

(2013) 09 KAR CK 0061

In the Karnataka High Court

Case No : Writ Petition No. 4915 of 2012 (KLR-RR/SUR)

Sri Puttaiah

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 136(2), 136(3)

Citation : (2013) 09 KAR CK 0061

Hon'ble Judges : B. Manohar, J

Bench : Single Bench

Advocate : Chandrakanth R. Goulay, for the Appellant; Ramachandra R. Naik, HCGP for R1 to 3, for the Respondent

Final Decision : Allowed

Judgement

B. Manohar, J.—In this writ petition, the petitioner is challenging the order dated 22-11-2011 passed by the Deputy Commissioner Ramanagara, dismissing the appeal filed by the petitioner for default. The grievance of the petitioner in this writ petition is that against the order passed by the Tahsildar he had preferred an appeal before the Assistant Commissioner u/s 136(2) of the Karnataka Land Revenue Act ("the Act" for short). The Assistant Commissioner without considering the case pleaded by the petitioner, dismissed the appeal. Being aggrieved by the same, the petitioner preferred a revision petition u/s 136(3) of the Act before the Deputy Commissioner. The Deputy Commissioner without affording any opportunity to the petitioner, dismissed the revision petition solely on the ground that the advocate appearing for the petitioner was absent on the date of hearing and that the petitioner is not interested in prosecuting the matter, which is contrary to law. It is the case of the petitioner that he was diligently prosecuting the matter, however, he could not notice the date fixed for hearing the matter. In view of that, he could not be present on the date of hearing. Hence, sought for setting aside the order and allow him to prosecute the matter.

2. Though the contesting respondents 4 and 5 are served, they remained unrepresented.

3. Learned Government Pleader appearing for the Respondents 1 to 3 argued in support of the order passed by the Deputy Commissioner and contended that in spite of giving sufficient opportunity, neither the petitioner nor his advocate were present on the date of hearing. Hence, sought for dismissal of the writ petition.

4. I have carefully considered the arguments addressed by the learned counsel for the parties.

5. The records clearly disclose that, against the order passed by the Assistant Commissioner u/s 136(2) of the Act, the petitioner preferred a revision petition before the Deputy Commissioner. The Deputy Commissioner dismissed the revision petition for default solely on the ground that when the case was taken up for hearing, neither the petitioner nor the advocate representing the petitioner were present. The order passed by the Deputy Commissioner is not correct. If the advocate for the petitioner is not present, he should have given one more opportunity to the petitioner to defend his case. There is no allegation against the petitioner regarding dragging the matter unnecessarily. Admittedly, the appeal was filed in the year 2010-11, there is no such allegation regarding the petitioner intentionally dragging on the proceedings and the property right of the petitioner cannot be taken away in this manner. One more opportunity ought have been given to the petitioner. Hence, the petitioner has made out a case to set aside the order passed by the Deputy Commissioner. Accordingly, I pass the following:

ORDER

The writ petition is allowed. The order dated 2-11-2011 made in Revision Petition No. 6/2010-11 passed by the Deputy Commissioner, Ramanagara is set aside and the matter is remitted back to the Deputy Commissioner, Ramanagara to reconsider the same afresh and pass orders in accordance with law.

The petitioner is directed to appear before the Deputy Commissioner, Ramanagara on 11-10-2013, without expecting any notice for further hearing.