

(2011) 01 KAR CK 0131

In the Karnataka High Court

Case No : Writ Petition No's. 37882-37893 of 2010

Sri V. Lakshmana Murthy and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 94, 94 A (4)

Citation : (2011) 01 KAR CK 0131

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

Bench : Single Bench

Advocate : Srivasthava, for NDS Law Partners, for the Appellant; R. Omkumar, AGA for R1 to R6, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ Petitioners claim to be in unauthorized occupation and cultivation of different extents, ranging from 30 guntas, 40 guntas. 60 guntas of land in Sy. No. 69 of Huralichikkanahalli Village, Hesaraghatta Hobli, Bangalore North Taluk, for the past more than forty years and had made applications for regularization of unauthorized occupation by filing applications in Form No. 50 under Rule-108-C of the Karnataka Land Revenue Rules, 1966 in terms of Annexures - B to K to the writ petitions.

2. It is to be noticed that most of the applications are said to have been made on 14.8.1991, but some are on 16.8.1991 and on 17.8.1991 also.

3. Grievance of the Petitioners in these petitions is that inspite of the Petitioners having sought for regularization of their unauthorized occupation, the Respondents are lukewarm to their applications, have not passed orders on the said applications and it is therefore the Petitioners are constrained to approach this Court seeking the following reliefs:

a. Issue a Writ in the nature of mandamus directing the Respondent No. 4 to consider the applications of the Petitioners for regularization of the occupation of

unauthorities cultivation of the land bearing Survey No. 69 of Huralichikanahalli Village, Hesraghatta Hobli, Bangalore North Taluk, to the extent they are in occupation of the land vide Annexure-A respectively.

b. Call for the relevant records from the Thasildar, Bangalore North Taluk, Karnataka.

c. Any other Writ of direction deemed fit under the circumstances of the case.

4. Notices had been issued to the Respondents of the writ petitions as per the following order passed on 7.12.2010.

Learned Addl. Govt. Advocate is directed to take notice for Respondents and secure instructions as to whether the applications filed by the Petitioners for regularization of their unauthorised occupation of the Government lands are still pending.

Re-list on 10.12.2010.

5. The matter has come up after such notice to the Respondents. Respondents are represented by Sri. R. Omkumar, learned Additional Government Advocate.

6. Irrespective of the factual averments and the correctness of which is neither verified nor necessary, submission of Sri. Omkumar, learned Additional Government Advocate appearing for the Respondents is that there is a statutory bar in terms of the second proviso to Sub-section (4) of Section 94A of the Karnataka Land Revenue Act, 1964 (for short "the Act") for the Committee to consider regularization of applications made by the Petitioners in respect of the subject lands, assuming for argument sake but without conceding that the Petitioners are, in fact, in unauthorized occupation and cultivation of the subject lands.

7. The statutory provision in terms of second proviso to Sub-section (4) of Section 94A of the reads as under:

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

XXX

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

18 Kms.

Corporations Act, 1976.

2.

The Cities of Belgaum, Gulbarga, Hubli, Dharwad, Mangalore and Mysore respectively under the provisions of Karnataka Municipal Corporation Act, 1976.

10 Kms.

3.

All City Municipalities having more than fifty thousand population and constituted under the Karnataka Municipalities Act, 1964.

5 Kms.

8. In this regard, Sri. Omkumar, learned Additional Government Advocate has drawn attention of this Court to the recommendatory letter of the Assistant Commissioner, Bangalore Sub-Division, Bangalore, in No. LND.CR.5/78-79 dated 7.11.1978 addressed to the then Special Deputy Commissioner, Bangalore District, Bangalore, wherein the Assistant Commissioner has categorically mentioned that the subject village, namely, Huralichikkanahalli Village is situated within sixteen kilometres from Bangalore City Corporation limits.

9. Attention is also drawn to the recommendatory letter of the Tahsildar, Bangalore North Taluk, addressed to the Assistant Commissioner, Bangalore Sub-Division, Bangalore, based on which Annexure-L recommendation had been made in turn to the Deputy Commissioner reading as under:

No. LND.SR.60/77-78 Office of the Tahsildar, Bangalore North Taluk, Bangalore, Dt. 18.10.1978.

To, The Assistant Commissioner, Bangalore Sub-Division, Bangalore. Sir, Sub: Grant of land to Sri. Lakshmana Murthy and 15 others of Huralichikkanahalli for un- authorised cultivation of gomala land in S. No. 69 of Huralichikkanahalli, Hesaraghatta Hobli, Bangalore North Taluk. Ref: Your Memo No. LND. CR.5/78-79, dated 22.8.78. Adverting to the above, I write to state that the Revenue Inspector Hesaraghatta hobli has enquired and reported that Sri. Lakshmana Murthy and 15 others of Huralichikkanahalli Hesaraghatta Hobli have been unauthorise cultivating the gomala land in S. No. 69 of Huralichikkanahalli. As could be verified from the record all the persons are landless. They are eligible for sanction of land as per Government orders dated

1.9.77. In this record 9 persons belonging to S.C. and 7 persons belonging to other community. The gomala is insufficient and reduction of gomala is required as per rules. There are no malkies on the said land. The village is situated within 16 K.M.s from Bangalore City Corporation limits. There is no objection from the villagers for granting the land to landless persons at an upset price of Rs. 300/- per acre.

In the above circumstances, I recommend to sanction 16 acres of land in favour of 16 persons at 1 acre each.

Records accompany.

Yours faithfully, Sd/- Tahsildar, Bangalore North Taluk.

and submits that it is very obvious from the very documents produced by the Petitioners that the subject village and the gomal land in Sy. No. 69 of the Huralichikkanahalli village is located within sixteen kilometres from Bangalore City Corporation limits and therefore the embargo in terms of second proviso read with the table comes in the way of regularizing the unauthorized illegal occupation of the Petitioners and therefore a writ of mandamus as sought for cannot be issued to the Respondents.

10. Objections on behalf of the Respondents, as submitted by learned Additional Government Advocate is well taken.

11. A writ of mandamus will lie only to compel the public authority in the event of dereliction of duty or inaction on the part of the public authority in performing a statutory function. It should be vis-?-vis a statutory right in favour of the person seeking for issue of the writ and such inaction should have either denied or affected the exercise of right by the Petitioners.

12. In the first instance, the Petitioners have no right as admittedly they are encroachers on Government land that too gomal land. Gomal land is a land reserved for the grazing of village cattle and all and sundry cannot just encroach on that land and seek for regularization. In fact, there cannot be regularization of illegal occupation or encroachment of reserved land.

13. Be that as it may, assuming that the provisions of Section 94A of the Act can be read as a provision which can prevail over the rule relating to reservations, nevertheless, the proviso to Sub-section (4) of Section 94A of the Act being part of the very section itself and being part of the plenary legislation, it is inevitable that it will have to be taken note of and given effect to not only by the statutory functionaries but also by a court while examining matters arising under the provisions of Section 94A of the Act. This Court also has to recognize and give effect to the statutory provision and the provision cannot be read in such a manner as to render it otiose or useless.

14. The second proviso to Sub-section (4) of Section 94A of the Act; is in the nature of an exception to the general provision of Section 94A of the Act enabling

regularization of unauthorized occupation and cultivation of Government lands to regularize it in favour of bona fide cultivators and even then subject to the proviso etc. and therefore the embargo.

15. While the question as to whether the Petitioners are bona fide cultivators in unauthorized occupation in itself is in doubt and is not necessary to be examined in these writ petitions for the simple reason that when there is a statutory embargo in terms of the second proviso to Sub-section (4) of Section 94A of the Act, that question recedes to the background and even assuming for argument sake Petitioners are bona fide persons who are in unauthorized cultivation of the Government land (which fact is not even made good before the court as Petitioners have not placed any material to indicate that they have been in possession and cultivation of subject land by paying necessary TT fine in terms of Section 94 of the Act for claiming unauthorized occupation for as long period as forty years or more i.e. from the year 1991 or even before that also) and even assuming that it was so, there is no way of the regularization committee getting over the statutory bar and it is for this reason a writ of mandamus can never originate from this Court in such a situation to compel any of the Respondents to perform a function or duty which is expressly and specifically debarred by the statute.

16. There is no occasion for issue of a writ of mandamus in these petitions and therefore these petitions are dismissed.