

(2006) 09 KAR CK 0010
In the Karnataka High Court
Case No : Writ Petition No. 37661 of 2004

Narayanamma and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 28-09-2006

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 136 (2), 25

Citation : (2006) 09 KAR CK 0010

Hon'ble Judges : V.G. Sabhahit, J

Bench : Single Bench

Advocate : C.B. Srinivasan, for the Appellant; R. Kumar, Government Pleader for Respondent Nos. 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

V.G. Sabhahit, J.—This writ petition is filed being aggrieved by the order passed by the Deputy Commissioner, Bangalore District dated 26-4-2004, confirming the order passed by the Assistant Commissioner, Bangalore South Sub-Division, Bangalore, dated 26-4-2003, wherein, the Assistant Commissioner in exercise of his power u/s 136(2) read with Section 25 of the Karnataka Land Revenue Act, 1964 has cancelled the grant made in favour of respondents 1 to 4 before him.

2. It is the contention of the petitioners that respondents 1 to 4 before the Assistant Commissioner had died. It is their case that respondent 1-T. Muniyappa had died on 19-8-1990, the respondent 2-Krishnappa had died on 2-6-2000, the respondent 3-Muniyellappa had died on 17-6-2000 and respondent 4-Muniyappa had died on 31-10-1999. It is their contention that though respondents 1 to 4 had died, the Assistant Commissioner has proceeded to pass the impugned order on the ground that notice issued to the respondents 1 to 4 were served. The Special Deputy Commissioner without application of mind has confirmed the order passed by the Assistant Commissioner.

3. I have heard the learned Counsel appearing for the petitioners and the learned

Government Pleader.

4. It is clear from the perusal of the material on record that this writ petition is filed by the legal representatives of the deceased respondents 1 to 4 before the Assistant Commissioner. It is their case that respondents 1 to 4 before the Assistant Commissioner had died when the proceedings were initiated during 2002-03. It is clear from the perusal of the records that prior to initiation of proceedings in 2002-03 respondents 1 to 4 had died, the Assistant Commissioner has committed error in proceeding to pass the impugned order on the basis that notice was issued to respondents 1 to 4 and it was found that they were not residing there and their whereabouts were not known. It is natural when respondents 1 to 4 have died, notice could not have been served upon them and whereabouts will not be known and wherefore, the order passed by the Assistant Commissioner is perverse, arbitrary and unsustainable in law as notices were issued in the name of dead persons. Even the order of the Special Deputy Commissioner confirming the order passed by the Assistant Commissioner is untenable and the Deputy Commissioner was not at all justified in confirming the said order in revision filed by the legal representatives of respondents 1 to 4 before the Assistant Commissioner. Under these circumstances, I am of the view that the writ petition is entitled to be allowed and the matter is required to be remitted to the Assistant Commissioner. Accordingly, I pass the following.-

ORDER

(i) The writ petition is allowed;

(ii) The order passed by the Special Deputy Commissioner in Nos. Revision (P) 91, 92, 93 and 94/2003-04, dated 26-4-2004 confirming the order passed by the Assistant Commissioner, Bangalore South Division, Bangalore in No. LND (RA) 6/2002-03, dated 26-4-2003 is set aside and the proceedings in No. LND (RA) 6/2002-03 is restored to file of Assistant Commissioner, Bangalore South Division, Bangalore with a direction to permit the legal representatives of the original respondents 1 to 4 to come on record and thereafter, pass orders in accordance with law, after affording opportunity to the legal representatives of respondents 1 to 4 to substantiate their contentions and thereafter, dispose of the proceedings, in accordance with law;

(iii) The petitioners are directed to appear before the Assistant Commissioner on 6-11-2006 for seeking further instructions.