

(2019) 02 KAR CK 0027
In the Karnataka High Court
Case No : Writ Petition No. 23608 Of 2018

Mr Gunapal Athikari

APPELLANT

Vs

State Of Karnataka By Its

RESPONDENT

Date of Decision : 22-02-2019

Acts Referred:

Citation : (2019) 02 KAR CK 0027

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : N Sukumar Jain, T.S.Mahantesh

Final Decision : Allowed

Judgement

1. Petitioner herein is claiming permanent ownership to land bearing Sy.No.102/1, measuring to an extent of 6 acres 95 cents situated at Mudukodi village of Belthangady Taluk, Dakshina Kannada District.

2. The records would indicate that under South Canara District Lease of Lands for Cultivation Rules, 1957, the aforesaid land was leased in favour of the petitioner's mother, Smt.Chandravathi. Admittedly, the said lease was for a period of 30 years with certain terms and conditions attached to it, where an option is available to the lessee to seek permanent ownership to the leased land after the expiry of lease period provided. Copy of the lease agreement at Annexure-A would indicate that the petitioner's mother was the lessee and that she was in possession and cultivation of the land in question from 15.9.1958 till her death on 3.4.1993 and subsequently, the land in question is under the cultivation and enjoyment of the petitioner.

3. It is stated that the petitioner's mother has complied with all the terms and conditions of the lease and as such, during the lifetime of his mother she was entitled to seek permanent ownership over the land in question. However, when her application was pending consideration, she having died, the petitioner as her sole survivor is seeking issuance of permanent ownership to him.

4. In this behalf, in a proceedings bearing No.LND (3) CR.226/1995-96, an order is passed on 9.3.1999, at Annexure-C, on the file of Deputy Commissioner, South Canara, Mangaluru. In the said order the Deputy Commissioner would refer to an order already being passed in proceedings No.A.Dis.LND(3) CR 105/1995-96, dated 24.7.1995 in fixing a sum of Rs.8,000/- per acre as nominal value for seeking permanent ownership to the land in question, that the said order dated 24.7.1995 was challenged by the petitioner herein before the KAT in Appeal No.393/1995, where the demand of payment of Rs.8,000/-per acre is quashed and the matter is remitted back to the Deputy Commissioner to arrive at the value of the land in question in accordance with the guidelines laid down in the judgment of the Tribunal in Appeal No.247/94, dated 31.10.1996. Based on such remand by the KAT, the proceedings in No.LND(3)CR.226/1995-96 is initiated and the order dated 9.3.1999 at Annexure-C is passed, where the Deputy Commissioner would hold that the Government is required to take a decision regarding fixation of the nominal market value of the land in question and accordingly dropped the said proceedings.

5. In this proceedings, the grievance of the petitioner is that from 1999 till today no steps are taken by the Government to fix the nominal market value as directed by the KAT in its order dated 27.3.1997 in Appeal No.393/1995. In that view of the matter, he would seek mandamus at the hands of this Court to the authorities for fixing the nominal market value.

6. However, when this matter is taken up for consideration, learned counsel for the petitioner would bring to the notice of this Court that under similar circumstances several writ petitions are also disposed of. One of them on which he would place reliance before this Court is in WP.No.30532/2015, disposed of on 19.1.2017 (Ramanatha Shetty -vs- State of Karnataka & Another), wherein the Coordinate Bench of this Court would rely upon the Division Bench judgment rendered earlier in WA.Nos.5242/2004 c/w 5103/2004, 5331/2004 and 5046/2004, disposed of on 26.10.2017 as well as the order passed on 23.7.2012 in WP.No.23692/2012.

7. The observations made by the Division Bench in WA.No.5242/2004 and connected matters reads as under:

"8. In our considered view, on the basis of decision of Supreme Court referred to supra upon which strong reliance is rightly placed by the learned counsel for the appellants and also in view of vested right accrued upon the land in question in favour of appellants the leasehold rights were granted and the said Rules have got statutory force. The determination of market value of granted land must be on the basis of Rule-23 but not Rule-17. Rule-17 is applicable to the grant of land in favour of fresh grantees but not in favour of lessees who had acquired vested right under the Rules, 1957. Therefore, we have to hold that determination of the market value of the granted land must be reckoned which was prevalent at the time of grant of the same by lease under sub-rule (1) of Rule(iii) of 1957 Rules, this is what is referred to in Rule-23 of KLG Rules. In the absence of Rule-

we also, appellants are liable to pay the value of land as fixed as on the date of grant of leasehold rights in favour of the appellants. These aspects are not considered by the learned single Judge while setting aside the order of KAT, no doubt, various other decisions of the Supreme Court are referred to by him in the impugned order which have no relevance to the fact situation as the learned Single Judge did not examine the Rules of 1957, which have got enforceable character and conferred the vested statutory rights upon the appellants in respect of the land in question and similarly placed persons. Non-consideration of the said Rules of 1957 and the terms and conditions of the grant order upon which the vested rights are conferred upon the appellants and similarly placed persons are not examined and considered by the learned Single Judge at the time of passing the impugned order. Therefore, the impugned order is liable to be set aside and the order of KAT must be revived, but fair submission is also made by the appellants counsel having regard to the potentially of the land and market value of the land, the learned counsel for the owners have submitted that they would pay 300 times the price of the land revenue assessed per acre which was prevailing as on the date of grant.

In view of the above fair submission on behalf of the appellants, there Writ Appeals are allowed. The impugned order is set aside. The Deputy Commissioner shall quantify the market value of the land in question and collect the price of the land in question from the owners and shall also issue grant certificate in their favour as expeditiously as possible, but no costs are awarded."

8. The observations made by the learned Single Judge in WP.No.23692/2012 disposed of on 23.7.2012 reads as under:

"10. It is necessary to notice here that a submission was made by the counsel for the appellants before the Division Bench that having regard to the potentiality of the land and its market value, the appellants were prepared to pay the price at 300 times the land revenue payable on the lands in question which was prevailing as on the date of grant. Therefore, after holding that the order of the Appellate Tribunal did not call for interference and that the order passed by the learned Single Judge had to be set aside, the Division Bench referring to the submission made by the appellants directed the Deputy Commissioner to quantify the market value and collect the price of the land from the owners and thereafter issue Grant Certificate. This is the essence of the direction issued.

11. But, the Deputy Commissioner has ignored the entire reasoning assigned by the Division Bench and has merely proceeded to construe the order passed by the Division Bench as one directing him to collect the market value. Based on this wrong construction of the order passed by the Division Bench of this Court, the impugned communication was issued vide Annexure-A calling upon the Tahsildar to give sales statistics of the lands in the village for the last three years so as to enable him to find out the market value to be collected from the petitioner. This approach of the Deputy Commissioner is totally illegal and erroneous and is contrary to the direction issued by the Division Bench of this

Court.

12. The tenor of the judgment passed by the Division Bench of this Court is that the market value at the rate of 300 times the land revenue assessed on the land as was prevailing on the date of grant had to be collected. In fact the Division Bench upheld the order of the Tribunal wherein the market value had to be collected by referring to the decision of the Full Bench of the Tribunal which had held that the amount to be collected was 200 times the land revenue payable. But as a submission was made by the petitioner herein agreeing to pay the amount at 300 times the land revenue payable, the Division Bench directed the Deputy Commissioner to quantify the market value on that basis.

9. After giving careful consideration to the submissions made by the learned counsel for the petitioner and on going through the judgments, referred to supra, it may not be appropriate for this Court to take a contradictory stand and to give a finding in the present case contrary to the finding of Division Bench and the learned Single Judge in the said judgments.

10. Accordingly, this writ petition is allowed. The impugned endorsement at Annexure-H bearing No.LGLCR.03/2016-27 dated 27.1.2018 is quashed. The 2nd respondent Deputy Commissioner, Mangaluru, is hereby directed to collect the nominal price at the rate of 300 times the land revenue payable per acre that was prevailing as on the date of grant and issue Permanent Ownership Certificate to the petitioner. The same shall be concluded by the Deputy Commissioner within a period of 3 months from the date of receipt of a copy of this order and Permanent Ownership Certificate/Saguvali Chit shall be issued.

Learned Additional Government Advocate is permitted to file memo of appearance within two weeks from today.