

**M. Manjunath Vs. State of Karnataka and Others**

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**Court :** Karnataka

**Decided On :** Mar-02-2000

**Reported in :** ILR2001KAR117; 2001(1)KarLJ195

**Judge :** Chidananda Ullal, J.

**Acts :** [Karnataka Land Revenue Act, 1964](#) - Sections 67, 91 and 197; Karnataka Land Grant Rules, 1969 - Rule 4 and 25; Land Reforms Act - Sections 80; Land Revenue Act - Sections 49

**Appeal No. :** Writ Petition No. 14484 of 1999

**Appellant :** M. Manjunath

**Respondent :** State of Karnataka and Others

**Advocate for Def. :** Sri B. Manohar, Additional Government Adv., ;Sri H.S. Damodara Hegde and ;Sri K.S. Sreekanth, Adv.

**Advocate for Pet/Ap. :** Sri U. Panduranga Naik, Adv.

**Judgement :**

ORDER

1. This writ petition is directed against the endorsement dated 17-1-1999 in No. Tikannya:MPH 1/93-94, 1/98-99 issued by the respondent 2-Tahsildar, Thirthahalli, copy as at Annexure-J to writ petition, in issuance of which, he had

communicated the petitioner that the grant of 1 acre 38 guntas of land in S. No. 13 of Odalamane Village, Thirthahalli Taluk, made in favour of the original grantee, Smt. Kamala Shedthi came to be cancelled by the order of the non-party Assistant Commissioner in No. 679 of 1971-72, dated 23-1-1972 and as such, the request of phodi work could not be considered.

2. It is to be noted here that when the instant writ petition is pending before this Court, the respondents 4 to 87 had filed an application for impleading themselves and upon hearing the parties, the said application came to be allowed and in the process the respondents 4 to 87 came to be arrayed as respondents as above.

3. The respondent 3, a formal party having been served with notice had remained absent before Court. The learned Additional Government Advocate had filed his objection statement for and on behalf of the respondents 1 and 2 and in the like way, the contesting respondents 4 to 87 too have filed detailed objection statement.

4. It is to be stated here that while the matter was pending before this Court, this Court had directed the Assistant Commissioner to hold a spot inspection by issuing notices to all the parties concerned and further to file report as to the factual situation of the subject land. That order came to be passed on 29-7-1999 and that as per the direction of this Court, the Assistant Commissioner did conduct the spot inspection upon notices to all the contesting parties and further filed the detailed spot inspection report on 7-8-1999 and the same is taken on record in this writ petition.

5. The learned Counsel for the petitioner herein, Sri U. Panduranga Naik, had taken me through the petition averments. It is his submission that the original grantee one, Kamala Shedthi, who had been granted an extent of 1 acre 38 guntas of land in S. No. 13 of Odalamane Village (henceforth for convenience referred to as the 'subject land') in the year 1962 Willed it away to her son, the respondent 3 herein and that the petitioner thereafter had purchased the same from the respondent 3 after obtaining necessary permission from the Assistant Commissioner as contemplated under Section 80 of the Land Reforms Act and thus, he had become the absolute owner of the subject land and that the revenue

entries at the first instance stood in the name of the original grantee, Kamala Shedthi and subsequently the registered Will that came to be executed by her in the name of the respondent 3 bequeathing the subject land to him and that the same thereafter stood in the name of the said respondent 3 and upon that he sold the subject land to the petitioner and that in view of the same, the revenue entries too came to be mutated in the name of the petitioner himself and that in the month of January 1999, the petitioner had approached the respondent 2-Tahsildar requesting him to conduct the durast and phodi work and that in consideration of the said request made by the petitioner, the Tahsildar had issued the impugned endorsement declining to do the same as stated above and it is for that reason, the petitioner had to approach this Court by filing the instant writ petition. He therefore prayed that this Court be pleased to quash the impugned endorsement and further be pleased to direct the Tahsildar to conduct durast and phodi work as requested by his party.

6. The learned Counsel appearing for the contesting respondents 4 to 87, Sri K.S. Sreekanth, on the other side submitted that at the outset his party had taken exception to the above spot inspection report filed by the Assistant Commissioner at the instance of this Court and according to him, the same is not reflecting the real ground situations and as such, the same is of no relevance for the purpose of deciding the instant writ petition. It was also pointed out by him that the report in question was prepared by the Assistant Commissioner as if the same was one to help the petitioner herein. It was also pointed out by him that the Assistant Commissioner had exceeded the scope of inspection and thus gone beyond the scope of job entrusted by this Court and therefore, he, on that count prayed that the report of the Assistant Commissioner may not be looked into for disposal of this writ petition.

7. Nextly, it was argued by Sri Sreekanth that the subject land originally granted to Kamala Shedthi came to be rejected by the granting authority as long back as on 23-1-1972. In this context, Sri Sreekanth, had drawn my attention to the said order of cancellation found at page 29 of the records pertaining to the case very well secured by the learned Additional Government Advocate. It was argued by him that, when the very grant came to be cancelled, the question of bequeathing the

same by the original grantee to the respondent 3 at the first instance and selling of the same by the respondent 3 subsequently to the petitioner herein did not arise at all inasmuch as, according to him, there could not be passing of title in respect of the subject land to the petitioner herein to make a request before the Tahsildar to do the durast and phodi work as he did. While referring to the impugned endorsement at Annexure-J to writ petition, Sri Sreekanth also pointed out that it is for the said reason, the Tahsildar rightly declined to carry out the durast and phodi work. Furthermore, Sri Sreekanth had also drawn my attention to the application of the original grantee, Kamala Shedthi, one found at page 9 of the records secured by the learned Additional Government Advocate, wherein the original grantee, Kamala Shedthi and her son made a specific request to the Assistant Commissioner to cancel the original grant of the subject land in S. No. 13 and further to grant some other land alternatively in S. No. 1 of the said village. It was also argued by him that even if the case of the petitioner was that the original grantee was not communicated of the order of cancellation of the grant in question, for according to him, the same was of no consequence insofar as the effect of order of cancellation is concerned as the very cancellation by the Assistant Commissioner, the granting authority, was at instance of the original grantee. Yet another point that was argued by Sri Sreekanth was with regard to the very maintainability of the writ petition to challenge the impugned endorsement at Annexure-J to writ petition, for according to him, the same was in substance an order by itself and as such, the same was an appealable order before the Assistant Commissioner as contemplated under Section 49 of the Land Revenue Act. It was therefore further argued by him that on that short ground also, the instant writ petition is liable to be dismissed by this Court.

8. The last submission of Sri Sreekanth was with regard to the public interest involved in the case as the subject land, according to the respondents 4 to 87, was a burial ground and the same was very well needed by the villagers at large of 8 hamlets for the purpose of using the same as burial ground and further to use part of the same as a pathway to reach three temples, i.e., Rameshwar, Subrahmanya and Jwala Narasimha, situated all around the subject land.

9. To sum up, Sri Sreekanth had also submitted that in view of the cancellation of the grant made in favour of the original grantee by the granting authority and the same was since at her instance, the question of cancellation of the same in compliance with Rule 25 of the Land Grant Rules did not arise and further that even if the permission was granted by the Revenue Authorities permitting the respondent 3 to sell the subject land to the petitioner herein as contemplated under Section 80 of the Land Reforms Act, the same was of no assistance to the petitioner since all that the Revenue Authority did in passing that order at Annexure-D to writ petition was only to permit the petitioner to purchase the agricultural land.

10. For the aforesaid reasons, he prayed that the instant writ petition be dismissed.

11. The learned Additional Government Advocate on the other side while supporting the impugned endorsement issued by the Tahsildar submitted that the grant of subject land since came to be cancelled on 21-3-1972 by the Assistant Commissioner by passing the considered order thereon, that too at the instance of the original grantee, Kamala Shedthi herself, there was every justification on the part of the Tahsildar to issue the impugned endorsement declining to do the durast and phodi work. He had further submitted that the detailed objection statement filed by him for and on behalf of the respondents 1 and 2 be considered before passing the considered order in the instant writ petition.

12. In reply, the learned Counsel for the petitioner, Sri Naik, argued with reference to Annexure-D to writ petition, copy of the order passed by the non-party Assistant Commissioner, Shimoga, wherein the permission was granted to the petitioner to purchase the subject land from the respondent 3 that the authorities in passing the said order, it was very well referred to the subject land and as such, it was not available for the learned Advocate for the contesting respondents 4 to 87 and also for the learned Additional Government Advocate to say that the grant of subject land had long back been cancelled by passing necessary order therefor by the Assistant Commissioner in the year 1972. He had also argued that at no point of time, the order of cancellation in the year 1972 was ever communicated to the

original grantee and as such, it was futile for the other side to argue as above. It was further submitted by him that with the order of cancellation, there was no good reason for the non-party Assistant Commissioner and the granting authority to permit the petitioner to purchase the subject land from the respondent 3 as per Annexure-D to writ petition, as it was argued by the learned Additional Government Advocate as well as the learned contesting respondents 4 to 87. He further submitted that if one peruses the order of cancellation, copy of one found at page 9 of the records secured by the learned Additional Government Advocate, the same appears to be nothing but a communication by the Assistant Commissioner addressed to the Tahsildar and as such the same cannot be construed in law as an order of cancellation of the grant of subject land to the original grantee by the Assistant Commissioner.

13. Now the points that arise for my consideration in the instant writ petition are as follows:

(i) Whether there was any justification on the part of the respondent 2-Tahsildar to issue the impugned endorsement dated 17-1-1999 declining to do the durast and phodi work in respect of 1 acre 38 guntas of land in S. No. 13 of Odalamane Village in issuing the impugned endorsement at Annexure-J to writ petition?

(ii) Whether the respondents 4 to 87 can in any way oppose the instant writ petition filed by the petitioner or not?

14. Now I take up the above points as hereunder:

Point No. (i):

15. The impugned endorsement issued by the respondent 2-Tahsildar not to entertain the request of the petitioner to conduct durast and phodi work is for the sole reason that the original grant made on 19-7-1961 to the original grantee, Kamala Shedthi, by the non-party Assistant Commissioner came to be cancelled by him as the granting authority on 23-1-1972.

16. To quote the endorsement, the same reads as hereunder:

17. The learned Additional Government Advocate while supporting the above endorsement issued by the Tahsildar vehemently argued that when the original grant made in the name of original grantee, Kamala Shedthi in the year 1962 came to be cancelled on 23-1-1972, the Tahsildar was justified in declining to conduct the durast and phodi work as prayed for by the petitioner and that the cancellation of grant was duly communicated to the original grantee, Kamala Shedthi, on 12-3-1974. In this context, he had specifically drawn my attention to para 3 of the objection statement filed by him, wherein he had stated that on the recommendation of the Tahsildar, the Assistant Commissioner by his order dated 23-1-1972 had cancelled the grant made in favour of the said Kamala Shedthi and that the same was communicated to her on 12-3-1974 and that therefore it was not open to the petitioner to contend that the grant had not been cancelled.

18. Now the moot point is whether there was due cancellation of the grant of the subject land by the Assistant Commissioner as argued by the learned Additional Government Advocate. In this context, it is pertinent to mention here that the cancellation order, the one the learned Additional Government Advocate referred to with reference to the records is found at page 9 thereof. I feel it appropriate to place on record. The said order reads as follows:

'A. 679/71-72/Records

Assistant Commissioner (Darkast),

Shimoga District, Shimoga

23-1-1972

To

The Tahsildar,

Tirthahalli Taluk,

Tirthahalli.