

(1989) 09 KAR CK 0051

In the Karnataka High Court

Case No : Writ Petition No. 20095 of 1982

Siddalingayya Gurayya Vastrad

APPELLANT

Vs

Assistant Commissioner

RESPONDENT

Date of Decision : 27-09-1989

Acts Referred:

Karnataka Land Grant Rules, 1969 — Rule 18 (2), 25

Citation : (1990) ILR (Kar) 1241 : (1990) 3 KarLJ 535

Hon'ble Judges : Shyamasundar, J

Bench : Single Bench

Advocate : S.G. Kulkarni, for the Appellant; M. Siddagangaiah, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Shyamasundar, J.—The petitioner sought and obtained grant of a building site which is said to be next to his own. The grant made by the Assistant Commissioner presumably u/s 18(2) of the Land Grant Rules which enjoined granting a site to the adjacent owner if the site itself cannot be disposed off independently, if he so desired and at such value as the Deputy Commissioner may determine. Admittedly, the said site was granted to the petitioner on the foregoing ground.

2. Subsequently, the Deputy Commissioner, it appears moved by somebody else, passed an order of stay of the grant and clamped it despite an application made by the petitioner to vacate the same. The petitioner preferred an appeal before the Divisional Commissioner without any success and thereafter the Assistant Commissioner who had granted the site to the petitioner went on to cancel the grant under Annexure-F. In the preamble to Annexure-F, a reference to the circumstances under which the Assistant Commissioner cancelled the grant made earlier in favour of, the petitioner is made. The relevant portion of the preamble and the order reads thus:

"....Further the Divisional Commissioner, Belgaum endorsing copy of the same has directed the Assistant Commissioner, Indi to cancel the order u/s 25 of K.L.R. Act, 1964. Accordingly, the show cause notice was given to grantee. Meanwhile the grantee has approached the Hon"ble Revenue Minister of Karnataka and presented petition. The same was accepted by the Hon"ble Revenue Minister and forwarded in the Deputy Commissioner, Bijapur with direction to vacate the stay and close the matter. Now the Revenue Secretary, Government of Karnataka directed under their No. RD 21 LOJ 81 of 1-2-1982 that the directions/orders passed by the previous Hon"ble Minister on 5-9-1980 are revoked and directed to take further action in this case as per rules. The Deputy Commissioner Bijapur has directed under his Endt. No. RB.LBP.SR.15/77 dated 30-4-1982 to cancel the order passed under this office No. LBP.SR.65/77 dated 31-5-1978.

ORDER

Under the circumstances narrated in Preamble I the Assistant Commissioner, Indi Sub-Division, Indi hereby order under the powers vested in me u/s 25 of the K.L.R. Act 1964 and revoke the order passed under this Office No. LBP.SR.65/77 of 31-3-1978 and to take further action to cancel the divestment notice."

3. Earlier the petitioner had been notified of the Assistant Commissioner"s intendment to cancel the grant and thereupon the petitioner had joined fray by making a representation as per Annexure-E. It is common ground that, as averred by the petitioner, the Assistant Commissioner without considering the objections filed by him, had proceeded to cancel the grant by passing the cryptic order excerpted above read with the preamble citing directions of the Deputy Commissioner makes it clear that the Assistant Commissioner had been acting as an automaton without exercising his own mind independent of the administrative directions of the third respondent.

4. The learned Government Pleader appearing for the Assistant Commissioner urges that the grant had been cancelled because the petitioner was found to possess two houses in the village and consequently, under the scheme of Rule 13 of the Land Grant Rules, he became ineligible for grant of a house site. The petitioner thus being the recipient of an illegal benefit I should therefore desist from interfering with the impugned order which merely took away a new benefit legally. But what that argument overlooks is the circumstance that in the particular case the petitioner owning other properties viz., owning of a house was not clearly relevant as this was a case where the petitioner wanted to annex an adjacent holding. Rule 18(2) which permits such annexation reads:

"18(2). Where a building site cannot with advantage be granted as an independent site, the adjoining holder if he so desires, may be granted such site at such value as the Deputy Commissioner may determine."

5. Rule supra makes it abundantly clear that where a building site cannot with advantage be disposed off as an independent unit and the adjoining holder desires to acquire the same, he may be granted such site at such value as the

Deputy Commissioner may determine. It is clearly an exception to the generality of the rule prohibiting grant of a site to a person who already owns one.

6. Under these circumstances cancelling the earlier grant on the ground that the petitioner owned two houses and was therefore ineligible for acquisition of another house site in the same village is clearly untenable. There was no bar for making the grant under Rule 18(2) of the Rules which enables further acquisition in the circumstances enumerated by the Rule. This aspect has been clearly overlooked by the Assistant Commissioner and the Deputy Commissioner.

7. Now, it cannot be denied that an order granting a site and later of cancelling the same, is quasi-judicial in nature and has got to be done only in accordance with the Rules. The Authority who acts in this behalf has got to act independently and on its own. It cannot purport to act under inspiration from others even though such inspiration is derived from a superior authority. The Executive Officer in whom power is confided for being exercised cannot abdicate his responsibility in favour of any one else is highlighted by the decision of the Supreme Court in *The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others*, That was a case in which the Cane Commissioner had exercised power of reservation of sugarcane area in Bihar Sugarcane Mills under clause (6) of the Sugarcane (Control) Order, under the instructions of the Chief Minister. Exercise of authority by the Cane Commissioner in that manner and the failure to exercise authority on his own volition having been assailed before the Supreme Court, the Court said:

"From the material before us, the only conclusion possible is that the Chief Minister imposed his opinion on the Cane Commissioner. The power exercisable by the Cane Commissioner under Clause 6(1) is a statutory power. He alone could have exercised that power. While exercising that power he cannot abdicate his responsibility in favour of anyone not even in favour of the State Government or the Chief Minister. It was not proper for the Chief Minister to have interfered with the functions of the Cane Commissioner. In this case what has happened is that the power of the Cane Commissioner has been exercised by the Chief Minister, an authority not recognised by clause (6) read with clause (11) but the responsibility for making those orders was asked to be taken by the Cane Commissioner.

The Executive Officers entrusted with statutory discretions may in some cases be obliged to take into account considerations of public policy and in some context the policy of a Minister or the Government as a whole when it is a relevant factor in weighing the policy but this will not absolve them from their duty to exercise their personal Judgment in individual cases unless explicit statutory provision has been made for them to be given binding instructions by a superior.

In *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, this Court struck down the order purported to have been passed by the Commissioner of Police in the exercise of his powers under the Bombay Police Act and the Rules made

thereunder as the order in question was, in fact, that of the Government. The Rule laid down in that decision governs the question under consideration. This Court reiterated that Rule in State of Punjab and Another Vs. Hari Krishan Sharma, Therein this Court held that the State Government was not justified in assuming jurisdiction which had been conferred on the Licensing Authority by Section 5(1) and (2) of the Punjab Cinemas (Regulation) Act. For the reasons mentioned above, we hold that the impugned orders are liable to be struck down as they were not made by the prescribed authority."

Similar is the case herein. The Assistant Commissioner while purporting to act under Rule 25 of the Land Grant Rules had simply carried out the instructions of the Deputy Commissioner without an independent application of his mind and, therefore, the decision by the Assistant Commissioner to cancel the grant in favour of the petitioner could not be said to have been made by him although he purports to have passed that order. Therefore, it becomes clear that the order of the Assistant Commissioner merely echoing of the view of his official superior must be treated as non-est. This is yet another reason why this Writ Petition should succeed.

Hence, it is I am to interfere with the order of the Assistant Commissioner by allowing this Writ Petition and quash Annexure-F being the only order made by the Assistant Commissioner cancelling the grant made earlier by the Assistant Commissioner himself in No. LBP. SR.65/1977 dated 31-3-1978 and that order shall stand restored without more. No costs.