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Nagesh vs State of Karnataka

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Court : Karnataka

Decided On : Mar-28-2024

Judge : R Devdas

Appeal No. : WP/6200/2023

Appellant : Nagesh

Respondent : State of Karnataka

Judgement :

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF MARCH, 2024 BEFORE THE HON'BLE MR JUSTICE R DEVDAS WRIT PETITION NO. 6200 OF 2023 (KLR-RES) BETWEEN: NAGESH, S/O MOGANNA GOWDA, AGED ABOUT 45 YEARS, RESIDENT OF NELLIGERE VILLAGE, KUNDUR HOBLI, ALUR TALUK, HASSAN DISTRICT - 573 128. PETITIONER (BY SRI. M.J. ALVA, ADVOCATE AND SRI. H.M. GIRISHA, ADVOCATE) AND:

1. STATE OF KARNATAKA,

REPRESENTED BY ITS PRINCIPAL SECRETARY, Digitally signed by USHA N S DEPARTMENT OF REVENUE, Location: M.S. BUILDING, BENGALURU - 560 001. HIGH COURT OF KARNATAKA 2. THE DEPUTY COMMISSIONER, HASSAN DISTRICT, HASSAN - 573 201.

3. THE SPECIAL LAND ACQUISITION OFFICER, HEMAVATHI RESERVOIR PROJECT, DC OFFICE BUILDING, -2-

4. THE ASST. COMMISSIONER, SAKALESHPURA SUB DIVISION, SAKALESHPURA, HASANA DISTRICT - 573 134.

5. THE TAHSILDAR, BELUR TALUK, BELUR, HASANA DISTRICT - 573 115.

6. THE ASST. DIRECTOR OF LAND RECORDS, HASANA DISTRICT,

7. THE DEPUTY CONSERVATOR OF FOREST, HASANA DIVISION,

8. THE INSPECTOR OF POLICE,

CEN CRIME POLICE, DCRB DIVISION, RESPONDENTS (BY SRI. C.N. MAHADESHWARAN, AGA) THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO-QUASH THE IMPUGNED ORDER NO.LND/YLQ(D).183/16-17 DATED 29.8.2022 PASSED BY THE SPECIAL LAND ACQUISITION OFFICER, HEMAVATHI RESERVOIR PROJECT, HASANA / R3 CANCELING THE GRANT MADE IN FAVOUR OF THE PETITIONER IN RESPECT OF THE SCHEDULE PROPERTY WHICH IS PRODUCED AT ANNEXURE-A AND ETC., THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING: -3-

ORDER

R.DEVDAS J., (ORAL): The petitioner is aggrieved of the impugned order dated 29.08.2022 passed by the Special Land Acquisition Officer, Hemavathi Reservoir Project, Hassan, in case No.L.N.D/YABHOOMA(D):183/2016-17.

2. The petitioner claims to be the legal representative of Late Mogana Gowda, who lost his lands due to submergence of

his lands under water on the construction of Hemavati/Yagachi/Vatehole Reservoir. In terms of the scheme proposed by the State Government, a person who lost land on account of submergence for the project, would not only be entitled for compensation but also entitled for grant of

alternative lands to ensure that the livelihood of such agriculturists are not lost. Accordingly, 4-00 acres of land in Sy.No.70, Block No.4 of Gurgihalli Village, Arehalli Hobli, Belur Taluk was granted to the petitioner. However, several irregularities were found in the matter of allotment of alternative lands. Action was directed by the State Government having regard to such irregularities. The Special Land Acquisition Officer (for short SLAO) has passed the impugned -4-

order canceling the grant on the ground that the petitioner did

not obtain No Objection Certificate for having paid the price of the malki/standing trees.

3. Having regard to the ground on which the order has

been passed, learned counsel for the petitioner has drawn the attention of this Court to Rule 11 of the Karnataka Land Grant Rules, 1969 (hereinafter referred to as the Rules, 1969, for short). Learned Counsel submits that whenever lands are granted under the provisions of the Rules, 1969, the manner in which the trees grown on the granted lands have been disposed is provided for in the said provision. Learned Counsel submits that sub-rule (1) provides that the authorities of the Forest Department have to value all the trees standing on the granted lands. Sub-rule (2) provides that wherever the value of the trees so assessed is not more than Rs.5,000/- in cases of other cultivable lands, the grantee should be given the option of paying the estimated price; the time to be stipulated by the granting authority and accordingly the trees shall be sold to the grantee. It provides that if the grantee once agrees to pay the value of the trees and defaults to pay the same, it may occasion cancellation of the grant. If the grantee is not willing

-5- to pay the value of the trees assessed by the Forest Department, the trees shall be disposed of by the authorities of the Forest Department by tender-cum-auction sale. Sub-rule

(3) provides that if the value is more than Rs.5,000/- the trees

shall be removed by the authorities of the Forest Department within one year from the date of the grant of land. The learned Counsel would therefore submit that when admittedly, the value of the standing trees are not assessed in terms of sub-rule (1) and no intimation is given to the petitioner calling upon him to pay the value, there was no occasion for the competent authority to cancel the grant.

4. In the present case, it has been pointed out from the

impugned order itself that the SLAO has not made any statement regarding assessment on the value of the standing trees; and that the petitioner was called upon to pay the value of the standing trees. In that view of the matter, it is submitted that the impugned order cannot be sustained.

5. There is substance in the submissions of the learned Counsel for the petitioner.
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6. Having regard to the express provision contained in

Rule 11 of the Rules, 1969, since nothing is found on record to say as to whether the SLAO got fixed the value of the trees at the hands of the authorities of the Forest Department and since it is not stated that the petitioner was called upon to pay the value of the standing trees, this Court is of the opinion that the impugned order passed by the SLAO cancelling the grant cannot be sustained.

7. At this juncture, the learned AGA appearing on behalf

of the respondent-State would submit that the matter may be remanded back to the SLAO to enable the SLAO to have the valuation of the standing trees assessed at the hands of the officials of the Forest Department. Further, although the learned AGA seeks to point out from the impugned order that some observations have been made by the SLAO that relevant records have not been

furnished by the petitioner to show whether he is the owner of the land, the extent of land submerged etc., this Court is of the considered opinion that such observations are general in nature, having regard to the fact that the SLAO was called upon to enquire into all the grants and such observations are general observations and

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would not be applicable to the petitioner. The factual information and the ground on which the impugned order of cancellation has been passed by the SLAO is the non-payment of the value of the standing trees. Therefore, all other observations made in the impugned order are hereby set aside as not specifically applicable to the petitioner. It is also a fact that the impugned order of cancellation was passed without hearing the grantee and therefore, on the ground of denial of principles of natural justice alone, the impugned order of cancellation is required to be set aside.

8. However, accepting the submission of the learned AGA

that an opportunity should be given to the SLAO to have the valuation of the standing trees made at the hands of the competent authority and inform the petitioner regarding the value of the trees and call upon him to pay the same in terms of Rule 11 of the Rules 1969, this Court proceeds to pass the following:

ORDER

i) Writ petition is allowed in part. ii) The impugned order dated 29.08.2022 in case No.L.N.D/YABHOOMA(D):183/2016-17 passed by the Special Land Acquisition Officer, -8-

> Hemavathi Reservoir Project, Hassan, at Annexure A, is hereby quashed and set aside. iii) The matter stands remanded back to the SLAO to have the value of the standing trees in the granted land assessed at the hands of the competent authority. Thereafter information shall be provided to the petitioner in terms of Rule 11 of the Rules, 1969, if the value is to be

paid by the petitioner. iv) On the other hand, if the valuation of the standing trees is more than Rs.5,000/, as provided in sub-rule (3) of Rule 11 of the Rules, 1969, then the SLAO shall have the trees removed in terms of the provisions contained in sub-rule (3) of Rule 11 of the Rules, 1969. v) At any rate, the SLAO shall keep the petitioner informed of his decision having regard to the provisions contained in sub-rule (2) and sub-rule

(3) of Rule 11 of the Rules, 1969. vi) Consequent to the restoration of the grant in favour of the petitioner, the revenue entries shall also be restored in the RTC. Sd/- JUDGE SNC, List No.: 2 Sl No.: 17 CT: BHK

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