
(2013) 03 KAR CK 0065

In the Karnataka High Court

Case No : Writ Petition Nos. 14855-14867 of 2013 (KLR-RES)

Sri. Abbaiah and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 26-03-2013

Acts Referred:

Citation : (2013) 3 KarLJ 604

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Judgement

Ashok B. Hinchigeri, J.—The petitioners have called into question the order, dated 21.03.2013 (Annexure-BE) passed by the Tahsildar in exercise of the power conferred by Section 39(ii) and 104 of the Karnataka Land Revenue Act, 1964 ("the said Act" for short) for clearing the properties in question from the unauthorized occupation. Sri. T.N. Vishwanath, the learned counsel for the petitioners submits that the petitioners have put up the buildings on the schedule properties and have been residing therein. He submits that without issuing any notice to the petitioners, the respondents are trying to dispossess them forcibly. He complains of the violation of the principles of natural justice. He also complains of the violation of Article 21 of the Constitution of India. If the petitioners are dispossessed, they would be rendered roofless. He submits that the panchayat itself has formed the layout and has provided the petitioners and the similarly placed persons with the basic amenities. He submits that the petitioners' names figure in the voters' list, the electricity connections and water supply are given to their houses.

2. Smt. M.C. Nagashree, the learned High Court Government Pleader for the respondents submits, on instructions, that all the unauthorized occupants are already issued with the notice to vacate their encroachment.

3. Evicting a person from the unauthorized occupation of the Government land is a power coupled with the duty of the revenue officers. In this regard, it is beneficial to refer to the Apex Court's judgment in the case of Jagpal Singh and

Others Vs. State of Punjab and Others, . Paragraph No. 13 of the said decision is extracted hereinbelow:-

13..... The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of villagers of the village. The letter dated 26.9.2007 of the Government of Punjab permitting regularization of possession of these unauthorized occupants is not valid. We are of the opinion that such letters are wholly illegal and without jurisdiction. In our opinion such illegalities cannot be regularized. We cannot allow the common interest of the villagers to suffer merely because the unauthorized occupation has subsisted for many years.

4. However, before evicting the unauthorized occupants, the procedure prescribed by law has to be followed. Section 39 of the Kamataka Land Revenue Act, 1964 reads as follows:

39. Whenever it is provided by this Act or any other law for the time being in force that the Deputy Commissioner may or shall evict any person wrongfully in possession of land or where any order to deliver possession of land has been passed against any person under this Act, such eviction shall be made or such order shall be executed, as the case may be, in the following manner, namely-

(i) by serving a notice on the person or persons in possession requiring them within such time as may appear reasonable after receipt of the said notice to vacate the land and.

(ii) if such notice is not obeyed, by removing or deputing a subordinate officer to remove any person who may refuse to vacate the same; and

(iii) if the officer removing any such person is resisted or obstructed by any person, the Deputy Commissioner or the Revenue Officer as the case may be, shall hold a summary inquiry into the facts of the case and, if satisfied that the resistance or obstruction is without any just cause and that such resistance and obstruction still continues, may, without prejudice to any proceedings to which such person may be liable under any law for the time being in force for the punishment of such resistance or obstruction, take or cause to be taken, such steps and use or cause to be used, such force as may, in the opinion of such officer, be reasonably necessary for securing compliance with the order.

5. If the notice is issued, as submitted by the learned Government Pleader on instructions, it is open to the petitioners to submit their reply thereto. If the notice is not yet issued in compliance with Section 39(i) of the said Act, the same

shall be issued to the petitioners. Their objections, if any, shall be considered and the summary inquiry as contemplated u/s 39(iii) of the said Act, shall be held before taking any coercive steps. This petition is accordingly disposed of. No order as to costs.