

Mahadev Vs. The State

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Court : Karnataka

Decided On : Jul-01-2016

Judge : Ashok B.Hinchigeri

Appeal No. : WP 19474/2016

Appellant : Mahadev

Respondent : The State

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE1T DAY OF JULY 2016 BEFORE THE HONBLE MR. JUSTICE ASHOK B. HINCHIGERI WRIT PETITION Nos.19474-19479/2016 (KLR-RES) C/w WRIT PETITION Nos.19480-19486/2016 S/o Lingaiah, Aged about 54 years, R/o Siddaragudi, Sogane-Po, Shimoga Tq. and Dist. - 577 201. W.P.Nos.19474-19479/2016: BETWEEN:

1. Mahadev, 2. Manjula, 3.

4. Shekar, S/o Lingaiah, Aged about 50 years. D/o Kenchamma, Aged about 46 years, R/o Siddaragudi, Sogane-Po, Shimoga Tq. and Dist. - 577 201. Eshwara, S/o Lingaiah, Aged about 42 years, R/o Siddaragudi, Sogane-Po, Shimoga Tq. and Dist. - 577 201. 2 R/o Siddaragudi, Sogane-Po, Shimoga Tq. and Dist. - 577 201.

5. Krishnappa, S/o Basappa, Aged about 46 years, Othigatta - At, Sogane-Po, Shimoga Tq. and Dist. - 577 201.

6. Smt. Shantamma, W/o Krishnappa, Aged about 65 years, Othigatta - At, Sogane-Po, Shimoga Tq. and Dist. - 577 201. Petitioners (By Sri Jayakumar S. Patil, Sr. Advocate for Sri Dayanand S. Patil, Advocate) The State of Karnataka, Department of Revenue, By its Secretary, M.S.Building, Bangalore - 560 001.
AND:

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2. 3.

4. The Deputy Commissioner, Shivamogga District, Shivamogga - 577 201. The Assistant Commissioner, Shivamogga Sub-Division, Shivamogga - 577 201. The Tahsildar, Shivamogga Taluk, Shivamogga - 577 201.

5. 3 The Committee for Regularization of Unauthorized Occupation, Shimoga Taluk, Shimoga District - 577 201, By its Secretary. Respondents (By Sri T.L. Kiran Kumar, AGA) These writ petitions are filed under Articles 226 and 227 of the Constitution of India praying to direct the respondents not to dispossess the petitioners from the land in question as described in Annexure-A i.e., in Sy.No.120 of Sogane Village, Shimoga Taluk and District and etc. W.P.Nos.19480-19486/2016: B.T. Ravikumar, S/o late Thirumalaiah, Aged about 45 years, R/o Thirumala Nilaya, Rajappa Layout, I Cross, Jannapura, Bhadravathi, Shimoga Dist. - 577 301. BETWEEN:

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3. B.R. Nagaraja, S/o Raju B, Aged about 60 years, R/o Hutta Colony, Bhadravathi, Shimoga Dist. - 577 301. B.R. Balakrishna, S/o Raju B, Aged about 55 years, R/o Jink Line, Bhadravathi, Shimoga Dist. - 577 301.

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7. 4 Smt. Shantamma, W/o Thirumalaiah, Aged about 67 years, R/o Rajappa Layout, Jannapura, Bhadravathi, Shimoga Dist. - 577 301. Smt. Shivamma, W/o B.R. Puttaraju, Aged about 53 years, R/o Jink Line, Bhadravathi, Shimoga Dist. - 577 301. B.A. Chandrappa, S/o Appaiah Gowda, Aged about 60 years, R/o Kurubara Street, Near Dhobi Shop, Jannapura, Bhadravathi, Shimoga Dist. - 577 301. B.A. Rajappa, S/o Appaiah Gowda, Aged about 55 years, R/o Kurubara Street, Jannapura, Bhadravathi, Shimoga Dist. - 577 301. Petitioners (By Sri Jayakumar S. Patil, Sr. Advocate for Sri Dayanand S. Patil, Advocate) AND:

1. The State of Karnataka, Department of Revenue, By its Secretary, M.S.Building, Bangalore - 560 001.

2. 3.

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5. 5 The Deputy Commissioner, Shivamogga District, Shivamogga - 577 201. The Assistant Commissioner, Shivamogga Sub-Division, Shivamogga - 577 201. The Tahsildar, Shivamogga Taluk, Shivamogga - 577 201. The Committee for Regularization of Unauthorized Occupation, Shimoga Taluk, Shimoga District - 577 201, By its Secretary. Respondents (By Sri T.L. Kiran Kumar, AGA) These writ petitions are filed under Articles 226 and 227 of the Constitution of India praying to direct the respondents not to dispossess the petitioners from the land in question as described in Annexure-A i.e., in Sy.No.120 of Sogane Village, Shimoga Taluk and District and etc. These writ petitions coming on for preliminary hearing in B group this day, the Court made the following:

ORDER

As the questions of fact and law in W.P.Nos.19474- 19479/2016 and W.P.Nos.19480-19486/2016 are similar, they are clubbed, heard together and are being disposed of by this common 6 order. The facts are narrated with reference

to W.P.Nos.19474- 19479/2016.

2. The petitioners are the applicants for the grant of the land. The fifth respondent Committee resolved to grant the land in its meeting held on 8.4.2015. The fourth respondent Tahsildar has expressed his dissenting view. The Chairman and three members constitute the majority. They have resolved to grant the land. It is the grievance of the petitioners that the Committees resolution is not being implemented and that the saguvali chit is not being issued.

3. Sri Jayakumar S. Patil, the learned Senior Counsel appearing for Sri Dayanand S. Patil for the petitioners submits that the Tahsildar has not operationalised the recommendations of the Committee. On the other hand, he has been issuing the fresh instructions to the Revenue Inspector and the Taluka Surveyor for furnishing the fresh distance certificate of the land in question from the periphery of the local body (Shivamogga City boundaries). He 7 submits that the Revenue Inspector has reiterated his earlier finding in the report, dated 9.7.2015 (Annexure-M1) to the effect that the distance is 4.31 kms. from the Shivamogga City Corporation limits at present.

4. The learned Senior Counsel has also relied on this Courts order in the case of B.A.RAJAPPA v. STATE OF KARNATAKA passed in W.P.Nos.495-510/2001 for advancing the submission that the petitioners applications for the grant of the land has to be considered with reference to the Rules which were in force at that time and not in the wake of the amendment brought subsequent to the filing of the applications for grant of land.

5. Sri T.L.Kiran Kumar, the learned Additional Government Advocate appearing for the respondents submits that the fifth respondent Committee had earlier rejected the applications filed by the petitioners, by its order, dated 11.07.2011. The unsuccessful applicants filed the appeal before the Assistant Commissioner. The Assistant Commissioner set aside the order and remanded the matter to the fifth respondent Committee. It is in 8 the remanded proceedings that the Committee took the decision to grant the land, notwithstanding the serious and tenable objections raised by the Tahsildar, who is also the Member Secretary of the said Committee. He submits that the lands in question fall within the forbidden radius

and that therefore they cannot be granted at all.

6. The learned Additional Government Advocate also relies on the Circular dated 09.06.2014 to advance the submission that the Tahsildar can reject the applications for the grant of the lands. He submits that as per the Circular, the Tahasildar is even vested with the power to withdraw the applications which are already placed before the Committee.

7. The submissions of the learned counsel have received my thoughtful consideration. The first question that falls for my consideration is whether the Tahsildar can deny or withhold the grant of the land in derogation of the resolution passed by the fifth respondent Committee for the Regularization of the Unauthorized Occupation?. 9 8. To answer this question, advertence to the relevant provisions of the Karnataka Land Revenue Act, 1964 and the Karnataka Land Revenue Rules, 1966 may be necessary. Section 94-A(6)(a) reads as follows; Notwithstanding anything contained in the preceding Sub Section (a) The Tahsildar concerned shall issue the order of grant of land, on the recommendations of the Committee or additional Committee as the case may be, if any and issue the Saguvali Chit. 9. Rule 108-D(2) and (3) of the Karnataka Land Revenue Rules, 1966 reads as follows: Rule 108-D(2): After the expiry of the period specified in the notice the Committee (or the Additional Committee) shall, after considering the objections received and after further enquiry, if necessary, (recommend for grant of the land unauthorisedly occupied by the applicant or to dismiss it), subject to the provisions of Rule 108-I. Rule 108-D(3):- On such recommendations, the Tahsildar, who shall be the Secretary of the Committee or the Additional Committee, as the case may be, shall, issue an order of grant and issue certificate of 10 grant or Saguvali Chit in Form No.VII specified under the Karnataka Land Grant Rules, 1969, or dismiss the application, as the case may be. 10. The perusal of the afore-extracted provisions reveals that once the fifth respondent Committee recommends the grant of the lands, the Tahsildar has no discretion in the matter. He has no option but to issue the grant order and Saguvali Chit on such terms as are permissible in law. The Tahsildar, who is the Member Secretary of the Committee cannot act as an Appellate Authority and sit in judgment over its orders or recommendations. The Member Secretary has no

veto-power as such. The mandate of the law is that he has to only operationalize the recommendations of the Committee.

11. However, all these does not mean that if the resolution recommending the grant is illegal, irregular or if the applicant for the grant of the land is ineligible or if the land itself is not available for grant, then the remedy for the Tahsildar is to prefer an appeal before the Assistant Commissioner invoking Rule 108-K of the 11 Karnataka Land Revenue Rules, 1966. It is for the Assistant Commissioner to take the decision in the matter of cancellation of the grant.

12. The second question that falls for my consideration is whether the application for the grant of the land has to be examined with reference to the law which was in force at the time of making the application or as per the law, which is amended subsequent to the filing of the application?.

13. It is a cardinal principle of construction that every statute is prima facie prospective, unless it is expressly or by necessary implication made to have retrospective operation. Unless there are words in the statute sufficient to show the intention of the Legislature to affect the existing rights, it is deemed to be prospective only. In the absence of anything in the enactment to show that it is to have retrospective operation, it cannot take away or impair a right acquired under the existing laws or attach a new disability. 12 14. In the instant case admittedly the application for the grant of the land was made in 1991. In 1991, there was no prohibition in granting the land which lied within a radius of 5 kms. from the periphery of Shivamogga City. The prohibition or embargo is introduced subsequently. Such a question is examined by this Court in its decision in the case of RAMA NAIK v. THE DEPUTY COMMISSIONER AND OTHERS reported in ILR 2007 KAR1521 Paragraph No.5 of the said decision is extracted hereinbelow: 5. I do see some force in the arguments of the learned counsel for the petitioner. If the land has been regularized in favour of the petitioner, prior to declaring Gangavati Town as City Municipality and if an amendment has been brought into the Karnataka Land Revenue Act, 1964, subsequent to the order of regularization for issuance of saguvali chit, the Tahsildar is not expected to apply the subsequent development. What is required to be considered is whether the Committee had

power to regularize it in accordance with the Karnataka Land Revenue Act on the date of consideration of the application of the petitioner. 13 15. In the result, I allow these petitions by directing the Tahsildar to issue the saguvali chit to the petitioners, on such terms as are permissible in law and as expeditiously as possible and in any case within an outer limit of three months from the date of the issuance of the certified copy of today's order. It is made clear that the allowing of these petitions does not come in the way of the Tahsildar filing an appeal before the Assistant Commissioner and challenge the fifth respondent Committees resolution, recommending the grant of the land to the petitioners. It shall also be open to the Tahsildar to issue the grant order and saguvali chit with the rider that the same shall be subject to the outcome of the appeal, if any, filed in the meanwhile. MD/GH Sd/- JUDGE

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