

(2012) 08 KAR CK 0021

In the Karnataka High Court

Case No : Writ Petition No. 10769 of 2009 (KLR-REG)

Sri G. Ashwath Naik

APPELLANT

Vs

The Special Deputy Commissioner and Others

RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:

Citation : (2012) 08 KAR CK 0021

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

Bench : Single Bench

Advocate : A.S. Mahesha, for the Appellant; E.S. Indires, HCGP for R1 to R3 and R10 and Sri Lakshminarayana Reddy, for M/s Southern Law Assts. for R4 to R9, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar

1. This writ petition, questioning the order dated 7-11-2007 [copy at Annexure-E to the writ petition] passed by the second respondent-Assistant Commissioner and the affirming order dated 3-3-2008 [copy at Annexure-F to the writ petition] passed by the first respondent special Deputy Commissioner and seeking for quashing of these two orders by issue of writ of certiorari and for restoration of the order dated 24-11-1997 [copy at Annexure-A to the writ petition] passed by the third respondent-committee for regularization of unauthorized cultivation in government lands on the applications of respondents 4 to 9 amongst others, in all 34 in number, on the premise that the subject land located in Sy No 132, measuring totally an extent of 120 acres in B M Kaval village, Kengeri hobli, Bangalore south taluk, is a land located within the prohibited distance from the limits of Bangalore city municipal corporation, is by a person who claims to be the joint secretary of Karnataka Banjara Seva Sangha, Saludoddi village, Thathaguni post, Kengeri hobli, Bangalore south taluk and who further claims that he is a person belonging to scheduled caste community and is interested in protecting government lands from being grabbed by persons without bona fides,

persons who are land grabbers and on the premise that respondents 4 to 9, who have managed to get lands to an extent of 3 acres each in the said survey number, are all such persons; that the Assistant Commissioner, in the first instance for reversing the decision of the committee, has not considered relevant records and more so for the reason that the matter which had been heard and reserved for orders by an erstwhile incumbent in office as on 27-2-2006 has been pronounced and the appeal allowed by the successor in office as per the order dated 7-11-2007 and in between the one who heard and reserved the matter for pronouncement of orders and one who has passed the order, a couple of Assistant Commissioners having occupied the post etc. The affirming order of the special Deputy Commissioner in the appeal by some of the applicants before the committee, whose applications had been rejected on the premise that they are not cultivating the land, also suffers from the very vice of subject land being within the prohibited distance from the Bangalore city municipal corporation limits and the affirming order which was passed without application of mind and without a proper hearing, is also liable to be quashed.

2. This writ petition had been admitted and notice issued to the respondents. Respondents 1 to 3 and 10 are represented by Sri E S Indires, learned government pleader and respondents 4 to 9 are represented by Sri Lakshminarayana Reddy, advocate.

3. I have heard Sri A S Mahesh, learned counsel for the petitioner and the learned counsel for the respondents.

4. Statement of objections has also been filed by the respondents 4 to 9 urging for dismissal of the writ petition.

5. Learned counsel for the petitioner has reiterated the grounds urged in the petition and as noticed above and also submits that the government land is being usurped by all and sundry; that there are several land-grabbers who are systematically go about grabbing government lands and abusing the provisions of Section 94-A of the Karnataka Land Revenue Act, 1964 [for short, the Act]; that in spite of the fact that the tahsildar and the revenue inspector, who had conducted a physical examination of the distance between the subject land and the periphery of the Bangalore city municipal corporation limits and having notice that it is less than 12 kms, the Assistant Commissioner and the Deputy Commissioner, on the other hand, opining that the distance from some other route i.e. Haleguddadahalli, a place in Mysore road, is more than 18 kms and therefore the land can be regularized in favour of respondents 4 to 9, is nothing but a fraud played on the statutory provisions; that it betrays an element of biased favourism in favour of respondents 4 to 9 and also applying different norms by these statutory authorities in sustaining the grant in favour of these respondents even when the committee had opined that it cannot be done so, but not examining the case of other applicants on the same parameters.

6. While the learned government pleader supports the orders submitting that

PWD authorities have opined that it is more than 18 kms etc., learned counsel for the respondents 4 to 9 submits that as on the date of application for regularization of their unauthorized cultivation i.e. as on 24-11-1997, the distance was more than 18 kms, as the city corporation limits had not expanded as much as of now and therefore the orders can be sustained.

7. Provisions of Section 94-A of the Act, reading as under:

94-A. Regularisation of certain cases of unauthorised occupation by constituting committee etc.-

(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).

(2) The Tahsildar of the concerned taluk shall be the Secretary of the committee.

(2A) The State Government may, if it is of the opinion that it is necessary, constitute one or more additional committees for a taluk for the purpose of grant of land under subsection (4) consisting of such number not exceeding five, as may be prescribed and the State Government shall nominate from among the members one of them as the Chairman and another as the Secretary of the committee. When an additional committee is constituted, the Deputy Commissioner shall determine the jurisdictions of the committee and the additional committee and transfer the pending applications to the respective committee.

(3) The Committee or additional Committee shall follow such procedure as may be prescribed.

(4) Nothing in section 94 shall prevent the committee constituted under sub-section (1), or additional committee constituted under sub-section (2A), but subject to such rules as may be prescribed, if any, to grant to the person liable to be evicted under that section, the land which he had unauthorisedly occupied prior to the fourteenth day of April, 1990 (hereinafter referred to as the said date) or any portion thereof, if he satisfies the prescribed conditions (including the extent of the land held and unauthorisedly occupied by him) and makes within a period of six months from the date of commencement of the Karnataka Land Revenue (Amendment) Act; 1990 (hereinafter referred to as the Amendment Act), an application for such grant in such form along with such fees as may be prescribed and on payment of the amount payable under sub-section (5): Provided that the land so granted together with the land already held by such person, shall not exceed two hectares of "D" class of land or its equivalent thereto:

Provided further that no land shall be granted in the areas lying within the limits of Cities and City Municipalities specified in column (2) of the Table below and within the distance from such limits specified in the corresponding entries in

column (3) thereof:

Sl. No Places Distances

(1) (2) (3)

1. Bangalore City under the Karnataka Municipal Corporations Act, 1976. 18 Kms.
2. The Cities of Belgaum, Gulbarga, Hubli-Dharwad, Mangalore and Mysore respectively under the provisions of Karnataka Municipal Corporations Act, 1976 10 Kms.
3. All City Municipalities 1 [having more than fifty thousand population and constituted] 1 under the Karnataka Municipalities Act, 1964. 5 Kms.

Provided also that a person who has unauthorisedly occupied the land, falling within the distance of five kilometres from the limits of the city municipality having less than fifty thousand population, prior to the 14th day of April, 1990, shall make an application for such grant, within three months from the date of commencement of the Karnataka Land Revenue (Amendment) Act, 1994.

Provided that nothing in this section shall apply to forest lands, Plantation lands or lands referred to in sub-section (2) of section 79.

Explanation.-For the purpose of this section "D" class of land means "D" class of land or an extent equivalent thereto consisting of one or more classes of land, as specified and determined in accordance with the formula in Schedule I to the Karnataka Land Reforms Act, 1961.

(5) The amount payable for the grant of land under sub-section (1) sub-section (2A) shall be such as may be prescribed.

(6) Notwithstanding anything contained in the preceding sub-section,-

(a) The Tahsildar concerned shall issue the order of 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 instalments, 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

(b) xxx

(c) the trees, if any, standing on the land granted and the 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.

have become a fertile ground for colluding revenue officials and land grabbers and other persons even non-agriculturists etc., who have never seen the colour of the soil even for a single day, merely by applying and making false claims that they are in unauthorized occupation and cultivation and obliging revenue officials

starting from the lower ranking revenue officials and many a times even the committees, passing orders to grant lands in their favour to the detriment of the larger public interest and the genuine landless persons who may not have any voice or say with these revenue officials.

8. More often than not, lands reserved for a specific purpose such as gomal land and other reserved lands are all just gifted away in the name of regularization of unauthorized cultivation in favour of applicants who are seldom bona fide cultivators or occupiers of such lands.

9. The applications in the present instant are by as many as 34 persons and in respect of Sy No 132 of B M Kaval village. Very name of the village indicates that it is a village reserved for a specific purpose. If the land is reserved for a specific purpose under the provisions of the Act unless it is dereserved, the question of considering such applications does not arise.

10. Be that as it may, the present order of the Assistant Commissioner and affirming order of the Deputy Commissioner mainly suffer from two maladies. First is the Assistant Commissioner who has passed the order is not one who had heard the matter, but some other Assistant Commissioner - his predecessor, who heard the matter and reserved for orders and without further hearing, the successor Assistant Commissioner could not have passed the order, unless the order is ready and it is only a question of pronouncing the order. The time gap in between of more than 11/2 years indicates that things have not happened in a proper manner or as contemplated procedurally.

11. Second lacuna in the order is that even when the tahsildar and the revenue inspector, who had physically travelled the distance, opined that it was less than 12 kms, the authorities to get over this hurdle appear to have obtained a report from PWD authorities and it is not indicated as to in what manner the distance being more than 18 kms has been calibrated.

12. Though, normally in such matters, this court seldom interfere in exercise of writ jurisdiction under Article 226/227 of the Constitution of India, as in the present case, public interest is involved, a land belonging to government is sought to be granted to all and sundry in the name of provisions of the Section 94-A of the Act, which is more an abuse of provisions and even otherwise the orders suffer from two lacunae noticed above and as such the impugned orders are quashed by issue of a writ of certiorari.

13. It is, however, submitted by Sri Lakshminarayana Reddy, learned counsel for the respondents 4 to 9 that the writ petitioner is only selectively targeting these respondents while in the very survey number there are several other grantees who have been granted land on regularization under the very provisions of the Act.

14. In the circumstance, state government and the respondents 1 to 3 and 10 are directed to examine the matter as to the extent of land that is available in Sy

No 132 of B M Kaval village, Kengeri hobli, Bangalore south taluk, verify the kind of reservation that had been made earlier and also to ensure that if there are other illegal statute violating grants, either initially by the committee or later in appeal and further appeals, as in the present case, to take corrective steps for revocation of such grants, and resume those lands to the state and for such purpose to ensure that notices are issued to all concerned persons in whose favour the grants have been made, proposing to take corrective measures and then hear such persons and pass orders in accordance with law and to ensure that such follow up action is completed within a period of one year from the date of this order.

15. Action taken in this regard by the respondents 1 to 3 and 10 to be placed for perusal before the Chief Secretary, Government of Karnataka, who is directed to monitor such follow up action, for evaluation on the administrative side the manner of implementation of the court order. Registry is directed to send a copy of this order to the Chief Secretary, Government of Karnataka. Writ petition allowed in the above manner. Rule made absolute.