(2007) 08 KAR CK 0047

In the Karnataka High Court

Case No : Writ Petition No. 16195 of 2006

Rudrappa and Others APPELLANT

Vs

The Deputy Commissioner and Others RESPONDENT

Date of Decision : 03-08-2007

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 136 (2), 136 (3)

Citation : (2007) 6 KarLJ 615

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : S.S. Guttal, for the Appellant; G. Chandrashekaraiah, A.G.A. for Respondent Nos. 1 and 2 and V.F. Kumbar, for the Respondent

Judgement

N.K. Patil, J.—Petitioners, assailing the correctness of the impugned order dated 9th October, 2006 in proceedings bearing R.P. No. 11/2003-04 on the file of the Deputy Commissioner, Tumkur District, Tumkur, vide Annexure-D, have presented the instant writ petition.

2. The grievance of the petitioners in the instant writ petition is that, first petitioner has submitted the application to the Village Accountant, Yelachigere Circle seeking deletion of the name of Sri Chidanandaiah from Column 12(2) of the pahani, RTC extract in respect of land bearing Sy. No. 109 measuring 0.33 guntas situate at Malagonahalli Village and to enter the name of first petitioner therein. Accordingly, Form 21 was issued by the Village Accountant deleting the name of Sri Chidanandaiah in view of the consent given by him and to enter the name of*first petitioner in Column 12(2) of the pahani. The Revenue Inspector accepted the said report submitted by the Village Accountant and has passed the order in M.R. Mutation Register No. 5/2000-01 ordering to record the name of first petitioner in Column 12(2) of the record of rights in respect of the land in question in place of Sri Chidanandaiah. Be that as it may.

3. Meanwhile, the third respondent, who is nowhere concerned to the above said land, nor he is the owner nor adjacent owner, but except the fact that, he

belongs to the same village, in view of his inimical terms with the petitioners and just to harass the petitioners, has filed the appeal before the Assistant Commissioner under Sub-section (2) of Section 136 of the Karnataka Land Revenue Act, 1964 in proceedings No. RRT(A).123/2002-03. The Assistant Commissioner, Madhugiri Sub-Division, Madhugiri, after hearing both sides and after considering the relevant material available on file, has allowed the appeal filed by third respondent and set aside the mutation entry in M.R. No. 5/2000-01, dated 8th November, 2001 and directed to record the name of the original owner and to continue to enter the same and out of the said extent, 22 guntas was ordered to be entered in the name of the first petitioner and the remaining extent of land in the said survey number was directed to be shown as "Beelu" which means ''uncultivable'' by his order dated 9th June, 2003 vide Annexure-B. Being aggrieved by the said order passed by the Assistant Commissioner, Madhugiri Sub-Division, Madhugiri, the third respondent has filed the revision petition in case No. R.P/11/2003-04 on the file of the Deputy Commissioner, Tumkur District, Tumkur against the petitioners. The said revision petition filed by third respondent had come up for consideration before the Deputy Commissioner on 9th October, 2006 and the Deputy Commissioner, after hearing both parties and after perusing the relevant records available on file, has allowed the revision petition filed by third respondent and set aside the impugned orders passed by Tahsildar dated 8th November, 2001 in M.R. No. 5/2000-01 and the order passed by the Assistant Commissioner, Madhugiri Sub-Division, Madhugiri, dated 9th June, 2003, therein as referred above, and further ordered that, the entries in the RTC shall be maintained as they were earlier to the passing of the impugned orders therein i.e., before the Deputy Commissioner. Assailing the correctness of the impugned order passed by the Revisional Authority-Deputy Commissioner, Tumkur District, petitioners herein felt necessitated to present the instant writ petition.

4. I have heard learned Counsel appearing for petitioners and learned Counsel appearing for respondents.

5. When this matter had come up for consideration on 20th July, 2007, the matter was adjourned at the request of the learned Additional Government Advocate to enable him to file necessary memo along with the report of the Assistant Commissioner and the sketch prepared by the surveyor. Today, when this matter is taken up for consideration, learned Additional Government Advocate has filed the memo dated 3rd August, 2007 by producing thereto a copy of the sketch prepared by the surveyor dated 12th June, 2007 and the RTC extract for the agricultural year 2006-07 along with a copy of the Mahazar drawn on 12th June, 2007 stating that, as per the spot inspection conducted by the Competent Authority at Sy. No. 109, situate at Malagonahalli Village, the said survey number consists of a total extent of 33 guntas, out of the same, in 24 guntas, petitioners have grown ''Tomato'' and ''Chilli'' crops and in the remaining extent of 9 guntas, the villagers have utilised the said place for burial purpose. The memo along with the enclosures thereto are placed on record.

6. After perusal of the sketch prepared by the surveyor and annexed to the memo filed by learned Additional Government Advocate, it emerges that, the light pink colour marked in the sketch consisting of 9 guntas is utilised for burial purpose and in the remaining 24 guntas which is coloured in sky blue colour, petitioners have grown ''tomato'' and ''chilli'' crops. Further, as per the ETC extract produced thereto for the agricultural year 2006-07, in the relevant Column 12(7), (9), (15) and (16), it can be seen that, petitioners have grown ''paddy'' in 11 guntas; ''chilli'' in 12 guntas and ''musukina jola'' (maize) in 1 guntas and to that effect, Mahazar is also drawn. Therefore, in view of the sketch prepared by the surveyor, record of rights for the agricultural year 2006-07, the mahazar drawn and after perusal of the order passed by the Deputy Commissioner, I am of the considered view that, the matter requires reconsideration by the original authority itself. Without doing this exercise, the Deputy Commissioner, being the Revisional Authority has proceeded and passed the impugned order quashing the orders passed by the Deputy Tahsildar and the Assistant Commissioner, Madhugiri Sub-Division. Therefore, the manner in which the said authority has proceeded to pass the impugned orders proves beyond all reasonable doubt that, the said authority has not conducted proper enquiry in strict compliance of Sub-section (3) of Section 136 of the Karnataka Land Revenue Act. Therefore, I am of the considered view that, at any stretch of imagination, the impugned order passed by the Revisional Authority-Deputy Commissioner, Tumkur District cannot be sustained and the same is liable to be set aside and the matter is required to be reconsidered by the original authority-Deputy Tahsildar.

7. Having regard to the facts and circumstances of the case, the writ petition filed by petitioners is disposed of as follows.-

(I) The writ petition filed by petitioners is allowed in part;

(II) The order passed by the Tahsildar, dated 8th November, 2001 in M.R. No. 5/2000-01 vide Annexure-A, the order dated 9th June, 2003 passed by Assistant Commissioner, Madhugiri Sub-Division, Madhugiri bearing No. RRT(A) 123/2002-03 vide Annexure-B and the order dated 9th October, 2006 passed by the Deputy Commissioner, Tumkur District, Tumkur bearing No. R.P. 11/2003-04 vide Annexure-D are all hereby set aside the matter stands remitted back to the original authority-Deputy Tahsildar, Nada Kacheri, Kollegal Taluk, to reconsider the matter afresh and to take appropriate decision strictly in accordance with the relevant provisions of the Karnataka Land Revenue Act, 1964 and the Karnataka Land Revenue Rules, 1966, after affording an opportunity to petitioners and also third respondent including the villagers, as expeditiously as possible, at any rate, within four months from the date of receipt of a copy of this order.

