(2012) 09 KAR CK 0124

In the Karnataka High Court

Case No : Writ Petition No. 3597 of 2012 (KLR-RR/SUR)

Sri S.N. Puttegowda APPELLANT

Vs

The State of Karnataka RESPONDENT

Date of Decision : 28-09-2012

Acts Referred:

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

Citation : (2012) 09 KAR CK 0124

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Padmanabha Mahale for Sri. L. Rajanna, for the Appellant; Chittappa, Spl. Govt. Advocate for R1 to R4, for the Respondent

Final Decision : Allowed

Judgement

B.S. Patil

1. In this writ petition, petitioner is calling in question the notice dated 22.12.2011 issued by the 2nd respondent - Special Deputy Commissioner, Bangalore North Taluk, Bangalore, vide Annexure-AA. As can be seen from the impugned notice, proceedings are sought to be initiated u/s 136(3) of the Karnataka Land Revenue Act, 1964 (for short, ''the Act'') and the petitioner is called upon to explain why the entry made in the revenue record in respect of 2 acres of land comprised in Sy.No. 31 of Kodigehalli Village, Yeshwanthpura Hobli, Bangalore North Taluk, shall not be cancelled as they were illegally effected and in that regard to produce relevant documents to support his claim for the land in question.

2. Petitioner has approached this Court raising several questions including the question of jurisdiction of the 2nd respondent - the Special Deputy Commissioner to issue such a notice as proceedings had been already initiated and the matter had attained finality. It is because of this contention that this matter is heard at length, as otherwise, in the normal circumstances, this Court would not interfere

with the show-cause notice issued in exercise of the writ jurisdiction.

3. The main contention of Sri Padmanabha Mahale, learned Senior Counsel appearing for the petitioner is that proceedings had been earlier initiated in exercise of the powers u/s 136(3) of the Act by the Special Deputy Commissioner and an order came to be passed on 18.05.2007, which was challenged by the petitioner before this Court in W.P. No. 9268/2007. This Court, having referred to the fact that the petitioner had produced before this Court the original documents showing his title to the property as well as that of his predecessor in title and that even in the course of the enquiry, the original grant certificate and the original records had been allegedly produced and also keeping in mind the fact that valuable right over the immovable property was involved and the question raised was regarding the genuineness of the grant, held that the matter deserved to be remitted back to the Special Deputy Commissioner for fresh consideration by giving opportunity to the petitioner to produce the original documents and the Special Deputy Commissioner was directed to dispose of the case on merits and in accordance with law after receipt of the original records from the concerned office. Petitioner was directed to appear before the Special Deputy Commissioner on 12.11.2007 without waiting for notice from the Special Deputy Commissioner and produce all the original documents in his possession on that day with due acknowledgment.

4. Pursuant to this order, petitioner appeared before the Special Deputy Commissioner producing all the relevant documents. The Special Deputy Commissioner passed an order on 04.12.2008 referring to the report submitted by the Assistant Commissioner, Bangalore North Taluk, stating that there were some ambiguities in the entries made in the revenue records and that no original records regarding the grant of land and Saguvali Chit Register or the Darkhast register were available. However, having regard to the fact that the petitioner herein had produced certified copy of the Saguvali Chit register obtained during the year 1995 i.e. on 30.06.1995 and by entertaining doubt as to how the original grantees Narayanappa and Sharadamma could not get the mutation of the lands effected in their names up till 1975-76, the Special Deputy Commissioner thought it fit to refer the matter to the Tahsildar, Bangalore North Taluk with a direction that he shall put in all his efforts to trace out the original grant records and verify whether the Saguvali Chit produced by the respondents were genuine or not. The Tahsildar was also directed to verify the genuineness of the mutation entries made in the revenue records in respect of the land in question keeping in view the doubt entertained by him and the ambiguities pointed out by the Assistant Commissioner. The Deputy Commissioner, however, thought it fit to dispose of the proceedings u/s 136(3) of the Act making it clear that the Tahsildar shall examine the matter and furnish a report within three months.

5. Thereafter, on 16.01.2009, the Tahsildar reported stating that the original records regarding the grant of the land were not available in his office and it

appeared that the records were in the office of the Special Deputy Commissioner, Bangalore Rural. This was followed by another report dated 05.08.2009 produced at Annexure-U, wherein the Tahsildar, Bangalore North Taluk, Bangalore, informed that there was material to disclose that the original grantees had paid certain amount as back as in the year 195.7 to the Treasury and Saguvali Chit was issued on 29.05.1957. He further reported that the land which was granted earlier was found to be required for public purpose and therefore reserving the said land for public purpose, by way of an alternative arrangement, the land in Sy.No. 31 had been granted in favour of the original grantees namely Narayanappa and Sharadamma. By submitting this report, enclosing the relevant original/authenticated documents, the Tahsildar sought for further action in the matter.

6. Based on this report dated 05.08.2009 submitted by the Tahsildar, the Special Deputy Commissioner examined the matter and passed an order dated 30.10.2009. A perusal of the said order which is produced at Annexure-V makes it clear that the Special Deputy Commissioner went through and scrutinised the documents pertaining to Sy.No. 31 regarding the genuineness of the entries, in the background of the report submitted to him on 16.01.2009 by the Tahsildar and on verification of the Saguvali Chit register, he has noted that Smt. Sharadamma vide receipt No. NLR-113/1956-57 and Sri Narayanappa vide receipt No. NLR-114/1956-57 paid certain amounts on 06.03.1957 and remitted the same to the Treasury and the Saguvali Chit was issued on 29.05.1957. He has further noticed that as the granted land was required for public purpose and was reserved as such, the grantees were given, as an alternative arrangement, the land in Sy.No. 31 Therefore, he concluded that the names of the successor in interest of the original grantee shall be entered in the khatha.

7. Though this order was passed on 30.10.2009, no action was taken for entering the name of the petitioner in the khatha in respect of the land in question. But, after a lapse of nearly two years, by the impugned notice issued on 22.12.2011, again proceedings are initiated by invoking Section 136(3) of the Act calling upon the petitioner yet again to produce the original documents to support his claim making similar allegations against the genuineness of the grant made in favour of the predecessor of the petitioner.

8. As rightly pointed out by the learned Senior Counsel, the Deputy Commissioner has considered the report submitted by the Tahsildar and has verified the records made available before him and has passed the order dated 30.10.2009 not only dropping the proceedings initiated u/s 136(3) of the Act for cancellation of the entries, but by issuing a positive direction to enter the name of the successor in interest of the original grantee in the khatha of the land. Therefore, the proceedings initiated u/s 136(3) of the Act have attained finality and hence no proceedings again u/s 136(3) of the Act by way of issuing the impugned notice could be initiated. The Special Deputy Commissioner, having become functus officio, has seriously erred in again initiating fresh proceedings u/

s 136(3) of the Act.

9. Mr. Chithappa, learned counsel appearing for the State vehemently contends that the order dated 30.10.2009 passed by the Special Deputy Commissioner was not a speaking order and was not an order in strict compliance with the order earlier passed by this Court in W.P. No. 9268/2007 and therefore initiation of fresh proceedings u/s 136(3) of the Act by issuing the impugned notice has to be viewed as continuation of the proceedings which were initiated after the matter was remanded by this Court and therefore no exception can be taken for the said proceedings. He further contends that since it is only a notice issued by the Special Deputy Commissioner, it is always open to the petitioner to take up all contentions before the Deputy Commissioner and hence there is no justification for the petitioner to invoke the writ jurisdiction of this Court.

10. None of these contentions can be accepted in the facts and circumstances of the case because the sequence of events as adverted to above make it very clear that after the matter was remanded, the Special Deputy Commissioner enquired into the matter and found that the original records and certified copies of the original records were filed before him, but he wanted a report from the Tahsildar and therefore he called for the report. Thereafter, the Tahsildar has submitted the report. In the report submitted on 16.01.2009, the Tahsildar has stated that despite thorough search made by him, the grant records were not available with him and according to him, they were perhaps available in the office of the Special Deputy Commissioner. In the next report submitted on 05.08.2009, he has stated that he had come across the treasury challan for having paid certain amount as back as on 06.03.1957 by the original grantees by name Narayanappa and Sharadamma and of the issue of Saguvali Chit in their favour and also shara made stating that in the place of the land granted earlier, Sy.No. 31 had been granted as an alternative land. The Special Deputy Commissioner, upon receipt of this report, has been satisfied of the genuineness of the entries made and has therefore passed an order dated 30.10.2009 dropping the proceedings initiated for cancellation of the entries and directing the entry of the name of the successor in interest of the original grantees in the khatha of the land. Therefore, it cannot be said that the matter was kept pending and the Special Deputy Commissioner was entitled to again continue the proceedings u/s 136(3) of the Act, by issuing another notice as impugned in this writ petition. The impugned notice issued is clearly without authority of law. The Deputy Commissioner again cannot suo-motu initiate proceedings for the second time having passed an order once. Hence, the impugned notice is unsustainable. Therefore, the writ petition is allowed. The impugned notice issued and the proceedings initiated are quashed. The Revenue Authorities have to take action in accordance with the directions issued by the Special Deputy Commissioner vide order dated 30.10.2009 produced at Annexure-V.