

(2008) 07 KAR CK 0056
In the Karnataka High Court
Case No : Writ Petition No. 5357 of 2002

L.R. Gangadharappa

APPELLANT

Vs

The Assistant Commissioner and Others

RESPONDENT

Date of Decision : 01-07-2008

Acts Referred:

Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 — Section 273

Citation : (2008) ILR (Kar) 3508 : (2009) 1 KarLJ 159 : (2008) 4 KCCR 2161

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : B.M. Siddappa, for the Appellant; Bopanna A/s, for R2-3, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—The grant in favour of the petitioner, a site bearing No. 268/1 measuring 25 ft ? 30 ft, of Madure village, within the territorial jurisdiction of the then existing Mandal panchayat, by resolution dt. 6.10.1988, when called in question in an Appeal u/s 273 of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayat & Nyaya Panchayaths Act, 1983, for short "Zilla Parishad"s Act, by the 3rd respondent, was allowed by order dt. 23.3.2001 Annexure-C of the Asst. Commissioner 1st respondent and the grant set-aside. Hence this writ petition.

2. Learned Counsel for the petitioner contends that the appeal filed on 18.01.1991, u/s 273 of the Zilla Parishad"s Act, against the resolution dtd.06.10.1988, not being within reasonable time, and without an application to condone the delay or an order to condone the delay, the appeal deserved to be dismissed. In addition, learned Counsel contends that the petitioner is in possession and occupation of the premises ever since the grant in the year 1988 and the challenge to the grant after considerable delay is unsustainable.

4. Per contra, Learned Counsel for the contesting respondent No. 3 seeks to

sustain the impugned order as being well merited, fully justified and not calling for interference.

5. Indisputably the vacant site measuring 25ft x 30 ft. belonging to the then Mandal Panchayat when allotted to the petitioner, the brother-in-law of the President of the then Mandal Panchayat, under the resolution dt. 6.10.1988, though required to be questioned within a reasonable time as provided u/s 273 of the Zilla Parishad's Act, was questioned by the 3rd respondent, a resident of the village in an appeal filed on 18.1.1991. It is no doubt true that this Court in number of decisions has observed that, reasonable time, when no period of limitation is provided under the statute, could be six months. In the instant case indisputably the appeal was filed after 21A years without an application to condone the delay. Having regard to the fact that the petitioner's brother-in-law was the President of Mandal Panchayat, there can be no more doubt in my mind that the grant of land belonging to the Mandal Panchayat was made to a person interested. The petitioner's brother-in-law having held the post of President of the Mandal Panchayat, misused the office of the President, and granted a site belonging to the Mandal Panchayat. Such a grant in any event cannot but be said to be a fraud in exercise of power, without sanctity of law, invalid, wholly void and unsustainable. In the circumstances, merely because an application is not filed to condone the delay in preferring the appeal, cannot aid the petitioner to validate an invalid action of the Mandal Panchayat. Suffice it to state that the resolution being void-ab-initio, no exception can be taken to the reasons, findings and conclusions arrived at by the Asst. Commissioner in the impugned order.

6. The observation of the Apex Court in *State of Punjab and Another Vs. Gurdial Singh and Others*, , in the circumstances is opposite:

9. The question then, is what is malafides in the jurisprudence of power? Legal malice is gibberish under juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power sometimes called colourable exercise or fraud on power and often times overlaps motives, passions and satisfactions-is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated. "I repeat.... That all power is a trust-that we are accountable for its exercise that, from the people, and for the people, all springs, and all must exist." Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud

in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impels the action mala fides or fraud on power vitiates the acquisition or other official act.

7. The writ petition is without merit and is, accordingly rejected.