

(1977) 01 KAR CK 0001
In the Karnataka High Court

The State of Karnataka and Others

APPELLANT

Vs

M.G. Chowde Gowda and Others

RESPONDENT

Date of Decision : 27-01-1977

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Land Revenue Act, 1964 — Section 54
Karnataka Land Revenue Rules, 1966 — Rule 43E, 43L

Citation : AIR 1977 Kar 96 : (1977) ILR (Kar) 629 : (1977) 1 KarLJ 183

Hon'ble Judges : K. Jagannatha Shetty, J;B. Venkataswami, J

Bench : Division Bench

Advocate : M.P. Chandrakantraj Urs, for the Appellant; S. Shivaram, for S.G. Doddakalegowda and K.N. Subba Reddy, for the Respondent

Judgement

Jagannatha Shetty, J.—This appeal is directed against the order of the learned single judge allowing Writ Petition No. 244 of 1974 and directing the State Government to dispose of the case with liberty to call for the materials, if necessary, from the Subordinate Officers.

2. Briefly stated the facts are: Chowde Gowda-Respondent 1 is a political sufferer. The political sufferers are given some concessions in the matter of granting land by the Karnataka Land Revenue (Amendment) Rules, 1960. Sometime in the year 1964-65, respondent 1 applied for grant of land in Survey No. 296 in Maralagala village in Srirangapatna Taluk. His application, was processed and an extent of 2 acres 16 guntas was granted by the Special Deputy Commissioner, Mandya District. Respondent 1 was not satisfied with the land granted to him. He wanted about 10 acres of land. So, he approached the State Government with his grievance. The Government by order in D. M. No. RDI LYD 65 dated 9-10-1965, directed to consider the request of Respondent 1, if the land was available in Survey No. 296. The Deputy Commissioner and the Divisional Commissioner construed the said order as a direction issued to them under Rule 43 (L) of the Land Revenue (Amendment) Rules, 1960 and granted a further extent of 7 acres 24 guntas to Respondent 1, although at that time there were

pending applications from some of the respondents 2 to 15. So, those applicants complaining about that grant, took up the matter in appeal before the State Government. In that appeal, the Government did not agree with the view taken by the Deputy Commissioner or the Divisional Commissioner, The Government found that the authorities without actually setting apart the land for the scheduled castes and scheduled tribes as per their priorities, ought not to have granted the additional extent of land to respondent 1. The appeal was accordingly allowed by order dated 5th April, 1971, with the following observations:

"The records do not bear out that the reservation contemplated in Rule 43 (E) has been actually made before the grant was ordered by the Deputy Commissioner in this case, though there is a statement in the Revenue Inspector's report dated 11-8-1954 on the Darkhast Memorandum pertaining to the respondent that 25 acres have been reserved for the scheduled castes and scheduled tribes. Whether this is only a paper reservation or whether land had actually been set apart for the scheduled castes and scheduled tribe per sons required to be definitely ascertained. The facts apparent from the available records do not establish or even probabalise the inference that such a reservation was in fact made. This is an infirmity which vitiates the grant. In the result the appeal is allowed. The grant of land ordered by the Special Deputy Commissioner in his order No. M3-II PR 278 1 164-65 dated 18-1-1966 upheld in the impugned order dated 31-3-1970 by the Divisional Commissioner, Mysore Division, is set aside and the case remanded to the Special Deputy Commissioner, Mandya, for fresh enquiry and disposal in accordance with law after giving an opportunity to both the parties to be heard."

3. Pursuant to the above order, the Special Deputy Commissioner took up the matter for further consideration. In the final analysis, he reached the conclusion that out of Survey No. 296, only 2 acres 16 guntas could be granted to respondent 1 and accordingly, he made the order on 15th November, 1971.

It was then the turn of respondent 1 to appeal to the Divisional Commissioner complaining against the order made by the Deputy Commissioner. The Divisional Commissioner accepted the appeal, reversed the order of the Deputy Commissioner and granted to respondent 1 a further extent of 7 acres 24 guntas. But the success of respondent 1 was short lived. Respondent 4 and four others again appealed to the Government challenging the correctness of the order of the Divisional Commissioner. The Government set aside the grant made by the Divisional Commissioner stating thus:

"In the absence of detailed information regarding the lands which had been reserved in favour of scheduled castes and scheduled tribes, the additional grant of 7 acres and 24 guntas made in favour of the respondent by the Divisional Commissioner cannot be sustained."

With the above conclusion, the Government issued the following directions to the

Deputy Commissioner:

"The case is remanded to the Special Deputy Commissioner, Mandya District, for recording special findings on the following points.

1. The extent of land which was available for disposal in the village in 1964-65 when the respondent applied for grant of land as a political sufferer;
2. The extent of land disposed of since 1964-65 in the village and the categories of persons in whose favour such disposals have been effected; and
3. The balance that will be available for each category if the total extent of land available for disposal in 1964-65 is allocated to the various categories as per the land grant Rules in force in 1964-65.

After recording findings on these points, the Special Deputy Commissioner may proceed to pass orders on the extent that could be granted to the respondent and to the petitioners having regard to the extent of land available for grant in each category,"

4. Challenging the validity of the above order, respondent 1 preferred Writ Petition No. 244 of 1974 under Art. 226 of the Constitution. The learned single judge by order dated 9th June 1975, allowed the writ petition and set aside the remand order with a direction to the Government to dispose of the appeal before it as expeditiously as possible. The learned single judge has also made some observations to which we will make reference a little later.

The State being aggrieved by the order of the learned single judge has preferred the writ appeal.

5. The principal contention urged for the appellant is that having regard to the scope of the appellate power u/s 54 of the Karnataka Land Revenue Act, the Government was well within the jurisdiction to make the impugned order, and the learned single judge was in error in directing the Government to re-hear and dispose of the appeal.

6. In order to appreciate the contention, it is necessary to see first as to the scope of the appellate power. Section 54 of the Karnataka Land Revenue Act, so far as it is relevant, provides:

"54. Powers of appellate authority - The appellate authority may, for reasons to be recorded in writing either annul, reverse, modify or confirm the order appealed from, or may direct the officer making the order by himself or by any of his subordinate officers, to make further inquiry or to take additional evidence on such points as the appellate authority may specify, or the appellate authority may itself make such inquiry or take such additional evidence:

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The section confers wide powers to the appellate authority including the power to annul, reverse, modify or confirm the order appealed from. It also empowers the

appellate authority to make such enquiry by itself by taking such additional evidence as it thinks fit. It could also direct any of the subordinate officers to make further inquiry or to take additional evidence on such points as may be, specified. These powers, in our view, are not hedged by the limitations imposed by Rules 23 and 25 of Order 41 of the Code of Civil Procedure. But it is a recognised principle that the appellate power should not be exercised arbitrarily, by resorting to an improper order of remand. The appellate authority must first go into the merits of the matter, and if there is enough evidence, on record, it must dispose of the appeal by itself, and should not abdicate its responsibility by remanding the matter to its subordinate officers.

7. Let us now see whether the Government order in question falls short of these requirements. The order could be broadly categorised into four parts. The first part sets out the facts leading up to the second appeal before the Government. The second part sets out the grounds of appeal, The third part deals with the merits of the appellate order of the Divisional Commissioner and the last part provides the directions to the Special Deputy Commissioner to record certain findings and to consider the grant of land to respondent 1 and other applicants.

8. We will now examine the order of the Divisional Commissioner dated 29th January 1973. As earlier stated, the Divisional Commissioner allowed the appeal of respondent 1 holding that due reservation of 50 per cent of the excess gomal land was made and grant of 10 acres of land made earlier to respondent 1 was in order. He has observed that at the time of building darkhast records in favour of respondent 1 there was in all 134 acres and 28 guntas of land available as gomal while the cattle strength was 288 and the requirement of gomal for the said cattle strength was only 84 acres and 28 guntas, and there was an extent of 50 acres of land available for disposal at that time. These statements, in our opinion, appear to be vague, and at any rate, are against the observations made by the Deputy Commissioner in his order dated 15th November 1971. The Government, therefore, has found fault with the order of, the Divisional Commissioner stating thus:-

".....The Divisional Commissioner has not given reasons for holding that out of the total extent of 50 acres of land available for disposal, 25 acres of land had been reserved for Scheduled Castes and Scheduled Tribes. If the available lands had been included in S. No. 348, then the calculation adopted by the Divisional Commissioner would not be correct as no land has yet been disposed of out of S. No. 348. In the absence of detailed information regarding the lands which had been reserved in favour of Scheduled Castes and Scheduled Tribe, the additional grant of 7 acres and 24 guntas made in favour of the respondent by the Divisional Commissioner cannot be sustained."

The above conclusion of the Government cannot be said to be erroneous or in excess of the appellate powers, although a more detailed order would have been proper in that context. But that by itself is no ground for this Court to set aside the said order with a direction to the Government to dispose of the, appeal

afresh. So long as the order falls within the ambit of the appellate powers and in the absence of any other infirmities calling for interference, this Court cannot in the exercise of its writ jurisdiction remit the matter for fresh disposal.

It may be stated that the Government after setting aside the order of the Divisional Commissioner, could have rested the matter by simply allowing the appeal without issuing further directions to the Deputy Commissioner. Those directions, in the circumstances, are really for the benefit of respondent 1, to work out his rights, if any.

9. Before parting with this case, we may observe that we entirely agree with the view expressed by the learned Judge that the applications of the political sufferers for whom special provision is made, ought to be dealt with as expeditiously as possible in as much as the grant of land to such persons is intended to minimise their sufferings and any delay in making appropriate grant to them would defeat the very purpose for which the reservation of land is made for their benefit.

10. For the foregoing reasons, we allow the appeal and in reversal of the order of the learned single judge, we dismiss the writ petition without an order as to costs.

11. Since the matter is pending from 1964, it is but appropriate that the Deputy commissioner shall dispose of the matter on top priority basis Respondent 1 is at liberty to urge all his contentions before the Deputy Commissioner including the contention that the appellants before the Government have already been granted lands and they are in possession of the same.

12. Appeal allowed.