

(2001) 12 KAR CK 0023
In the Karnataka High Court
Case No : Writ Petition No. 238 of 2001

Sri Nandi Basaveshwara Swamy Devaru, Attigere Village,
Davanagere District

APPELLANT

Vs

The Deputy Commissioner, Davanagere District and Others

RESPONDENT

Date of Decision : 14-12-2001

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 79 B (1)

Citation : (2002) 3 KarLJ 669 : (2002) 2 KCCR 964

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : R.S. Hegde, for the Appellant; H.S. Surendra, High Court
Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil, J.—With the consent of the learned Counsels appearing for both the parties, the matter is taken up for hearing.

2. The petitioner is assailing the impugned orders in No. RRT. CR. 156/96, dated 22-7-1996 issued by the 3rd respondent vide Annexure-E; in case No. EA. 28/1996-97, dated 22-6-1998 passed by the 2nd respondent vide Annexure-F and in R.A. No. 98/1999-2000, dated 14-11-2000 passed by the 1st respondent vide Annexure-H.

3. The petitioner is a registered Society formed as Sri Nandi Basaveshwara Swamy Devaru by the villagers of Attigere Village to manage and look after the ancient religious Sri Nandi Basaveshwara Devaru Temple in Attigere Village, Davanagere Taluk, The land measuring 3 acres 5 guntas in Sy. No. 92, situated at Attigere Village, Davanagere Taluk was belonging to Smt. Basawa w/o. Kakargollada Hallappa and Smt. Basawa had given the said land to Sri Nandi Basaveshwara Temple for the purposes of "Devara Deeparadhane" in the temple from the income derived out of the said land and the income from the said land

should be permanently utilised for the temple and the land belonging to the temple should not be alienated at any time. The land was given by Smt. Basawa as she had no issues subject to the condition as stated supra. The said land was handed over to five Panchayatdars who were looking after the affairs of the temple at that time namely, Kuruvathapal Murugappa and four others. Accordingly, the entries came to be made in the revenue records, R.R. extract and index of land as per Annexure-B.

4. The further case of the petitioner is that from time to time the Vyavasthapakadars of the temple continued to manage the land in question and utilised the income for the purpose of the temple. When things stood thus, in the year 1996, the villagers and the disciples of the petitioner temple had held meeting and decided to form a Samithi for the purpose of managing the affairs of the temple and the properties. Accordingly, the Society was registered in the month of June 1996. The said Samithi controlled and managed all the possession of the properties of the petitioner-deity and the income so derived is utilised for the performance of the poojas and other festivals and yearly Rathotsava festival and maintenance of the petitioner temple and five other small temples attached to the petitioner-deity.

5. The said land is located adjacent to land Sy. No. 101 of Attigere Village and from time immemorial there exist Bandidari (road) (Achukattu Road) passing through land Sy. No. 101 to reach land Sy. No. 92 belonging to the petitioner temple which is about 100 yards. The land Sy. No. 101 has been purchased by the 4th respondent about 7 years back and the 5th respondent is the husband of the 4th respondent. After purchasing the said land the respondents 4 and 5 with ulterior motive have filed Form 7 before the Land Tribunal for grant of occupancy rights. The said application filed by the 5th respondent was rejected by the Land Tribunal. In view of the rejection of the applications, with ulterior motive made a false allegation and caused obstruction of the petitioner-Samiti to go to the land Sy. No. 92. In pursuance of the said complaint given by the 5th respondent, the 3rd respondent has issued a show-cause notice to the petitioner, directing the petitioner-society and other persons not to enter the land in Sy. No. 92. Feeling aggrieved by the notice issued by the respondent, the petitioner filed an appeal before the Assistant Commissioner in R.A. No. 28/1996-97. In the said appeal filed by the petitioner, an interim order of stay was passed, which was in operation till the disposal of the appeal. The second respondent, without application of mind to the facts of the case and the dispute involved in the matter, arbitrarily passed an order on 22-6-1998, dismissing the appeal, and while dismissing the appeal, the second respondent passed an order for feinting the land of the temple u/s 79-B of the Karnataka Land Reforms Act, 1961 as amended in the year 1974 and directed to take possession of the land. Feeling aggrieved by the said order dated 22-6-1998 passed in case R.A. No. 28/1996-97 by the second respondent, the petitioner filed a writ petition before this Court in W.P. No. 26830 of 1998. The said writ petition came up for consideration and this Court has passed an order on 29th July, 1999 granting

liberty to the petitioner to file a revision petition before the Deputy Commissioner u/s 136(3) of the Land Revenue Act. Accordingly, the petitioner has filed the revision before the Deputy Commissioner in R.A. No. 98/1999-2000. The Deputy Commissioner, Davanagere District, in turn has passed an order on 14-11-2000 rejecting the revision filed by the petitioner, confirming the order passed by the Assistant Commissioner. Feeling aggrieved the petitioner have filed this writ petition.

6. The learned Counsel for the petitioner has contended that the order passed by the Assistant Commissioner is one without jurisdiction on the ground that pursuant to the complaint given by the 5th respondent, the 3rd respondent has passed the impugned order directing not to enter the land Sy. No. 92 which is the subject-matter before the Assistant Commissioner. Instead of considering the case of the petitioner the 2nd respondent has passed order rejecting the appeal and vesting the lands u/s 79-B of the Karnataka Land Reforms Act. The said order passed by the Assistant Commissioner is one without jurisdiction and the operation of Section 79-B of the Karnataka Land Reforms Act is not attracted to the facts of the case. Even the Deputy Commissioner also has passed the order without going into the merits of the case and confirming the order passed by the Assistant Commissioner.

7. Per contra, the learned Counsel for the respondents 1 to 3 submits that he is not in a position to clarify whether Section 79-B of the Act is applicable to the facts of the case.

8. Section 79-B of the Karnataka Land Reforms Act is not applicable to the facts and circumstances of the case. The learned Counsel rightly pointed out that Section 67, Sub-clause (a) is clear on the point. Therefore, the said provision applies to the institution concerned. Here the land held for such institution should not exceed the ceiling limit. In the instant case, the land concerned measures only 3 acres and 5 guntas and this is the only land. There is considerable force in the submission made by the learned Counsel for the petitioner. Taking into consideration all the facts and circumstances of the case, I hold that the impugned order passed by the Assistant Commissioner is one without jurisdiction. As a matter of fact, Section 79-B of the Karnataka Land Reforms Act is not at all applicable to the facts and circumstances of the case. As pointed out above, the order passed by the 3rd respondent prohibiting the petitioner or the members from entering Sy. No. 92 which is the subject-matter of the appeal before the Assistant Commissioner calls for interference. Taking into consideration the facts and circumstances of the case has passed the order holding that the said land should be vested with the Government u/s 79-B of the Act. The findings given by the Assistant Commissioner and confirmed by the Deputy Commissioner are contrary to the relevant provisions of the Act. Hence, it is not sustainable. Accordingly, the impugned orders passed by the respondents are liable to be quashed.

9. The writ petition is allowed, The impugned orders are quashed. The parties are

to bear their own costs.