

(2016) 12 KAR CK 0071
In the Karnataka High Court
Case No : W. P. No. 42988 of 2011

Venkatesh Appaiah

APPELLANT

Vs

Spl. Deputy Commissioner, Bangalore

RESPONDENT

Date of Decision : 16-12-2016

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 128, Section 129

Citation : (2017) 2 AirKarR 672

Hon'ble Judges : B.S. Patil, J.

Bench : Single Bench

Advocate : G.R. Praveen Kumar, Advocate for M. Ram Mohan, Advocate, for the Petitioner; A.G. Shivanna, Addl, AGA a/w Kiran Kumar T.L. AGA, for the Respondents

Final Decision : Allowed

Judgement

B. S. Patil, J.—Challenge in this writ petition is to the order dated 08.08.2011 passed by the Deputy Commissioner-respondent No. 1 herein in Revision Petition No. 93/2010-11 thereby confirming the orders passed by the Assistant Commissioner in R.A. No.280/2007-08 and the Tahsildar in M.R. No.2/2000-01.

2. Facts, stated in brief are that revision petition before the Deputy Commissioner under Section 136(3) of the Karnataka Land Revenue Act was filed by the petitioner challenging Orders passed by the Assistant Commissioner and the Tahsildar. The Tahsildar, Bengaluru South Taluk had effected mutation in M.R. No.2/2000-01 in respect of 3 acres 24 guntas of land comprised in Sy.No.12/6A and 8 guntas of land comprised in Sy.No.12/6B, both situated at Byrasandra Village, Uttarahalli Hobli, Bengaluru South Taluk in the name of respondent No. 3 " " the Director of Fire Force, Fire Force Department. Petitioner claims that he was the absolute owner of the said lands having succeeded to the same from his father Appaiah.

3. The Tahsildar, after rejecting the objection raised by the petitioner, has entered the name of Director, Fire Force Department, as per mutation entry duly certified. The Tahsildar while effecting the mutation entry has committed an error in making reference to M.F.A. No.2298/1999 disposed of on 10.08. 1999, which appeal had nothing to do with the rights of the parties involved herein.

4. When the petitioner took up the matter before the Assistant Commissioner under Section 136(2) of Karnataka Land Revenue Act, the Assistant Commissioner passed an order on 20.01.2010 holding that as the land had been acquired for the benefit of Fire Force Department, entries in the revenue records effected in the name of Fire Force Department could not be found fault with.

5. Against the said order of the Assistant Commissioner, revision petition was filed before the Deputy Commissioner. The Deputy Commissioner has come to the conclusion that the two lands had been acquired as back as in the year 1941 the mutation entry effected in the name of Fire Force Department could not be found fault with. Accordingly, revision petition was dismissed.

6. Learned counsel for the petitioner submits that at an undisputed point of time in O.S. No.3567/1991 filed by one Manjunath whose mother was co-owner of the property along with petitioners and their predecessors, Fire Force Department had taken a stand that lands acquired in its favour were different and they had nothing to do with lands in Sy.Nos.12/6A and 12/6B and that they were not in possession of the subject lands. It is therefore urged by him that the contention taken up before the revenue authorities stating that these two lands had been acquired for the benefit of Fire Force Department could not have been accepted.

7. Learned counsel for petitioners has referred to order sheet dated 22.09.2012 and 14.02.2013 of this writ petition wherein a direction was issued to the respondent to produce copy of the award passed pursuant to the acquisition of the subject lands. It is urged that even as of date copy of the award has not been produced which demonstrated that there was no award passed, nor any compensation paid so far as lands of the petitioner were concerned. He points out from the pleadings and other documents that though an extent of 131 acres of land was acquired for constructing Central Jail, the project was given up and certain portion of land out of 131 acres was allotted in favour of different departments of the Government. So far as lands of the petitioner were concerned, it is urged that neither award was passed, nor compensation was paid and therefore, question of taking over possession by the respondent did not arise.

8. Counsel for petitioner further refers to Annexure-C order dated 13.08.1992 passed by the Assistant Commissioner, wherein order dated 30.12.1991 passed by the Tahsildar was set aside directing that name of the appellant therein A. Manjunath shall be entered in the revenue record. It is his contention that this order has attained finality as there was no challenge made by the Tahsildar or for that matter by the Fire Force Department which claimed to be the beneficiary of acquisition. He also refers to RTC extracts produced at Annexure-D series to

point out that name of Chowdamma w/o. K. Annayyappa along with Venkatesh petitioner herein was entered in column No. 9 in the revenue record as owners thereof. It is his submission that the mutation entry which was ordered by the Tahsildar in M.R. No.2/2000-01 directing mutation of the name of Department of Fire Force was wholly erroneous and without jurisdiction because, the Tahsildar could not have exercised his power in the wake of the order of the Assistant Commissioner having attained finality.

9. It is his next contention that judgment dated 10.08.1999 passed in MFA. No.2298/1999 which was made basis for effecting mutation in favour of Fire Force Department had nothing to do with the lands in question. In this regard, he has invited the attention of the Court to Annexure-F judgment passed in MFA.2298/1999 and the memorandum of appeal filed in MFA.2298/1999 which is also enclosed to the writ petition at Annexure-F. As can be seen from the memorandum of appeal, one Thimmakka w/o. Dodda Yellappa and five others had filed the said appeal against the State of Karnataka and the Director, Fire Force Service in respect of Sy.No.12/4 measuring 1 acres, 2 guntas of Byrasandra Village, Uttarahalli Hobli, Bengaluru South Taluk challenging the interim order dated 03.02.1999 passed on I.A. in O.S.No.8881/1998 on the file of II Additional City Civil Judge, Bengaluru. By the judgment passed in the said appeal, order dated 03.02.1999 was confirmed by rejecting the appeal at the stage of admission. Thus, in the said appeal, this Court has found that there was no illegality committed by the Trial Court in rejecting the prayer made by the plaintiff therein for grant of temporary injunction. As asserted by the petitioners, neither the order passed in the said appeal, nor the proceedings in the suit had anything to do with Sy.Nos.12/6A and 12/6B and therefore, the Tahsildar seriously erred in directing mutation in the name of Fire Force Department in respect of lands in question based on the said judgment passed in MFA.No.2298/1999. Therefore, his contention is that subsequent orders passed by the Assistant Commissioner and the Deputy Commissioner confirming the said order of the Tahsildar are totally vitiated.

10. Along with the memo dated 24.02.2015, counsel for the petitioners has enclosed a copy of the written statement filed in O.S. No. 3567/1991 by defendants 2 & 3, therein namely, Inspector General of Prisons and the Deputy Director of Fire Force Administration respectively, wherein it is contended at paragraphs 3 & 8 that no portion of the land bearing Sy. Nos.12/6A and 12/6B was in possession of their Departments and that the Karnataka Fire Force Department had communicated to the Tahsildar, Uttarahalli Hobli, vide letter No. GBC.280/72 dated 06.04.1991 that no portion of lands in Sy. Nos.12/6A and 12/6B of Byrasandra Village, Uttarahalli Hobli, was in possession of Karnataka Fire Force Department. This is emphasized to contend that admittedly subject lands were not taken over by the acquiring body or the beneficiary.

11. Sri. A. G. Shivanna, learned Additional Advocate General points out that copy of the award could not be produced because acquisition was of the year 1941

and therefore, documents were unavailable. He urges that although the order of the Tahsildar may be incorrect, the ultimate conclusion reached by the Deputy Commissioner holding that the name of Fire Force Department had to be recorded in the revenue record is sustainable because in two civil proceedings i.e., O.S.No.3567/1991 confirmed in RFA.No.22/1995 disposed on 26.7.1995 and O.S.No.5946/1996 confirmed in RFA No. 678/2001 disposed of on 17.06.2003, it has been held that though there was no record or conclusive piece of evidence to establish that possession of lands in question was taken over, having regard to the fact that acquisition itself was initiated in the year 1941, there was presumption of legality in respect of acts performed by the public authority and the notification produced acquiring the land disclosed that consequence of acquisition should follow. He, therefore, contends that dismissal of the suit clearly disclosed that petitioners or Sri. Manjunath was not at all in possession of the same.

12. He further refers to the second suit O.S.No.5946/1996 disposed of on 15.03.2002 confirmed in appeal in RFA.No.678/2002 by the judgment dated 17.06.2003 to contend that the entire issue regarding acquisition of land has been put at rest recording a finding that lands in question had been acquired and therefore, plaintiff/petitioners herein could not maintain a suit for injunction to protect their interest. He, therefore, submits that the writ petition deserved to be dismissed. He also submits that there is suppression of material fact of the judgment rendered in the subsequent suit against the petitioners.

13. In this case, this court is concerned with the legality and correctness of the impugned Mutation Entry- Annexure-G as affirmed by the orders of Asst. Commissioner and Deputy Commissioner. It is necessary to again refer to the impugned order passed by the Tahsildar which is at Annexure-G. By the said order, the Tahsildar has held that in view of the judgment dated 10.08.1999 passed in MFA. No.2298/1999, khatha of the land was required to be entered in the name of Fire Force Department. Indeed, on an earlier occasion, the Tahsildar, Uttarahalli Hobli, Bengaluru South Taluk, vide order dated 30.12.1991 had rejected the request made by A. Manjunath, co- owner of the lands bearing Sy.Nos.12/6A and 12/6B to record his name in the khatha. This order was challenged before the Assistant Commissioner, Bengaluru Sub-Division, Bengaluru. Thereafter, the order of the Assistant Commissioner was given effect to and name of Chowdamma and the present petitioner Venkatesh (since dead) and his brother Muniga was entered. When this is the position and the order passed by the Assistant Commissioner had attained finality, there was no occasion for the Tahsildar to direct deletion of the name of petitioners and to enter the name of the Department of Fire Force. Reference made to the judgment dated 10.08.1999 passed in MFA.2298/1999 as basis to record the name of Fire Force Department, is wholly erroneous, inasmuch as the said appeal did not pertain to subject lands, nor was it between the petitioners herein or the other co-owners on one side and the State on the other. Therefore, the Tahsildar has acted without jurisdiction and by ignoring the quasi-judicial order passed by

his higher authority the Assistant Commissioner in R.A.No.130/1991-92 on 13.08.1992 while effecting the impugned Mutation as per Annexure-G. Neither the Assistant Commissioner, nor the Deputy Commissioner, who have passed the impugned orders dismissing the appeal and the revision petition respectively filed by the present petitioners challenging the order of the Tahsildar, have taken note of this important fact which goes to the root of the matter. Therefore, orders passed by the Appellate Authority, the Assistant Commissioner and the revisional authority, the Deputy Commissioner, confirming the order passed by the Tahsildar are also vitiated in law.

14. It is true Manjunath had filed a suit seeking decree of permanent in O.S.No.3567/1991. In the said suit, the Inspector General of Prisons and the Deputy Director of Fire Force, Administration defendants 2 & 3 respectively appeared and filed written statement on 17.12.1992 specifically asserting that the Karnataka Fire Service Department was in possession of 25 acres of land in Sy.Nos.8, 9 & 10 which was allotted to the Karnataka Fire Service Department vide order No. HD- 117. PRM. 66 dated 31.01.1967 and another 10 acres of land in Sy.Nos.112 & 113 of Byrasandra Village which was sanctioned by the Government to the Fire Service Department in order No. HD.107.PRB.71 dated 20.03.1972, possession of which was taken over on 18.02.1975 as part of Sy.Nos.112 & 113, but no portion of land bearing Sy.Nos.12/6A and 12/6B was in possession of the Department. This is evident from paragraph 2.of the written statement. In paragraph 8 of the written statement, it has been further reiterated by the aforesaid two departments that no portion of land in Sy.Nos.12/6A and 12/6B of Byrasandra Village was in possession of Fire Service Department. This written statement has been verified by the Inspector General of Prisons and the Deputy Director of Fire Service Administration No. 1 & 2, Bengaluru.

15. It is in the background of this stand taken in the written statement by these departments and in view of the acquisition proceedings and the change of mutation in the name of Fire Force Department based on acquisition proceedings, the suit for injunction filed by Manjunath was dismissed and the same was confirmed in appeal.

16. The present petitioners again filed another suit in O.S.No.5946/1996 seeking again a decree of permanent injunction against the very parties. The said suit was also dismissed on 15.03.2002 and the appeal filed against it was dismissed confirming the judgment of the Trial Court. Even in the said proceedings, it has been found that several lands totally measuring 131 acres were acquired vide notification dated 20.08.1941 for the purpose of construction of Central Prison, but subsequently, the Government dropped the idea of constructing the Central Prison and it gave the acquired lands to various departments including Fire Force Department as asserted by defendants 2 & 3 themselves and even though some endorsements had been issued by some officers of the Government stating that the lands in question were not acquired for the benefit of respondent No. 3

herein, the said endorsements could not have the effect of obliterating the consequence of vesting of the lands in the Government; the entries in the revenue record indicated that lands in question belonged to the State Government; though there were some proceedings with regard to the entries made in the revenue records, but the Civil Court had no jurisdiction to go into the validity or otherwise of the acquisition proceedings, therefore, question of granting permanent injunction did not arise.

17. It is thus clear from the judgments of the Civil Court confirmed in appeal that suit for injunction filed by Manjunath and latter by the present petitioner came to be dismissed on the ground that lands in question were acquired and vested in the State and the revenue entries also disclosed the name of Fire Force Department, hence they had failed to establish their actual, lawful possession over the lands.

18. Looking into the specific stand taken by Fire Force Department and the Prison Department that they were not in possession of lands in question and the possession delivered to them was in respect of different survey numbers, this Court in this writ petition directed the respondents to furnish the details of the award made in respect of these two lands and the particulars regarding payment of compensation to the landowners/petitioners. This order was passed on 22.09.2012 almost 4 years back. This was followed by another order dated 14.02.2013 to the same effect. No such details are furnished. The State Government and the Department of Fire Force which were arrayed as party defendants in the suit filed by Manjunath in O.S.No.3567/1991 could produce the notification acquiring the land and the orders allotting the acquired lands (except the subject lands) to different departments, but they have not produced any material to show that award had been passed and compensation had been paid to the present petitioners or their predecessors/co-owners. Not only that they did not produce any such document, but more importantly they specifically urged before the civil court in the first suit that these two lands were not given to them and that they were given some other lands. As the State Government was a party to the suit, it ought to have produced those documents. Even the State Government did not produce any such documents.

19. The most unfortunate condition in which petitioners have been pushed becomes clear from the fact that though their lands were notified for acquisition for constructing Central Jail, admittedly, the project of constructing the Central Jail was dropped; though several other lands notified for acquisition were allotted to Fire Force Department, the department itself admitted in O.S.3567/1991 that they were not given the subject lands but were given different lands; there is nothing to show that award had been passed and compensation had been paid to the petitioners. This court, in this writ petition directed the State to produce any material to show that award had been passed and compensation had been paid but, no material is produced before this Court. Though Mutation had been effected in the revenue records mentioning factum of acquisitions, the same was

subsequently set aside by the Asst. Commissioner vide his order dated 13.8.1992 in R.A.No.130/91-92. The civil court declines to grant injunction to the petitioners on the ground that there was a notification regarding acquisition and the said fact had been entered in the Mutation Entry. It is thus clear that rights of the petitioner over these lands cannot be taken away unless the State establishes that an award had been passed and compensation was paid to the petitioners/their predecessors. Their names had been rightly restored back in the revenue records by the Asst. Commissioner vide order dated 13.8.1992. This order holds the field as on today.

20. The impugned Mutation Entry Annexure-G ordered by the Tahsildar, therefore, is wholly illegal. Consequently the impugned orders of the Asst. Commissioner and the Deputy Commissioner produced at Annexures " " A and B respectively, are also illegal. Dismissal of the suit for injunction filed by the petitioners, which again is based on the notification acquiring the lands in question and the consequent entries in the revenue records cannot have the effect of effacing the right, title and interest of the petitioners over the lands in question.

21. Hence, the writ petition is allowed. Impugned orders Annexures A & B are quashed. The Mutation effected by the Tahsildar in M.R. No.2/2000-01 vide Annexure-G in respect of the lands in question is also quashed. Entries in the Revenue Records of the names of petitioners shall be restored.