(2010) 11 KAR CK 0129

In the Karnataka High Court

Case No : Writ Petition No. 1448 of 2010

Sri Thimmappagowda, Sri Keshavegowda, Sri Dasegowda and Sri Cheluvegowda — APPELLANT

Vs

The Deputy Commissioner and Others — RESPONDENT

Date of Decision : 22-11-2010

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 25

Citation : (2010) 11 KAR CK 0129

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

Bench : Single Bench

Advocate : Kempe Gowda, for K.V. Narasimhan, for the Appellant; R. Om Kumar, AGA for R1-R3 and A. Ravishankar, for R5 and R6, for the Respondent

Judgement

B.S. Patil, J.—Petitioners are calling In question the order dated 17.02.2009 passed by the Deputy Commissioner, Hassan District, Hassan, vide Annexure-E.

2. By the said order, the Deputy Commissioner exercising his inherent powers u/s 25 of the Karnataka Land Revenue Act, 1964 (hereinafter referred to as the Act, for short), has withdrawn his earlier order dated 23.12.2002 and has confirmed the order dated 26.03.2003 passed by the Assistant Commissioner. He has further directed cancellation of mutation entry No. 12/2007-08. The Tahsildar has been directed to enter the name of Respondent No. 5 herein in the record of rights.

3. The dispute started when the mutation entry bearing No. 29/87-88 was approved by the Tahsildar. Hassan, entering the name of Puttegowda S/o Velapurigowda - Respondent No. 4 herein as khathedar in respect of land bearing Sy. No. 399/3 measuring 16 guntas situated at Hassan village, Hassan Taluk. This mutation was effected upon the death of the father of Puttegowda allegedly on the basis of the consent given by the brothers of Puttegowda viz., the Petitioners herein. The brothers of Puttegowda - the Petitioners herein challenged this mutation entry by filing R.A. No, 19/97-98 before the Assistant

Commissioner, Hassan Sub-Division, Hassan. They contended that upon the death of their father, they have got equal right over the property in question and therefore, their names ought to have been jointly entered along with Puttegowda upon the death of their father.

4. The Assistant Commissioner has dismissed the appeal holding that the appeal was presented after a lapse of 10 years and the khatha was effected in the name of Puttegowda in accordance with law based on the consent given. Aggrieved by this order, the Petitioners herein preferred revision petition before the Deputy Commissioner.

5. The Deputy Commissioner allowed the revision petition and directed that the names of the Petitioners along with Puttegowda be jointly entered in the revenue records by canceling the mutation entry No. 29/87-88.

6. It is relevant to note at this stage that Respondent No. 5 herein claiming to be the owner of the property had challenged M.R. No. 29/87-88 entered in the name of Puttegowda by filing another appeal before the Assistant Commissioner, Hassan Sub-Division, Hassan, in Appeal No. 104/01-02. In the said appeal, Respondent No. 5 herein contended that the land in question was acquired way back in the year 1949 for establishing an educational institution and thus Respondent No. 5 institution had come in possession of the property and without arraying Respondent No. 5 as party Respondent, and without notice to Respondent No. 5, the impugned mutation entry No. 29/87-88 was illegally entered in the name of Puttegowda. In the said proceedings, Puttegowda was issued with notice. However, as he refused to accept the notice, the matter was proceeded against ex-parte and the Assistant Commissioner passed an order on 26.03.2003 as per Annexure-R3 canceling the mutation entry effected in the name of Puttegowda. This order has become final.

7. It is relevant to note here that the Petitioners herein were not parties to the said proceedings in R.A. No. 104/2001-02, which culminated in the order dated 26.03.2003. Without noticing the order passed as per Annexure-R3 by the Assistant Commissioner on the appeal filed by Respondent No. 5, the proceedings before the Deputy Commissioner went on at the instance of the Petitioners who had challenged the order of the Assistant Commissioner passed in R.A. No. 19/97-98. The Deputy Commissioner eventually by his order dated 23.12.2002, as already adverted to above, set aside the order of the Assistant Commissioner and directed that the names of the Petitioners along with Puttegowda be jointly entered in the revenue records by canceling the mutation entry No. 29/87-88.

8. After a period of 9 years, the Deputy Commissioner has initiated suo motu proceedings culminating in the order at Annexure-E invoking Section 25 of the Act. He has passed the present order withdrawing the earlier order and directing that in view of the order of the Assistant Commissioner passed in R.A. No. 104/01-02 dated 26.03.2003, the Tahsildar shall enter the name of Respondent

No. 5 in the revenue records.

9. The position as It presents now discloses that the Deputy Commissioner has set aside his own order and has directed entries to be effected in the name of Respondent No. 5, but nothing is said about the order of the Assistant Commissioner passed in R.A. No. 19/97-98 which was challenged before him. The proper course for the Deputy Commissioner was to remit the matter back to the Assistant Commissioner, directing him to re-consider the same in the light of the order already passed by him (Assistant Commissioner) on 26.03.2003 in R.A. No. 104/01-02, in which event, Respondent No. 5 and the writ Petitioners herein would have had an opportunity before the Assistant Commissioner to put forward their contentions.

10. The Deputy Commissioner was in error in pronouncing on the matter on merits by exercising jurisdiction u/s 25 of the Act. Since he had noticed certain apparent illegality and failure of justice on account of the non-consideration of the order dated 26.03.2003 passed by the Assistant Commissioner, he should have asked the Assistant Commissioner to provide an opportunity to Respondent No. 5 and pass an order afresh after setting aside the order impugned before him. The Assistant Commissioner has to now examine the correctness of M.R. No. 29/87-88 by which the Tahsildar has effected khatha in the name of Puttegowda. Whether the khatha should continue in the name of Respondent No. 5 or whether the Petitioners will be entitled to convince the Assistant Commissioner that they have any right in the property is to be examined by the Assistant Commissioner.

11. The writ petition is therefore allowed in part. The impugned order passed by the Deputy Commissioner and the Assistant Commissioner vide Annexures-B, C & E, are set aside. The matter is remitted to the Assistant Commissioner, Hassan Sub-Division, Hassan, to examine the correctness of M.R. No. 29/87-88 after affording opportunity to Respondent No. 5 and as also to the Petitioners and Respondent No. 4 -B.V. Puttegowda. The order shall be passed within a period of two months from the date of receipt of a copy of this order. All the parties are directed to appear before the Assistant Commissioner, Hassan Sub-Division, Hassan, on 13.12.2010.

