

(2005) 10 KAR CK 0013
In the Karnataka High Court
Case No : W.A. No. 7288 of 2001

M.N. Venkateshaiah

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 05-10-2005

Acts Referred:

Karnataka Land Grant Rules, 1969 — Rule 9, 9 (1) (i)
Karnataka Land Revenue Act, 1964 — Section 128, 133, 136 (3)

Citation : (2005) ILR (Kar) 5084 : (2005) 6 KarLJ 452 : (2006) 1 KCCR 205

Hon'ble Judges : S.R. Nayak, J;Anand Byrareddy, J

Bench : Division Bench

Advocate : M.S. Padmarajaiah for S. Chennaraya Reddy and R. Thares, for the Appellant; Deshraj, Government Advocate for R1 to R4, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—The writ petitioner being aggrieved by the order of the learned single Judge dated 27th September, 2001 passed in Writ petition No. 26831 of 2000, has preferred this writ appeal. The learned single Judge has dismissed the writ petition.

2. The background facts leading to the filing of the writ appeal, in brief, are as follows:

The grandmother of appellant, one late Smt. Kamma, was granted 11 acres 34 guntas of land in Sy. No. 50 of Mallepura village, Channarayapatna Hobli, Devanahalli Taluk, Bangalore Rural District during 1940s. In the same survey number, 5 acres of land was also granted to the father of the appellant, Narayanappa by name. Thus, an extent of 16 acres 34 guntas of land, in total, in Sy. No. 50 of Mallepura village was granted in favour of the grandmother and father of the appellant. The said land is hereinafter referred to as the "schedule land", for the sake of brevity. It is the case of the appellant that from the date of the grant, all through the schedule land has been in actual possession and personal cultivation of the family of the appellant and all the revenue records

also support that claim. When the matter stood thus, in the year 1995, on account of rivalry in the village, some of the residents of Mallepura village made an application to the Tahsildar, Devanahalli Taluk-4th respondent herein, to set aside the entries in Column No. 9 and Column No. 12(2) of pahanis which were standing in the name of the appellant and his predecessors-in-title and to hold that the schedule land is a "gomal land". The Tahsildar, having issued notice to Smt Kamma, Sri Narayanappa and the appellant, and having heard the parties, passed an order on 27.2.1996, marked as Annexure-V, directing cancellation of the entries in Column No. 9 and Column No. 12(2) of pahanis and to show the schedule land as "gomal".

3. Against the above order of the Tahsildar, the appellant preferred an appeal to the Assistant Commissioner, Doddaballapur Sub-Division-3rd respondent herein, who, by his order dated 30.4.1997, dismissed the appeal. The appellant preferred further appeal to the Deputy Commissioner, Bangalore Rural District, Bangalore-2nd respondent herein in No. LND. RA.7/97-98, who, by his order dated 30.11.1999 dismissed the appeal. Thereafter, the appellant preferred Writ petition No. 26831 of 2000. In the writ petition, among other grounds, it was urged that from the inception of the grants during 1940s, the appellant and his predecessors-in-title have been in actual possession and personal cultivation of the schedule land uninterruptedly growing various crops; the Record of Rights and pahanis of the schedule land continuously show the name of the appellant and his predecessors-in-title as occupiers and cultivators of the schedule land; the entries made in the Record of Rights and pahanis of the schedule land were never challenged or contested by anyone till the year 1995; the respondent-authorities i.e., the Tahsildar, the Assistant Commissioner and the Deputy Commissioner have exceeded their jurisdiction in recording a finding that the grants pleaded by the appellant are bogus, particularly in the absence of any challenge to the grant orders; since there is no challenge by anyone to the grants made in favour of Smt Kamma and Narayanappa, the Tahsildar, Assistant Commissioner and the Deputy Commissioner ought not to have pronounced upon the validity of the grant orders. Placing reliance on the Judgment of a Division Bench of this Court in the case of H.M. Hanumantharaju and Ors. v. State of Karnataka and Anr. ILR 2001 KAR 3445 it was contended that since the 2nd respondent has not yet cancelled the grants made in favour of Kamma and Narayanappa, the Tahsildar ought not to have invoked his power u/s 133 of the Karnataka Land Revenue Act, 1964 (for short, the Act) and such a course is open to the Tahsildar only if grant orders are cancelled.

4. The learned single Judge having secured the records and perused the same, dismissed the writ petition by observing that the finding recorded by the Tahsildar, Assistant Commissioner and the Deputy Commissioner that the entries are bogus is perfectly in order. At this stage itself, it needs to be said that from the order of the Learned single Judge we could see that the learned single Judge has not dealt with or considered any of the contentions raised in the writ petition. The learned single Judge has also not considered even the grounds of attack

noted by him in paragraphs 3 and 5 of the judgment.

5. We have heard Sri M.S. Padmarajaiah, learned Senior Counsel for the appellant and Sri Deshraj, learned Additional Government Advocate for the respondents.

6. Sri M.S. Padmarajaiah would contend that the Record of Rights and Pahanis of the schedule land and other documents produced in the case would clearly and clinchingly establish that the schedule land was granted in favour of the grandmother and father of the appellant in 1940s itself and since then, the family of the appellant has been in actual possession and personal cultivation and enjoyment of the same all through and this position was clearly reflected in the revenue records till the Tahsildar passed the adverse order against the appellant. Sri M.S. Padmarajaiah would also contend that there is an error apparent on the face of the orders of the Tahsildar, Assistant Commissioner and the Deputy Commissioner in pronouncing upon the validity of the grants made in favour of the grandmother and father of the appellant and condemning the entries in Column Nos. 9 and 12(2) as bogus. Sri M.S. Padmarajaiah would highlight that till date no one has challenged the existence or validity of the grant orders made in favour of the grandmother and father of the appellant and, therefore, the revenue authorities ought not to have directed deletion of the entries made in the name of the appellant and his predecessors-in-title and that any direction to delete the entries in the Record of Rights and Pahanis which stand in the name of the appellant and his predecessors-in-title would arise only in the event of a competent authority cancelling the grants made in favour of the grandmother and the father of the appellant or pronouncing upon the non-existence of such grants. Sri M.S. Padmarajaiah would place strong reliance on the judgment of this Court in the case of H.M. Hanumantharaju (*supra*) in support of his above submission.

7. Sri Deshraj, learned Government Advocate, per contra, while supporting the impugned orders of the revenue authorities, would contend that since the appellant has not produced the grant orders made in favour of his grandmother and father and the saguvali chits issued by the Tahsildar, the mutation and the entries made in the record of rights and pahanis of the schedule land could not be supported and therefore, they are liable to be deleted. The learned Government Advocate would also draw our attention to the finding recorded by the Assistant Commissioner that the entries in the Record of Rights and pahanis are concocted. Sri Deshraj would also maintain that when the entries in the Record of Rights and pahanis were made by the Tahsildar himself, it is also permissible for him to delete such entries.

8. By way of reply, learned senior Counsel for the appellant would contend that the grant orders were made by the Deputy Commissioner and, if for any reason, grants made in favour of the grandmother and the father of the appellant are liable to be cancelled, the Deputy Commissioner alone could initiate proceedings and cancel the grant as provided under the Land Grant Rules. Learned senior

Counsel would contend that if it is the case of the revenue authorities that the schedule land was never granted in favour of the grandmother and father of the appellant, the Deputy Commissioner ought to have been moved by the aggrieved parties or the concerned revenue officer and it was for the Deputy Commissioner to verify the records and decide whether such grant orders exist or not. Be that as it may, learned senior Counsel would contend that certainly it is not the power of the Tahsildar to pronounce upon the non-existence of the grants or to cancel grants, if they exist, and that power of the Tahsildar could not be traced with reference to any of the provisions of the Act and the Rules framed thereunder or any other law.

9. Having heard the learned Counsel for the parties, the point that arises for our consideration and decision is whether the order made by the Tahsildar directing deletion of the entries which stood in the name of the appellant and his predecessors-in-title from the revenue records and showing the schedule land as "gomal land", in the facts and circumstances of the case and evidence on record is justified and legal?

10. At the threshold, it needs to be noticed that it is the case of the appellant that the schedule land was granted in favour of his grandmother and father by the Deputy Commissioner, Bangalore Rural District in 1940s. It is true that grant orders as such are not produced before the authorities or before this Court. In the course of the arguments, when we asked the learned senior Counsel as to why the grant orders were not produced before the revenue authorities, he would tell us that the grandmother and father of the appellant were illiterate and gullible persons and they had either misplaced them or lost them during their lifetime. Simply because the appellant has not produced the grant orders issued by the Deputy Commissioner in 1940s in favour of the grandmother and the father of the appellant, would it be fair for the revenue authorities or for that matter for this Court to assume that the schedule land was not granted to the grandmother and father of the appellant. Perhaps we would have recorded such a finding provided there were no other pieces of substantive legal evidence.

11. In the present case, fortunately for the appellant, there are many records which would go to show that from 1940s the appellant and his predecessors-in-title have been in actual possession and personal cultivation of the schedule land uninterruptedly. Annexure-B is the true copy of the extract of the Special Dharkast Register for the year 1947-48 and this document discloses the grant made in favour of Smt. Kamma. Annexures C to H are the extracts of patta & receipt books and RTCs of the schedule land and all of them stand in the name of Smt. Kamma. Annexure- J is the tax-paid receipt which shows that kadayam was paid by the granted. Even with regard to 5 acres of land in Sy.No. 50 granted in favour of the father of the appellant, the revenue records reflect the same position as in the case of Smt. Kamma. Annexure-K and L are the copies of Record of Rights and Index of Lands of the schedule land. Annexure-M to S are the copies of land Record Phodi Register, Saguvalli chit dated 25th May, 1942,

Special Dharkast Register extract for the year 1942-43, Saguvali chit and Demand Register for the year 1942-43, tax-paid receipt and Hiduvali certificate. All these documents, individually and collectively, show that after the grant made in 1940s Smt. Kamma and Sri Narayanappa and the appellant have been in actual possession and personal cultivation of the Schedule land althrough.

12. At this stage, one more development which has taken place needs to be noticed. That is when one R. Narasimhappa and nine others tried to interfere with the possession of the appellant in the year 1995, the appellant had filed a suit in O.S. No. 364 of 1995 in the Court of the Civil Judge (Jr. Dn.), Devanahalli, for permanent injunction and the said suit was decreed on 25.3.1999. The Judgment and decree passed in the said suit are produced at Annexures T and U in the writ petition. Of course, the revenue authorities are not parties to the said suit. But, the fact remains that the Civil Court found that the appellant and his predecessors-in-title were in possession of the schedule land. Thus, there is a prima facie evidence to show that the appellant and his predecessors-in-title have been in actual possession and cultivation of the schedule land roughly for six decades as per the documents available and produced in the case. Therefore, it cannot be said that the appellant and his predecessors-in-title are not in possession and enjoyment of the schedule land. It also needs to be noticed that from 1940s till the year 1995, neither the revenue authorities nor any private persons questioned the possession and cultivation of the schedule land by the appellant and his predecessors-in-title by contending that they were unauthorised occupants of the schedule land or that no grants were made in their favour or that someone else is entitled to the schedule land. In that view of the matter, we are of the considered opinion that the say of the revenue authorities that the documents produced by the appellant to show that the schedule land was granted in favour of his grandmother and father are bogus because there are no entries in the original dharkast register for the corresponding period, is not correct. The revenue authorities have failed to appreciate the fact that such lapse might have occurred on account of the mistake or dereliction of duty on the part of the concerned officer who was entrusted with the duty of making entries in the Dharkast registers. Be that as it may, if the Deputy Commissioner were to initiate proceedings for cancellation of grant in favour of the grandmother and father of the appellant or calling upon the appellant to trace his title to the schedule land, the appellant would have reasonable opportunity to adduce evidence to satisfy the Deputy Commissioner about the existence of the grants. That power which is exclusively available to the Deputy Commissioner, in terms of law, could not have been usurped by the Tahsildar in the purported exercise of his power u/s 133 of the Act. The Tahsildar, undeniably, has no power to pronounce upon the validity of the grants made in favour of the grandmother and father of the appellant in 1940s or on the existence of such grants or bogus nature of the documents produced by the appellant to support his case that in 1940s the schedule land was granted in favour of his grandmother or father. The revenue authroities, in our considered

opinion, have exceeded their jurisdiction in recording a finding that the documents produced by the appellant to establish that the schedule land was granted in favour of his grandmother and father are bogus, that too, in a proceeding initiated by the Tahsildar u/s 133 of the Act.

13. In our view, as rightly contended by the learned senior Counsel for the appellant, the judgment of a Coordinate Division Bench of this Court in the case of H.M. HANUMANTHARAJU (supra) squarely applies to the facts of this case. In that case, the dispute related to certain extend of land in Sy. No. 46 of Kaggalipura village, Uttarahalli Hobli, Bangalore South taluk. Those lands were granted to various persons. The grants were made under the provisions of the Karnataka Land Grant Rules, 1969 framed under the provisions of the Act. The appellants were purchasers of the land in question from some of such grantees for consideration under the registered sale deeds. It appeared that after purchase of the land in question, the appellants got their names mutated in revenue records as per the provisions contained u/s 128 of the Act. Subsequently, by order dated 31.1.1997 purported to have been passed u/s 136(3) of the Act, after notice to the appellants, their names had been directed to be cancelled in the revenue records and names of the original grantees were directed to be restored. The reason assigned in the order was that since the appellants and some other similarly situated persons had purchased the land in question in violation of non-alienation clause, as incorporated in the grant order, they had not acquired any valid title and therefore their names could not have been mutated in the revenue records. In such fact-situation, having noticed the fact that the grants made in favour of the original grantees were not cancelled by any competent authority, though such a power lies with them under Rule 9(1)(i) and (v) of the Rules and placing reliance on the Judgment of another Division Bench of this Court in the case of Siddaiah v. Hutchamma 1982 (2) KLJ 28 it was held by this Court thus:

"If the contention of the respondent revenue authorities that alienation in favour of the appellants were made in violation of the non-alienation clause of grant is correct, when they ought to have resorted to the above Rule 9 of the Rules for cancellation of the grant itself and only thereafter they could have initiated proceedings u/s 136(3) of the Act for correction of the revenue entries. But, without cancelling the grant, they could not have adopted indirect way of cancelling the grant by changing the mutation entry. This is ex facie impermissible in law".

14. What is held and observed in para 7 of the Judgment has a direct bearing on the decision-making in this appeal also. Since the Deputy Commissioner has not initiated any proceeding to cancel the grants made in 1940s in favour of the grandmother and father of the appellant, deletion of entries which stand in the name of the appellant and his predecessors-in-title in pursuance of the grant orders, that too by the Tahsildar, would not arise. In other words, the Tahsildar would have acquired such a right to do so only if the Deputy Commissioner were

to cancel the grant orders or to hold the grant orders claimed by the appellant are non-existent. In the absence of such order of the Deputy Commissioner, we should necessarily hold that the impugned order of the Tahsildar is one without authority of law in terms of the above Judgment of the Division Bench. Consequently, the orders passed by the Assistant Commissioner and the Deputy Commissioner as well as the learned single Judge would also fall to the ground.

15. In the result and for the foregoing reasons, we allow this Writ Appeal and set aside the orders of the learned single Judge dated 27th September, 2001 and allow Writ petition No. 26831 of 2000 and quash the order of the Deputy Commissioner, Bangalore Rural District, in No. LND. RA. 7/97-98 dated 30th November, 1999 marked as Annexure-Y. In the facts and circumstances of the case, the parties are directed to bear their respective costs.