Ashok Vs. Pandurang and Others

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Court : Karnataka Dharwad

Decided On : Aug-21-2012

Judge : The Honourable Dr. Justice K. Bhakthavatsala &Amp; Mohan Shantanagoudar &Amp; B. Sreenivase Gowda

Appeal No. : Writ Petition No. 67926 of 2001 (KLT-RR/SUR)

Appellant : Ashok

Respondent : Pandurang and Others

Advocate for Pet/Ap. : Sri. Santosh B. Rawoot

Judgement :

DR. K. Bhakthavatsala, J.

1. In view of the order dated 31.5.2012 made in W PNo.67926/2011 by learned single judge, Honble Chief Justice by his special order dated 21.6.2012, has referred the following question to answer by this Larger Bench:

Whether orders made under section 136(2) of the Karnataka Land Revenue Act, 1964 (in short, the Land Revenue Act) by the Assistant Commissioner in appeals preferred against the orders made under sub-section (4) or entry certified under sub-section (6) of section 129 of the Land Revenue Act, are subject to revision by Deputy Commissioner under sub-section(3) of section 136 of the Land Revenue Act?

2. Brief facts leading to the Reference may be stated as under:

Petitioner filed the above Writ Petition under Articles 226 and 227 of the Constitution of India against the respondents, for quashing the order in No.RTS/AP/109/09-10 dated 23.5.2011 at Annexure-C on the file of respondent No.3/Assistant Commissioner, Chikodi, and order passed in No.RB/RTA/113/2011-12 dated 12.10.2011 at Annexure-E on the file of respondent No.4/Deputy Commissioner, Belgaum.

It is the case of the petitioner that the land measuring 6 acres 22 guntas in Sy. No.191/3A situated at Manjare Village, Chikodi Taluk, Belgaum District, was granted in favour of his father-Venkaji Kulkarni by the Tahsildar of Chikodi, under Section 4(1) of Bombay Paragena and Kulkarni Watans (Abolition) Act, 1950. Again, as per re-grant order No.RB/WRG/SR.461 dated 2.3.1958, the land in question was re-granted to the petitioners father who died leaving behind a daughter and three sons and they have inherited the land in question. As per MR No.2004-05 their names came to be mutated in the ROR of the land. The petitioner is the eldest son and personally cultivating the land in question; he has mortgaged the land in question in favour of Primary Agriculture Rural Development Bank, Manjari, for raising loan of Rs.20,000/-. The said mortgage is also reflected in column No.11 of the ROR and he is continuously in possession and enjoyment of his share of land. It is further pleaded that there is a dispute between the petitioner on one side and his brothers and sister on the other, in respect of the land in question. The petitioner had filed a Suit in O SNo.9/2001 against his sister and brothers and during the pendency of the suit, his brothers and sister alienated the entire land measuring 6 acres 22 guntas to a third party. It is stated that while granting the land in question, a condition was stipulated that it shall not be converted to non-agricultural purpose. But, his brothers and sister without his knowledge submitted an application forging his signature, for conversion of the land for non-agricultural purpose. As per the intimation letter dated 15.5.2006, the Assistant Commissioner referred the matter to Tahsildar for his report. But the Tahsildar, without conducting local enquiry, securing the documents as listed in the intimation at Annexure-C and without notice to the petitioner, submitted a report (Annexure-D) on 5.6.2006 to the Assistant Commissioner stating that there was no impediment for converting the land in question for non-agricultural purpose. In pursuance of the report of the Tahsildar, the Assistant Commissioner passed an order dated 27/6/2006 (Annexure-C) for conversion of the land in question from agriculture to Raitwa and issued certificate. After the petitioner came to know about the order of conversion dated 27.6.2006, he filed a Revision Petition under Section 56 of the Land Revenue Act, 1964 inNo.55/2010 before the Karnataka Appellate Tribunal at Bangalore, for setting aside the order of the Assistant Commissioner dated 27.6.2006. Further, the petitioners brother-Anant/respondent No.2 has executed a sale deed in favour of respondent No.1 and the latter has got mutation effected in his favour on 7.7.2006. Petitioner claimsthat he is in possession and unsuccessfully challenged the mutation entry made in favour of respondent No.1 in an Appeal in No.RTS/AP/109/2009-10 before the Assistant Commissioner. As against the order of the Assistant Commissioner dated 23.5.2011 at Annexure-C, the petitioner preferred a Revision Petition No.55/2010 under Section 136(3) of the Land Revenue Act, before the Deputy Commissioner. But the revision petition was rejected by order dated 12.10.2011 (Annexure-E), holding that in view of the decision rendered in W P No.11953/2011 (KLR-RES) dated 18.8.2011 in Malligowda Vs. Channaveeregouda and others, ILR 2011 KAR 4225, he has no jurisdiction to entertain the petition. Therefore, the petitioner has filed the present Writ Petition for quashing the order of the Assistant Commissioner and Deputy Commissioner at Annexure-C and E, respectively.

When the Writ Petition came up for orders, on account of non-compliance of office objections, learned Single Judge (Justice Dilip B Bhosale), referring to various orders made by larger bench, Division bench and Single Judges of this Court and agreeing with the view taken in Mallegowdas case that as against the order passed by Asst. Commissioner under Section 136 (2) of the Land Revenue Act, the aggrieved party has no right to file revision petition under section 136(3) of the Land Revenue Act, formulated the above said point for decision by Larger Bench.

3. Sri Santosh B. Rawoot, learned Counsel for the petitioner and Sri Mahesh Wodeyar, learned Additional Government Advocate addressed arguments stating that under Section 136(3) of the Land Revenue Act, the Deputy Commissioner has

the revisional jurisdiction.

4. Keeping in view large numbers of cases are pending on the similar issue, the Bar was notified to address arguments either for or against the view in question. Accordingly, Sri F.V. Patil learned senior member of the Bar submitted that Section 136(3) of the Land Revenue Act, itself is a remedy against the finality of the order of the appellate authority made under Section 136(2) of the Land Revenue Act. Sri Ahmed Ali Rahman Shah, learned Advocate submitted that an aggrieved party has no right to invoke the revisional jurisdiction of the Deputy Commissioner under Section 136(3) of the Land Revenue Act.

5. It is necessary to excerpt Section 136 of the Land Revenue Act for immediate reference. It reads as under:

Section 136: Appeal and Revision: (1) The provisions of Chapter V shall not apply to any decision or order under this Chapter.

(2) Any person affected by order made under sub-section (4) or an entry certified under sub-section (6)of section 129 may, within a period of sixty days from the date of communication of the order or the knowledge of the entry certified, appeal to such Officer as may be prescribed by the State Government in this behalf and his decision shall be final.

(3) The Deputy Commissioner may, on his own motion or on application of a party, call for and examine any records made under Section 127 and Section 129 and pass such orders as he may deem fit: Provided that no order shall be passed except after hearing the party who would be adversely affected by such order.

6. Three Judges Bench of this court in Gururaj Gurunath Govind Rao Mutalik Desai case, AIR 1995 Kar 267, has answered the reference holding that merelybecause an expression final is used in Section 118(2-B) of the Karnataka Land Reforms Act (in short Land Reforms Act), it cannot be said that a revision would not lie against such an order.

7. In the case of Srimanmaharaja Niranjana Jagaduru Mallikarjuna Murugarajendra Mahaswamy vs. Deputy Commissioner, ILR 1986 Kar 1059,

Division Bench of this Court examined the question of law namely,

Whether under sub-section of Section 136 of the Land Revenue Act, the Deputy Commissioner has the power to interfere with an appellate order made by the authority exercising the appellate power under sub-section (2) of Section 136 of the Land Revenue Act?

Division Bench answered it in the negative, observing that if theintention of the Legislature was that the Deputy Commissioner should have the power to interfere with an appellate order made under sub-section (2) of Section 136 of the Land Revenue Act, it would have specified the said Sections 127 and 129 in sub-section (3) of Section 136 of the Land Revenue Act.

8. In the case of Smt. Maramma Vs. The Tahsildar, Siruguppa, ILR 1999 Kar 1203, Justice B. Padmaraj, referring to the decision by the Division Bench in Murugarajendra Mahaswamys case and the Full Bench in Gururajs case, held that the order of the Assistant Commissioner under Section 136(2) of the Land Revenue Act is to be treated as an order passed under Section 129 and not an independent order; that so long as the matter pertains to Sections 127 and 129, the finality attached to an order made in appeal under Section 136(2) is subject to the power of revision by the Deputy Commissioner under Section 136(3) of the Land Revenue Act.

9. In the case of B.P. Ashok vs. The Deputy Commissioner, Office of the D.C., Chickmagalur and Others, 2001 (1) KCCR SN 34, Justice K Sreedhar Rao, has held that the revisional jurisdiction is purely a discretionary, and irrespective of the nature and source of information, the Deputy Commissioner can take cognizance of such information and can find out the legality of the proceedings or order and it would not debar any person who is a party to the proceedings as interested in the dispute to bring to the notice of the Deputy Commissioner about the legality.

10. In the case of B. Mahadevaiah vs. State of Karnataka and Others, 2006 (5) AIR Kar 69 Justice V.G. Sabhahit, referring to the decision rendered in Murugarajendra Mahaswamys case, Smt. Marammas case and Gururajs case, held that the order passed in Appeal under Section 136(2) of the Land Revenue

Act, is revisable before the Deputy Commissioner under Section 136(2) of the Land Revenue Act.

11. Justice D.V. Shailendra Kumar, in Mallegowdas case, supra, referred to all the above-said four cases, but did not subscribe to their views. In para-28 of the judgment, he has observed that in Mutalik Desais case, the full bench had only clarified that the word attained finality has to be understood in the context of the particular statutory scheme and cannot be generalized and made a clear distinction of the phrase as it occurs in the Karnataka Land Reforms Act, 1961 and as it occurs in the Karnataka Land Revenue Act, 1964.

He has further observed in paragraph 33 of the order as under:

If one were to read the provisions of Section 136 in juxtaposition to proviso to Section 135 of the Act, it becomes clear that after the stage of appeal under Section 136(2) of the Act, a person who is aggrieved with a decision rendered in exercise of power and jurisdiction of appeal, has to necessarily approach a Civil Court as the Revenue Authorities do not determine the rights of the parties, but is only a reflection of the rights of the parties in the entries maintained by the Revenue Authorities for the purpose of collection of land revenue from such person.

12. It is useful to examine the meaning of the words viz. Appeal, Revision, Distinction between Appeal and Revision, and Final.

Appeal means a process of re-examination of the Judgment and decree, or order of the decision passed by the original court is a suit or in a case. In other words it may be defined as the judicial examination of the decision of an inferior court by a higher court.

Revision means careful examination or perusal with a view to correcting or improving or to see again.

Distinction between Appeal and Revision: An Appeal is a continuation of the proceeding, in effect the entire proceedings are before the appellate authority which has power to review the evidence subject to the statutory limitations prescribed. But in a revision, there visional authority has not the powers to review the evidence unless expressly conferred by a statute. It cannot travel beyond the order passed or proceedings recorded by the inferior authority and make fresh enquiry and pass orders on merits on the basis of the said enquiry.

Final: The word final employed in many enactments has been the subject matter of lis in many cases. In Re Gilmores Application (1957) 1 All ER 796-the term final has been examined and it is stated that the term final means- without recourse to other remedies. A remedy which will arise in cases of exercise of power in excess of jurisdiction or for error of law on the face of the record would certainly lie and unless there are express words, the jurisdiction of an authority is not taken away. Lord Justice Parker in his opinion stated that there are many instances where a statute provides that a decision shall be final. Sometimes as here, the statute provides that subject to a specific right of appeal the decision shall be final. In such a case it may be said that the term shall be final is merely a pointer to the fact hat there is no further appeal, and the remedy by way of certiorari is not by way of appeal.

In Re South Asia Industries Private Ltd vs. S.B. Sarupsingh, AIR 1965 SC 1442 the apex court has held that the word final prima facie connotes that an order passed on appeal under the Act is conclusive and no further appeal lies against it. But, it does not mean a remedy other than an appeal would not lie.

13. It is useful to refer to Law Commissions 54th Report. According to that it was opined that in view of Article 227 of the Constitution of India, Section 115 (deals with Revision) of the Code Civil Procedure (CPC) was no longer necessary and recommended omission of Section 115 and accordingly, it was deleted in the original Bill. But the Joint Committee recommended the retention of Section 115 of CPC on the ground that in spite of the alternative remedy available under Article 227 of the Constitution, Section 115 of CPC serve useful purpose as a cheap and easy remedy.

(emphasis supplied)

14. Though the decision of the Division Bench made in Murugarajendra Mahaswamys case was brought to the notice of Larger Bench in Gururajs case, it was disposed off with an observation that the decision in Murugarajendra Mahaswamys case was made on the scheme and scope of the provisions of the Land Revenue Act. Larger Bench interpreting Section 118(2-B) of the Land Reforms Act has held that merely because an expression final is used in Section 118(2-B) of the Land Reforms Act, it cannot be said that a revision under Section 118-A of the Land Reforms Act, would not lie against such an order made under Section 118 (2-B). Therefore, it is necessary to excerpt Section 118(2-B) of the Land Revenue Act and Section 136(2) of the Land Revenue Act, for immediate reference and analyze the provisions in juxtaposition.

Section 118(2-B) of the Karnataka Land Reforms Act, 1961 reads as under:

Section 118 (2-B): From every order passed by the Tahsildar, an appeal shall lie to the Assistant Commissioner and the order of the Assistant Commissioner on such appeal shall be final.

Section 136(2) of the Karnataka Land Revenue Act, 1964 reads as under:

Section 136(2): Any person affected by order made under sub-section (4) or an entry certified under sub-section (6) of section 129 may, within a period of sixty or the knowledge of the entry certified, appeal to such Officer as may be prescribed by the State Government in this behalf and his decision shall be final.

15. The scheme and provisions of the Acts and the language employed in the above said provisions cannot be said that they are different. The word final appearing in the provision cannot take away the right of the aggrieved party to challenge the order of the appellate authority before the Deputy Commissioner, who is the highest authority of the Revenue District/Court, by way of revision petition, before approaching the law courts.

16. In the case of Bowramma and Another vs. The Special Deputy Commissioner, Mysore, 1979(2) Kar.L.J.200, learned Single Judge of this Court, justice Chandrakantaraj Urs, has correctly held in para-11 of the judgment as under:

11. xxx xxx xxx xxx. A reading of Sec.136(2) makes it clear that the Deputy Commissioner of the District has revisional jurisdiction in respect of orders passed by officers subordinate to him in proceedings under Secs.127 and 129 of the Act. It could not have been legislatures intention that finality intended in the order made by the Assistant Commissioner as in the instant case under Sec.136 (2) of the Act, should remain without a remedy within the framework of the statute. Sec.136 (3) clearly makes a reference to Sec.129. The Deputy Commissioner under Sec.136 (3) of the Act may on his own motion or on application of the party, call for and examine any records made under Secs.127 and 129 and pass such orders as he may deem fit. Sec.136 deals with appeal and revision. Appeal obviously has reference to the order passed underSec.136 (2) and revision to the orders passed in relation to the power exercised by subordinate authorities under Secs.127 and 129. The fact that an officer subordinate has been prescribed as the appellate authority under Sec.136 (3), is, clear manifestation of the intention of Legislature that Sec.136 (3) itself is a remedy against the finality of the order of the appellate authority under Sec.136(2). If the section is read as it is then there is no apparent contradiction between Sec.136(2) and Sec.136 (3) and gives useful effect to the purpose, meaning and object of the whole of Sec.136.

17. The pronouncement of the Larger Bench made in the case of Muthalik Desais case, supra, is applicable on all the fours to the present case. In our view the intention of the legislature is to provide an opportunity to the aggrieved party to prefer a revision under Section 136(3) of the Land Revenue Act as against the order of the appellate authority, before approaching the Law Courts and therefore the provision of Section 136(3) of the Land Revenue Act has been made. Hence, the observation of the Division Bench in Murugarajendra Mahaswamys case that if the intention of the Legislature was that the Deputy Commissioner should also have the power to interfere with an appellate order made under sub-section (2)of Section 136 of the Land Revenue Act, it would have specified the said provision also in sub-section (3) of Section 136 of the Land Revenue Act just as Sections 127 and 129 is not correct.

18. Keeping in view the Doctrine of stare decisis and the reasons stated supra, it has to be held that the Deputy Commissioner is entitled to entertain a revision

petition under sub-section (3) of Section 136 of the Land Revenue Act, as against the orders made under sub-section (2) of Section 136 of the Land Revenue Act.

MOHAN SHANTANAGOUDAR, J., (for himself and for B. Sreenivase Gowda, J.)

We have perused the Judgment authored by our learned brother Dr. Justice K. Bhakthavatsala. We agree with the reasons assigned and the conclusions arrived at therein. However, we would like to provide certain additional reasons for coming to the same conclusion, by writing separate order as under:

2. The reference is made to this Bench to decide the following question: Whether orders made under section 136 (2) of the Karnataka Land Revenue Act, 1964 (for short the Act of 1964) by the Asst. Commissioner in appeals preferred against the orders made under sub-section (4) or entry certified under sub-section (6) of section 129 of the Act of 1964 are subject to revision by Deputy Commissioner under sub-section (3) of section 136 of the Act?.

3. The brief facts leading to this reference are asunder:

Writ Petition No.67926/2011 is filed seeking quashing the order passed by the Assistant Commissioner dated 23.5.2011 as well as the order passed by the Deputy Commissioner dated 12.10.2011 vide Annexures-C and E respectively. By the order dated 23.5.2011 vide Annexure-C, the Assistant Commissioner exercising the jurisdiction under Section 136(2) of the Karnataka Land Revenue Act, 1964 (the Act for short) has confirmed the order relating to certification of Mutation Entry No. 22/ 2006-07 made by the Tahsildar. The order passed by the Assistant Commissioner was questioned before the Deputy Commissioner, Belgaum by filing the Revision Petition under Section 136(3) of the Act. The said Revision Petition came to be dismissed on 12.10.2011 vide Annexure-E by the Deputy Commissioner, Belgaum holding that he has no jurisdiction to entertain the Revision under Section 136(3) of the Act against an order passed in appeal by the Assistant Commissioner under Section 136(2) of the Act. Being aggrieved, W.P. 67926/2011 is filed.

At the time of admission, the learned Single Judge having noticed conflicting versions rendered by different Benches felt fit to refer the aforementioned question for decision by the larger Bench in order to settle the law on the point once and for all. Accordingly, the Honble Chief Justice has referred the aforementioned question to this Bench.

4. It is relevant to note the observations and the conclusions reached by different Benches on the subject which are as under:

Learned Single Judge of this Court in the case of Smt. Maramma vs. The Tahsildar, Siruguppa, ILR 1999 Kar 1203 followed by another Learned Single Judge of this Court in B. Mahadevaiah vs State of Karnataka and Others, 2006 (5) AIR Kar 69 relying upon the principle laid down in the Full Bench decision of this Court in the case of Gururaj Gurunath Govind Rao Mutalik Desai vs. State of Karnataka, AIR 1995 Kar 267 held that revision under Section 136(3) of the Act against the order passed by the Assistant Commissioner under Section 136(2) of the Act is maintainable.

The Full Bench in Gururajs matter referred to supra while deciding the question regarding maintainability of the Revision before the Divisional Commissioner against the order made by the Assistant Commissioner in a proceeding arising under Section 118(2b) of the Karnataka Land Reforms Act, had an occasion to consider and discuss the dictum laid down by the Division Bench in Srimanmaharaja Niranjana Jagadguru Mallikarjuna Murugarajendra Mahaswamy vs. Deputy Commissioner, ILR 1986 Kar 1059. The FullBench in that context has observed as under:

16. In Srimanmaharaja Niranjan Jagadguru Mallikarjuna Murugarajendra Mahaswamy Vs. Deputy Commissioner, ILR 1986 Karnataka 1059, a Division Bench of this Court had occasion to consider the scope of provisions of the Karnataka Land Revenue Act. It washeld therein that in exercise of his powers under Section 36 (sic) of the Land Revenue Act, the Deputy Commissioner has no power to revise the appellate order under sub-section (2) thereof. Section 136(2) uses the expression final as regards the order of the appellate authority made under that provision and there are no express words in any other provision

enabling a revision and when the appellate authority makes an order under Section 136(2) of the Land Revenue Act, the order made by the original authority under Section 129 of the Act merges with the latter and therefore the Deputy Commissioner has no power to interfere with the order made under Section 129 of the said Act when it has been a subject-matter in appeal. That decision stood on the scheme and scope of the provisions of the Land Revenue Act. Itwas pointed out therein that the expression rendering an appellate authority as final would be rendered otiose, if it were a subject-matter for revision. But, we cannot subscribeto that rationale, with respect, because where an order of authority is rendered final whether the same is subject to further revision should be understood in the light of the decisions of the Supreme Court referred to earlier wherein it is explained that the meaning to be attributed to expression final will depend upon the scheme of the provisions of the Act and cannot be read in isolation. Merelybecause an expression final is used, it cannot be said that a revision would not lie against such an order.

(Emphasis supplied)

The Division Bench in the case of Murugarajendra referred to supra has considered the provisions contained in the Act, more particularly, Section 136(2) and Section 136(3) thereof and held that the revision under Section 136(3) of the Act as against the order passed by the appellate authority under sub-section(2) of Section 136 of the Act is not maintainable. It would-be advantageous to reproduce the relevant observations made in paragraphs 8 and 9 of the said judgment for better appreciation of the question raised in this petition.

8. In the light of the arguments addressed by the Learned Counsel, we proceed to construe the provisions of Section 136 of the Act. As pointed out earlier, under the scheme of the Act, Section 127 provides for preparation of record of rights in the first instance. That is not made a subject matter of appeal under Section 136 of the Act. The entry made under Section 127 can be corrected either inrevision under Section 136(3) of the Act or pursuant to a decree obtained, as permitted under the proviso to Section 135 of the Act. Section 128 of the Act provides for reporting the acquisition of rights by any method. Section 129 of the Act provides for (i) entering

such report, in the first instance, in the register of mutations, (ii) for giving public and individual notices of such entry to all persons interested as revealed from the revenue records, (iii) for registering the objection in the register of disputed cases, if there were to be objections to such entry, (iv) for inquiring into such disputes and passing final order in the dispute, (v) for correcting and/or certifying the entry in the register of mutations in accordance with the order so made, and (vi) finally for transferring such certified entries to the record of rights. There is no dispute that the authority prescribed to hold the inquiry under Sub-section (4) of Section 129 of the Act is the Tahsildar. Subsection (1) of Section 136 of the Act excludes the operation of Chapter V of the Act under which an appeal lies from an order of any revenue officer to the next higher revenue officer, in the matter of record of rights. The Legislature in its wisdom has considered that hierarchy of such appeal should be excluded. Under Subsection (2) of Section 136 of the Act, an appeal is provided to the prescribed authority in respect of an order made under Sub-section (4) or an entry certified under Sub-section (6) of Section 129 of the Act. The period of limitation prescribed for such appeal is sixty days from the date of communication of the order. This sub-section expressly provides that the decision of such authority is final. Under Rule 43 of the Karnataka Land Revenue Rules, the Assistant Commissioner is designated as the appellate authority. When Sub-section (2) of Section 136 uses the expression final as regards the order of the appellate authority made under that provision, unless there are express words in any other provision, which affects such finality and constitutes an authority to decide the validity of such an appellate order, it is difficult to hold that any other authority has the power to interfere with such an order. Now coming to the language of Sub-section (3) of Section 136 of the Act, it expressly empowers the Deputy Commissioner to interfere in revision either suo motu or on the application of any party, with the decision taken either under Section 127 or Section 129 of the Act. It is significant to note that the decision under Section 127, has not been made a subject matter of appeal under Section 136(2), but is made revisable under Section 136(3). An amendment of the entry relating to record of rights is not a decision falling under Section 127 of the Act, but it falls only under Section 129 of the Act. An order under Section 129 is made applicable under Section 136(2). Therefore, if an order made under Section 129 of the Act is not appealed against either because the person concerned was not aware of order or he was not a party to the proceeding, he can move the Deputy Commissioner under Section 136(3) to interfere with such an order. The Deputy Commissioner also, if he comes to know of any illegality committed in making such entries, can interfere suo motu. There is also no period of limitation for exercising the power of revision. The provision under Sub-section (3) of Section 136 of the Act, it appears to us, is a safeguard provided against any illegal entries made without the knowledge of the parties or to the prejudice of the State. But in respect of a case which is registered as a dispute and is decided by contest and the matter was appealed against before the prescribed authority under Sub-section (2) of Section 136 of the Act and there has been an appellate order, the intention of the Legislature is, the party aggrieved by the appellate order can only resort to the remedy of filing a civil suit as permitted under the proviso to Section 135 of the Act. Any interpretation of Sub-section (3) of Section 136 as conferring power to interfere with an appellate order of the Assistant Commissioner made under Sub-section (2) of Section 136 would render the words and his decision shall be final otiose. It is a settled rule of construction that no portion of a Section can be rendered otiose. Further the Legislature has expressly referred only to Sections 127 and 129 in Sub-section(3) of Section 136 of the Act. If the intention of the Legislature was that the Deputy Commissioner should also have the power to interfere with an appellate order made under Sub-section (2) of Section 136 of the Act, it would have specified the said provision also in Sub-section (3) of Section 136 of the Act just as Sections 127 and 129 are specified.

9. The only other point for consideration is: whether the view taken by the Learned Single Judge in Bowramms case, that an order made under Sub-section (2) of Section 136 of the Act can be regarded as an order made under Section 129 of the Act is correct? In view of the enunciation of law by the Supreme Court in Bhogilals case, and in Gojer Brothers case, it is not possible to say that an order made by the Assistant Commissioner under Sub-section (2) of Section 136 of the Act is an order made under Section 129 of the Act. Infact, as held by the Supreme Court in the aforesaid two cases, the moment the appellate authority makes an order under Sub-section (2) of Section 136 of the Act, the order made by the original authority under Section 129 of the Act merges in the latter and as a result,

the order made by the appellate authority under Sub-section (2) of Section 136 alone remains. For these reasons we are of the view that the true scope of Sub-section (3) of Section 136 of the Act, is that the Deputy Commissioner has the power to interfere with an order made under Section 129 of the Act if only the said order had not been the subject matter of an order in appeal made under Sub-section (2) of Section 136 of the Act, and that he has no power to revise an appellate order made under Section 136(2) of the Act.

(emphasis supplied)

5. The Division Bench in Murugarajendra was of the opinion that in case if it is held that the Revision lies before the Deputy Commissioner against the order passed by the Assistant Commissioner under Section 136(2) of the Act, the same would render the words, and his decision shall be final occurring in Section 136(2) of the Act otiose. It is also held that once the order is passed by the Assistant Commissioner under Section 136(2) of the Act against the order passed by the Original Authority, the order passed by the Original Authority merges into the order passed by the Appellate Authority and that therefore the order passed by the Appellate Authority under Section 136(2) alone remains and hence the Deputy Commissioner has no power to revise the appellate order passed by the Assistant Commissioner under Section 136(2) of the Act.

6. The learned Single Judge of this Court in the case of Mallegowda vs. Channaveeregowda and Others, ILR 2011 Kar 4225, after considering all the earlier judgments rendered by the learned Single Judges, Division Bench and Full Bench has observed thus:

31. That means chapter XI is a scheme and a Code in itself, insofar as the provisions relating to entries in the revenue records to be made insofar as the appeals and revisions are to be examined in respect of the orders passed by the original authority while making entries in the revenue records and particularly, as per chapter-XI of the Act and that appeal and revision petitions do not fit into the general scheme of appeals and revisions as it occurs in the chapter-V of the Act.

In short, the learned Single Judge in the case of Mallegowda, has held that the Revision as provided under Section 136(3) of the Act is not maintainable against the order passed by the Assistant Commissioner in appeal under sub-section (2) of Section 136 thereof.

7. Learned Single Judge of this Court in W.P.No.67926/2011 while referring the aforementioned question has observed thus:

Though I find myself in agreement with the view expressed by the learned single Judge in Mallegowdas case, I deem it appropriate to request the Honble Chief Judge to make reference to a Larger Bench to decide the question formulated in the beginning of this order so as to make the position of law clear. The registry is directed to place this order along with the writ petition and its annexures before the Honble Chief Justice for passing appropriate order.

8. At this stage, it is beneficial to note the provisions of Sections 127 and 129 of the Act.

127. Record of Rights.-(1) A record or rights shall be prepared in the prescribed manner in respect of every village and such record shall include the following particulars:-

(a) the names of persons who are holders, occupants, owners, mortgagees, landlords or tenants of the land or assignees of the rent or revenue thereof;

(b) the nature and extent of the respective interest of such persons and the conditions or liabilities (if any) attaching thereto;

(c) the rent or revenue (if any) payable by or to any of such persons; and

(d) such other particulars as may be prescribed.

(2) The record of rights shall be maintained by such officers in such areas as may be prescribed and different officers may be prescribed for different areas.

(3) When the preparation of the record of rights referred to in sub-section (1) is completed in respect of any village, the fact of such completion shall be notified in

the official Gazette and in such manner as may be prescribed.

129. Registration of mutations and register of disputed cases.-(1) The prescribed officer shall enter in the Register of Mutations every report made to him under sub-section (1) of section 128 or received by him under sub-section (2) or sub-section (4) of the said section.

(2) Whenever a prescribed officer makes an entry in the Register of Mutations, he shall at the same time post up a complete copy of the entry in a conspicuous place in the chavadi and shall give written intimation to all persons appearing from the Record of Rights or Register of Mutations to be interested in the mutation, and to any other person whom he has reason to believe to be interested therein.

(3) Should any objection to any entry made under sub-section (1) in the Register of Mutations be made either orally or in writing to the prescribed officer, it shall be the duty of the prescribed officer to enter the particulars of the objection in a Register of Disputed Cases.

(4) The objections entered in the Register of Disputed Cases and such other objections as may be made during the enquiry shall be enquired into and disposed of by such officer and in such manner as may be prescribed. Orders disposing of such objections shall be recorded in the Register of Mutations by such officer.

(5) The officer holding an enquiry under sub-section (4) shall have all the powers under Chapter III, that a Revenue Officer has in making a formal or summary enquiry under this Act.

(6) Entries in the Register of Mutations shall be tested and if found correct or after correction, as the case may be, shall be certified by such officer as may be prescribed.

(7) The transfer of entries form the Registers of Mutations to the Record of Rights shall be effected in the prescribed manner, provided that an entry in the Register of Mutations shall not be transferred to the Record of Rights until such entry has been duly certified.

9. A Revenue Officer, not below the rank of Tahsildar while exercising the power under the Karnataka Land Revenue Act shall be a Revenue Court as is clear from Section 24 of the Act. The subject relating to Record of Rights is dealt with in Chapter XI of the Act. Section 127 of the Act clarifies as to the particulars to be noted in the Record of Rights. It also deals with preparation of Record of Rights according to the prescribed procedure. Section 128 of the Act provides for reporting of the acquisition of rights in respect of the lands covered by the provisions of the Act. Section 129 prescribes the procedure for registration of mutations reported under Section 128. Sub-section (1) of Section 129 of the Act provides for making an entry in the register of mutations of every report made under the provisions of Section 128 of the Act. Sub-section (2) of Section 129 of the Act provides for publication of a copy of the entry so made as also forgiving written intimation to all persons interested, as disclosed in the revenue records. If objections are filed, the Prescribed Officer shall enter particulars of the objections in the register of disputed cases under sub-section (3) of Section 129 of the Act. Thereafter the prescribed authority shall decide the dispute under sub-section (4) of Section 129 of the Act following the procedure prescribed under sub-section (5). Sub-Section (6) of Section 129 of the Act provides for making an entry and certifying the entry relating to mutations in accordance with the order made after such inquiry. Sub-section (7) of Section 129 provides for transfer of certified entries made in the register of mutations to the record of rights.

Section 135 of the Act bars the jurisdiction of Civil Courts in respect of an order made under any of the provisions of the Chapter XI against the Government. The proviso to the said section, however provides that a person aggrieved by any revenue entry made in any record or register may institute a suit against any person denying or interested in denying his title to such right and further clarifies that the entries in the record of rights shall be subject to the result of the decision to be rendered by the Civil Court.

10. Section 136 of the Act deals with Appeal and Revision and it reads thus:

136. Appeal and Revision.-(1) The provisions of Chapter V shall not apply to any decision or order under this Chapter.

(2) Any person affected by an order made under sub-section (4) or an entry certified under sub-section (6) of section 129 may, within a period of sixty days from the date of communication of the order or the knowledge of the entry certified, appeal to such officer as may be prescribed by the State Government in this behalf and his decision shall be final.

(3) The Deputy Commissioner may, on his own motion or on application of a party, call for and examine any records made under section 127 and section 129 and pass such orders as he may deem fit:

Provided that no order shall be passed except after hearing the party who would be adversely affected by such order. A bare reading of Section 136 of the Act would disclose that the provisions of Chapter-V shall not apply to any decision or order made under Chapter-XI. Thus Chapter-V though deals with appeal, second appeal, revision against the original order, cannot be made applicable to the disputes relating to entries in the record of rights. The orders arising out of the disputes relating to Sections 127 and 129 of the Act are to be dealt with in appeal and revision as provided under Section 136 of the Act. Undisputedly appeal is maintainable under Section 136(2) of the Act against the order made under sub-sections (4) and (6) of Section 129 of the Act. Thus the only disputed question is as to whether the revision lies against the order passed by the appellate authority under section 136(2) of the Act?

11. As has been held by the Apex Court in the case of Sri Raja Lakshmi Dyeing Works vs. Rangaswamy Chettiar, (1980) 4 SCC 259, Appeal and revision are expressions of common usage in Indian statute and the distinction between appellate jurisdiction and revisional jurisdiction is well known though not well defined. Ordinarily, revisional jurisdiction is analogous to a power of superintendence and may sometimes be exercised even without it being invoked by a party. The conferment of revisional jurisdiction is generally for the purpose of keeping Tribunals subordinate to the revisional Tribunal within the bounds of their authority to make them act according to law, according to the procedure established by law and according to well defined principles of justice. The question relating to the extent of appellate or revisional jurisdiction has to be considered in

each case with reference to the language employed by the statute.

It is also well established that right of appeal is a substantive right conferred by the statute, while the revisional jurisdiction is purely discretionary.

12. While dealing with the said question, the Division Bench in the case of Murugarajendra, has observed that the order of the Appellate Authority passed under Section 136(2) of the Act shall be final; since the decision to be rendered by the appellate authority under Section 136(2)of the Act is final, the revision does not lie and the revision would lie to the Deputy Commissioner only against the orders made under Sections 127 and 129 of the Act and not against the order passed under section 136(2) of the Act. While concluding so, the Division Bench has also held that the order passed by the Original Authority under sub-section (4) or sub-section (6) of Section 129 of the Act merges with the order passed by the Appellate Authority under Section 136(2) of the Act and the order passed under Section 136(2) of the Act is not made revisable under sub-section (3) of Section 136 of the Act by the Deputy Commissioner. With great respect, we do not subscribe to the reasons assigned and the conclusions arrived at by the Division Bench in the case of Murugarajendra.

We are clearly of the view that one cannot say with any definiteness or lay down any general principle as to whether the expression final in regard to an order made by an authority would not leave open the door to revision. The matter should be examined not merely on the language of a particular provision, but also bearing in mind the entire scheme of the Act and, if necessary the legislative history thereto.

The language of Section 136(2) would admit of the examination of the order made under sub-section (4) or an entry certified under sub-section (6) of Section 129, by the Assistant Commissioner within the prescribed period of 60 days and such order of the Assistant Commissioner shall be final. In Re Gilmores Application {(1957) 1 All ER 796} the expression final has been examined and it is stated that the word final means without further appeal. There are many instances where a statute provides that a decision shall be final. Sometimes, as here, the statute provides that the decision in appeal shall be final. In such a case, Justice Parker in Re Gilmores Application has observed that the expression shall be final is merely a pointer to the fact that there is no further appeal. A Revision is not by way of appeal. The Apex Court in the case of South Asia Industries Private Limited vs. S.B. Sarupsingh, AIR 1965 SC 1442, observed that the expression final prima facie connotes that an order passed on appeal under the Act is conclusive and no further appeal lies against it. But, it does not mean a remedy other than an appeal would not lie.

13. In Madhaji Lakhiram vs. Masrubhai Mahadevbhai Rabari, AIR 1962 Guj 235 question of finality of the order passed by the jurisdictional authority under the Bombay Tenancy and Agricultural Lands Act was considered. In that decision, it is observed inter alia that there is ample authority for the view that mere use of words shall be final in an enactment does not have the effect of shutting out a revisional jurisdiction. It is also held therein that the expression final needs to be understood based on the scheme and the provisions of the particular Act.

14. In our opinion, the expression final is used under Section 136(2) of the Act by the Legislature in limited or technical sense of not subject to further appeal, but it is not used in the wider sense of not being subject to revision.

15. If the revision is excluded against the order passed by the Assistant Commissioner under Section 136(2) of the Act, then there will be only two tier system containing the Original Authority and the Appellate Authority. The suit would not lie against the order passed by the Appellate Authority. Some times the order of the Appellate Authority may be erroneous, illegal or arbitrary. The aggrieved party in such an event will have to approach the Civil Court for getting his rights declared by filing the suit seeking appropriate declaratory relief without any fault of him and will have to wait for long length of time. By the time, the suit is decided or appeal from the decision of the suit is decided, the litigant would have spent lot of money, energy and time. He may or may not get the fruits of the litigation during his life time. That may not be the intention for enacting Chapter-XI of the Act, which is a self contained code by itself, more particularly the provisions of Section 136 of the Act. Chapter-XI is enacted to deal with the disputes relating to revenue entries, with an avowed object of finally settling such disputes before the Revenue Courts.

15A. Keeping these factors in mind, in our considered opinion, the expression shall be final found in the provisions of Section 136(2) of the Act would not preclude the exercise of revisional jurisdiction by the Deputy Commissioner. In other words, mere use of words shall be final in the enactment does not have the effect of shutting out the revisional jurisdiction. At this stage, it is relevant to note Section 57 of the Act wherein it is expressly stated that whenever in the Land Revenue Act, it is declared that the order of the Revenue Officer shall be final, such expression shall be deemed to mean that no appeal lies from such order; however, the Tribunal is competent to modify, annul or reverse such order. Though Section 57 comes within Chapter-V and though the same is not applicable to Chapter-XI of the Act, the principle therein may be relevant having regard to intention with which the Karnataka Land Revenue Act, more particularly Chapter-XI is enacted. In Chapter-V, not only the first appeal is provided, but also second appeal is provided against the original order. Even the Revision is provided before the Tribunal or such other Revenue Officer as prescribed. Thus it is clear that in Chapter-V, four tier system is provided, whereas in Chapter-XI if the judgment of the Division Bench in Murugharajendra, is to be accepted, then there will be only two tier system. Equity demands that the order passed by the inferior revenue Court will have to be scrutinized by the higher revenue Court at least by way of Revision, after exhausting the remedy of appeal, particularly when, as aforementioned the object of Chapter XI is to finally decide disputes relating to entries in Revenue Courts. Further, to entries in Revenue Courts. Further, revisional jurisdiction may be necessary for keeping Revenue Courts subordinate to revisional Revenue Court within the bounds of their authority to make them act according to law.

16. It is no doubt true that the original order merges with the appellate Courts order on appeal being decided. But the same does not mean that the substance of the matter would vanish by such merger. The substance of the matter or crux of the matter remains the same. Under Section 129 of the Act, the disputed entries will be adjudicated by the original Revenue Court/Authority. Under Section 136(2) of the Act, the prescribed Officer/the Assistant Commissioner gets jurisdiction to decide the validity of the orders made under Section 129(4) of the Actor an entry certified under Section 129(6) of the Act. Thus the order passed by the appellate

authority in exercise of jurisdiction under Section 136(2) of the Act would decide the question as to whether the entry should be made either in favour of A party or B party or C party. Hence the substance of the matter or crux of the matter before appellate forum is nothing but the dispute relating to revenue entries under Sections 127 and 129 of the Act. If these things are kept in mind while interpreting the provisions of Section 136(3) of the Act, it would be amply clear that the Deputy Commissioner may on his own motion or on an application of a party, call for and examine any records not only made under sections 127 and 129 but also under Section 136(2) of the Act and pass such orders as he may deem fit. After adjudicating the dispute under Section 129(4) of the Act, the mutation should be certified under Section 129(6) and the same shall be transferred from the register of Mutations to the Record of Rights under sub-section (7) of Section 129 of the Act. Consequently, the entries in the Record of Rights under Section 127 of the Act would be altered. Thus virtually the provisions of Sections 127 and 129 go hand in hand and fate of revenue entries would depend on the orders passed by the appellate authority and/or the revisional authority.

Though the order passed by the original authority under Section 129 of the Act merges with the order passed by the appellate authority under Section 136(2) of the Act and as such the order of the Assistant Commissioner is executable, the same would not take away the revisional jurisdiction of the Deputy Commissioner, particularly, in view of the language employed in Section 136(3) of the Act. Revisional jurisdiction can be exercised by theDeputy Commissioner either suo motu or on an application made by an aggrieved party against the proceedings taken under Sections 127 and 129 of the Act. Section 136(3) specifies that the Deputy Commissioner may call for and examine any records made under sections 127 and 129 of the Act and thereafter pass such orders as he may deem fit. The said sub-section does not specify that theRevision lies only against the order passed under Section 129 of the Act. On the other hand, the DeputyCommissioner will call for and examine the records pertaining to the proceedings made under sections 127 and 129 of the Act and thereafter he will take decision as per law. This means the Deputy Commissioner may callfor and examine the records of the Assistant Commissioner also pertaining to the subject matter relating to Sections 127 and 129 of the Act.

17. There cannot be any dispute that the Assistant Commissioner while dealing with the appeal under Section 136(2) of the Act will decide the dispute arising under Sections 129(4) and 129(6) of the Act. The entries wouldbe accordingly made as per the decision rendered by the Assistant Commissioner. Such entries will be entered inthe Record of Rights again under Section 127 of the Act. If the Deputy Commissioner chooses to call for and examine records pertaining to the subject matter involving Sections 127 and 129 of the Act, naturally the order passed by the Assistant Commissioner in such an event in appeal would be placed before the Deputy Commissioner. The DeputyCommissioner thus would exercise his revisional jurisdiction by perusing the records/proceedings maintained by the original authority as well as the appellate authority / Assistant Commissioner. In this viewof the matter, in our considered opinion, the revisional jurisdiction of the Deputy Commissioner cannot be excluded merely because Section 136(2) of the Act is not mentioned alongwith Sections 127 and 129 of the Act in sub-section (3) of Section 136 of the Act.

18. It could not have been legislatures intention that finality intended in the order made by the Assistant Commissioner as in the instant case under Section 136(2)of the Act, should remain without a remedy within the framework of the statute. Undisputedly, the AppellateAuthority i.e. Assistant Commissioner is the subordinate authority to the Deputy Commissioner, who is the revisional authority. Hence it is clear that the records of appellate authority i.e. Assistant Commissioner also maybe called for while considering the matters relating to Sections 127 and 129 of the Act. The language used in Section 136 of the Act discloses clear manifestation of the intention of Legislature that Section 136(3) of the Act itself is a remedy against finality of the order of the Appellate Authority under Section 136(2) of the Act. We do not findany apparent contradiction between Section 136(2) and 136(3) of the Act. In our opinion, revisional jurisdiction isprovided to the Deputy Commissioner in order to give effect to the purpose, meaning and object of the whole of Section 136 of the Act.

19. Moreover, the people of this State as well as the Courts in the State have understood the provisions of Section 136(3) of the Act since decades, as the one providing revisional jurisdiction to the aggrieved party as against the order passed

by the appellate authority. TheJudgment of the Full Bench in Gururajs case is holding the field since 1st August 1994, the date on which that judgment was delivered. In the said judgment, the Full Bench in paragraph-16 has observed that it did not subscribe to the rationale of the Division Bench in the case of Murugharajendra. The said observations contained inparagraph-16 of the judgment in Gururaj are understood by the Courts in Karnataka to mean that remedy of revision is also available under Section 136(3) of the Act. Since that day onwards, the Deputy Commissioners in the State have been entertaining Revision Petitions against the orders passed by the Assistant Commissioner under Section 136(2) of the Act. Hence we are of the considered opinion that the principles of stare decisis have to be applied and that therefore the settled position on point need not be disturbed, particularly when no prejudice is caused or illegality occurs in providing remedy of revision to the higher Revenue Court i.e., the Deputy Commissioner under Section 136(3) of the Act.

In the case of Shyamaraju Hegde vs. Venkatesha, AIR 1987 SC 2323 the question for consideration was as to whether a revision application is maintainable under Section 115 of Code of Civil Procedure read with Section 50(1) of the Karnataka Rent Control Act, 1961 against the order of a District Judge made in his revisional jurisdiction under Section 50(2) of the Act. TheApex Court having noticed the Rent Control enactments of different States including Kerala State concluded that the High Court has got the power to revise the order passed by the Court subordinate to it under Section 115 of Code of Civil Procedure and since the District Judge is subordinate Court to the High Court, the order passed by the District Court may be revised by the High Court. While concludingso, the Apex Court has observed thus:

14. On the view we have taken, it must follow that we too are bound by the decision taken by this Court in Krishnajis case {ILR (1978)2 Kant 1585)} (FB) was rendered under the Karnataka Rent Control (Amendment) Act, 1975 and has held the field for over a decade. No justification has been pointed out by the High Court why that should be discarded. It is one of the essentialrequirements of the administration of justice that judgments rendered by superior courts and particularly with the approval of the apex Court should not be frequently changed so as to unsettle the settled positions. The fact that theState Legislature has not

thought it necessary to amend the law and set at naught Krishnaji or Bhatija is indicative of the position that thisCourt had not taken a wrong view of the legislative intention. In these circumstances, we feel advised not to enter into an analysis of the provisions of the Act for a fresh look at the matter and prefer to follow Bhatija. We make itclear that we have not felt it necessary to examine whether the ratio of Aundal Ammal (AIR 1987 SC 203) is binding or requires reconsideration in the presence of Bhatija in the field as a direct authority.

(Emphasis supplied)

In the matter on hand also the Deputy Commissioners in the State have been revising the orders passed under Section 136(2) of the Act, atleast since the date of judgment in Gurunath. It is one of the essential requirements of the administration of justice that judgments rendered by superior Courts should not be frequently changed so as to unsettle settled positions. The language employed in Section 136(2) and (3) of the Act remains the same since inception, in the Act. The factthat the State Legislature has not thought it necessary to amend the law and set at naught the observations made in paragraph-16 of Gurunaths case is indicative of legislative intention of providing revision to the DeputyCommissioner.20. The observations of the Division Bench in the case of Murugharajendra that either an appeal is maintainable under Section 136(2) of the Act or Revision is maintainable under Section 136(3) of the Act against the original order cannot be accepted. Having regard to therestrictive nature of revisional jurisdiction, the aggrieved party against the order passed under Section 129 of the Act by the original revenue Court would not normally invoke revisional jurisdiction directly, particularly when appellate jurisdiction is available for aggrieved party to be invoked under Section 136(2) of the Act. Therefore if Section 136 of the Act is read in its entirety, it becomes clear that the revision lies under Section 136(3) of the Act against the order passed by the Assistant Commissioner under Section 136(2) of the Act.

In view of the above, the question referred to us is answered as under:

The order made under Section 136(2) of the Karnataka Land Revenue Act, 1964 by the Assistant Commissioner in an appeal preferred against the order made under sub-section (4) or an Entry certified under sub-section (6) of Section 129 of the Act is subject to Revision by the Deputy Commissioner under sub-section (3)of Section 136 of the Act.

Dr. KBJ, MSGJ and BSGJ WP NO.67926/2011

OPERATIVE PORTION OF THE ORDER

(Vide order dated 21.8.2012)

At supra, it is held that the law laid down by the Division Bench of this Court in Murugarajendra Mahaswamys case is not correct. Further, the law laid down in Mallegowdas case that after the stage of Appeal under Section 136(2) of the Land Revenue Act, a person, who is aggrieved of the order made by the appellate authority, has to necessarily approach the Civil Court and there is no remedy of revision as against the order of the appellate authority is also not correct. Accordingly, we una voce answer the point for reference in the affirmative.