

(2013) 07 KAR CK 0289

In the Karnataka High Court

Case No : Writ Petition No. 36265 of 2010 (KLR-RES)

Smt. Yashodha

APPELLANT

Vs

State of Karnataka, The Deputy Commissioner, The Assistant
Commissioner and The Tahasildar Sullia

RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

Karnataka Land Revenue Rules, 1966 — Rule 108F, 108-I

Citation : (2013) 07 KAR CK 0289

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Krishna Moorthy D, for the Appellant; S. Susheela, AGA, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—Writ petitioner, who is a retired school teacher, claims to be in unauthorized occupation of an extent of 1.17 acres of land in Sy. No 183/1A IB 1A/4 of Sullia village, Kasaba Hobli, Sullia taluk from the year 1950 onwards. It is her case that she has been granted an extent of 25 cents of land on lease by the government wherein she has her residential house constructed and to an extent of 1.17 acres is a land adjacent to this 25 cents which she has occupied by levelling the same and planting many fruit-bearing trees and has also developed it as a pepper plantation by raising pepper wines. Petitioner had made efforts to get this land granted to her name free of cost or even by payment of occupancy price, by giving a representation dated 15-8-1964. It is the case of petitioner that this was never responded, though a survey report had been prepared and sent in her favour, recommending grant of land to her. It is also the version of the petitioner that she had given an application in form 50 in the year 1991, but that was also not responded. A further application in form No 53 which was given in the year 1999 has also not seen the light of the day.

2. It is the case of the petitioner that in this regard she had complained to the

revenue minister and the private secretary to the minister had addressed a letter to the deputy commissioner to look into the matter and to respond. It is thereafter, the deputy commissioner, on looking into the matter, has issued an endorsement dated 30-1-2010 [copy at Annexure-E to the writ petition] indicating that her request has been examined as per the letter from the private secretary to the revenue minister and the land, which is located within the city or town limits, cannot be granted in favour of private persons or organizations, in view of Rule 108-I of the Karnataka Land Revenue Rules, 1966 [for short, the Rules]. It is aggrieved by this endorsement, the present writ petition.

3. Submission of Sri D. Krishnamurthy, learned counsel for petitioner, is that the endorsement is not spelling out any reasons; that it does not say anything as to why the petitioner is not eligible for grant; that it does not say the factual position of the subject land and at any rate it is submitted that the applications were for regularization of the unauthorized occupation of government land by the petitioner, which can only be considered by the committee for regularization of unauthorized occupation in government lands and therefore the deputy commissioner could not have preempted the same by issuing the impugned endorsement.

4. Notice had been issued to the respondents. Respondents are represented by Ms S. Susheela, learned AGA, who submits that when there is no scope for regularization of unauthorized occupation in respect of lands located within the city or town limits, as there is a prohibition against such grant, and further submits that such a land has to be reserved for public or government purpose and there is no question of any committee examining the case of regularization etc.

5. It is also submitted that even under Rule 108F of the Rules, unless the petitioner is a person occupying the land as a bona fide agriculturist, regularization is not possible and in the case of petitioner, she has herself described as a retired teacher and not as an agriculturist.

6. The endorsement issued by the deputy commissioner preempts examination of the applications of the petitioner by the committee and it is only open to the committee to say as to why the application for unauthorized occupation of a government land either cannot be considered or to be rejected etc. It is not asserted as to the outcome of the applications and as to why the petitioner is not eligible for regularization.

7. Be that as it may, if the application filed by the petitioner in form 53 is a valid application and is still pending without examination by the committee, it is open for the deputy commissioner to reconsider the matter and pass a fresh order keeping in mind the present possession of the land and factual position as asserted by the petitioner and makes a suitable recommendation to the committee depending upon the outcome and for such purpose, the present endorsement, without giving any reason and not explicit, is hereby quashed.

Rule issued and made absolute to this extent. Writ petition allowed to the above effect. Deputy commissioner is granted six months" time from the date of receipt of a copy of this order to act accordingly.