is not entitled for regularisation of his unauthorised occupation of the land in question. On this sole ground, the grant made in favour of the petitioner by the 3rd respondent was set aside by both the authorities contrary to the materials available on record and the relevant provisions of the Act. Hence, he prayed that the impugned orders passed by the respondents 1 and 2 may be set aside.

6. Per contra, the Government Advocate appearing for respondents 1 to 3 has inter alia contended that the impugned order passed by the 1st and 2nd respondents are strictly in accordance with the material records available on the original files and as per the relevant provisions of the Act. The original records show that Sy. No. 21/3 measuring 33 guntas, Sy. No. 28 measuring 2 acres, Sy. No. 84/2 measuring 32 guntas, Sy. No. 65/8A measuring 25 guntas, Sy. No. 70/2 measuring 3 acres 10 guntas and Sy. No. 95/4 measuring 1 acre 24 guntas are standing in the name of the petitioner. Therefore, the petitioner is an excess holder of the lands and he is not entitled for regularisation of his unauthorised cultivation of land in Sy. No. 158 measuring 2 acres 30 guntas of Kamathi Village. By taking this fact into consideration the 1st and 2nd respondents have rightly set aside the grant made in favour of the petitioner by the 3rd respondent on the ground that the petitioner is an excess holder of the lands and he is not entitled for regularisation of unauthorised cultivation of the land in question. Therefore, he prayed that the petitioner has not made out a case to interfere with the impugned orders passed by the 1st and 2nd respondents.

7. Further, he contended that the writ petition is liable to be rejected at threshold on the ground of suppression of material facts, as the petitioner has not approached this Court with clean hands and not stated the true facts, therefore, the writ petition is liable to be dismissed by imposing exemplary costs.

8. The learned Counsel appearing for the respondents 4 to 8 inter alia contended that the petitioner being an excess holder of the lands is not entitled to seek any grant from the 3rd respondent contrary to the relevant provisions of the Act. As a matter of fact, the 2nd respondent after going through the entire original records had passed a well-considered order by setting aside the grant made in favour of the petitioner. Hence, she prayed that the writ petition may be rejected with costs.

9. The points that arise in the present petition for consideration are:

- (i) Whether the petitioner is a holder of excess lands?
- (ii) Whether the petitioner has made out any case for regularisation of unauthorised cultivation of the land in question?
- (iii) Whether the petitioner is entitled for grant of 2 acres 30 guntas in Sy. No. 158 situated at Kamathi Village, Alur Taluk, Hassan District?

10. The learned Government Advocate appearing for respondents 1 to 3 has made available the original records. The original records reveal that the land bearing Sy. No. 21/3 measuring 33 guntas stands in the name of the petitioner for the agricultural years 1988-89 to 1991-92 and it is shown as dry land. Sy. No. 28 measuring 2 acres stands in the name of the petitioner and his name is shown for the agricultural years 1987-88 to 1991-92 and it is shown as wetland. Sy. No. 84/2 measuring 32 guntas stands in the name of the petitioner for the agricultural years 1981-82 to 1986-87 and it is shown as wetland. Sy. No. 65/8A

measuring 25 guntas stands in the name of the petitioner and his name is mentioned in Col. No. 8 (Kabsedars Col.) it is shown as dry land. Sy. No. 20/2 measuring 3 acres 10 guntas stands in the name of the petitioner for the agricultural years 1983-84 to 1986-87 and it is shown as dry land. Sy. No. 95/4 measuring 1 acre 24 guntas stands in the name of the petitioner and his name is shown for the agricultural years 1981-82 to 1986-87 it is shown as dry land. These material facts are available on the original records, which has been taken into consideration by the Assistant Commissioner at the time of considering the case of the petitioner and the respondents 4 to 8. The Assistant Commissioner has given a specific finding in his order dated 23-6-1998 stating that the above referred lands are standing in the name of the petitioner which totally comes to 9 acres 34 guntas. Therefore, as per the relevant provisions of the Karnataka Land Revenue Rules, the holding of the petitioner is in excess of 4 acres 38 guntas, as such, he is not entitled to seek regularisation of his unauthorised cultivation in Sy. No. 158 measuring 2 acres 30 guntas and the Assistant Commissioner has rightly rejected, the defence put forth by the petitioner and set aside the grant made by the 3rd respondent in his favour. Against the order dated 23-6-1998 passed by the Assistant Commissioner, the petitioner has filed an appeal before the Deputy Commissioner, who after hearing the parties, after going through the original material on records and the order passed by the Assistant Commissioner has confirmed the said order by dismissing the appeal filed by the petitioner.

11. I have carefully gone through the entire original records made available by the Government Advocate, the impugned orders passed by the 1st and 2nd respondent. After thoroughly scrutinising the original records and the impugned orders passed by the respondents 1 and 2, I am of the view that the respondents 1 and 2 have not committed any error in law. As a matter of fact as stated supra, it reveals from the track of the records that the petitioner's holding totally comes to 9 acres 34 guntas. Intentionally and deliberately the petitioner has not stated this fact either before the 1st and 2nd respondents or before this Court, except stating that he owns only an extent of 2 acres in Sy. No. 28 situated at Kerehalli Village and the remaining lands are standing in the name of one Sri Puttarudregowda. It is relevant to refer here itself that Puttarudregowda is none other than the father of the petitioner and this fact is also not stated by the petitioner in the present writ petition intentionally and deliberately. Therefore, having regard to the factual and legal position of law, the petitioner has not made out any prima facie case to interfere with the impugned orders passed by the 1st and 2nd respondents. Therefore, the writ petition deserves to be dismissed.

12. Yet another reason the writ petition is liable to be rejected at threshold on the ground of suppression of material facts. As stated supra, the petitioner has specifically contended in this petition that, except 2 acres of land in Sy. No. 28 of Kerehalli, he does not own any other lands and he is entitled for regularisation of his unauthorised cultivation of the land measuring 2 acres 30 guntas situated at Kamathi Village in Sy. No. 158. Further, he has gone to the extent of stating that,

the xerox copies of the pahani extracts which were produced by the respondents 4 to 8 stands in the name of Puttarudregowda only and not in his name. It is significant to note that the petitioner has intentionally and deliberately not stated the real material facts and the fact that Puttarudregowda's name has been found in pahanies. As a matter of fact as staged earlier, Puttarudregowda is none other than his own father. It is pertinent to note that the petitioner has intentionally misled this Court by producing RTC extract of Sy. No. 95/4 for the agricultural years 1997-98 to 1999-2000 and Sy. Nos. 70/2 and 65/89 for the same agricultural years as stated supra, just to mislead this Court because the 3rd respondent as on the date of the amendment of Section 94-A of the Karnataka Land Tribunal Act came into force, whether the petitioner's holding is less than 4-38 guntas. In the instant case as stated supra, the petitioner's total holding is 9 acres 34 guntas in several survey numbers as indicated above. The conduct of the petitioner is not fair and this Court is constrained to draw an adverse inference against the petitioner because the petitioner knowing fully well that his holdings is more than 4-38 guntas and he is not at all entitled to seek regularisation of unauthorised cultivation of lands in question has intentionally and deliberately misled the Assistant Commissioner and Deputy Commissioner and also this Court.

13. It may be of importance to note here that the Supreme Court in the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , has severally deprecated the conduct of the litigants. It is held as:

"The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. It can be said without hesitation that a person whose case is based on falsehood has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party."

Further, it is held that: "there is no legal duty cast upon the party to come to the Court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. The land-grabbers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal gains indefinitely. Therefore, I have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation as rightly observed by the Apex Court as stated supra. In the instant case, the petitioner being a land-grabber has not approached this Court with clean hands as revealed

in the original records carefully scrutinised by me as stated supra.

14. Keeping in view the facts and circumstances of the case, I have no hesitation to hold that the conduct of the petitioner is not fair to the Court. Therefore, in my considered view, the writ petition is liable to be dismissed with exemplary costs.

15. Further, it may be of importance to note here that the Supreme Court in the case of Kerala Solvent Extractions Ltd. Vs. A. Unnikrishnan and Another, has severely deprecated the judicial tendencies to grant unwarranted reliefs by merely being governed by misplaced sympathy, generosity and private benevolence. In para 7 of the report sets out the warning and declares that:

"..The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability."

16. Accordingly, having regard to the factual and legal position of law as stated above, the writ petition is dismissed by imposing exemplary cost of Rs. 5,000/-.

The cost imposed by this Court to be paid to the respondents in equal proportions within four weeks from the date of the receipt of the copy of this order.

The Government Advocate is permitted to file memo of appearance within four weeks from today.