

**(2010) 01 KAR CK 0066**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 28187 of 2009**

Smt. Ratnamma

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

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**Date of Decision :** 12-01-2010

**Acts Referred:**

Karnataka Land Revenue Act, 1964 — Section 94 A (1), 94 A (6)  
Karnataka Land Revenue Rules, 1966 — Rule 108D, 8 (6), 97 (5)

**Citation :** (2010) 2 KarLJ 125

**Hon'ble Judges :** Ashok B. Hinchigeri, J

**Bench :** Single Bench

**Advocate :** K.G. Sadashivaiah, for the Appellant; K.M. Natraj, Additional Advocate General and R. Omkumar, A.G.A. for Respondents-1 to 3, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Ashok B. Hinchigeri, J.—The petitioner has called into question the second respondent's endorsement, dated 11-9-2009 (Annexure-D). She has also sought a writ of mandamus to the respondents to consider her application for the regularisation of unauthorised occupation.

2. The facts of the case in brief are that the petitioner claims to have been unauthorisedly cultivating the land measuring 2 acres at Sy. No. 156 of Hulimangala Village, Jigani Hobli, Anekal Taluk, Bangalore Rural District for over 20 years. It is not in dispute that the land in question is a Government gomal land. She made an application, dated 3-9-1991 (Annexure-B) for the regularisation of her unauthorised occupation of the said land. The respondent 2 has issued an impugned endorsement intimating that the petitioner's application is rejected, as the land in question comes within a forbidden zone of 18 kilometers from Bruhat Bangalore Mahanagara Palike limits.

3. Aggrieved by the same, this petition is presented.

4. Sri Sadashivaiah, the learned Counsel for the petitioner submits that the impugned endorsement is without jurisdiction. The third respondent has no competence whatsoever, to consider the petitioner's application. It is Sri Sadashivaiah's grievance that the application ought to have been placed before the Competent Authority, namely, the Deputy Commissioner.

5. Sri Sadashivaiah brings to my notice the provisions contained in Rule 97(5) of the Karnataka Land Revenue Rules, 1966 (hereinafter called "the said Rules") in support of his contention that if the gomal land fall within the specified radius, the application for the grant of land can be disposed of only by the Deputy Commissioner. The provisions contained in Rule 97(5) of the said Rules is extracted hereinbelow:

97(5) From the date of commencement of the Karnataka Land Revenue (Amendment) Rules, 2007, the gomal lands in villages comprised within the municipal corporation limits and the areas within 25kms. from the outer limits of Bruhat Bangalore Mahanagara Palike, 10 kms. from the outer limits of the other City Corporations and 5 kms. from the outer limits of the City Municipal Councils shall be disposed off by the Deputy Commissioner subject to the general orders of the State Government in this behalf.

6. Nextly, the learned Counsel relies on Rule 8(6) of the Karnataka Land Grant Rules, 1969 (hereinafter called "1969 Rules") and submits that the Tahsildar ought not to have placed the application before the respondent 3, he ought to have placed the matter before the Deputy Commissioner. The same provisions are extracted hereinbelow:

8(6) Where the Tahsildar is not competent to grant land under these rules or where the extent of land applied for is more than the extent of land which he is competent to grant he shall submit the application to the officer who is competent under these rules to grant such extent of land along with the report in the matter and such Competent Officer may pass orders granting the land.

7. The learned Counsel submits that the respondent 3 has no competence even to reject the petitioner's application. It could have only been returned the application to the respondent 2 for placing the application before the Deputy Commissioner. He has also relied upon the Division Bench judgment of this Court in the case of The State of Karnataka, The Land Grant Committee and The Tahsildar Vs. Holeyappa and Others, . He has read out the Head Note "C" which reads as follows:

(C) Karnataka Land Revenue Act, 1964, Sections 94-A, 94-B and 94-C of the Act and Rules - Rights given under the statute - Object and purpose of - Diversion of Gomal land for other purposes - Held, a right given under a statute in favour of unauthorised occupants can neither be taken away nor the provisions made nugatory unless the provisions of Sections 94-A, 94-B and 94-C of the Act and Rules are declared as unconstitutional - Further held, there is nothing wrong in diverting either a gomal land or any other reserved land for other purposes when

there is no sufficient cattle population in that area when there is no requirement of land for free pasturage and the purpose for which the reservation does not exist - The occupation of lands by unauthorised occupants has become inevitable which reality and factual situation has been taken note by the Government, therefore, the statutory rights given to the unauthorised occupants cannot be deprived of. The order of the learned Single Judge is set aside.

8. He also brings to my notice the decision rendered by this Court in the case of Manje Gowda M. v. State of Karnataka and Ors. 1978(2) Kar. L.J. 406. The relevant head note portion, which he read out reads as follows:

Where once the Deputy Commissioner reached the conclusion that he had no power to grant the extent sought by the petitioner, respondent 4 or any other applicant, it follows that the Deputy Commissioner cannot grant or reject any application for the area of land that was in excess of his powers.

9. The learned Additional Advocate General, Sri KM. Natraj submits that a scheme of the Karnataka Land Revenue Act, 1964, Karnataka Land Revenue Rules and Karnataka Land Grant Rules is such that the application for the regularisation of unauthorised occupation has to be considered only by the third respondent-Committee. The applications for the grant of certain lands can be considered by the Deputy Commissioner. The learned Additional Advocate General make subtle distinction between the application for the grant of land and the application for the regularisation of unauthorised occupation. The regularisation of unauthorised occupation presupposes the occupation of the Government land unauthorisedly. On the other hand, the applicant for the grant of land need not be its occupant.

10. The learned Additional Advocate General submits that the Legislature has conferred the power only on the Committee, as is evident from the provisions contained in Section 94-A(1) of the Karnataka Land Revenue Act, 1964. The said provision is extracted hereinbelow:

94-A{1) Subject to such rules as may be prescribed, the State Government shall, by notification, constitute for each taluk a Committee consisting of such number of members not exceeding five of whom one shall be a member of legislative assembly, for the purpose of grant of land under Sub-section (4).

11. He brings to my notice the Rule 108-D of the said Rules dealing with the procedure that the Regularisation Committee has to follow. The said Rule is extracted hereinbelow:

108-D. Procedure of the Committee.-(1) The Committee or the Additional Committee shall, after verifying the particulars furnished by the applicant and after holding such enquiry as it deems necessary determine the extent of land to which the applicant is entitled for grant and the amount required to be paid by him for the grant of land, publish a notice which shall be in Form 52 in the Chavadi of the Village in which the land is situated and also in the office of the

Mandal Panchayat, inviting objections from the interested persons for the purposed grant, within such time as may be specified in the notice, which shall not be less than fifteen days from the date of the notice.

(2) After the expiry of the period specified in the notice the committee or the Additional Committee shall, after considering the objections received and after further enquiry, if necessary, recommend for grant of the land unauthorisedly occupied by the applicant or to dismiss it, subject to the provision of Rule 108-I.

(3) On such recommendations, the Tahsildar who shall be the Secretary of the Committee or the Additional Committee, as the case may be, shall, issue an order of grant and issue certificate of grant or Saguvali Chit in Form VII specified under the Karnataka Land Grant Rules, 1969; or dismiss the application, as the case may be;

(4) First instalment shall be paid in accordance with Clause (a) of Sub-section (6) of 94-A and remaining two instalments of amount payable, if any, shall be paid by the applicant within sixty days from the expiry of the last date fixed for payment of first installment.

(6) Appeal against orders made by the Tahsildar on the recommendations of the committee shall lie to the Assistant Commissioner, and of the Additional Committee shall lie to the Deputy Commissioner.

12. The Additional Advocate General also brings to my notice the non obstante clause contained in Section 94-A(6) of the Karnataka Land Revenue Act, 1964, which states that the Tahsildar shall issue the order of grant of land, on the recommendations of the Committee or the Additional Committee. The provision reads as follows:

94-A. (6) Notwithstanding anything contained in the preceding sub-section:

(a) The Tahsildar concerned shall issue the order of the grant of land, on the recommendations of the Committee or Additional Committee, as the case may be, if any, and issue the saguvali chit. The amount payable if any, shall be paid in three equal installments of which the first one shall be paid before the expiry of a period of thirty days from the date of communication of the order of grant and the remaining two within such period as may be prescribed; and

...

(c) The trees, if any, standing on the land granted and granite in such land shall continue to belong to the Government, which may at its discretion be disposed off by it, in such manner as it may deem fit.

13. The question that falls from my consideration is whether the third respondent-Committee has the competence to consider the application for the regularisation of unauthorised occupation of the gomal land falling within the forbidden radius. To answer this issue, the various provisions of the Act and Rules framed thereunder are to be considered harmoniously. I do not see any

head-on collusion between the statutes and the rules, and if there is a conflict between the statute and the Rules, the provisions of the statute shall prevail over those of the rules. The provisions contained in Section 94-A(1) and 94-A(6) which are extracted hereinabove confer the power of considering the application for the regularisation of unauthorised occupation on the Committee.

14. As pointed out by the learned Additional Advocate General, the subtle distinction has to be drawn between the application for the grant of the land and the application for the regularisation of unauthorised occupation. The application for the regularisation of the unauthorised occupation pre-supposes the possession or unauthorised occupation. On the other hand, the applicant for the grant for the land may not be the occupant of the land. The provisions of the Rules conferring the power on the Deputy Commissioner for disposing of the application are in respect of the application for grant of the land. Rule 108-D of the said Rules dealing with the procedure of the Committee also clarifies the position. In the result, I negative the submission urged on behalf of the petitioner that the third respondent-Committee has no competence to dispose of the petitioner's application for the regularisation of unauthorised occupation. But it does not mean that the endorsement issued by the respondent 2 is upheld on merits. The petitioner's grievance over the issuance of the impugned endorsement has to be agitated by way of appeal before the Assistant Commissioner as provided under Rule 108-D(6) of the said Rules.

15. This petition is dismissed, but by reserving the liberty to the petitioner to avail of the appeal remedy. If an appeal is filed before the Assistant Commissioner, the same shall be disposed of by him on merits, without being influenced by the dismissal of this petition.

16. No order as to costs.