

(2011) 09 KAR CK 0123
In the Karnataka High Court
Case No : Writ Petition No. 18202 of 2011

Kumaraswamy

APPELLANT

Vs

Chief Executive Officer Zilla Panchayath and Executive Officer
Taluk Panchayath

RESPONDENT

Date of Decision : 21-09-2011

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 157 (4)

Citation : (2011) 09 KAR CK 0123

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : Suneel S. Narayan, for the Appellant;

Judgement

Mohan Shantanagoudar, J.—The order Annexure-"E" dated 5.10.2010 passed by the Taluk Panchayath - the second Respondent by which the grant of site made in favour of the Petitioner as per Annexure- "A" dated 12.04.1990 stood cancelled, is called in question in this writ petition.

2. The records reveal that the Petitioner herein was issued with a "Hakku Patra" (which means Title Deed) as per Exhibit-P1 dated 12.04.1990 under which the Petitioner was granted a site bearing No. 92 measuring 40" x 60" situated at Muttur Colony Village, Periyapatna Taluk. Thereafter, the neighbouring land owners started interfering with the Petitioner's peaceful possession of the site. Hence, the Petitioner filed a suit, in O.S. No. 17/2004 before the Civil Judge (Jr. Dn) and JMFC, Periyapatna for permanent injunction against one Smt. Jainabi and Nagin Jan. The said suit came to be decreed as per Annexure "D" dated 2.3.2006. Subsequently, the impugned order is passed by Respondent No. 2 on 5.10.2010 cancelling the Hakku Patra (Title Deed) on the ground that it was not open for the Petitioner to get the aforementioned site from the Grama Panchayath as the Petitioner himself was the Grama Panchayath member. In other words, the second Respondent states that the Petitioner has misused the office of member of Grama Panchayath. The second ground on which the Title

Deed stood cancelled is that the allottee should not sell the property within 25 years of allotment as per Condition No. I annexed to the Title Deed; however, the Petitioner has sold the property in favour of Smt. Kaveramma. W/o. Raju on 7.1.2010 and the same is registered in Sub-Registrar's office, Periyapatna. The said order of cancellation was questioned by the Petitioner before the first Respondent - Chief Executive Officer, Zilla Panchayath by filing an appeal u/s 157(4) of the Panchayath Raj Act. The same came to be dismissed as not maintainable.

3. The learned Counsel for the Petitioner submits that since the Petitioner did not have an opportunity of being heard before passing the impugned order, the impugned order is bad in the eye of law. He submits that had an opportunity been given to the Petitioner to defend himself, he would have produced the records in his favour.

4. The Respondents though served, have remained absent.

5. Though the reasons assigned by the Respondent in the impugned order prima facie appear to be just and proper, the rules of natural justice requires that the Petitioner should have been notified and heard before the authority taking the drastic step of cancelling the allotment made in his favour about 20 years back. Admittedly, the property was allotted in favour of the Petitioner on 12.04.1990. The same is cancelled by the impugned order on 5.10.2010. Since the Petitioner is neither notified nor heard before passing the impugned order, this Court deems it fit to give an opportunity of being heard to the Petitioner, before the second Respondent. By the said practice, no prejudice or injustice would be caused to the parties.

6. Accordingly, the impugned order dated 5.10.2010 stands quashed. The matter is remitted to the Taluk Panchayath, Periyapatna for fresh consideration. Notice shall be issued to the Petitioner before passing an order in the matter, by the second Respondent. It is open for the Petitioner to submit records in his favour and have his say in the matter before the second Respondent in support of his case. The second Respondent - Taluk Panchayath shall consider the matter on merits without being influenced by any of the observations made by this Court in the course of the order or without being influenced by the order passed by the Zilla Panchayath Annexure- "G" dated 29.01.2011.

Petition is disposed of with the above observations.