

(2002) 04 KAR CK 0022
In the Karnataka High Court
Case No : Writ Petition No. 5237 of 2001

Ramachandra Reddy and Others

APPELLANT

Vs

Special Deputy Commissioner Bangalore District and Others

RESPONDENT

Date of Decision : 15-04-2002

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 94 A
Karnataka Land Revenue Rules, 1966 — Rule 108F

Citation : (2002) 3 KCCR 2091

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : K.V. Lakshminarasimhan, for the Appellant; V.Y. Kumar, Government Advocate for Respondents 1 to 4, for the Respondent

Judgement

K. Sreedhar Rao, J.—The Writ Petition is filed against the order of the Assistant Commissioner at Annexure-K dated 15.11.1997 and the order of the Deputy Commissioner at Annexure-L dated 15.7.2000. The Petitioners are the grantees of land in Sy. No. 53 of Kadajikkanahalli village to an extent of 1 acre 30 guntas each by the third Respondent-committee. The 5th Respondent challenged the order of the grant in favour of the Petitioners before the Assistant Commissioner. Under the impugned order, the Assistant Commissioner held that the Petitioners No. 1 to 4 belongs to same family and therefore the individual separate grants made is illegal. Being aggrieved by the said orders, the Petitioners filed second appeal before the Deputy Commissioner who on a different point set aside the orders of the grant holding that the material on record produced by the 5th Respondent discloses that the lands in question are not government lands and they have been granted in favour of the 5th Respondent in the year 1961 and as such it was held that the grants made by the committee is illegal.

2. The Government Advocate has filed his objection statement to the petition supporting the order of the Deputy Commissioner.

3. On going through the records and the provisions of law, I find that the view

taken by the Assistant Commissioner that the individual grants made in favour of Respondents No. 1 to 4 is bad in law as they belong to same family is an untenable view. u/s 94A any person who is in unauthorised cultivation of the Government land on fulfilment of certain eligibilities under Rule 108-F and other provisions would be entitled to regularisation under the provisions of Land Revenue Act and Rules. Under Rule 108-F there is no restriction placed that the land shall not be granted to more than one member in the same family. If one satisfies the eligibility of the age criteria and residence criteria if he is cultivating the land for a period of 3 years prior to 9.10.1989 and not otherwise prohibited from holding or acquiring the lands under the Land Reforms Act is entitled to regulation.

4. After perusal of the orders of the Deputy Commissioner, I find that the questions that emerges are disputed question of fact, the identity of the land granted in favour of the Petitioners is to be fixed since the Respondent No. 5 claims that the land belonging to him has been granted in favour of the Petitioners. However, the Petitioners contend that the land granted is nothing to do with the land of the 5th Respondent. It is also contended that the 5th Respondent has sold away the land under registered sale deed in the year 1977 to one Kempaiah and therefore contends that the 5th Respondent has no locus standi to maintain the petition as he does not possess or own the land in question. The Counsel for the 5th Respondent disputed the sale of land in favour of Kempaiah, disputed contentions are raised with regard to the identity and ownership. Therefore, it is necessary that a proper enquiry has to be held giving opportunity to both the parties to establish their case and if necessary survey is also to be conducted to establish the identity of the property involved claimed by the respective parties and also about the fact whether the land in question is a private land or Government land. In that view of the matter, the order of the Deputy Commissioner and the Assistant Commissioner is set aside and the matter is remanded to the Assistant Commissioner for fresh enquiry only for ascertaining the identity of the property about the nature of the property as to whether it is Government land or belonging to the 5th Respondent and enquiry to be conducted by the Assistant Commissioner by giving opportunity to both the parties and dispose of the petition in accordance with law.

Sri V.Y. Kumar is permitted to file his memo of appearance to Respondents No. 1 to 4 within four weeks.