

(2002) 08 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition No. 24690 of 2001

Sridhara Bhat

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 02-08-2002

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 79 (2)

Citation : (2002) ILR (Kar) 4473 : (2002) 5 KarLJ 454 : (2003) 1 KCCR 775

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

Bench : Single Bench

Advocate : K. Chandranath Ariga, for the Appellant; Chandrashekhar Rodannavar, High Court Government Pleader for Respondents-1 and 2 and Raja Subramanya Bhat, for Respondent-3, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The matter is taken up for hearing with the consent of learned Counsel appearing for the petitioner and the learned Counsel for respondent 3 as also the learned Government Pleader.

2. The petitioner is assailing the legality and validity of the order passed by the Deputy Commissioner, dated 20th March, 2001 in No. CDS RAP 64/99-2000. The case of the petitioner is that he and his predecessors have been in peaceful possession and enjoyment of certain Kadim warg lands touching the schedule property. The schedule property has been used since time immemorial for the purposes subservient to agriculture like collection of green manure, leaves and firewood and for collection of soil to the areca-nut garden in the very land and they were enjoying the said property as kumki land. When things stood thus, the 3rd respondent has made attempt to encroach the alleged kumki land as claimed by the petitioner. The petitioner had filed O.S. No. 378 of 1979 on the file of the Civil Judge (Junior Division), Karkala. The Court has granted injunction after hearing both the parties. Be that as it may, the 3rd respondent had filed an application for grant of land in Sy. No. 290/2A(2). The said application filed by

3rd respondent was considered and the Tahsildar has granted the land and issued saguvali chit on 17-3-1994 in favour of 3rd respondent. In the said saguvali chit issued by the Tahsildar in favour of 3rd respondent to an extent of 1-99 cents, boundaries have been mentioned as follows: East: Sy. No. 87, West: Sy. No. 290/1, South: Sy. No. 290 and North: Sy. No. 290/2C. Assailing the said order/saguvali chit issued in favour of 3rd respondent, the petitioner has filed an appeal before the Assistant Commissioner after lapse of four years. The said appeal has been disposed off by order dated 16-3-1999 by the Assistant Commissioner, Mangalore allowing the appeal filed by the petitioner by setting aside the order passed by the Tahsildar and remitting back for fresh disposal after serving due notice to all the interested parties.

3. Feeling aggrieved by the order of the Assistant Commissioner, the 3rd respondent herein has filed appeal before the Deputy Commissioner in No. CDS RAP 64/99-2000. The Deputy Commissioner after hearing both the learned Counsels appearing for the parties and after taking into consideration the report submitted by the Tahsildar and the material available on record has allowed the appeal filed by 3rd respondent and set aside the order passed by the Assistant Commissioner and restored the order passed by the Tahsildar by his order dated 20th March, 2001. Assailing the correctness of the order passed by the Deputy Commissioner, the petitioner has presented this petition.

4. The principal submission of the learned Counsel for the petitioner is that the saguvali chit issued by the Tahsildar dated 17-3-1994 is behind the back of the petitioner. No opportunity as such has been given to the petitioner. Further, the order passed by the Assistant Commissioner is strictly in accordance with the relevant provisions of the Act. The said order passed by the Assistant Commissioner has in no way prejudiced the rights of the 3rd respondent because the Assistant Commissioner has set aside the saguvali chit and remanded the matter back to the Tahsildar for fresh disposal. Further, he contended that the impugned order passed by the Deputy Commissioner is contrary to the relevant provisions of the Act, and he has not even gone into the matter as per the material available on record. The specific case made out by the petitioner before the Deputy Commissioner was that the land in question is kumki land and as per Section 79(2) of the Karnataka Land Revenue Act, the petitioner has privilege in respect of kumki lands and when he has got privilege as per the relevant provisions of the Act, the Deputy Commissioner ought not to have held that the land in question is not kumki land, without any basis. Further, he pointed out since time immemorial, the land to the extent of 86 cents has been in enjoyment of the petitioner. When the relevant provision has provided the privilege to the petitioner, duty is cast on the Competent Authority i.e., the Tahsildar to give an opportunity to the petitioner before granting the saguvali chit. This material fact pleaded before the Deputy Commissioner was not taken into consideration. Further, he specifically contended that in view of the attempt made by 3rd respondent for encroachment of a portion of the kumki land enjoyed by the petitioner, the petitioner was compelled to file the suit before the competent

Court by way of O.S. No. 378 of 1979. The Trial Court after hearing the petitioner and the 3rd respondent has granted injunction order in favour of the petitioner. In pursuance of the said injunction order, he is in peaceful possession and enjoyment of the land in question. This fact was not at all taken into consideration by the Deputy Commissioner while passing the impugned order. Therefore, he prayed that the impugned order passed by the 1st respondent is contrary to the material on record and is liable to be set aside.

5. Per contra, the learned Counsel for respondent 3 inter alia contended that the 3rd respondent was cultivating the land in question unauthorisedly since from more than 30 to 40 years and accordingly, he has approached the Tahsildar with an application for grant of the said land. The Tahsildar after verifying the material on record and the nature of the land in question and also taking into consideration the ground reality, has granted the land in favour of 3rd respondent and issued saguvali chit as early as on 17-3-1994. The Tahsildar has not committed any error, as such, in considering the request of 3rd respondent. Further, he contended that there is inordinate delay of more than four years in filing the appeal before the Assistant Commissioner and a specific case was made out before the Assistant Commissioner that the appeal filed by the petitioner is beyond the period of limitation and the injunction order granted by the Trial Court was set aside in Appeal No. 223 of 1990, dated 29-6-1996 on the file of the Civil Judge, Mangalore, and the matter was remitted back for fresh disposal. This fact was also brought to the notice of the Assistant Commissioner during the course of the arguments and there is a reference with regard to the submission made by the learned Counsel for the respondent before the Assistant Commissioner but no finding has been given to that effect. On the contrary, the Assistant Commissioner has observed that there was an injunction order regarding the said disputed land. As a matter of fact as per the Xerox copy of the order of the n Additional Civil Judge and Chief Judicial Magistrate, Mangalore, it is seen that the injunction order granted earlier has been set aside and matter stand remitted back to the Trial Court. On the date of passing of the order by the Assistant Commissioner, there was no injunction order in favour of the petitioner. The said finding given by the Assistant Commissioner is contrary to the order passed by the competent Civil Court. Further, to substantiate his case, the petitioner has produced the sketch prepared by the Court Commissioner appointed by the learned Civil Judge and it is exhibited as Ex. C. 3. As per the said sketch prepared by the Court Commissioner during the pendency of the regular appeal, the boundaries of the disputed land are clearly shown. The land granted in favour of the 3rd respondent is Sy. No. 290/2A(2) and the land belonging to the petitioner is Sy. No. 290/1 i.e., adjacent to Sy. No. 290/2A(2) towards west of the land, granted in favour of the 3rd respondent as per the saguvali chit. Further, he has taken me through the impugned order passed by the Deputy Commissioner. The Deputy Commissioner has passed the order after going through the entire material available on file. The Tahsildar, Karkala has submitted the report stating that the land granted in favour of the petitioner is

not kumki land and the said land is situated on the bank of the river flowing adjacent to the land granted in favour of 3rd respondent. Therefore, the impugned order passed by the Deputy Commissioner is strictly in accordance with the relevant provisions of the Act, and no interference is called for. Further, he specifically contended that the appeal filed by the petitioner before the Assistant Commissioner is beyond reasonable period of limitation. He placed reliance on the judgment of the Supreme Court in support of his submission in the cases of *State of Gujarat v. Patil Raghav Natha and Ors.* and *Mohamad Kavi, Mohamad Amin v. Fatmabai Ibrahim*. It is held therein that aggrieved party should approach the Competent Authority within the reasonable time. But in the instant case, there is an inordinate delay of more than four years in filing the appeal. The said aspect though has been specifically pleaded before the Assistant Commissioner, the Assistant Commissioner has not at all considered this aspect of the matter. Therefore, having regard to the facts and circumstances of the case, the petitioner has not made out any prima facie case to interfere with the impugned order passed by the Deputy Commissioner. Hence, the learned Counsel prayed that the writ petition is liable to be rejected.

6. As rightly pointed out by the learned Counsel for the 3rd respondent that the saguvali chit was issued as early as in the year 1994. The petitioner has not raised any objection with regard to the saguvali chit issued in favour of 3rd respondent. After lapse of more than four years, he had filed an appeal before the Assistant Commissioner. I have carefully gone through the order passed by the Assistant Commissioner. As a matter of fact, the 3rd respondent has specifically pleaded before the Assistant Commissioner that the appeal filed by the petitioner is beyond reasonable period of limitation and the injunction order granted in favour of the petitioner before the Trial Court was set aside. However, the Assistant Commissioner has remitted back the matter for fresh disposal. It is contended that when the matter was remitted back for fresh disposal, injunction order was not in force. Further, it reveals from the track of the record that the Deputy Commissioner has taken into consideration all the material on record and the ground reality of the land in question and upheld the grant made in favour of 3rd respondent on more than several grounds. At the time of considering the request of the 3rd respondent exercising the appellate power he has called for report from the Tahsildar regarding the nature of the lands and the ground reality of the case. The Tahsildar in turn, has submitted the report specifically stating that the land in question is not kumki land and the said land was cultivated by 3rd respondent unauthorisedly since from several years. Further, it is significant to note that as per the submission made by the learned Counsel for the petitioner that an extent of 89 cents of land enjoyed by the petitioner is kumki land but except making oral statement, the petitioner has not produced any authenticated document to establish that the said land is kumki land as envisaged u/s 79(2) of the Act. As the petitioner has failed to produce any document before the Deputy Commissioner or even before this Court to establish that an extent of 89 cents alleged to have been enjoyed by the petitioner is

kumki land, much credibility cannot be attached to the oral submission made by the learned Counsel for the petitioner to consider that the land enjoyed by the petitioner is kumki land. The Competent Authority has submitted the report and the same was accepted and declaration was given by the Deputy Commissioner being the Appellate Authority holding that the land in question is not kumki land as envisaged u/s 79(2). Therefore, the contention taken by the petitioner that he is enjoying the kumki land since time immemorial is not available to him in the facts and circumstances of the case as stated above.

7. Further, the learned Counsel for the petitioner has submitted that the grant was made and saguvali chit was issued in favour of the 3rd respondent behind the back of the petitioner and no opportunity of hearing was given to him. It is relevant to submit here itself that the question of giving opportunity to the petitioner and issuing notice to the petitioner is uncalled for since the land in question is not kumki land nor the petitioner has produced any authenticated document to show that the land in question is kumki land. In my considered view, when the land in question is cultivated by the 3rd respondent as unauthorised occupant, he is only entitled to seek relief and the same was considered by the Deputy Commissioner and the order was passed under the relevant provisions of the Act.

8. Therefore, in my considered view, the grant made in favour of 3rd respondent is strictly in accordance with the relevant provisions of the Act. Hence, I do not find any error or illegality in the impugned order passed by the Deputy Commissioner nor the petitioner has made out any prima facie case to interfere with the order passed by the Deputy Commissioner. Hence, interference is uncalled for.

9. Accordingly, writ petition filed by the petitioner is dismissed and stand disposed off.

10. The learned Government Pleader is permitted to file memo of appearance within four weeks.