

(2015) 06 KAR CK 0306

In the Karnataka High Court

Case No : Writ Petition No. 6028 of 2015 (KLR-RES)

V.P. Madaiah and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 17-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Land Revenue Act, 1964 — Section 192-A, 94-A

Citation : (2015) 4 KarLJ 672

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : M.M. Cariappa, for the Appellant; E.R. Diwakar, Additional Government Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J—Facts briefly stated are that petitioners 1 and 2 claim to be related as son and mother, respectively, and trace their lineage to one Vokkaligara Puttaiah, the husband of the 2nd petitioner while another Vokkaligara Sannaiah, the father of the 2nd petitioner. It appears that the Deputy Commissioner during 1957 granted 2 acres, each, to Vokkaligara Puttaiah and Vokkaligara Sannaiah in Sy. No. 25/22 as recorded in the order, Annexure-C, dated 8-7-1988 in Revision Petition No. 237 of 1976 of the Karnataka Appellate Tribunal ("KAT for short), Bangalore, a proceeding, on remand by this Court in exercise of writ jurisdiction on two occasions in the past. In the revision petition, KAT fell in favour of the sympathetic claim that if the said grant is cancelled and the two grantees evicted, it would occasion extreme injustice and accordingly rejected the petition filed by the State of Karnataka, while setting aside the suo motu proceeding initiated by the Deputy Commissioner over the validity of the grant of the year 1957. This order admittedly is final and binding between the parties. It is the case of petitioners that Vokkaligara Puttaiah and Vokkaligara Sannaiah were granted 3 acres 50 cents in Sy. No. 25/22 with an observation that the encroached area in excess of 3 acres 50 cents may also be granted to

the aforesaid two grantees amongst other encroachers on payment of fine by grant order, dated 18-1-1969, of the Deputy Commissioner, Annexure-B. It is the further case of petitioners that Vokkaligara Puttaiah and 2nd petitioner filed an application, dated 6-9-1991 under Rule 50 of the Karnataka Land Grant Rules, 1969 framed under Karnataka Land Revenue Act, 1964, for grant of land measuring 3 acres 50 cents in Sy. No. 25/22, by way of regularisation of unauthorised cultivation under Section 94-A which was inserted by Act No. 2 of 1991, to the Karnataka Land Revenue Act, 1964.

2. The State of Karnataka, having suffered an order in the public interest litigation in W.P. No. 3969 of 2007, wherein a Division Bench of this Court directed eviction of all unauthorised occupants of Government lands, leading to issue of a notice, dated 2-1-2015, by respondent 3-Tahsildar, Virajpet Taluk, calling upon the 1st petitioner to submit his explanation, as to why he should not be evicted from an extent of 5 acres 75 cents in Sy. No. 25/22 and to appear for a hearing on 17-1-2015 at 11.00 a.m. It is the allegation of petitioners that though a reply in writing, Annexure-L was submitted and acknowledged by the Tahsildar, nevertheless, without looking into the contents of the reply, a final order dated 27-1-2015, Annexure-A, was issued treating the 1st petitioner as an unauthorised occupant of land bearing Sy. No. 25/22 measuring 5 acres 75 cents and to deliver vacant possession of the said land to the State failing which action under Section 192-A of Karnataka Land Revenue Act, 1964 for offences and penalty would be instituted. Hence this petition.

3. From the aforesaid factual matrix, what can be deduced is that there was only one grant made in the year 1957 in respect of 2 acres, each in favour of Vokkaligara Puttaiah and Vokkaligara Sannaiah in Sy. No. 25/22 of Nokyasiddapura Village, as set out in the order, dated 8-7-1988 in R.P. No. 237 of 1976. The aforesaid two grantees though parties to R.P. No. 237 of 1976, nevertheless, there is no finding over the claim of a second grant made in the year 1969, Annexure-B, over an extent of 3 acres 50 cents in Sy. No. 25/22. That order is final since not questioned over the claim of the subsequent grant of the year 1969 in favour of Vokkaligara Puttaiah and Vokkaligara Sannaiah. It is by now well-established that Vokkaligara Puttaiah and Vokkaligara Sannaiah were granted 2 acres each in Sy. No. 25/22 and nothing more or nothing less. If that is so, then the claim of the State Government that 1st petitioner is in unauthorised cultivation of 5 acres 75 cents in Sy. No. 25/22 as indicated in the notice dated 2-1-2015, Annexure-K, cannot be found fault with. At the cost of repetition, it must be noticed that grant of 2 acres each to the aforesaid two grantees has virtually invested absolute title over the said lands in favour of the grantees, while what is the subject-matter of the notice is the encroachment of 5 acres 75 cents and not the granted land.

4. A faint submission is put forth in the written submission, Annexure-L, at paragraph 6 that Vokkaligara Puttaiah and 2nd petitioner filed an application dated 6-9-1991 in Form 50 under Section 94-A for regularisation of unauthorised

cultivation of 3 acres 50 cents of land in Sy. No. 25/22. Except for such an assertion, in the absence of an order regularising such unauthorised occupation or cultivation of Government land, it cannot but be said that the petitioners are in possession unauthorisedly of Government land other than the land allegedly granted in the year 1969. On that score too, there can be no justification to the petitioners to come rushing to this Court, calling in question the notice, dated 2-1-2015, Annexure-K, as well as the order, dated 27-1-2015, Annexure-A, directing them to voluntarily surrender the encroached portion of land unauthorisedly being cultivated.

5. It may or may not be that the petitioners are in possession of a total extent of 5 acres 75 cents as unauthorised occupant, nevertheless, by their own admission in the written statement of objections at paragraph 6 supra that they are in unauthorised cultivation to an extent of 3 acres 50 cents in Sy. No. 25/22 is sufficient evidence and admission of a fact in issue.

6. To a question of this Court as to the existence of the original of Annexure-B, grant order of the year 1969, though, no date is mentioned therein, learned Counsel submits that the original was submitted in Revision Petition No. 237 of 1976. In the absence of original and in the light of the order passed in Revision Petition No. 237 of 1976, more appropriately making reference to the alleged grant dated 18-1-1969, it is impermissible to infer that the petitioners are not in possession as unauthorised cultivators of lands in excess of 3 acres 50 cents in Sy. No. 25/22. In the result, this petition does not merit consideration in exercise of extraordinary writ jurisdiction under Article 226 of the Constitution of India for the relief sought for. Petitioners, if so advised, may voluntarily surrender the encroached portion of the land failing which, it is for the State to initiate action in accordance with law. Petition rejected.