

(2009) 08 KAR CK 0059

In the Karnataka High Court

Case No : Writ Petition No's. 19892 and 19893 of 2009

S.G. Kenchana Gowda and Others

APPELLANT

Vs

The Deputy Commissioner and Another

RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Citation : (2009) 5 KarLJ 519 : (2010) 1 KCCR 34

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : D.R. Nagaraja and Spoorthy Hegde, for the Appellant; R. Kumar, High Court Government Pleader, for the Respondent

Judgement

A.S. Bopanna, J.—The petitioners in both these petitions are questioning the mutation entry bearing M.R. No. 7/1998-99 which are impugned at Annexures-F and D respectively in both the petitions. The petitioners claim right to the property in question to the land measuring 6 acres and 8 acres in each of the writ petitions. It is in that context, the petitioners in both these petitions claim to be aggrieved by the Mutation Order No. 7/1998-99.

2. The contention of the petitioners is that they are entitled to the said property which was the subject-matter of a civil litigation in R.S.A. No. 349 of 1968. Pursuant thereto, the mutation entries were changed to the names of the petitioners viz., 6 acres insofar as petitioners in W.P. No. 19892 of 2009 and 8 acres in respect of petitioners in W.P. No. 19893 of 2009. The said mutation entry was effected by the order passed by the Deputy Tahsildar in MR No. 2/1997-98. The petitioners claim that pursuant thereto they have been in enjoyment of the said property. The grievance of the petitioners at present is that the Revenue Inspector without providing opportunity to the petitioners, though their names were indicated in the revenue registers has passed a fresh Mutation Order No. 7/1998-99 ordering that the land in question be indicated in the name of the Government. In this regard a circular dated 23-4-1999 is relied on by the Revenue Inspector. Learned Counsel for the petitioner while assailing the said

impugned entry in M.R. No. 7/1998-99 would contend that even if the said circular dated 23-4-1999 is kept in view, the same would not be applicable to the present lands since the right indicated therein is in respect of the inam lands. But, in the instant case, the petitioners contend that a portion of the land belonging to the petitioners had been dedicated in the name of their deity "Pranadevaru" and therefore, it cannot be considered as inam land. In that context, it is contended that the mutation order in M.R. No. 2/1997-98 could not have been reversed and in any event, it could not be made without opportunity to the petitioners.

3. The learned Government Advocate however sought to justify the action by pointing out that the Revenue Inspector has merely acted based on the circular issued by the Government and therefore there cannot be any fault found with the mutation entry.

4. In the light of what is contended, even though rival contentions have been advanced with regard to the rights of the parties, it is seen at the outset that the Mutation Order No. 2/1997-98 in favour of the petitioners was passed by the Deputy Tahsildar. Subsequently the mutation order in M.R. No. 7/1998-99 is made by the Revenue Inspector and the very perusal of the order passed therein would indicate that no notice has been issued to any of the parties, but reliance has been placed only on a circular bearing No. LRM.CR. 230/1998-99, dated 23-4-1999. In a fact of this nature, when the names of the petitioners were found in the register, even if such circular was to be relied, the only course open to the Revenue Authorities would have been to issue notice to such of the parties whose names were indicated in the revenue records and thereafter take decision in the matter one way or the other. The same has not been done.

5. However, I do not find it necessary at this juncture to set aside the mutation entry bearing No. 7/1998-99, since in any event, the petitioner herein would have to approach the Revenue Authorities in this regard at the outset. Therefore, without disturbing the said entries, the petitioner is granted liberty to raise a dispute with the Tahsildar with regard to the manner of change of mutation entries by order dated 7-8-1999 putting forth all contentions of the parties with regard to the right claimed to the property and indicating that the property in question would not fall within the four corners of the directions issued under the circular dated 23-4-1999. On such dispute being raised by the petitioners herein before the Tahsildar, the Tahsildar shall decide the said dispute after providing opportunity to both the parties and shall pass orders in accordance with law. If the petitioners herein make out a case before the Tahsildar, it is needless to mention that the Tahsildar would have to reverse the mutation order in MR No. 7/1998-99 and restore the earlier Mutation Order No. 2/1997-98. On the other hand, if the decision is otherwise, the appropriate reasons shall be assigned so that the petitioners can redress their grievance appropriately. The petitioners are granted liberty of raising the dispute before the Tahsildar within a period of six weeks from the date of receipt of a copy of this order. On such dispute being

raised by the petitioners, the Tahsildar shall consider and dispose of the same in accordance with law within a period of four months thereafter.

In terms of the above, the petition stands disposed of. No order as to costs.