

(2018) 02 KAR CK 0107

In the Karnataka High Court

Case No : 23100 of 2016 & 23267-68 of 2016(GM-For)

Sri.Ningegowda

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 06-02-2018

Acts Referred:

Citation : (2018) 02 KAR CK 0107

Hon'ble Judges : A.S.Bopanna

Bench : Single Bench

Advocate : Vigneshwar S.Shastri, Shivaprabhu S.Hiremath

Final Decision : Disposed off

Judgement

1. The petitioner is before this Court seeking issue of mandamus to direct the respondents No.1 to 4 to allow the petitioner to cultivate the lands

owned by the petitioner which is referred to in the schedule to the petition.

2. The petitioner contends that the lands bearing Survey Nos. 163, 164 and 165 to the extent as indicated in the schedule to the petition and

situated at Kattaya Kaval village, Kattaya Hobli, Hassan Taluk are the lands absolutely owned by the petitioners. In that regard it is contended that

the lands in question were granted by the Revenue Department to the vendor of the petitioner in the year 1977. The petitioner claims to have

purchased the said properties under a Registered sale deed dated 13.11.1996 and has thereafter secured the Revenue entries to the property

through M.R. No. 2/2012-13, M.R. No.10/2014-15 and M.R. No. 4/2015-16. The grievance of the petitioner is that the respondents contending

that the said property is forest land has not been permitting the petitioner to cultivate the same though earlier the petitioner was cultivating the said

property.

3. The petitioner at an earlier point had sought for permission to carry on the quarry operations in a portion of the land situated in Sy.

No.164/10B-P1 and 163 of Kattayakavalu village which is also a portion of the land which is purchased under the sale deed dated 13.11.1996.

In that context, when a contention had been raised by the respondents that the claim as put forth by the petitioner cannot be accepted so as to

permit quarrying operation since the land is a forest land, the Hon"ble Division Bench of this Court in W.P. No.39977/2015 dated 12.01.2016

had directed a survey to be conducted and thereafter a decision to be taken. Since according to the respondents in the said process it is noticed

that the land is forest land, the leave had not been granted. The case of the petitioner however is that though such contention is put forth by the

respondents in respect of the extent regarding which the leave to carry out quarrying operation was sought, in respect of the remaining portion the

petitioner having cultivated the land thus far and since according to the petitioner the same is revenue land, the petitioner claims that the leave to

cultivate the land is to be granted and therefore, appropriate directions be issued.

4. The respondents have filed their objection statement. Though the contention as put forth by the petitioner to the extent of the claim made that the

property had been earlier granted to one Shahajabi in 1977 and the petitioner claims to have purchased the said property in 1996, the respondents

contend that the lands in Kattaya Kaval village are all lands which is a part of the Reserve Forest which has been notified on 29.09.1938. In that

light it is contended that even if any grant is made, the same would not be sustainable as the forest land which is notified under the Karnataka

Forest Act, 1963 cannot be used for any other purpose. In that regard the respondents seek to rely on the judgment of the Hon"ble Supreme

Court and it is contended that despite the respondents having held the spot inspection and a Mahazar has been drawn pursuant to the direction

issued by the Hon"ble Division Bench, the petitioner though present, has not subscribed his signature to the Mahazar and therefore, the petitioner

cannot make any grievance in that regard.

5. Therefore, in the light of the rival pleadings what is necessary to be taken note is that when the petitioner was before this Court at the first

instance, the issue though was only with regard to the quarrying permission which had been sought by the petitioner and this Court in W.P. No.

39976/2015 through the order dated 12.01.2016 had directed a joint survey and consideration thereto and presently the petitioner contends that

the remaining extent of land is cultivable land and the petitioner has been cultivating the same, in view of the contentions urged by the respondent in

the objection statement and the notification relied by them at Annexure "R1" dated 29.09.1938, the matter is required to be taken note in that

circumstance. The position of law is well settled that when any property is included in the notification issued under the provisions of the Karnataka

Forest Act, the same cannot be diverted to any other purpose unless such land is de-notified by issue of appropriate notifications under the

Karnataka Forest Act itself. At this point, it is neither the contention that it has been de-notified nor is there any other material on record.

Therefore, in that circumstance if the notification at Annexure "R1" is kept in view, as contended by the learned Government Advocate prior to

issue of notification a consideration with regard to the lands in Kattaya Kaval village was made and thereafter a decision was taken to notify the

said lands as Reserve Forest. It is true that the said notification does not refer to the survey numbers in detail. However while indicating the

boundaries, the starting points with reference to the survey numbers has been indicated in the notification. Therefore, all that is necessary to be

determined is as to whether the lands to which the petitioner claims also falls within the boundaries that is indicated in the notification at Annexure

"R1" and if so the said lands will have to be deemed as the forest lands.

6. On the other hand, if the lands to which the petitioner claims is outside the boundaries to the lands indicated in the notification at Annexure "R1",

the consideration of the right as claimed in the Revenue lands would arise. Therefore, at this point in time a mandamus in the nature as prayed in the

petition would not arise. However, notwithstanding the Mahazar referred to at Annexure "R2" which was conducted in the context of the direction

issued by this Court to consider the request made by the petitioner for quarrying operation, an appropriate consideration to find out as to whether

the entire extent of land to which the petitioner claims under the sale deed dated 13.11.1996 is a part of the lands which is notified under the

notification at Annexure "R1" is to be determined. It is only thereupon the issue as to whether the petitioner can cultivate the said lands or not is a matter which would arise for consideration, if it falls outside the boundaries indicated in the notification.

7. Hence, the appropriate course would be to direct the respondents to hold a joint survey in the presence of the petitioner and determine the location of the land. In that regard since it is noticed that the respondent No.5 is also arrayed as a party to this petition and since the respondent No.5 is an Officer under the Revenue Department the respondent No.5 is also directed to remain present and if the respondent No.5 find that the presence of any of the Superior Officers namely the Assistant Commissioner is required at the time of the joint survey, the respondent No.5 shall ensure the presence. The respondent No.3 shall arrange for a joint survey and determine the status of the land keeping in view the above observations. Depending on the conclusion of the survey and the nature of the land, the further orders shall be passed by the respondents.

In terms of the above, the petition stands disposed of.