

(2015) 10 KAR CK 0172

In the Karnataka High Court

Case No : Writ Petition Nos. 60019-60021/2011 (KLR)

Rajasab and Others

APPELLANT

Vs

M.F. Ingalagi and Others

RESPONDENT

Date of Decision : 13-10-2015

Acts Referred:

Citation : (2015) 10 KAR CK 0172

Hon'ble Judges : L. Narayana Swamy, J.

Bench : Single Bench

Advocate : Dinesh M. Kulkarni, Advocate, for the Appellant; Shivaprabhu S. Hiremath, Gangadhar J.M., Harish S. Nagnur and Chetan J. Hiremath, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

L. Narayana Swamy, J.—The order dated 17.1.2005 passed by the Deputy Commissioner, Uttara Kannada and order dated 30.9.2010 passed by the Karnataka Appellate Tribunal, Bangalore in Appeal No. 871/2005 vide Annexures-L & M are sought to be quashed in the present writ petitions.

2. The facts leading to the case are that one Fakirsab Ingalagi was granted an extent of 4 guntas in Plot No. 141 of Sy. No. 186/A2 in Mundagod Village in the year 1969. Though the grant was made, "Kabulayat" (sale deed) was not issued. The original grantee Fakirsab Ingalagi died in the year 1982. On his death, his L.Rs. made an application for change of revenue entries and also for issuance of necessary certificates. On such an application made by the L.Rs. of Fakirsab, these petitioners also made application to the Deputy Commissioner seeking cancellation of grant made in favour of Fakirsab in the year 1969 and to grant the same extent to the petitioners. It is stated that they are in unauthorized occupation but Fakirsab is not in possession since the order of grant.

3. The Deputy Commissioner has examined the claim and it was rejected. It was appealed before the Karnataka Appellate Tribunal. The Karnataka Appellate

Tribunal set aside the order of the Deputy Commissioner and remanded for fresh consideration. On second time, the Deputy Commissioner has passed the order in favour of LR.s. of Fakirsab, which has been confirmed by the Karnataka Appellate Tribunal. Hence these petitions.

4. The learned counsel for the petitioners, submits that a specific finding has been given by the Karnataka Appellate Tribunal in Appeal No. 651/2001 and 130/2002 that grant made in favour of Fakirsab was not followed by Kabulayat (sale deed) and there is no finding that whether he has put up construction in compliance of the conditions stipulated in the grant. Thereafter the L.R.s. of Fakirsab have also not complied the condition of putting up construction. The petitioners who are in unauthorized occupation and said Fakirsab and his L.R.s. were not residing in the land, which was granted to Fakirsab nor they have put up construction. The Karnataka Appellate Tribunal in order to provide final opportunity set aside the order and remanded the matter for fresh consideration.

5. The learned counsel for the private respondents submits to dismiss these writ petitions. It is submitted that Fakirsab was residing in the same place and after his death, the L.R.s. of Fakirsab made application for change of khata and till then no application has been made by these petitioners for regularization. It is impermissible to cancel the grant made about 30 years ago even if there is violation of grant order. He has produced tax paid receipts for the year 1974, 1976 and onwards and also produced grant certificate and RTC for the years 2004, 2005, 2006 and 2009 and declaration for having paid taxes for the year 2011-12. The learned counsel for private respondents relied upon decision in The Academy of General Education, Manipal and Another Vs. State of Karnataka and Others, to advance the contention that the grant made more than 30 years ago cannot be canceled even if there are violations.

6. I have heard both.

7. The dispute is as to whether either Fakirsab or his L.R.s. are in possession of the site granted in the year 1969 or whether the petitioners are in unauthorized occupation in respect of the very same property which was granted to Fakirsab in the year 1969. The same has been examined by the Deputy Commissioner on two occasions, which is confirmed by the Appellate Tribunal. The Appellate Tribunal has held that the grant made in the year 1969 cannot be challenged after 30 years and prayer also cannot be made to regularize the unauthorized occupation of the land which was granted in favour of Fakirsab.

8. I have gone through the reasons assigned by the Appellate Tribunal. The documents produced on behalf of the respondents would show that they are the residents of the said village and taxes have been paid, RTC stands in their name and revenue records also stand in their name. The certificate issued by the Village Accountant to the effect that the L.R.s. of Fakirsab are residing in the said village. These disputed facts are gone into by the authority and they are held in favour of the respondents. The petitioners made application for regularization of

unauthorized occupation only in the year 2000, which is required to be examined and accordingly I have examined. The petitioners have not produced any documents as to under what provisions of law or Rules framed by the Government of Karnataka, they are seeking for regularization of their unauthorized occupation. Unless law permits or rules have been framed to that effect, no application could have been made. Assuming that the petitioners show some documents, but the grant which was made in the year 1969 cannot be set at naught after 30 years at the instance of the petitioners. The Revenue Courts cannot go into the issue of possession and it is only the Civil Courts, which have competence to resolve such dispute. In view of the citation referred to above, within a reasonable time, the grant is to be challenged. Without expressing any opinion as to what is the reasonable time, which differs from facts to facts, in the facts and circumstances, the challenge made by the petitioners after 30 years, is not a reasonable time.

9. Hence I am of the view that the Deputy Commissioner and the Karnataka Appellate Tribunal are justified in passing the impugned orders. Writ Petitions are accordingly dismissed.