

(2009) 04 KAR CK 0033
In the Karnataka High Court
Case No : Writ Appeal No. 2101 of 2007

The Deputy Commissioner, The Assistant Commissioner
Sagar Sub-Division and The Tahsildar Sorab Taluk

APPELLANT

Vs

Smt. Kushalamma Gowda and Others

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 128, 129

Citation : (2009) 04 KAR CK 0033

Hon'ble Judges : N. Kumar, J;A.S. Pachhapure, J

Bench : Division Bench

Advocate : H.M. Manjunatha, AGA in Writ Appeal No. 2101 of 2007 and S.R. Hegde Hudlamane, in Writ Appeal No. 2297 of 2007, for the Appellant; H.M. Manjunatha, AGA for R6 to 8 in Writ Appeal No. 2297 of 2007, for the Respondent

Final Decision : Allowed

Judgement

1. These two appeals are preferred against the very same order passed by the learned single Judge setting aside the orders passed by the revenue authorities and directing the revenue authorities to restore the names of the respondents in the mutation register.

2. Land bearing Sy. No. 25 situated at Tavarehally Village, Kasaba Hobli, Sorab Taluk, measures in all 513 acres. The names of the ancestors of respondents 1 to 5 were entered in respect of a portion of the said land. When the authorities conducted survey they noticed that the aforesaid land is classified as KAN lands and no person's name could have been entered either in column No. 9 or 12 of the record of rights. Therefore, in the year 1977-78 they removed the names of the persons which had been wrongly entered and entered the name of the Government. The said order removing the names of the persons and entering the name of the Government has not been challenged till today. But, the respondents filed applications to delete the name of the Government and to restore their names. The Assistant Commissioner rejected their request Aggrieved by the

same, they preferred an appeal to the Deputy Commissioner who also rejected their request. Aggrieved by these two orders, they preferred a Writ Petition before this Court. The learned single Judge held that the deletion of their names without notice to them, without hearing them is illegal, admittedly they were in occupation of the said land and, therefore, he set aside the orders passed by the revenue authorities, directed restoration of their names in the revenue records and also reserved the liberty to them to approach a competent Civil Court for seeking appropriate declaration. Aggrieved by the same, the Government has preferred the writ appeal in W.A. No. 2101/2007. The other appeal W.A. 2297/2007 is by the villagers of the said village who preferred the appeal when the Government did not challenge the said order. That is how both the appeals are listed before us.

3. Learned Government Advocate assailing the impugned order passed by the learned single Judge contended that KAN land is a Government land. It is a forest land. No one can acquire an interest in the said property. Only privileges to remove the usufructs on the said land is conferred on persons and, therefore, when the authorities realised that names have been entered in the mutation register in respect of the said land at the time of re-survey, they promptly removed the same and restored the name of the Government. The revenue authorities were justified in removing the names of the respondents and entering the name of the Government. However, the learned single Judge committed an error in passing the impugned order which calls for interference.

4. It is not in dispute that the land in question is a KAN land. The Mysore Land Revenue Manual defines what a KAN land means.

KANS means

- (1) species of grass destructive to cultivation;
- (2) extensive tracts of green forest which are preserved for the sake of wild pepper vines, bag and palms, gum trees, etc.

The holders of these KANS are allowed the privilege of

- (a) enjoying the said produce
- (b) clearing and making use of the under growth
- (c) dipping trees for the growth of pepper trees and for purposes of manure.

The above said meaning of the KAN undoubtedly manifests that it is a forest land belonging to the Government and that no person would acquire any right or claim over the KAN land, merely because of their enjoying the privileges. If their names are entered in the mutation register it does not confer any right or title in the property in respect of those persons. Therefore, when the names of the ancestors of the respondents were entered in column Nos. 9 and 12 in RTC it is an entry without authority. Unless a person acquires an interest in the property, his name cannot be mutated either in column No. 9 or in column No. 12 under

Sections 128 and 129 of the Karnataka Land Revenue Act. In respect of KAN land nobody can acquire interest except some privileges. Therefore, the names of the ancestors of the respondents which was entered is a gross mistake committed by the authority. At the time of re-survey they realised the mistake, they found out that the land in question is a KAN land and removed the names of the persons which was entered and entered the name of the Government That is not challenged till today. In respect of a Government land the respondents have no right to request the authorities to mutate their names or restore their names. Therefore, the revenue authorities were justified in passing the orders rejecting the request of the respondents. When there is no right in a property, when by mistake an entry is made, it does not create any interest in the person. Principles of natural justice has to be followed only when a right of a person is sought to be taken away. By mere entry of the name of the respondents in the mutation register in respect of a forest land or a Government land or a KAN land, they acquire no right. To set right the mistake and to remove their names, they need not be heard and, therefore, the learned single Judge was not correct in holding that the removal of the names of the respondents from the mutation register without notice to them is bad. It is a Government land. Government's name has been entered. It is a forest land which cannot even be granted by the Government to any person. All that the persons are entitled to is the privilege of collecting the usufructs of the said land. In that view of the matter, the direction issued to the revenue authorities to restore the name of the respondents is illegal and contrary to law and is liable to be set aside. In that view of the matter, we pass the following order:

- (a) Both the appeals are allowed.
- (b) The impugned order passed by the learned single Judge is set aside.
- (c) The order passed by the revenue authorities is restored.