

(1998) 01 KAR CK 0022
In the Karnataka High Court
Case No : Writ Petition No. 22727 of 1991

M. Ramakrishna Bhat

APPELLANT

Vs

Tahsildar, Puttur, Dakshina Kannada and Others

RESPONDENT

Date of Decision : 22-01-1998

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 94, 96

Citation : (1999) ILR (Kar) 2259 : (2000) 3 KarLJ 570

Hon'ble Judges : A.M. Farooq, J

Bench : Single Bench

Advocate : Sri S.S. Sripathy, for the Appellant; Sri S.S. Guttal, High Court Government Pleader, for the Respondent

Judgement

A.M. Farooq, J.—In this writ petition, the petitioner has sought for issue of writ of certiorari to quash the order dated 19-3-1982 issued by the Tahsildar, Puttur and the order dated 25-10-1990 passed by the second respondent, the Revenue Inspector and the order dated 7-7-1990 passed by the Village Accountant. The petitioner in this writ petition has raised an important question of law as to whether the Wargdar who is enjoying kumki land appertaining to the Wargland could be said to be an unauthorised occupier of the said land and can fine be imposed upon him u/s 94 of the Karnataka Land Revenue Act, hereinafter referred to as "the Act".

2. It is the case of the petitioner that he is the owner of the Warg lands Sy. Nos. 258, 258/5-B, 257/2, 267/3, 267/4-A, 267/6-A, 268/B, 268/4-A3 and 270/1-A3 of Nidpalli Village, Puttur Taluk. For the above Warglands, AW lands bearing Sy. Nos. 268/4-A2 and 270/1-A2 form kumki lands. It is stated that the petitioner has been making use of the said kumki lands for the cultivation of his warg land and according to the petitioner, the warg lands have been granted to him several years back and in view of the ancientness of the grant, it is called Kadim Warg land and therefore, Kadim Wargdars were entitled for kumki rights. The petitioner has also cited old Madras standing orders regarding enjoyment of the

kumki lands.

3. It is stated by the petitioner that he has planted coconut and cashew plants in the said land and has also enclosed the said land by means of fence in order to prevent cattle's straying into the land. That on 19-3-1982, the petitioner was issued an eviction notice on the ground that since the lands belong to the Government, double assessment has been levied as penalty and since the petitioner is not entitled for the grant of the land because of his annual income being more than Rs. 2,000/-, the petitioner should handover possession of the kumki lands within 15 days. The petitioner filed an appeal to the Assistant Commissioner, which was dismissed and against the said order he approached the Deputy Commissioner, who allowed the appeal by an order dated 3-3-1987 and remanded the matter to the Tahsildar for considering the matter afresh.

4. It is the case of the petitioner that the petitioner has been directed to pay a TT fine of Rs. 22,004-47 for being in unauthorised cultivation of the kumki land. The petitioner had filed revision petition before the Karnataka Appellate Tribunal, which was dismissed. It is stated that the Village Accountant has issued the notice dated 7-7-1990 calling upon the petitioner to pay the TT fine amount as stated above and subsequently the Revenue Inspector has threatened to attach the warg land properties of the petitioner. He has been issued with another notice produced at Annexure-D for forfeiture etc., of his properties. It is stated by the petitioner that the notice issued as per Annexures-H, D and F without there being jurisdiction to pass such orders. It is contended by the petitioner that he being Kadim Wargdar is entitled to enjoy and make use of the kumki land attached to the wargland for the better enjoyment of the wargland. It is submitted by Sri Sripathy, the learned Counsel appearing on behalf of the petitioner that the kumki land goes along with the wargland enjoyed by the wargdar and making use of the kumki land will not amount to unauthorised occupation or cultivation of the kumki land and since the wargadar can make use of the kumki land, such use of the kumki land can be punished only with a maximum fine of Rs. 200 under Kumki Rules and no exorbitant fine could be imposed u/s 94 of the Act.

5. Sri Sripathy, learned Counsel appearing for the petitioner brought to my notice, the judgment of the Hon'ble Supreme Court in State of Mysore and Others Vs. K. Chandrasekhara Adiga and Another, , paragraphs 16, 17, 18 and 23 in the said judgment read as under:

"16. The right of kumkidars in respect of kumki lands and the grant of such lands for occupation are matters dealt in the orders of Board of Revenue, Madras. A copy of these orders has been placed before us. Para 40(4) describes what is "kumki land" in South Kanara District. According to it all Government waste land within 100 yards of assessed land included in a holding formed prior to Fasli 1276 (corresponding to 1886 AD) is kumki land. Kumkidar is a person who is entitled to enjoy the kumki privileges. A kumkidar is necessarily either the registered holder, walawargadar or mulgenidar of the land to which the kumki privilege is

attached.

17. Sub-para (4) of the order says:

A kumkidar's privileges in the land are grazing his cattle, cutting and collecting leaves, timber and other forest produce for his agricultural and domestic purposes.

18. Sub-para (6) further makes it clear that within kumki limits, a kumkidar can temporarily cultivate dry crops on Government waste land. If he so cultivates land within kumki limits, he is not liable to pay any hakkal.

23. Although styled as "privileges", kumki rights are recognized by these statutory rules and the standing orders aforesaid. They are property rights notwithstanding the fact that their scope is restricted and their exercise is subject to these statutory rules. Therefore, these rights could be curtailed, abridged or taken away only by law and not by an executive fiat".

6. The learned High Court Government Pleader, who had secured the relevant records from the respondents could not deny the fact that the land in question is a kumki land. The records produced from the authorities themselves show that the land in question is a kumki land. Petitioner is in occupation and cultivation of the said land. It is submitted by the learned High Court Government Pleader that even accepting the arguments addressed on behalf of the petitioner, that though he is not entitled to enjoy certain privileges in the kumki land, certainly he is not entitled to cultivate the kumki land and therefore, he has acted in violation of the rights given to him and hence the fine imposed u/s 94 of the Act is lawful.

7. As extracted from the judgment of the Hon'ble Supreme Court in K.C. Adiga's case, supra, clearly show that the State of Karnataka has conceded before the Supreme Court certain rights which can be enjoyed by the wargadars in respect of the kumki lands and the Hon'ble Supreme Court has observed that the Wargdar's privilege in a kumki land apart from grazing cattle, cutting leaves and trees for his agricultural and domestic purpose, the kumkidar within kumki limits can temporarily cultivate dry crops on Government waste land and if he so cultivates, he is not liable to pay any hakkal (assessment). It is further observed by the Hon'ble Supreme Court that the kumki rights although styled as privileges, the rights are recognised by statutory rules and standing orders in force from a long time and they are property rights notwithstanding the fact that their scope is restricted and subjected to the statutory rules and such rights could be curtailed, abridged or taken away only by the law and not by an executive fiat. The learned Counsel has also cited another judgment in Kammaram Maniani v Mahalakshmi Rajani. In the said case the Kerala High Court was considering whether the Wargdar is entitled for compensation towards the loss of kumki rights along with the warglands. In the said judgment, it is observed that the kumki rights have been statutorily recognised and the rights conferred in the matter of an assignment has been left untouched by any specific provisions to the contra. In view of the Supreme Court pronouncement that

kumki rights are property rights notwithstanding their restricted scope and their exercise subject to statutory rules, there can be little doubt that u/s 72, a right which landlords had in the property in respect of kumki lands vested in the Government. That was under the Kerala Land Reforms Act. In the same case, the Kerala High Court had also considered about the cultivation of kumki land with eucalyptus trees or other timber and as observed such cultivation cannot be said to be any agricultural crop. Here the Government record itself show that the petitioner has cultivated the land with coconut trees and cashew-nut trees. Planting of the said trees cannot be said to be carrying on any agricultural operation in the kumki land.

8. Section 94 of the Act empowers the concerned authority to impose fine on persons unauthorisedly occupying and cultivating the Government lands and the fine amount is left at the discretion of the Deputy Commissioner and the said amount could be levied for every year of the unauthorised occupation but not exceeding Rs. 500 per acre if the land has been used for the purpose of cultivation and not exceeding Rs. 1,000/- per acre if it has been used for non-agricultural purposes. Section 96 applies to only unauthorised occupation of Government land.

9. In the present case, when admittedly the land in question is a kumki land in which the petitioner has been given certain privileges including planting of trees, the petitioner cannot be imposed with a fine u/s 94 of the Act. Even if the concerned authority after enquiry is to come to the conclusion that the cultivation of the land by the Wargdar is in violation of the alleged privileges, even then the Wargdar cannot be imposed a fine of more than Rs. 200 under the relevant Kumki Rules prevailing in respect of the kumki lands. Annexure-B which is an order of remand made by the Deputy Commissioner disclose that the Deputy Commissioner himself was in doubt as to whether the petitioner could be penalised for being in possession and enjoyment of kumki land.

10. Considering the facts of the case and after going through the records produced by the learned High Court Government Pleader, the contention of the learned High Court Government Pleader cannot be accepted and the order passed by the authorities demanding fine u/s 94 of the Act cannot be sustained. It has to be held that the petitioner has been in possession of the kumki land which is attached to his warglands since decades and it cannot be said that the petitioner is in unauthorised occupation and cultivation of the said land. If that is so, no action could be taken against him u/s 94 of the Act.

11. For these reasons, the impugned orders passed by the respondents demanding fine from the petitioner cannot be sustained. This writ petition is accordingly allowed. Rule issued is made absolute. The impugned orders Annexures-H, D and F dated 19-3-1982, 25-10-1990 and 7-7-1990 bearing Nos. NCR.CR. 3043/72-73, NCR.CR. 3043/72-73 and NCR.CR. 3043/72-73 issued by the respondents 1 and 2 and the Village Accountant, Nidpally Village are hereby quashed.

Sri S.S. Guttal, learned High Court Government Pleader is permitted to file his memo of appearance within 8 weeks from today.