
(1982) 09 KAPT CK 0021
In the Karnataka Appellate Tribunal
Case No : Revn. Petn. 136/81 (VPS)

Nagaraj S.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 30-09-1982

Acts Referred:

Karnataka Panchayats (Acquisition, Transfer of Moveable and Immoveable Property) Rules, 1960 — Rule 6
Karnataka Village Panchayat and Local Boards Act, 1959 — Section 50

Citation : (1982) 1 KarLJ 110

Hon'ble Judges : K. V. Narayana Raju, Member; R. Shankarappa, J

Judgement

Per K.V. NARAYANA RAJU, M.-This revision petition under S. 207 of the Karnataka Village Panchayats and Local Boards Act is directed against the order dated 9-11-1981 passed by the learned Divisional Commissioner, Mysore in VPA 56/1980-81 setting aside the order dated 1-8-1979 passed by the learned Deputy Commissioner, Chickmagalur in file O.M. No. VPC CR 73/ 79-80 granting a site 34" x 15" at Sakrepatna village, Kadur taluk to the present petitioner Nagaraj.

2. Some years ago the petitioner was granted a site by the panchayat and he construed a house or shop thereon in which he is carrying on business as a tailor and/or a cloth dealer. Some vacant land remained on the north of that site. The petitioner applied and the panchayat resolved on 26-8-1978 that the second site should not be given. The petitioner moved the higher authorities, and the Assistant Commissioner, Tarikere Sub-Division, recommended by letter dated 7-7-1979 grant the of site. He referred in that letter to the resolution passed by the panchayat declining to grant the site. But the learned Dy. Commissioner proceeded to issue official memorandum dated 1-8-1979 granting the site 34" x 15" purporting to act under Rule 6 of the Karnataka Panchayats (Acquisition and Transfer of Moveable and Immoveable Property) Rules, 1960. The learned Deputy Commissioner did not care to ascertain the wishes of the panchayat. it appears that certain villagers complained on 2-8-1980 that the present petitioner

was constructing over the road, and the Chairman cancelled the licence on 3-8-1980. Respondent-2 Ranganath preferred revision petition on 15-1-1981 to the learned Divisional Commissioner, Mysore, with an application for condonation of delay stating in the affidavit that he was not aware of the order passed by the Deputy Commissioner till 12-1-1981 when the present petitioner tried to encroach upon the land covered by the channel, that immediately he applied and obtained a copy of the order and that therefore the delay in preferring the revision may be condoned. We may state here that S. 207 of the Karnataka Village Panchayats and Local Boards Act, does not provide the period of limitation for filing a petition for revision, or for the exercise of the power of revision by the Commissioner or the Government. The learned Divisional Commissioner entertained the revision and set aside the order passed by the Deputy Commissioner holding that the Deputy Commissioner had no power to order the grant of the land and that Rule 6 of the Karnataka Panchayats (Acquisition and Transfer of Moveable and Immoveable Property) Rules, 1960 only contemplates the issue of sanction for the transfer of property proposed by the panchayat. He rightly said that the Commissioner or the Deputy Commissioner had been given the power to regulate transfers of the immoveable property and see that the panchayat did not alienate the property without the previous sanction, and that he had no power to direct the grant or alienation of the property.

3. Aggrieved by that order the petitioner has contended before us that the order passed by the Deputy Commissioner was in conformity with Rule 6 of the Karnataka Panchayats (Acquisition and Transfer of Moveable and Immoveable Property) Rules, 1960; that the Dy. Commissioner had only issued direction to the village panchayat in the matter of grant of a house site; that the learned Divisional Commissioner had no power to set aside the grant made by the village Panchayat (?); that the learned Divisional Commissioner did not consider the application for condonation of delay in filing the revision petition; etc....

4. The counsel for the petitioner, respondent-3 Ranganath and the Assistant State Representative have been heard. We are of the opinion that no case is made out for interference with the order passed by the Divisional Commissioner. The contention that the learned Divisional Commissioner did not consider the application for condonation of delay need not detain us long. As said before no period of limitation is prescribed for the exercise of power of revision. No doubt that such power should be used cautiously and within a reasonable time before a person has acquired valuable right in pursuance of the order impugned. Equitable considerations may be relevant. In the case before us the action of the petitioner in constructing on the site granted has been opposed by the villagers and it is not possible to say that he bonafide incurred heavy expenditure on constructing a house. Therefore, we are of the opinion that the petitioner is not really prejudiced by reason of the Divisional Commissioner exercising the power of revision after about an year.

5. Here is a clear case of by-passing the panchayat, which alone under S. 50 the

Karnataka Village Panchayat and Local Boards Act, has the authority to lease, sell or otherwise transfer any moveable or immoveable property vested in it. That power, no doubt, is subject to the condition that previous sanction of the Commissioner or such other authority as may be prescribed, is obtained. It is obvious while it is the panchayat which should take a decision to transfer the property, that such decision cannot be implemented without the previous sanction of the Commissioner or the Deputy Commissioner. The Commissioner is given the controlling power only to see that the panchayat does not indiscriminately dispose of the property vested in it. Such a controlling or regulatory power cannot be taken as conferring an original power to direct the panchayat to transfer the property. Both the decisions to transfer and the act of transfer should be of the panchayat subject only to the control of the Commissioner or the Deputy Commissioner.

6. A faint attempt has been made to show that the Deputy Commissioner had only issued a direction to the panchayat to consider the request of the petitioner for the grant of site. That surely is not the case and we find, deliberate attempt on the part of the Assistant Commissioner and the Deputy Commissioner to impose their will on the panchayat which is not permissible at all. S. 198 of the Village Panchayats and Local Boards Act deals with the power of inspection and supervision of the Commissioner and other officers. It only provides for the Commissioner or the Deputy Commissioner requiring a panchayat to take into consideration any objection which appears to him to exist to the doing of any thing which is about to be done, and to make a written reply within a reasonable time stating its reasons for not desisting from doing or for not doing, such thing. It is clear that the panchayat is the sole authority and that the Commissioner and the Deputy Commissioner could have only asked the panchayat why the site could not be granted to the petitioner. The panchayat had given quite good reasons in its resolution dated 26-8-1978 for not granting the site. The Deputy Commissioner could only think of other remedies if the panchayat was found acting in an illegal or improper manner. It is rather unfortunate that the Deputy Commissioner in the present case has done a highly improper thing by granting the site without caring for the reasons and wishes of the panchayat.

7. We are satisfied that neither S. 50 of the Village Panchayats and Local Boards Act nor Rule 6 of the Karnataka Panchayaths (Acquisition and Transfer of Moveable and Immoveable Property) Rules, 1960, empower the Deputy Commissioner to order alienation of the property vested in the panchayat. He can only decide whether a proposal by the panchayat to alienate is proper and desirable and accord or withhold the sanction as the circumstances may require.

8. The learned Deputy Commissioner has exceeded his power in ordering the grant. It is not possible to say that the panchayat has granted the site of its own volition. The circumstances are that the panchayat felt compelled to issue the certificate of grant.

9. For the fore-going reasons the revision petition is dismissed.