

Siddappa Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Jan-25-2006

Reported in : 2006(2)KarLJ224

Judge : N.K. Patil, J.

Acts : [Karnataka Panchayat Raj Act, 1993](#) - Sections 269

Appeal No. : Writ Petition No. 1940 of 2003

Appellant : Siddappa

Respondent : State of Karnataka and ors.

Advocate for Def. : H.B. Narayan, High Court Government Pleader for Respondents-1 and 2, ;Ravivarma Kumar and ;A. Jagannath, Advs. for Respondent 3

Advocate for Pet/Ap. : V.B. Siddaramaiah, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

N.K. Patil, J.

1. The petitioner, questioning the correctness of the order dated 30th November, 2002 in proceedings No. KPR: (A)5:2002-03 on the file of the second respondent vide Annexure-J, has presented the instant writ petition.

2. The grievance of the petitioner in the instant writ petition is that, the petitioner has been allotted a site bearing No. 37 of Bommathimmanahalli, Madhugiri Taluk, Tumkur District and after verification, the same has been certified in the mutation register by the Adhyaksha of the Grama Panchayat, Kavanadala, Madhugiri Taluk vide Annexure-A in M.R. No. 36 of 1998-99, dated 16th September, 1998. Assailing the correctness of the mutation entry dated 16th September, 1998 vide Annexure-A, the third respondent herein has filed the appeal on the file of the second respondent-Executive Officer, Taluk Panchayat, Madhugiri Taluk, Tumkur District under Section 269 of the [Karnataka Panchayat Raj Act, 1993](#) and the appeal filed by third respondent had come up for consideration before the second respondent on 30th November, 2002. The second respondent, after conducting enquiry and after verification of the relevant material available on file, has allowed the appeal and set aside the mutation entry carried out by the Adhyaksha of the Kavanadala Grama Panchayat, referred above. It is the grievance of petitioner that, the said order is passed by second respondent vide Annexure-A without conducting the enquiry in strict compliance of Section 269 of the Act. Hence, it is liable to be set aside. Therefore, petitioner felt necessitated to present the instant writ petition.

3. The principal submission canvassed by learned Counsel for petitioner is that, the second respondent has not at all conducted any enquiry before passing the impugned order. Straightaway, the second respondent has proceeded to pass the impugned order contrary to the mandatory provisions of the Karnataka Panchayat Raj Act and therefore, the impugned order passed by the authority is liable to be set aside. He further submitted that, it is a fact that, site No. 23 was earlier allotted to the brother of the petitioner after partition of the joint family property and that, the third respondent granted site No. 37 to the petitioner only after verifying the fact that, the site No. 23 fell into the share of the petitioner's brother. The Competent Authority, without appreciating this aspect of the matter and without proper verification and enquiry, has passed the impugned order. Therefore, he

submitted that, the impugned order passed by the second respondent is liable to vitiate.

4. I have heard learned Counsel appearing for petitioner and learned Counsel appearing for respondents. After careful perusal of the impugned order dated 30th November, 2002 on the file of the second respondent herein vide Annexure-J, it is manifest on the face of the order that, the second respondent has not committed any error much less irregularity in allowing the appeal filed by third respondent and setting aside the mutation entry made in favour of petitioner on 16th September, 1998 vide Annexure-A. The second respondent has given a specific finding at paragraph 1 item 5 of his order, stating that, the Secretary of the Grama Panchayat was directed to look into the original records of the Panchayat and he has submitted a report as per the panchahama conducted in the presence of panchas and has also produced a sketch along with the report, stating that, petitioner has put up fence which extends upto the main road due to which, it is reasonable to infer that, inconvenience is going to be caused to the public in general and to third respondent in particular since the said villages are adjacent and has further specifically pointed out that, there is no document as such produced by the Secretary of the Grama Panchayat in support of the entry made on 16th September, 1998, after thorough verification of the material available on the file of Grama Panchayat for the reason that, the matter was not placed before the Grama Panchayat in the meeting as per the mandatory provisions of the Act. Further, it can be seen that, the request of the petitioner should be placed before the Grama Panchayat in its meeting and the Grama Panchayat in turn has to consider the request and submit the report for making allotment in favour of the petitioner and further the same has to be forwarded to the Taluk Panchayat for clearance. In the instant case, after thorough verification of the records made available by the Secretary of the Grama Panchayat, there is no such resolution passed by Grama Panchayat nor the same has been referred to the Taluk Panchayat for confirmation or clearance for making allotment. Therefore, the mutation entry carried out in the mutation register on 16th September, 1998 bearing M.R. No. 36 of 1998-99 vide Annexure-A by the second respondent is one without jurisdiction and contrary to the mandatory provisions of the Karnataka Panchayat Raj Act and that, the specific finding given by second respondent is in consonance with the

mandatory provisions of the Act. Therefore, I do not find any justification or good grounds to entertain the instant writ petition nor there is any justification to interfere in the well-considered order passed by the second respondent-Taluk Panchayat.

5. Having regard to the facts and circumstances of the case, the writ petition filed by petitioner is dismissed as devoid of any merits.

6. Learned Government Pleader is permitted to file memo of appearance within two weeks from today.

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