
(2004) 08 KAR CK 0044
In the Karnataka High Court
Case No : Writ Petition No. 31414 of 2004

Zeenath Banu and Another	Vs	APPELLANT
Assistant Commissioner and Another		RESPONDENT

Date of Decision : 04-08-2004

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 60, 61

Citation : (2004) 4 KCCR 2471

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Phanindra and Vaishali Hegde, for the Appellant; S.S. Karmadi, High Court Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. Gopala Gowda, J.—Learned High Court Government Pleader is directed to take notice on behalf of the Respondents.

2. The Petitioners are seeking to quash the impugned order at Annexure-D dated 16.7.2004 passed by the Assistant Commissioner cancelling the order at Annexure-C-1 passed by him. By that order the Assistant Commissioner granted permission to the Petitioners to alienate the land in Sy. No. 1 measuring 5-03 acres of Badepur village. In respect of the said land the Land Tribunal conferred occupancy rights in favour of the Petitioners. The grievance of the Petitioners is that the impugned order is passed in violation of principles of natural justice.

3. It is no doubt true that the impugned order is passed without hearing the Petitioners and it is violative of principles of natural justice. But, the former order at Annexure-C1 granting permission to alienate the land was nullity in the eye of law as the Assistant Commissioner had no competency to grant permission for alienation. In the decision reported in AIR 1966 SC 829 it is held that if the earlier order is vitiated, the subsequent order cannot cure the illegality. An illegal order is always illegal and will not confer any right upon any person.

4. By the impugned order what is withdrawn is the permission granted for alienation. It is open for the Petitioners to seek such permission from the Deputy Commissioner.

5. Writ Petition is dismissed.

6. Learned Government Pleader is permitted to file memo of appearance in three weeks.

(V. Gopala Gowda) Judge

M.P. VGGJ 25.8.2004

Order on "FOR BEING SPOKEN TO"

1. By order dated 4.8.2004 this Writ Petition was dismissed. In paragraph 4 of the order an observation was made that the Petitioner may seek permission to alienate the land from the Deputy Commissioner. Before signing the order it was noticed that Land Tribunal granted occupancy right in favour of the Petitioner under Annexure-A only on 15.12.2003. Section 60 of Karnataka Land Reforms Act mandates that the tenant shall cultivate the land continuously for 3 consecutive years. It is mandatory. Further, u/s 61 of the Act the land in respect of which occupancy right granted shall not be alienated for a period of 15 years. In view of this clear bar, Petitioner is not entitled to seek permission to alienate the land. Hence, the matter was directed to be passed "for being spoken to" to recall para No. 4 of the order.

2. On the last date learned Counsel for the Petitioner took time to make his submissions. Today, he has filed a memo seeking permission to withdraw the petition.

3. Since the petition is already dismissed, permission to withdraw the dismissed petition cannot be granted. But Para No. 4 of the order dated 4.8.2004 is recalled. Memo for withdrawal stands rejected.

4. Send a copy of this order to the Secretary, Revenue Department to instruct his subordinates that in view of the restriction imposed in Section 61 of the Act not to entertain applications seeking permission to alienate lands in respect of which occupancy rights are granted.