

The State of Karnataka Vs. The Assistant Commissioner

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Court : Karnataka

Decided On : Sep-20-2017

Judge : B.S.Patil

Appeal No. : WP 58789/2016

Appellant : The State of Karnataka

Respondent : The Assistant Commissioner

Judgement :

1 WP587892016 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE20H DAY OF SEPTEMBER, 2017 BEFORE THE HONBLE MR.JUSTICE B.S.PATIL W.P.No.58789/2016 (KLR-REG) BETWEEN:

1. THE STATE OF KARNATAKA DEPARTMENT FO REVENUE, FOOD & CIVIL SUPPLIES, M.S. BUILDING, BENGALURU560001. REP BY ITS SECRETARY . THE DEPUTY COMMISSIONER BENGALURU RURAL DISTRICT, PODIUM BLOCK, V.V. TOWER, BENGALURU. THE TAHSILDAR HOSKOTE TALUK, HOSAKOTE, BENGALURU RURAL DISTRICT.

2. 3.

2. ... PETITIONERS (By Sri A.G.SHIVANNA, AAG A/W Sri T.S.MAHANTESH, AGA) AND1 THE ASSISTANT COMMISSIONER DODDABALAPUR SUB-DIVISON, DODDABALLAPURA, BENGALURU RURAL DISTRICT. THE

SECRETARY LAND GRANT COMMITTEE FOR REGULARIZATION OF UNAUTHORIZED OCCUPATION, HOSAKOTE TALUK, HOSAKOTE, BENGALURU RURAL DISTRICT. 2 WP587892016 SMT. HEMAKKA W/O NARAYANAPPA, AGED ABOUT 57 YEARS, R/AT DODDHULLURU VILLAGE, DASARAHALLI POST, HOSAKOTE TALUK, BENGALURU RURAL DISTRICT. SMT. BHAGYAMMA W/O K.N. MUNIRAJU, AGED ABOUT 44 YEARS, RESIDING AT KURUBARAHALLI VILLAGE, KASABA HOBLI, HOSAKOTE TALUK, BENGALURU RURAL DISTRICT. SRI.N. SHIVARAMU S/O NARAYAN, AGED ABOUT 48 YEARS, RESIDING AT KUBALAHALLI VILLAGE, KASABA HOBLI, HOSAKOTE TALUK, BENGALURU RURAL DISTRICT. SMT. VENKATALAKSHMAMA D/O CHIKKAMUNIYAPPA, AGED ABOUT 55 YEARS, RESIDING AT KURUBARAHALLI VILLAGE, KASABA HOBLI, HOSAKOTE TALUK, BENGALURU RURAL DISTRICT. SMT. NAGARATHNA W/O JAYANNA, AGED ABOUT 49 YEARS, RESIDING AT KULLAHALLI, KASABA HOBLI, HOSAKOTE TALUK, BENGALURU RURAL DISTRICT. SMT. MANJULA W/O RAMACHANDRAPPA, AGED ABOUT 48 YEARS, RESIDING NEAR MONTREAL ENGLISH SCHOOL, 3.

4. 5.

6. 7.

8. 3 WP587892016 TG EXTENSION, HOSAKOTE, BENGALURU RURAL DISTRICT. ... RESPONDENTS (By Sri VENKATESH DODDERI, AGA FOR R1 & R2; Sri JAYAKUMAR S.PATIL, SR.COUNSEL FOR Smt.SUDHA S.N., ADV. FOR C/R3-R8) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET-ASIDE THE

ORDER

DTD:27.7.2016 PETITION NO.20/2015 PASSED BY THE KARNATAKA APPELLATE TRIBUNAL, BENGALURU VIDE ANNEXURE-A AND CONSEQUENTLY QUASH THE

ORDER

DTD:29.7.2013 PASSED BY THE R-1 VIDE ANNEXURE- M, AND ETC. IN REVISION PASSED THIS PETITION COMING ON FOR HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1 This writ petition is filed under Articles 226 & 227 of the Constitution of India by the State Government represented by the Secretary, Department of Revenue, along with the Deputy Commissioner, Bengaluru Rural District, Bengaluru, and the Tahsildar, Hosakote Taluk, Hosakote, Bengaluru Rural District, challenging the order dated 27.07.2016 passed by the Karnataka Appellate Tribunal, Bengaluru (for short, KAT) vide Annexure-A, 4 WP587892016 thereby allowing the revision petition filed by respondents 3 to 9 herein.

2. The revision petition was filed by respondents 3 to 9 herein under Section 56 of the Karnataka Land Revenue Act, 1964 (for short, the Act) challenging the legality and correctness of the order dated 21.07.2014 passed by the Deputy Commissioner, Bengaluru Rural District, whereby the order dated 29.07.2013 passed by the Assistant Commissioner, Doddaballapur Sub-Division, was set aside directing fresh inquiry as per the provisions contained under Rule 108-K of the Karnataka Land Revenue Rules, 1966 (for short, the Rules) for passing appropriate orders and thus remanding the matter to the Assistant Commissioner.

3. The appeal before the Deputy Commissioner was filed under Section 50 of the Act, challenging the order passed by the Assistant Commissioner, Doddaballapur Sub-Division on 29.07.2013. The Assistant Commissioner after holding inquiry into the legality and correctness of 5 WP587892016 the order passed by the Committee for Regularization of Unauthorized Occupation, Hosakote, as per proceedings dated 08.05.2011 and 26.05.2011, had come to the conclusion that the committee had taken into consideration the cattle strength in each of the two villages viz., Kuruabarahalli village where land bearing Sy. No.124 is situated and Dodda Hullur village where land bearing Sy. No.78 is situated, to record a finding that the villagers were not grazing their cattle in the said lands and that the Gomaal lands available in the villages were sufficient. In addition, the committee had specifically recorded a finding that the unauthorized occupants of the lands

had already developed the lands and were eking out their livelihood from the same. The Assistant Commissioner had further found that the lands were situated beyond 18 Kms. from the Bruhat Bengaluru Mahanagara Palike (for short, BBMP) limits as on the relevant date as was evident from the report of the Assistant Executive Engineer, Public Works Department, Port and Inter-State Water Transport. The Assistant Commissioner had also further found that 6 WP587892016 the effective date for reckoning the distance of 18 Kms. from city limits had to be 01.04.1990 from which date unauthorized occupation of Government land was required to be considered for the purpose of regularization.

4. The KAT has held, by referring to the decision reported in the case of STATE OF KARNATAKA BY ITS REVENUE DEPARTMENT & OTHERS VS HOLEYAPPA & OTHERS - ILR 2007 KAR259 that there was no impediment in regularizing the unauthorized occupation of Gomaal lands and therefore there was no justification for the Tahsildar to raise such an objection. It has also found that as per the letter given by the Engineer on 23.04.2011, it was clear that the distance between the land and BBMP boundary was 19.10 Kms. which meant that there was no prohibition for grant of land, and therefore, there was no impediment for the Tahsildar to issue saguvali chit. The KAT has found fault with the action of the Deputy Commissioner who had referred the matter to the legal cell and registered a suo motu case though there was no issue to be scrutinized by the Deputy Commissioner, and hence, 7 WP587892016 the order passed by him directing the Assistant Commissioner to re-consider the matter was wholly unwarranted. Indeed, KAT has come to the conclusion that despite a specific direction issued by the High Court, the conduct of the Deputy Commissioner in registering suo motu case and remanding the matter for fresh consideration was wholly untenable.

5. The main contention urged by the learned Additional Advocate General Mr. A.G.Shivanna in support of the relief sought in this writ petition is, that the revision petition under Section 56(1) of the Act was not maintainable before the KAT. In this regard, he has placed reliance on the decision of this Court in the case of MADAN KUMAR & OTHERS VS STATE OF KARNATAKA & OTHERS - 2000(3) KAR.LJ321 and PUTTAHONNAMMA VS GANGADHARA MURTHY - ILR 1996

KAR1225 It is urged by him that against the order passed by the Deputy Commissioner exercising his appellate powers, a second appeal lies to the KAT and not a revision, and therefore, KAT was in error in entertaining the revision petition under Section 56 of the Act. It is his 8 WP587892016 further contention that the lands in question are situated within the radius of 18 Kms. from the periphery of BBMP, and therefore, there is prohibition for grant of such land in favour of unauthorized occupants by way of regularization as per second proviso to Section 94(4) of the Act.

6. Per contra, learned senior counsel appearing for respondent Nos.3 to 8 Sri Jayakumar S.Patil, strongly urges that as per the provisions contained in Section 56(3) of the Act, revision petition is maintainable as against the order passed by the First Appellate Authority to the tribunal, even though there is a provision for filing a second appeal, provided no such second appeal had been preferred: Only if a second appeal had been preferred, then revision petition shall not be entertained. In support of his contention, he has placed reliance on the judgment of this Court in case the of H.N. CHANDRASHEKAR AND ANOTHER VS. DEPUTY COMMISSIONER, CHIKMAGALUR DISTRICT AND OTHERS - ILR 2002 KAR4867 In this case, a learned Judge of this Court has examined the scope of the provisions contained under Section 56 of the Act and the 9 WP587892016 effect of the decision rendered by the Apex Court in the case of PUTTAHONNAMMA VS. GANGADHARA MURTHY ILR 1996 KAR1225 and also the earlier judgment rendered by another Single Judge in the case of MADAN KUMAR AND OTHERS VS. STATE OF KARNATAKA AND OTHERS (2000)3 Kar.L.J.

321. Having considered the same, in paragraph 5 of the judgment in the case of H.N.Chandrashekar, it has been held that the judgment of the Supreme Court made it clear that against the order of the first appellate Court passed under Section 49 of the Act, the aggrieved party had two remedies: he can either prefer a second appeal under Section 50 or a revision petition under Section 56 to the tribunal. Once one option is exercised, the other option was barred. It is further stated therein that if against the very same order, an aggrieved party is permitted to have two remedies by way of an appeal and revision before two forums, it would

give rise to conflict in decisions which has to be avoided under any circumstances.

7. Therefore, in the light of categorical statement of law laid down in H.N.Chandrashekars case, after discussing 10 WP587892016 the effect of the judgment of the Supreme Court, what is prohibited under section 56 is a revision against the order that was impugned in the second appeal. If no second appeal is filed, then there is no prohibition for filing a revision petition before the tribunal.

8. It is necessary to notice here that provisions providing for filing appeals from original orders as per Section 49 and second appeal against the order passed in an appeal under Section 49, are found in chapter 5. Hence, when Section 56(3) makes reference to any order passed in an appeal under this chapter it means and includes not only first appeal but also the second appeal. In such circumstances, the contention urged by learned Additional Advocate General stating that judgment in H.N.Chandrashekars case does not lay down correct proposition of law, cannot be accepted. It has to be held that the tribunal has correctly exercised revisional jurisdiction as the revision petition under section 56 was maintainable against the order passed by the Deputy Commissioner under section 50 of the Act. 11 WP587892016 9. The other contentions relate to the merits of the case regarding eligibility of petitioner for regularisation of unauthorized occupation having due regard to the distance of the land from the outer limits of Bruhat Bengaluru Mahanagara Palike. It was indeed urged before this Court in the previous round of litigation in W.P.Nos.12032-34/2013 and 12035-37/2013 and connected cases, for the petitioners therein/respondent Nos.3 to 8 herein that as per the letter dated 23.4.2011 issued by the concerned Engineer to the Tahsildar, distance between the land in question and the boundary of the Bruhat Bengaluru Mahanagara Palike was 19.10 kms. Indeed the Assistant Commissioner in his order dated 29.7.2013 produced at Annexure-M has referred in detail to the letter of the Assistant Engineer.

10. The Assistant Commissioner has further made it clear that in the report obtained by Tahsildar from the Assistant Executive Engineer, PWD, Port and Interstate Water Transport, it had been specified that land in Sy. No.78 of Dodda Hullur village was situated at a distance of 12 WP587892016 19.10 kms. from the

boundary line of Bruhat Bengaluru Mahanagara Palike jurisdiction and the land in Sy. No.124 of Kurubarahalli village was situated at a distance of 19.20 kms. from the boundary limits of Bruhat Bengaluru Mahanagara Palike. Therefore, the Assistant Commissioner has recorded a specific finding that it could be construed that as on the date of unauthorized occupation of the land in question by respondent Nos.1 to 6 i.e., much before 1.4.1990, their lands were not within 18 kms. from the limits of Bruhat Bengaluru Mahanagara Palike.

11. It is thus apparent from the findings recorded by the Assistant Commissioner based on the report obtained from the Assistant Executive Engineer, PWD that distance between the boundary line of the Bruhat Bengaluru Mahanagara Palike as it existed earlier that is to say as on 1.4.1990, the date on which unauthorized occupation of the Government land was to be reckoned for regularisation was more than 18 kms. from the outer periphery of the Bruhat Bengaluru Mahanagara Palike. 13 WP587892016 12. It is true, jurisdiction of Bengaluru Mahanagara Palike was later extended after the Bruhat Bengaluru Mahanagara Palike was established. It may be that from the expanded boundary line, if the distance is reckoned, location of the two lands in the two villages may be within 18 kms. but that is not the criteria to be adopted. Section 94A provides for regularization of unauthorized occupation of government land. This provision was introduced by Act No.2 of 1991 w.e.f. 20.3.1991. Sub clause (4) of Section 94A provides that subject to such Rules as may be prescribed, any person liable to be evicted under sub section 2A of section 94A and who had been in unauthorized occupation prior to 1.4.1990, if he satisfies the prescribed condition and makes within a period of six months from the date of commencement of the Karnataka Land Revenue Amendment Act 1990 application for such grant in the prescribed form paying prescribed fees, shall be entitled for the land. Second proviso enacted to section 94A(4) states that no land shall be granted in the areas lying within the limits of cities and the city municipalities 14 WP587892016 specified in column 2 of table therein and within the distance from such limits specified in the corresponding entries in column 3 thereof.

13. In so far as Bengaluru City is concerned, the distance between the limits of the city and the location of the land was required to be more than 18 kms. to seek

regularization. This was introduced by virtue of amendment dated 20.3.1991. If the location of the land in question was beyond 18 kms. from the limits of Bengaluru City Corporation as it existed on the date when the right accrued to the petitioner to seek regularization and indeed when the petitioner actually filed an application, then such vested rights of the petitioner cannot be taken away by the intervening circumstances whereunder the city limits of Bruhat Bengaluru Mahanagara Palike were extended and expanded on establishment of Bruhat Bengaluru Mahanagara Palike. This is so because sub clause (4) of section 94A clothes a person in unauthorized occupation of the government land with a substantive right to protect his possession. This right which is vested in a person in 15 WP587892016 possession of the Government land can only be taken away by way of amendment to the statute or by enacting a statute which has retrospective effect. It is the cardinal principle of construction of statute that a statute has prima facie, prospective operation unless it is expressly or by necessary implication made to have retrospective effect. This general rule of statutory construction is aimed at protecting the vested rights and against imposition of burden or to impair existing rights. In the instant case, there is nothing to show that as and when the city limits were expanded, the distance had to be calculated from the extended or expanded limits of the city to compute the radius of 18 kms. Hence if the argument of the learned Additional Advocate General is accepted, it would tantamount to taking away the vested right of an unauthorized occupant of the Government land to have his occupation regularized. Therefore, merely because the city limits of the Bengaluru Mahanagara Palike were expanded in year 2007, the same cannot be made basis for reckoning the distance of 18 kms. from the periphery of the 16 WP587892016 Bengaluru Mahanagara Palike. The relevant question therefore would be whether the lands in these two villages were indeed situated beyond 18 kms., as per the earlier city limits of Bengaluru Mahanagara Palike before it became Bruhat Bengaluru Mahanagara Palike. There is no clear material forthcoming in this regard.

14. Therefore, in order to avoid any confusion, I deem it appropriate to issue a direction to the Tahsildar to measure the distance between the periphery of Bengaluru City Corporation limit as it then existed prior to establishment of Bruhat Bengaluru Mahanagara Palike and the lands in question located in these two

villages i.e., Dodda Hullur village and Kurubarahalli village, with the help of a Surveyor. If the location of the lands are found to be beyond 18 kms., then the Tahsildar shall issue saguvali chit in favour of petitioner in view of the order passed by the committee constituted for regularization of unauthorized occupation of government lands which was confirmed by the Assistant Commissioner. 17 WP587892016 15. The order passed by the Deputy Commissioner is modified to the above effect. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order. Until the entire exercise is completed, both parties shall maintain status quo regarding the nature and possession of the lands in question. Ordered accordingly. The writ petition is accordingly disposed of. Sd/- JUDGE KK/CS

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