

(2016) 03 KAR CK 0086

In the Karnataka High Court

Case No : Writ Petition Nos. 54797-54801 of 2015 (KLR-RES)

Narayana Rao

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:

Citation : (2016) 03 KAR CK 0086

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : Raghupathy T.N., Advocate, for the Appellant; A.G. Shivanna, Additional Advocate General and H. Venkatesh Dodderi, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—1. Heard the learned Counsel for the petitioner and the learned Additional Advocate General Shri A.G. Shivanna and the learned Counsel Shri K.N. Puttegowda appearing for the respondent No. 6.

2. The present petitions have a chequered history. The facts are as follows:

"The petitioner is said to have submitted two applications in Form No. 50 under the provisions of the Karnataka Land Revenue Act, 1964 (Hereinafter referred to as the "KLR Act" for brevity) and the Karnataka Land Revenue Rules, 1966 (Hereinafter referred to as the "KLR Rules", for brevity), for regularization of unauthorized cultivation of lands bearing survey No. 55 measuring 1 acre 14 guntas at Jeegenahalli, Ramanagaram Taluk, and survey No. 83 measuring 12 guntas of Bolappanahalli, Kasaba Hobli, Ramanagaram taluk, as on 25.7.1991 and 19.9.1991 and the Committee for regularization of unauthorized cultivation of lands is said to have passed a resolution on 30.8.1993, recommending regularization of such unauthorized cultivation. However, the Tahsildar, who was the Secretary of the Committee, has chosen to dismiss the application on the ground that the Committee has not addressed the circumstance that the lands

were situated within 5 kilometres from the City Municipal limits (CMC) of the Ramanagaram CMC. That having been challenged in appeal before the Assistant Commissioner, the Assistant Commissioner had dismissed the appeal and the same having been challenged before the Tahsildar, who was required to pass an order under Section 108D(3) of the KLR Rules, had chosen to send the recommendation to the Assistant Commissioner who in turn, is said to have sent it to the Deputy Commissioner and the Deputy Commissioner, in turn had sent it to the State Government. This process had gone on till the Tahsildar ultimately passed an order dated 10.3.2006, dismissing the application on the footing that the lands were within 5 kilometres from the limits of the Ramanagaram City Municipal Council, though the recommendation for regularization of unauthorized cultivation was issued in the year 1993. The same having been questioned in appeal before the Assistant Commissioner, the Assistant Commissioner has dismissed the appeal and the matter had been remitted to the Deputy Commissioner."

However, parallely it transpires that by an order dated 3.5.2005, the Government of Karnataka had directed the Deputy Commissioner, Bangalore Rural District, to auction certain Government lands in the district under Rule 12(2) of the Karnataka Land Grant Rules, 1969. Pursuant to the direction, the Deputy Commissioner had directed the Assistant Commissioner, Ramanagaram Sub-division to auction the lands. Accordingly, public auction was conducted in respect of the very lands, which were the subject matter of these petitions and that notification was challenged by the petitioner herein, wherein there was an interim order directing not to confirm the sale. The public auction had however been held on 6.1.2006 and respondent No. 6 was found to be the highest bidder. This court in a writ petition in WP 126/2006, which was initiated by the petitioner, quashed the auction notification dated 30.11.2005. The auction purchaser had challenged that order by way of appeals in WA 2328/2008 and WA 2332/2008. This Court had set aside the order passed in WP 126/2006 and remitted the matter to the learned Single judge and also directed the petitioner to implead the auction purchaser. On hearing by the learned Single judge, the writ petition was dismissed. Writ Appeals were filed in WA 4316/2013 and WA 6772/2013. In the said writ appeals, the order of the learned Single judge was set aside and the matter remanded directing the Assistant commissioner to dispose of the case in accordance with law and the auction held on 6.1.2006 was made subject to the result of the appeals. Pursuant to the directions of the Division Bench, the Assistant Commissioner has conducted an inquiry and dismissed the appeal by order dated 6.3.2015. In the meanwhile, on 10.4.2015, the Deputy Commissioner had confirmed the sale of public auction in favour of the sixth respondent. The Tahsildar had also issued a Sale Certificate in the name of the auction purchaser on 24.4.2015 and possession is said to have been handed over to the auction purchaser on 30.4.2015. In the meanwhile, the appeal filed by the present petitioner against the order of the Assistant Commissioner on 6.3.2015 has been dismissed by order dated 3.11.2015. It is

that which is sought to be challenged in the present petitions.

The sequence of events are not in dispute except that the petitioner complains that over the years, he had grown several fruit bearing trees and the standing timber, which have been removed over night by the sixth respondent on 7.11.2015 and he is intending to form house sites over the land in question. Therefore, the petitioner would contend that as seen originally, there was a recommendation by the Committee for Regularization of Unauthorized Cultivation in his favour. However, Section 108D(3) of the KLR Rules, contemplates that the Tahsildar shall issue saguvali chit pursuant to the recommendation, unless he dismisses the application for good reason. The Tahsildar not having chosen to do so and having forwarded the papers to the Assistant Commissioner, who in turn, has forwarded to the Deputy Commissioner and thereafter to the State Government and the process having hung fire for over 13 years and ultimately, the matter having been sent back to the Deputy Commissioner and the Tahsildar of his own motion having proceeded to hold that there could not be regularization of land in favour of the petitioner as the lands were within 5 kilometres from the City Municipal Council, the same has been challenged. Notwithstanding the further proceeding that ensued, the matter having been remitted to the Assistant Commissioner, for fresh disposal, was required to address the grounds raised in challenging the rejection of the application by the Tahsildar, but the scope of the appeal has been widened into a roving inquiry on allegations of fraud and tampering of documents and ultimately has resulted in the Assistant Commissioner giving findings which were outside the scope of the appeal. It is pointed out that insofar as cancellation of a grant is concerned, if the recommendation was to be accepted by the Tahsildar and if it was to be cancelled, the procedure contemplated is in terms of 108K of the KLR Rules, which provides for cancellation of a grant after affording an opportunity of hearing. The learned counsel would submit that the cancellation of the grant on account of serious allegations of fraud and tampering would have required a detailed inquiry by recording evidence, where the petitioner would have had an opportunity to contest the worth of the evidence that is tendered to defeat his claim. Such an inquiry was not held. Mere filing of objections to the rejection of the application by the Tahsildar was incomplete inquiry insofar as the cancellation of the grant as contemplated under 108K is concerned. The learned Counsel, therefore, would submit that there has been a miscarriage of justice in the hybrid procedure having been adopted by the Assistant Commissioner on such remand of the appeal for consideration and would hence seek that there be a fresh inquiry where the petitioner would have ample opportunity to demonstrate that there is no substance in the allegations of fraud and tampering. In this regard, the learned Counsel would submit that the alleged tampering which is pointed out by the respondents in the Register maintained in respect of Form Nos. 50 and 51 is, on the face of it, not readily acceptable. It cannot be attributed to the petitioner of having tampered the said Register, which is in the custody of the competent authority.

It is further pointed out that there are as many as 49 interpolations and corrections which would apparently indicate that they were carried out in the usual business course for there is no allegation of fraud in respect of other corrections made in respect of people, who have had the benefit of regularization of unauthorized cultivation and to single out the petitioner and any correction made in respect of his application or name if characterized as forgery or fraud, is unnatural and is unfair. Therefore, the learned Counsel would submit that even if this factum of tampering or irregularity is to be established, it should be at a full-fledged inquiry and a valuable right that had accrued by virtue of the recommendation made by the competent authority cannot be taken away in a summary fashion and on a partisan view taken by the Assistant Commissioner unilaterally on the basis of mere objections being exchanged between the parties. Therefore, the learned Counsel seeks that the petition be allowed and the matter be remanded to the Assistant Commissioner and in the meanwhile, the respondent be restrained from changing the nature of the land or in any way interfering with the land.

3. On the other hand, the learned Additional Advocate General would submit that given the long history of this land, the question of a grant having been made in favour of the petitioner is not forthcoming. Even according to the petitioner, there was a mere recommendation by the Committee for regularization of unauthorized cultivation and saguvali chit was not issued pursuant to such recommendation. On the other hand, the matter was not even considered till the year 2006 by which time the land was clearly within the prohibited limits of the Ramanagaram CMC and the Tahsildar having rejected that application, was in order. A further appeal preferred was therefore futile.

4. Insofar as the subsequent proceedings that had ensued in appeals as well as before this court in writ petitions and writ appeals notwithstanding, the fact remains that the Assistant Commissioner, who had power under Section 108K of the KLR Rules, to inquire into any irregularity in canceling the grant, which was never made since he was only to consider whether the recommendation itself was right and proper has found that there was a large scale tampering of the relevant records and having come to a conclusion that the cancellation of recommendation was bad in law and having confirmed the rejection of the application by the Tahsildar, notwithstanding that it was not on the ground of the land failing within the limits of the Ramanagaram CMC, but on the ground that there was fraud involved, would not be outside the scope of the Assistant Commissioner's power or jurisdiction. Notwithstanding the reason assigned is that the recommendation would be bad for want of bona fides and on account of forgery and fraud, it cannot be said to be outside his jurisdiction. The insistence on the petitioner that there should be long drawn out inquiry is not warranted. It is well within the discretion of the Assistant Commissioner to satisfy himself as to want of bona fides on the part of the petitioner with reference to the record.

In the absence of any specific procedure prescribed as to the manner in which an

order shall be passed pursuant to the proceedings initiated under Rule 108K of the KLR Rules, it cannot be said that the Tahsildar was fettered in any manner in holding an inquiry. A reasoned order having been passed, it cannot be said that there has been summary disposal of the proceedings or that the petitioner is prejudiced, for he had every opportunity of having his say before the Assistant Commissioner and in the absence of any request for tendering evidence or seeking to cross-examine any of the officers of the department, it cannot be said that the petitioner was precluded from doing so or that he has been unfairly treated as sought to be suggested.

It is in this vein the petition is sought to be resisted by the learned Additional Advocate General.

5. The learned Counsel Shri K.N. Puttegowda, appearing for the auction purchaser would submit that he is an innocent and bona fide purchaser for value, who has participated at the public auction and has invested monies. Respondent No. 6 having invested a large sum of money in having purchased the property is yet to see the fruits of his purchase and the matter having been locked up in litigation for the past more than 10 years, would result in grave injustice. Further, the learned Counsel would question the bona fides of the petitioner in seeking regularization of unauthorized cultivation for there are enough and more material to demonstrate that he is not an eligible person seeking such regularization apart from the fact that the land lies well within the prohibited limits and it is not possible for regularization of the said lands. He would also submit that the land is classified as "sarkari bande kere kodi" and therefore not capable of being brought under agriculture and it is only being prohibited under rule 108-I. However, it may be put to non-agricultural use which has been permitted in favour of the sixth respondent and he would therefore submit that notwithstanding the further proceedings that may occasion in the present case on hand, even if it should come to that the sixth respondent must be permitted to develop the land at his risk. Further, it is also pointed out that the sixth respondent had been granted leave by a division bench of this court to participate at the proceedings earlier and hence the sixth respondent is a bona fide purchaser for value. The learned Counsel would therefore submit that in any event, there is no merit in the petitions and the petitioners are liable to be dismissed.

6. By way of reply, Shri Raghupathy, would submit that it is unfortunate that the petitioner has not been conferred with the occupation of the land at the earliest point of time. When there was a favourable report by a person no less than the then Tahsildar confirming that there were several fruit bearing trees on the land in question and that the petitioner was firmly in possession for over 25 years. This has been ignored in the subsequent proceedings where false allegations of tampering and fraud have been raised merely to bring the property to sale and deprives the petitioner of the benefit of the land.

7. Given the above circumstances, it may be seen that the after all the several

appeals and petitions and further writ appeals before this court, the matter having been remanded to the Assistant Commissioner was to reconsider the appeal that was filed by the petitioner. The Tahsildar, notwithstanding the recommendation by the Committee for Regularization of Unauthorized Cultivation, made as early as in the year 1993, of which the Tahsildar was the ex-officio Secretary of the very Committee, having chosen to reject the application in the year 2006 on the basis that the land was well within the prohibited limit of 5 kilometres from the CMC, Ramanagaram was the only ground on which there was a challenge. The scope of the appeal having been widened to address the allegation that there was tampering, the Assistant Commissioner having taken cue from the contention raised by the auction purchaser in proceedings before this court and having proceeded to enlarge the scope of the appeal into that of an inquiry for the purpose of cancellation of the recommendation under Rule 108K was unwarranted. Even if the Assistant Commissioner sought to inquire into the correctness or otherwise, on the basis of which the recommendation had been made by the Committee, it was an independent proceeding that ought to have been initiated and the Assistant Commissioner no doubt was vested with the power to do so, but such inquiry would necessarily have to afford opportunity to the petitioner to meet several allegations. The allegations of tampering of the record is a serious allegation and therefore the degree of proof required in arriving at a finding in this regard would also vary. The appeal having been converted into two pronged inquiry was out of place. Therefore, it would be appropriate, if there are serious allegations against the petitioner, an inquiry under Rule 108K of the KLR Rules be held in the first instance and subject to the result of that inquiry, the appeal which has been filed against the dismissal of the application under Rule 108D(3) of the KLR Rules be then taken. This would be the correct procedure to be followed. Therefore, at the inquiry, which the Assistant Commissioner shall now hold in terms of Rule 108K, shall afford full opportunity to the petitioner to meet several allegations and if evidence is tendered in support of the allegations, the petitioner should have an opportunity of cross-examining the witnesses, who may tender such evidence and to lead evidence on his own behalf in defence thereof and thereafter appropriate orders could be passed as to the correctness or otherwise of the allegations of fraud and forgery and thereafter the appeal could be considered if occasion arises.

8. The sixth respondent shall be given an opportunity to participate at the inquiry for he is interested in the land having invested a large sum of money and he would be proper and necessary party. The sixth respondent shall have equal opportunity of hearing and even tender evidence or cross-examine the petitioner as well. The Assistant Commissioner shall regularly and supervise the proceeding in this regard.

Accordingly, the petitions are allowed. Annexures - B and C are quashed. Having regard to the fact that these proceedings are hanging fire since the year 1993, the Assistant Commissioner is requested to expedite the inquiry and complete the same and if occasion arises, to decide the appeal of the petitioner, which

shall also be completed within six months, if not earlier, from the date of receipt of a copy of this order.

Till the proceedings attain finality, the parties shall maintain status-quo.