

(1983) 06 KAR CK 0008
In the Karnataka High Court
Case No : WP 16340/79

Krishna M. and Others

APPELLANT

Vs

Dy. Commr. Bangalore Dt. and Others

RESPONDENT

Date of Decision : 21-06-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1983) 2 KarLJ 468

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. The writ petition is directed against the order of the Deputy Commissioner, Bangalore Dist. Bangalore, dt. 14th June, 1979 purporting to be one made in exercise of his power under rule 6 of the Karnataka Village Panchayats (Acquisition of Moveable and Immoveable Property) Rules, 1960 (hereinafter referred to as "the Rules"). The petitioners are the residents of Nagawara village and also members of the Nagavara Village Group Panchayat Committee at the time of filing of the petition. They are also members of the said Village Panchayat. The impugned order purports to give permission under rule 6 of the Rules to the Village Panchayat to alienate site measuring 75 feet x 33 feet in K. No. 67/1 of Nagawara Village to one V. Jayalakshmamma of that village at an upset price of Rs. 1,500. The petitioners assail the impugned Order on the sole ground that the Village Panchayat has not decided to alienate the site in favour of Jayalakshmamma, on the Other hand, the Village Panchayat has specifically resolved to reject her application for grant of site for the reasons recorded by it in the three resolutions passed between 28-12-1977 and 13-3-1979. The resolution passed by the Village Panchayat on 28-12-1977 and on 13-3-1979 are produced at annexures A and B to the petition.

2. While the Deputy Commissioner, Bangalore Dist. and the Assistant Commissioner, Bangalore Sub-Dvn. are respondents 1 and 2 respectively, Jayalakshmamma, the beneficiary under the impugned order is the 3rd respondent. Respondents 1 and 2 are represented by the Government Pleader and he has made available the records of the case. Sri H. Munivenkatappa

learned Counsel for the 3rd respondent has presented the case for the 3rd respondent.

3. A statement of objections has been filed on behalf of respondents 1 and 2, in the statement of objections it is stated that the 3rd respondent presented a petition to the Hon"ble Minister for Panchayat Raj on 28-9-1977 stating that she had constructed a hut in the gramatana on a site measurins 33 feet x 77 feet and she was residing there since the last ten years and requested for grant of the land in question in her favour. That petition was sent down to the Block Development Officer, Bangalore N. Taluk for needful action. The Block Development Officer, in turn referred the matter to the Panchayat Extension Officer for enquiry and report. Ry report dt. 1-11-1977 the Panchayat Extension Officer made it known that the 3rd respondent had occupied the gramatana land and constructed a hut in which she was residing since 8 years and he also reported that the Village Panchayat had resolved that the Panchayat had no objection for grant of that land to Jayalakshamma and recommended alienation of the land in question in favour of the 3rd respondent. Thereafter, the Assistant Commissioner (2nd respondent herein) by his letter dt. 27-11-1978 reported to the Deputy Commissioner that the applicant-3rd respondent had requested for sanction of Government land in Nagawara where she had already put up a hut and living and he visited the spot and recommended for grant of the site as per Rules. It is only thereafter that respondents 1 and 2 claim that the impugned order came to be passed fixing the price of the site at Rs. 1500. There is no other averment in the Writ Petition than the narration of the sequence of events culminating in the impugned order.

4. Sri S.J. Srinivasan contends that the impugned order is without jurisdiction, there being no resolution or a decision to alienate the land of the Village Panchayat. The question of the Deputy Commissioner according sanction under rule 6 of the Rules would not arise at all; that the Panchayat had specifically decided not to grant the site in question to Jayalakshamma or any other as the same would be interfering with the right of the villagers to worship at the temple beside which was the site claimed by the 3rd respondent.

5. In the light of the above facts, what really arises for consideration is the scope of rule 6 of the Rules and the power exercised by the Deputy Commissioner under the said rule.

6. The facts themselves are not in dispute. In fact, a perusal of the records by Court, clearly indicates that the 3rd respondent is not a very rich person from the village standards nor is she very poor. She is said to own an acre of garden land and 2 acres, 4 guntas of dry land in the village. There is no doubt, she did make an application to the Hon"ble Minister for Panchayat Raj of the State at the relevant time, in 1977, for regularisation of the land on which she had built a hut and lived there for nearly ten years by granting the same to her. That is how the whole process began. It was about the same time when the Panchayat passed a resolution as per annexure-A to the petition and as supported by the records

produced by the learned Government Pleader, that the land shall not be given to any one including the 3rd respondent by the Village Panchayat. From the records, it is seen, thereafter, there does not appear to have been a Village Panchayat and that the Group Village Panchayat was under the control of an Administrator in 1978. While the Administrator was in charge, on 13-7-1978, in his capacity as Administrator, he has passed a resolution recommending the grant of the site to the 3rd respondent as well as to one Govindappa who also had sought land to an extent of 10 ft. x 15 ft. When that went upwards to the proper authorities, there appears to have been some disturbance in the village about the Administrator's decision and representations were made opposing the proposed grant of site to the 3rd respondent and Govindappa. The resolution of the Administrator clearly indicates that he took that decision not of his own but on the instructions received from the Assistant Commissioner (2nd respondent). This is evident from the subject noted beside his resolution of 13-7-1978. Then again there is the resolution by the Village Panchayat of 13-3-1979 forwarding it to the 2nd respondent from which it can be seen that the grant of site to the 3rd respondent was denied at the meeting held on 13-3-1979 by nine votes to 3. It is thereafter, despite the representation and protests by the villagers, that the Deputy Commissioner has passed the impugned order.

7. It is useful to set out the order, in order to explain the correct position of law in matters like this:

"No. VPC.CR 237/78-79

Office of the Deputy Commissioner Bangalore District,
Bangalore

Dated 14th June, 1979

Sub: Grant of site in No. 67/1 measuring 75" x 33" of Nagawara village Bangalore North taluk in favour of Smt. Jayalakshamma Nagawara village Bangalore North taluk.

Ref.: Correspondence ending with report No. V.P.C. 237/77-71 dated 6-4-79 from the Assistant Commissioner, Bangalore Sub-division Bangalore.

Official Memorandum

In the circumstances reported by the Assistant Commissioner, Bangalore Sub-division Bangalore, vide reference cited above, that the site measuring 75" x 33" in K. No. 67/1 of the Nagawara village, Bangalore North Taluk, in favour of one Smt. V. Jayalakshamma of Nagawara village. Permission is hereby accorded under rule 6 of the Karnataka Village Panchayats (Acquisition of Moveable and Immoveable Property) Rules 1960 to grant the said site at an upset price of Rs. 1500 in favour of Smt. V. Jayalakshamma of Nagawara village Bangalore north taluk by the Village Panchayat, Nagawara, Bangalore North taluk, subject to terms and conditions to be imposed by the Panchayat under the rules.

The Village Panchayat, Nagawara, Bangalore North Taluk should ensure that all formalities are fulfilled before effecting transfer of the said property as per rules.

Sd/- Adhip Chowdhuri,

Deputy Commissioner,

Bangalore District".

8. Rule 6 of the Rules is as follows:

"6. Transfer otherwise than by lease of immoveable property belonging to a Panchayat-A Panchayat shall not without the previous sanction of the Deputy Commissioner make or cause any transfer to be made except by way of lease, of any immoveable property belonging to it, or create or cause any charge to be created upon any such property. If the value of the property so transferred or the amount for which the charge is so created exceeds Rs. 10,000 the previous sanction of the Commissioner shall also be obtained for the transaction.

(2) The deed of transfer shall be in the appropriate form in Schedule II appended to these rules, with such variations as circumstances may require".

9. None before me have disputed that the land is vested in the Village Panchayat by virtue of the notification issued by the Government in 1961. There is no divesting of that vesting subsequently by the Government. Therefore, the property in question is part of the immoveable property of the Village Panchayat. In order that the Deputy Commissioner has power and jurisdiction to accord or not to accord permission under rule 6 extracted above, the pre-requisite is that there should be some-body seeking permission, whether it be the Village Panchayat represented by the elected body or Administrator who is in charge for any reason.

10. From the undisputed facts narrated above, it is seen that the seeking of permission was not the act of the Village Panchayat. The whole action began with the Minister for Panchayat Raj and processed downwards to the Village Panchayat resulting in refusal to grant the site to the 3rd respondent by the Panchayat. Therefore, the question of granting permission did not at all arise till the Asst. Commr. (2nd resp.) in 1978 directed the Administrator to process the grant of site to the 3rd respondent. The decision taken by the Administrator merely resolves to grant sites to Govindappa and the 3rd respondent. Before taking the decision, the Administrator had not sought previous permission of the Deputy Commissioner which is required, as is clear from the plain language of rule 6. In fact, on the facts of this case, viewed in the proper perspective, the Deputy Commissioner has accorded permission entirely of his own without any person requesting that permission. I, therefore, do not think that Rule 6 of the Rules contemplated a situation when a Deputy Commissioner can suo-motu accord permission without anybody asking for it. Such a construction is repugnant and unacceptable to the plain language and purpose of the rule. The Rule is meant as a check on the waywardness of the Village Panchayat in frittering away its

moveable and immoveable properties in favour of some to the detriment of the village. It is not meant to serve the purpose by empowering the Deputy Commissioner to make a grant of land belonging to the Village Panchayat.

11. However, Sri Munivenkatappa, learned Counsel for the 3rd respondent contended that rule-6 must be read very liberally and should be so read as to include post-facto sanction as well. I am unable to accept that contention, because if the rule making authority intended that rule 6 should not be mandatory, then it would not have used the word "previous" controlling "permission". If the word "previous" was not there, then the contention of the 3rd respondent would perhaps be reasonable. Permission obtained before or after would be the same. But the previous permission indicated cannot be read in the manner stated by the Counsel. Therefore, I must hold that the Deputy Commissioner assumed jurisdiction where none existed and having so assumed jurisdiction illegally exercised the power in excess of the jurisdiction, because the order clearly indicates that the price that should be charged is only Rs. 1500 as an upset price. That indicates that the site in question measuring 77 feet x 33 feet in the village is worth more than Rs. 1500. There is no power under rule 6 of the Rules or any other rule available to the Deputy Commissioner to fix the price. It is normally for the alienor to fix the price at which he wants to convey the immovable property. In the instant case, the alienor is the Village Panchayat and that does not seem to have been consulted at all in fixing the price, let alone the grant of site despite its protests.

12. It was next contended that there were two resolutions before the Dy. Commissioner, one passed by the Administrator acting for the Village Panchayat and the other by the members of the Village Panchayat in 1979 before the Deputy Commissioner passed the impugned order and therefore he had choice to act upon one or other resolution treating them as application seeking permission to alienate the property.

13. That argument would not be acceptable on the face of it because the second resolution has no application because it refuses to convey the site. It is only the 1978 resolution which can be considered as having been acted upon by the Deputy Commissioner. But in the normal circumstances, though the Administrator had power to take a decision as Village Panchayat, his decision being superseded by the subsequent resolution of the duly elected Village Panchayat itself with the effect that the resolution of the Administrator sanctioning the site to the 3rd respondent had become non-est, and the Deputy Commissioner, in that circumstance, should not have acted upon it.

14. The mahazar got drawn up by the Administrator which is to be found in the records is signed by six people of the Village Nagavara, while the representation subsequently given to the Assistant Commissioner and the Deputy Commissioner protesting against the grant is signed by more than hundred residents of the village. It is needless for me to state that the first mahazar supports the prayer of the 3rd respondent. This state of affairs in the records clearly lend support to

the contention of the petitioners as averred by them that the entire exercise by respondents 1 and 2 was on account of the political influence of the 3rd respondent. Nothing more than this need be said.

15. It was lastly urged by the learned Counsel for the 3rd respondent that the petitioners are not ordinarily residents of the Village Panchayat and therefore have no locus standi to prosecute this writ petition, as the Village Panchayat should be represented by the chairman or Secretary and not by the members who are not authorised by the Panchayat, Technically this may appear to be correct. But where public property and largesse are being distributed at the free will and pleasure of the officers, any member of the public who is not only affected by such free distribution or favours to the detriment of the village can move this Court under Art. 226 of the Constitution to check the illegal action of the State. Protecting the State property is the duty of every citizen in whatever manner the protection is sought by a citizen. Therefore, the villagers of Nagawara cannot be denied the locus standi because they do not hold either the office of the Chairman of the Village Panchayat or that of the Secretary of the Village Panchayat, It suffices that they are residents of the village and are vitally interested, that the site belongs to the Village Panchayat, which is sought to be gifted away to the 3rd respondent without the authority of law on a total misconstruction of rule 6 of the Rules.

16. Even the argument that the petitioners did not pursue the alternative remedy provided under the Act by way of revision under S. 206 of the Karnataka Village Panchayats & Local Boards Act, to my mind, in the circumstances of the case, is not validly taken.

17. In the result, the petition is allowed. Rule issued earlier is made absolute. The impugned order at annexure-C to the petition is quashed. But this is without prejudice to the rights of the 3rd respondent which she may have acquired by erecting a hut on the site in question otherwise than by the impugned order.

18. In the circumstances of the case, it is not proper to award any costs.