

(1999) 06 KAR CK 0029

In the Karnataka High Court

Case No : Writ Petition No. 15465 of 1996

UFM Ramabai Hanumanth Nayak

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 24-06-1999

Acts Referred:

Constitution of India, 1950 — Article 227
Karnataka Land Grant Rules, 1969 — Rule 18 (2), 25

Citation : AIR 1999 Kar 495 : (2000) 1 KarLJ 352

Hon'ble Judges : T.N. Vallinayagam, J

Bench : Single Bench

Advocate : Sri K.I. Bhatta, for the Appellant; Sri B. Veerappa, High Court Government Pleader and Sri R.V. Jayaprakash, for the Respondent

Judgement

1. Heard the learned Counsel Sri K.I. Bhatta for the petitioner, Sri R.V. Jayaprakash for respondents 3 to 5 and the learned High court Government Pleader who is directed to take notice on behalf of respondents 1 and 2.

2. The petitioner was granted earlier 2 guntas of land in 1965. Adjacent to this land, there is a vacant small strip of land measuring 14" x 80". As this was not useful to any other person for any purpose the same could not have been allotted or granted independently to any other person either for house or site or for any other purpose. The petitioner applied for and obtained the grant on 28-3-1984. Subsequently, the suit appears to have been filed in O.S. No. 65 of 1984 wherein the right of way was claimed over this particular piece of land as easement. The suit came to be dismissed after elaborate trial and the finding has become final. It appears that respondents 3 to 5 who claim to be the owners on the other side of the municipal land wanted to have access to the National Highway over this passage as a short-cut instead they have to walk through 300" road they approached the Deputy Commissioner for cancellation of grant. There was earlier proceeding in which this Court had directed the Deputy Commissioner to inspect the spot and consider the demand of respondents 3 to 5. A report

appears to have been filed after a spot inspection by DC. The Assistant Commissioner has chosen to cancel the grant in their favour under Rule 25 of the Land Grant Rules and such order came to be confirmed by the Deputy Commissioner. Hence, this present writ petition.

3. The report of the Deputy Commissioner reads as follows;

"Inspected the spot on 16-7-1991 in the presence of the appellant and respondent the land in Sy. No. 99-A IAIA is adjacent to the National Highway and the respondent has building constructed in the land granted to him, earlier. The houses of the appellant are behind the land granted to the respondent. The approach to their houses from the highway is through the land Sy. No. 99-A IAIA which is lying vacant. This land has now been granted to the respondent".

4. It is clear that respondents 3 to 5 wanted the particular piece of land as according to them, the public treated it as pathway or an access road to the National Highway. Once the Civil Court has come to the conclusion on evidence and documents there can be no easementary right for the adjacent owners to use this passage as an easement of necessity, the authorities cannot sit over judgment on such a finding rendered by the Civil Court and try to act independently. It is the settled law that whenever dispute arises in respect of enjoyment of the land under the Land Grant Rules or Act, the Civil Court's decision is the only remedy. Now that the Civil Court has declared the non-existence of easement of way, certainly neither the authorities nor respondents 3 to 5 can question the same.

5. The contention of Sri Jayaprakash is that in the Civil Court his clients were not made parties. But it is significant to note that the suit is not to establish the right of a person but it is claiming right over the land which is the subject-matter of this writ petition. Once the right is denied for the use of the land as easement of necessity, certainly respondents 3 to 5 are bound by the same. If they want to challenge the decree it is always open to them to question the decree or claim any right which they may have in law by instituting proceedings in a competent Court of law. They cannot resist or try to outwit the orders of the Civil Court by approaching the authorities to make them to fall a prey to their inclinations.

6. The second attack on the order made is u/s 18(2) on the ground that the petitioner was granted a piece of land and the present grant is the second grant within a period of 20 years. Consequently, such a grant has to be cancelled as is rightly done by the authorities. A reading of Section 18(2) would nullify the argument now advanced. Section 18(2) reads as follows:

"Where a building site cannot with advantage be granted as an independent site, the adjoining holder, if he so desires, may be granted such site at such value as the Deputy Commissioner may determine".

The wording "with advantage" is significant. Where a building site cannot with advantage be granted as an independent site means that if other site intended to

be granted no building can come in or no advantage can flow to the person who applied for that particular site as the grant in his favour then such a land can be granted to the adjoining holder. It is seen by the length and breadth which is 14/18 it cannot be used as a building site by anybody putting up a building in that particular piece of land would certainly be against the Municipal Rules or Panchayat Rules relating to construction of building.

7. The word "adjoining holder" is significant. It is not the adjoining owner. Adjoining holder means that the person who had already been granted the land under the provisions of this Rules and it contemplates that he was already having a grant in his favour. Though there is no definition of "holder" in the Rules, Section. 2(11) and (12) which is extracted below speaks about holding;

"to hold land" or to be a "Landholder" or "holder" of land means to be in lawful possession of land, whether such possession is actual or not;

"holding" means a portion of land held by a holder".

Now there is no dispute that this man was in lawful possession of the adjoining land and consequently, he has been granted such a land within the meaning of Section 18(2). Therefore, in my opinion Section 18(2) cannot be taken advantage of by respondents 3 to 5 to nullify the grant.

8. Learned Counsel Sri Jayaprakash also relied upon the dictum of the Supreme Court in Mohd. Yunus Vs. Mohd. Mustaqim and Others, , on the following passage;

"The supervisory jurisdiction conferred on the High Courts under 2, Article 227 of the Constitution is limited "to seeking that an inferior Court or Tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law. In this case there was in our opinion no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court of Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior Court or Tribunal purports to be based or to correct errors of law in the decision".

But this authority will not apply to the facts of this case for the simple reason that here we are concerned with the interpretation of Section 18(2) and I have interpreted the same in the above fashion.

9. In this view, setting aside the impugned orders and upholding the grant in favour of the petitioner, this writ petition is allowed.

No costs.