

(2000) 11 KAR CK 0021
In the Karnataka High Court
Case No : Writ Petition No. 31165 of 1992

M. Katappa and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 20-11-2000

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 71, 72
Karnataka Land Revenue Rules, 1966 — Rule 97, 97 (1), 97 (4)
Karnataka Minor Minerals Concession Rules, 1969 — Rule 3 (2), 3A, 9, 9 (2)
Mines and Mineral (Development and Regulation) Act, 1957 — Section 15

Citation : (2001) 1 KCCR 513

Hon'ble Judges : Ashok Bhan, J;A.V. Srinivasa Reddy, J

Bench : Division Bench

Advocate : C.S. Kothavale, for the Appellant; N.K. Ramesh, A.G.A. for Respondents 1 and 2 and D.L.N. Rao, for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

A.V. Srinivasa Reddy, J.—This writ petition is filed by the villagers of Maddakkananalli - Gollarahatti, Sira Taluk, Tumkur District in public interest to protect and save the gomal land belonging to six villages of Maddakkanahalli - Gollarahatti, Gowdanagere, Mosarukunte, Kurubarahalli, Ranganahalli and Tavarekere coming within the Tavarekere Mandal Panchayath. The Petitioners claim that they have a common grievance and common interest in the writ petition being interested in protecting the gomal land comprised in Sy. No. 39 of Maddakkanahalli Village from being leased out either for mining or from unauthorised cultivation. In order to show that it is a gomal land, the Petitioners have produced Annexure "A" which is a copy of Record of Rights pertaining to Sy. No. 39. The said Sy. No. 39 contain a small Stone Quarry which is located close to Gollarahatti where sizable population are residing. In order to show that the villages referred to supra are close knit, the Petitioners have also produced a Village Map. The Petitioners have also produced a Village Map. The Petitioners further state that there is a School very close to Stone Quarry and a public road

which passes through the Stone Quarry connecting Gollarahatti and Gowdanagere leading to other villages namely, Maddakkanahalli and Tavarekere.

2. The grievance of the Petitioners in this writ petition is that the Respondents 1 and 2 have sought to lease out a portion of land measuring 4 acres in Sy. No. 39 to the 3rd Respondent for a Quarry lease of Grey Granite. To that extent, the 2nd Respondent has issued a Notification dated 10.1.1992 as per Annexure "D" sanctioning the grant of Quarry Lease under Rule 9 of Karnataka Minor Minerals Concession Rules, 1969 (hereinafter called KMMC Rules, 1969) for a period of five years to the 3rd Respondent on the terms and conditions set-forth therein. The Petitioners are seeking to quash the said Notification - Annexure "D" by issuing a Writ of Certiorari and also for quashing the Lease Deed bearing No. QL 6584 dated 1.8.1992 executed pursuant to Annexure "D" by issuing a further Writ of Certiorari on the ground that the same are contrary to law and are opposed to public interest. Further, the Quarry Lease sought to be given in favour of the 3rd Respondent is opposed to Rules 3(2) and 3(a) of KMMC Rules, 1969 without following the procedure prescribed. The grant of Lease is malafide and motivated. The ecology of the area would be disturbed if the same is granted by way of Lease in favour of the 3rd Respondent. If the 3rd Respondent is allowed to quarry, it would not only affect the Petitioners and their animals but would also affect the ecology of the area.

3. Petitioners also contend that before granting the land, no notice was given to the villagers which is mandatory. The only source of water for the villagers is a public well which is situated in Sy. No. 39 which is close to the Stone Quarry surrounded on all sides by patta lands. The quarrying operation involves use of explosives and therefore, use of public road, the public well and the cultivation of the lands near about the Stone Quarry would become impossible thereby affecting the livelihood of the Villagers in the area. Therefore, the present writ petition is filed for the reliefs stated supra.

4. On filing the writ petition, this Court granted stay of impugned Annexure "D" which is in force. Upon service of notice on the Respondents, the Respondents have filed their statement of objections in two sets, one by the contesting Respondent No. 3 and the other by Respondent Nos. 1 and 2.

5. In the statement of objections filed by the 3rd Respondent, it is contended that pursuant to Annexure "D" dated 10.1.1992, the Authorities have also executed a Lease Deed dated 1.8.1992; that the land in question was not set apart for any public purpose and mere production of the RTC extract will not enable the Petitioners to come to the conclusion that the land in question is a gomal land. The same was required to have notified reserving for public or special purpose. The 3rd Respondent further contend that u/s 71 of the Karnataka Land Revenue Act, 1964, the Deputy Commissioner may set apart lands which are the property of the State Government and not in the lawful occupation of any person or aggregate of persons in any village or portions of the village for free pasturage for the village cattle, for forest reserves or for any

other public purpose and in the absence of any such order by the Deputy Commissioner, the land in question cannot be presumed to be a gomal land. It is contended that the village Gollarahatti is quite far off from the Quarry in question. There are no Schools, no public road passes through the Stone Quarry. It is claimed that before the grant of lease by the 2nd Respondent, the Tahsildar has issued a No Objection Certificate on the report submitted by the Revenue Inspector reporting that the land is not reserved for any public purpose and the area that was intended to be granted was not close to the village limits, public road, place of worship, Educational Institutions, grazing land or any other place of public interest. Pursuant to the said No Objection Certificate, the Deputy Director has issued the Lease which was duly registered in favour of the 3rd Respondent. The Respondent No. 3 denied the claim of the Petitioners that the Notification granting the Lease as per Annexure "D" was deemed to have been revoked under Rule 9(2) of KMMC Rules. She claims that the Director of Mines and Geology has allowed the Review Petition filed by the 3rd Respondent on 19.5.1992 and thereafter the Lease Deed was executed on 1.8.1992. It is also stated by Respondent No. 3 that the Respondents have executed another Lease Deed in favour of some other person and in respect of which the villagers have not objected. They are in possession and operating the area in question. The Respondents have also issued two more Notifications in favour of two more persons. In view of the same there are no bonafides in the claim of the Petitioners. It is also stated that the Notification referred to by the Petitioners which is dated 27.12.1961 was superseded by virtue of coming into force of Mines and Mineral Development and Regulation Act and by virtue of the power conferred u/s 15 of the said Act, the State Government have made their respective Rules under the subsequent MMDR Act. There was no requirement of any notification reserving the area in question and therefore, the grant made in favour of the 3rd Respondent was in order. Rule 3(2) of KMMC Rules, 1969 does not come in the way of granting the lease and Rule 3-A of the same Rules is not applicable to the present case since the Mineral that was leased is Grey Granite. The Competent Officer is the Deputy Director (MA) of the Department of Mines and Geology to grant lease in Revenue Land and therefore, the reference by the Petitioners to Section 71 of the Karnataka Land Revenue Act is without any basis. The 3rd Respondent contend that there is no statutory bar for granting of quarrying lease in her favour.

6. In the statement of objections filed by the Respondents 1 and 2, it is admitted that the land in question is a gomal land. It is stated that the Deputy Commissioner (Revenue) by his letter dated 25.5.1992 has informed that though the schedule land is a gomal land it is not reserved for any specific purpose and has given No Objection Certificate for grant of Quarry Lease in favour of the 3rd Respondent to an extent of 4 acres and as per the Inspection Report of the Senior Geologist dated 20th July 1990, no building was in existence on the property in question. It is further stated that the villagers coming within the jurisdiction of the aforesaid villages have submitted a representation on

27.5.1992 to the Director of Mines and Geology as well as the 2nd Respondent namely, the Deputy Commissioner. The Senior Geologist at the time of Survey and Demarcation of the area granted to the 3rd Respondent has obtained the consent of the other villagers on 16.7.1992. Therefore, the Respondents 1 and 2, contend that before granting the land in question, the Authorities have obtained No Objection Certificate. The Respondents 1 and 2 have stated that:

The report of NOC of the Deputy Commissioner (Revenue), Tumkur or the Inspection Report of the Senior Geologist, Tumkur never revealed that there is a road passing through the Stone Quarry leased out to the 3rd Respondent nor is there a mention about the existence of a School in the vicinity.

7. The Respondents 1 and 2 however contend that the Petitioners had an alternative remedy for redressal of their grievance under Rule 61(1) of KMMC Rules, 1961 and without exhausting the said remedy, the present writ petition is not tenable.

8. We have heard the Learned Counsel for both the parties.

9. On the basis of the claims and contentions of both the parties in the writ petition the following points would arise for our consideration:

i) Whether the land in question is a gomal land?

ii) If it is a Gomal land, whether the Deputy Commissioner has followed the procedure prescribed under Provisions of the Karnataka Land Revenue Act, 1964 before the grant of the land under Annexure "D", if not, What Order?

10. We are of the view that a finding on the above points would determine the rights of the Petitioners as well as Respondent No. 3.

11. Regarding First Point: The Petitioners in support of their claim that Sy. No. 39 of Maddakkanahalli - Gollarahatti is a gomal land have relied on certain documents annexed to the Writ Petition in addition to the admission made by the authorities. Annexure "A" is an RTC Extract for the year 1991-92 issued by the Village Accountant of Mosarukunte Circle, Sira Taluk on 1.1.1992. In the said document it is stated that the land bearing Sy. No. 39 measures 62 acres 19 guntas and it is a Government land reserved for "gomal". Under column No. 12 of Annexure "A" it is stated that the land is not under cultivation and it is fallow. However, in the column No. 11 it is stated that the Department of Mines and Minerals had granted lease for five years, but the extent is not mentioned. In addition to Annexure "A", Annexure "F" is a communication dated 25.5.1992 issued by the Deputy Commissioner, Tumkur District to the Director of Mines and Geology, Bangalore wherein it is stated that Sy. No. 39 is a gomal land and the same is not reserved for any public purpose. In addition to these two Annexures, in the statement of objections filed on behalf of the 1st Respondent - State as well as the Deputy Director of Mines and Geology, it is specifically admitted in para 1 that the land in question is a gomal land. The contesting Respondent No. 3 in the statement of objections filed has stated that a mere production of RTC

Extract would not enable the Petitioner to come to the conclusion that the land in question is a gomal land. We are unable to accede to the claim made by the 3rd Respondent that the land in question is not a gomal land. In the light of the documentary evidence and the admission made by Respondents 1 and 2 in their statement of objections, the claim of the 3rd Respondent that the land in question is not a gomal land cannot be accepted and we hold that the land in question is a gomal land.

12. When once it is held that the land is a gomal land, the provisions of the Karnataka Land Revenue Act, 1964 would be attracted. If it is a gomal land, the further question that arises for our consideration is whether the gomal land or any part of the gomal land could be leased to any purpose other than the purpose for which the land was reserved and if so, whether the procedure prescribed under the Karnataka Land Revenue Act, 1964 been followed before the same is granted for any other purpose. The same is considered in the second point.

13. Regarding Second Point: In order to answer the Point No. 2 it is necessary to extract certain provisions under the Karnataka Land Revenue Act, 1964 (hereinafter referred to as "Act 1964") and the Karnataka Land Revenue Rules, 1966 (hereinafter referred to as "Rules 1966"). Sections 71 and 72 of the Act and Rule 97 of the Rules are the relevant provisions dealing with the Gomal Land.

14. Sections 71 and 72 read as follows:

Section 71. Lands may be assigned for special purposes and when assigned, shall not be otherwise used without sanction of the Deputy Commissioner. Subject to the general orders of the State Government, Survey Officers, whilst survey operations are proceeding under this Act, and at any other time, the Deputy Commissioner, may set apart lands, which are the property of the State Government and not in the lawful occupation of any person or aggregate of persons in any village or portions of a village, for free pasturage for the village cattle, for forest reserves or for any other public purpose; and lands assigned specially for any such purpose shall not be otherwise used without the sanction of the Deputy Commissioner; and in the disposal of lands u/s 69 due regard shall be had to all such special assignments.

Section 72. Regulation of use of pasturage.-The right of grazing on free pasturage lands shall extend only to the cattle of the village or villages to which such lands belong or have been assigned, and shall be regulated by Rules or orders made generally or in any particular instance, by the State Government. The decision of the Deputy Commissioner in any case of dispute as to the said right of grazing shall be final.

In order to give effect to the said sections, procedure is prescribed under Rule 97 of the Rules which reads as follows:

Rule 97. Providing free pasturage.-(1) Government land shall be set apart for

free pasturage for the cattle for goats, sheeps of each village at the rate of twelve hectares for every hundred heads of cattle.

(1) Explanation.-In calculating the heads of cattle or calves or cow or buffalo shall be taken as equivalent to one head of cattle.

(2) If there is sufficient forest area in the village concerned or in the adjoining village to enable the village cattle to graze, the area to be set apart as free pasturage may be reduced correspondingly.

(3) If there is no grazing land available in a village, or the land available falls short of the extent prescribed under Sub-rule (1) the deficit may be made up by setting apart Government land available in the adjacent village.

(4) The Deputy Commissioner shall determine the extent of land necessary to be set apart for free pasturage in any village. If in the opinion of the Deputy Commissioner the extent of pasturage should exceed the minimum prescribed in Sub-rule (1) he may so set apart such larger extent as may be necessary. If on the contrary he considers that the area already so set apart is much larger than what is really required, he may reduce it to the prescribed minimum. Where, he considers that the extent of free pasturage may be reduced below the prescribed limit, he should do so only after obtaining the prior permission of the Divisional Commissioner.

[Provided that no such permission shall be necessary where the reduction below the prescribed limit is for the purpose of:-

(i) distribution of house sites to the siteless person; and

(ii) grant of land to persons belonging to Scheduled Castes and Scheduled Tribes, for agricultural purpose,

who are ordinarily residents of such village.]

(iii) regularisation of unauthorised cultivation under Chapter XIII-A.

(underlining is mine)

The land having been reserved for a specific purpose its appropriation for any other purpose has to be in terms of Sub-rule (4) of Rule 97 of the Rules. Determination of the extent of land necessary to be set apart for free pasturage is a condition precedent before the Deputy Commissioner can deviate a gomal land for any other use. It is only where the availability of gomal land exceeds the minimum prescribed in Sub-rule (1) that the Deputy Commissioner would derive jurisdiction to reduce it to the prescribed minimum. Non-observance of the procedure prescribed in the matter of grant of gomal land would vitiate the grant made in favour of Respondent No. 3. An act done in violation of the statutory Rules would render the very act non est in law and no benefit would accrue to any individual as a result of such wrongful exercise of power by the statutory authority. As the land in question was being used for gomal purpose, the

villagers, who were using the lands for the purpose of grazing their cattle, can sustain an action against such illegal grant. Individual hardship, if any, that would be suffered by the grantee cannot stand in the way of maintenance of the rule of law. The grant in the present case having not been preceded by the mandatory determination prescribed under Sub-rule (4), the same is vitiated and if such an order is allowed to stand it would result in deprivation of pasture for the cattle in the village. The precondition of determination of availability of the necessary extent of land prescribed by Sub-rule (4) of the Rules is, in all probability, intended by the Legislature to ensure that the cattle in the village are not deprived of pasture essential for their existence and the lands reserved for this particular purpose are not diverted for any other purpose. The impugned order being one made in violation of the statutory Rules, is bad in law and is liable to be struck down.

15. The Division Bench of this Court in *Manjunatha v. State of Karnataka*, 1976 (1) Kar LJ 380 while interpreting Rule 97(4) of the Rules held:

Before granting any part of the gomal land for cultivation the Deputy Commissioner should under Rule 97(4) make a determination regarding the surplus of the gomal, after notice to the villagers.

Though it may not be practicable to give individual notices to all the villagers having the right of free pasturage in gomal lands, the revenue authorities can give public notice by affixing a copy of such notice in the village chavadi, or by beat of tom tom or by publication in a newspaper or in any other reasonable manner. Hearing of objections of such persons to the proposed grant need not necessarily be personal or oral hearing.

Ascertainment of the view of the villagers in a mahazar conducted by the revenue authorities cannot take the place of notice to persons in the village and consideration of their objections.

The State Government while it functions as a quasi judicial authority is bound to follow the rulings of the High Court.

There is nothing on record to show that the Deputy Commissioner either determined the land required for use of the cattle for purposes of pastureage or called for objections from the public before appropriating the gomal land for a different purpose. In the absence of determination of the land necessary for free pasturage in the village, the resort to power available under Sub-rule (4) of Section 97 by the Deputy Commissioner would be violative of the mandatory requirement of the Rules.

16. In the light of the ruling of this Court in *Manjunath's* case, *supra*, it was not open to the Deputy Commissioner to reappropriate the gomal land for purposes of mining lease. Every Tribunal or quasi-judicial authority is bound to follow the rulings of this Court unless such rulings are reversed or overruled by the Supreme Court and it is not open for the Tribunals or the authorities to take a

different view on any question of law. The power available to the Deputy Commissioner under Rule 97 is tempered by the precondition of determination of the actual gomal requirement of the village cattle. The grant made is not in conformity with Rule 97 and, therefore is bad in law.

In the view that we have taken, we do not find it necessary to either refer to or to decide the other contentions urged by the learned Counsel for the Petitioner.

17. In the result, for the reasons stated above, the writ petition is allowed and the notification dated 10.1.1992, produced as Annexure-D is quashed.

Rule made absolute.

Parties to bear their own costs.