

(2011) 09 KAR CK 0068

In the Karnataka High Court

Case No : Writ Petition No. 24752 of 2011 (KLR-RR/SUR)

Suresh C.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 07-09-2011

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 136 (3), 3, 4, 56

Citation : (2011) 09 KAR CK 0068

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

Bench : Single Bench

Advocate : K.V. Lakshmanachar, for the Appellant; R Omkumar . AGA, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar

1. These two writ petitions are by persons who claim interest in agricultural land through their father to an extent of 4 acres 20 guntas in Sy. No. 42 of Turahalli Village under a grant certificate dated 16.9.1971 (copy produced as Annexure-B to the petition) in WP. No. 24752/2011 and the petitioner in WP. No. 24241 /2011 viz., Byrappa S/o. Venkatappa claiming a like extent of 4 acres 20 guntas of land in the very survey number had been granted to this petitioner also as per the very grant certificate of even date and copy of which is produced as Annexure-B in W.P. No. 24241/2011.

2. It is the averment of the petitioners that either one or all the ancestors who had been granted the land are in possession and enjoyment of the land etc. Writ petitioners though have not made any averments in the petition as to any current cause of action or affectation due to which they have approached this Court seeking the following relief :-

IN WP. No. 24752/2011:

Quash the orders dated 15.3.2007 passed by the 2nd respondent in survey revision No, 13/2006 07 dated 15.3.2007 (Annexure F) by issue of a writ of certiorari (the petitioner claims interest in respect of Sy. No. 42, New Sy. No. 74)

IN WP. No. 24241/2011:

Quash the orders dated 15.3.2007 passed by the 2nd respondent in survey revision No. 13/2006-07 dated 15.3.2007 (Annexure E) by issue of a writ of certiorari (the petitioner claims interest in respect of Sy. No. 42. New Sy. No. 72

particularly, for quashing the common order dated 15.3.2007 passed by the Special Deputy Commissioner, Bangalore Urban District in Old Sy. No. 42 (New Sy. Nos. 74 and 72) (copy produced as Annexure F & E) respectively whereunder the Special Deputy Commissioner purporting to have noticed that certain earlier phoding or sub-phoding of survey numbers and giving new survey numbers were all not called for, as the earlier application giving some new survey numbers was not called for, nor was it actual development and had directed the lower revenue officials to retain the revenue records in terms of the entries as it prevailed earlier and also having directed the lower revenue officials to show the subject land as forest land and the petitioners" claiming that they were blissfully unaware of all these developments, but stumbled upon such developments by gathering information from the neighbors and particularly, the adjacent land owners in Sy. Nos. 69, 70 and 71 also having suffered like orders and the order dated 15.3.2007 having been made subject matter of W.P. Nos. 12979/2007 and 12482/2008 by the adjacent owners and this Court in terms of orders dated 15.09.2009 and 1.12.2009 having allowed these petitions and having set aside the order passed by the Special Deputy Commissioner for recording the name of the Forest Department in the subject survey numbers in the revenue records is an action taken in violation of principles of natural justice and having set aside the same and having remanded the matter and the petitioners having come to know of such developments have approached this Court for a like relief

3. Writ petitions had been admitted by issue of rule and the following order dated 12.07.2011 had come to be passed:

DVSKJ: 12.07.2011

WP No. 24241 of 2011, WP No. 24752 of 2011

Issue Rule.

The tenor of the order dated 15.3.2007 passed by the Special Deputy Commissioner in both the writ petitions indicates that there were some forged documents created in respect of bits and parcels of land located in Sy. No. 42 of Turahalli Village, Uttarahalli Hobli, Bangalore South Taluk, particularly, insofar as it related to the creation of new Sy. Nos. 69. 70 and 71 from out of this survey number in the year 1971 and also further survey numbers 72. 73 and 74 in the year 2005 for phoding an extent of 177 acres 28 guntas of reserved forest land, it obviously is claimed by private persons as lands given to them under various

grants whereas the revenue records did not support such grants having been made and therefore it was necessary for the Special Deputy Commissioner to exercise his revisional powers u/s 56 of the Karnataka Land Revenue Act, 1964, not only for entering the name of the Government either as forest land or as gomal land [in respect of balance extent of 7 acres 24 guntas in the same survey number] and it is such an order which is questioned in these writ petitions as the writ petitioners claim they were grantees, hut that grant having come to be cancelled under the impugned order, without, notice to the writ petitioners, it is required to be quashed etc.

Writ petitions for examination in writ jurisdiction are stale as the impugned cancellation order is more than four years old as of now and more so if the petitioner neither having availed the statutory remedies under the Act nor having approached the civil court for relief examination at this point of time is too far fetched.

However rule is issued to verify as to how the State Government has preserved the extent of 177 acres of land which is mentioned as forest reserve area and for submitting a report in this regard to this court in respect of this land reserved as forest area.

Mr. Omkumar, learned Additional Government Advocate, also points out that any subsequent order passed by the Special Deputy Commissioner purporting to exercise the powers u/s 136[3] of the Act indicates that total extent of 597 acres 19 guntas in three survey numbers 41, 42 and 5 of Turahalli Village had been declared as minor forest of Turahalli as per Government Order dated 24.8.1934 and this appears to be the basis for the subsequent order of the Special Deputy Commissioner based on the report of the Tahsildar who in turn had been directed to submit such report as per directions of the Commissioner for Land Survey, Revenue Settlement and Land Records.

In the wake of such developments, Mr. Omkumar, learned Additional Government Advocate who is directed to take notice for the respondents, is directed to place factual report before this court within two weeks" from today about position of the Turahalli Minor Forest as of now and as to whether it is really so retained or it is yet again gobbled up by other land grabbers, particularly, as the orders indicate that the petitioners are also such persons.

List after two weeks.

A copy of this order shall be furnished to Sri. R. Omkumar. learned Additional Government Advocate, free of cost

and matter has been coming up thereafter.

4. The State Government has filed its statement of objections on 11.8.2011 countering the arguments in the petitions and in the wake of the assertions made by the State that the subject lands are all forming part of reserved forest land even in terms of a government order of the year 1934 (copy produced as

Annexure R-3) and therefore, subject land was required to be preserved as a forest and the revenue authorities having also noticed on actual measurement of the land within boundaries as described in Notification dated 24.8.1934; that the extent of land actually available in survey number 42 was more than the extent: actually mentioned in the revenue records; that while actual extent of land was 177 acres 20 guntas, whereas the revenue records indicated 159 acres 13 guntas and therefore the Special Deputy Commissioner and other authorities having taken action for re-phoding to indicate the actual extent in the survey number, the order passed at Annexure F in the year 2007 does not call for disturbance; that no interference is warranted in these writ petitions, as it has no merit and requires to be dismissed etc.

5. While the writ petitioners have also produced certain subsequent order passed by the Special Deputy Commissioner purporting to be u/s 136(3) of the Karnataka Land Revenue Act 1964 copy produced as Annexure G in WP No. 24752/2011 and as Annexure G in W.P. No. 24241/2011 of the even date 25.11.2010 and while certain directions have been issued by the Special Deputy Commissioner under this order, to direct the revenue authorities to retain the name of the petitioners in the revenue records in M.R Nos. 1/1971-72, 2/1971-72 and 3/1971-72, and it is claimed this order is supportive of the petitioners version in the writ petitions, whereas the assertion on the part of the respondents is that as contended in paragraph 7 reading as under :-

In these circumstances, it is ordered to continue the names of Sri. Kaverappa, Sri Byrappa and Sri Muniyappa in respect of the land in S.N.42 measuring 4 acres 20 guntas, 4 acres 20 guntas and 4 acres 38 guntas situated at Turalialli Village, Uttarahalli Hobli, Bangalore South Taluk as per M.R. Nos. 1/71-72, MR. No. 2/71-72 and MR. No. 3/1971-72 respectively as are existing.

such orders have been managed by the petitioners and have no sanctity in law and learned Government Advocate submits that many such orders passed by the Special Deputy Commissioner have been made subject matter by the State Government itself and perhaps this order may be one amongst them etc.

6. I have heard Sri K.V. Lakshmanachar, learned counsel for the petitioners. Sri R. Omkumar, learned AGA for respondents - State. Apart from all other controversies, submission of Sri K.V. Lakshmanachar, learned counsel is that the order passed by this Court in WP No. 12979/2007 (KLR RR/SUR) & WP No. 12482/2008 (copy produced as Annexure M & N to the rejoinder) by the writ petitioners in response to the statement of objections by the State Government is that the very order had come to be quashed earlier by this Court only on the ground of opportunity and a like relief is to be given to the writ petitioners etc., and urges that the writ petitions may be allowed on like terms, if not for any greater relief.

7. However on behalf of the State Government writ petitions are sought to be dismissed and submission of Mr. R. Omkumar, learned AGA is that liberty given

by this Court in other writ petitions cannot be made a ground in the present writ petitions as the stand of the respondents is that there was no grant order in the first instance; that by some fraudulent methods or deceit if the petitioners have managed to get their names entered in the revenue records; that does not mean that a grant is cancelled etc.

8. While it is true, that any order or proceedings which has come into existence in violation of principles of natural justice is a matter which merits examination and is normally looked into and is normally allowed relief granted in writ jurisdiction notwithstanding alternative remedy etc., in the present writ petitions there are sufficient distinguishing features. In the first instance, there is absolutely no current cause of action for seeking relief to question the order at Annexure F and to now seek to quash the order passed by the Special Deputy Commissioner in the year 2007, except to say that such developments came to the knowledge of the petitioners through neighbors etc. Writ petitions filed in the year 2011 seeking for relief in respect of an order passed in the year 2007 more so, in the wake of subsequent developments in respect of an order at Annexure G disentitles any relief in favor of writ petitioners as the writ petitions are hit by delay and laches and also for want of cause of action. An order as at Annexure G even according to the writ petitioners is directed only for the deletion of the names of the petitioners.

9. No grievance of the writ petitioners survive in these petitions though it is contended by Sri Lakshmanachar that the grievance is with regard to the manner in which the grant has been cancelled under the impugned order and therefore, the relief pressed for notwithstanding, petitioners having approached the Civil Court by filing a suit against the Forest Department is again countered by the learned AGA pointing out that the earlier phoding being based on a non-existing grant and if that has been corrected that cannot be put on par with a deprivation to take away land by cancellation of an earlier grant and therefore right is taken away in violation of principles of natural justice.

10. Submission of learned AGA merits acceptance for the reason that it is only a person who has a right and whose right is taken away, who can complain of the violation of the principles of natural justice. If the right is taken away without proper opportunity or without notice to a person claiming a land under a grant and phoding is ordered, then such a situation while may justify interference in writ jurisdiction, but if grant itself is a disputed aspect, as while the petitioners' claim under certain grants of the year 1971-72, version of the government is that there were no grants at all and nothing is there to support the same in the revenue records nor the petitioners had placed anything before the Court to this effect etc.. then in such a situation the argument of action without notice to deprive land got under a grant does not succeed as the very grant is under dispute.

11. Be that as it may. It is not necessary for this court to go into the disputed aspects particularly, as to whether the revenue records, the one relating to

entering the names of some person or phoding or re-phoding etc., are all to bring the revenue records in conformity with the right title acquired by persons under transactions are enabled in law and to reflect these entries and the drawing of a sketch are all due to change of ownership and rights in the subject property and are all not one to bring about such change by themselves, such entries in the revenue records are as a sequel to the change of ownership in respect of lands and therefore transactions otherwise are enabled in law. These are all questions particularly, the ownership aspects which are required to be examined by Civil Court and not by this Court.

12. Submission of Mr. Lakshmanachar, learned counsel for the petitioners that the Deputy Commissioner has no power to declare some lands as forest lands in terms of provisions of Sections 3 and 4 of the Act is an irrelevant submission, as the Deputy Commissioner under the impugned order has only confined his actions in respect of the revenue records and nothing beyond, but based on an earlier government, notification which had reserved the land in the said survey number as a forest land.

13. Though Mr. Lakshmanachar places considerable reliance on the order passed by this Court earlier in the writ petition by neighbors and submits that a like order is justified, I do not find any need or necessity or even justification to quash the impugned order insofar as the petitioners are concerned for the reason that not only the petition is hit by delay and latches, but also that petitioners have not shown any real / genuine cause of action and moreover a subsequent development in terms of the order at Annexure G which is in favor of the writ petitioners insofar as the revenue entries etc., are concerned virtually renders this writ petition infructuous.

14, Be that as it may, to examine the existence of any grant or otherwise, petitioners have to approach a Civil Court. Reserving such liberty these writ petitions are dismissed. It is however, made clear that the State Government should abide by the affidavit filed by the Secretary, Department of Revenue and Department of Forest and it is expected that the State Government at least evinces commensurate interest to conserve the lands, which have been identified and earmarked as a forest and retained as such and not waste or divert to other types of non-forest activities even as mandated by the Supreme Court in the decision of T.N. Godavarman Thirumulpad Vs. Union of India (UOI) and Others,

15. With this observation and direction to the State Government, these writ petitions are dismissed.