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D. Devaiah and Others Vs. Deputy Commissioner, Mandya District and Others

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Court : Karnataka

Decided On : Mar-21-2000

Reported in : ILR2000KAR3252; 2001(2)KarLJ178

Judge : G.C. Bharuka and ;N.S. Veerabhadraiah, JJ.

Acts : [Karnataka Land Revenue Act, 1964](#) - Sections 71 and 94-A; Karnataka Land Revenue Rules, 1966 - Rules 108-D and 108-I; Karnataka Land Grant Rules, 1969

Appeal No. : Writ Petition No. 2489 of 1999

Appellant : D. Devaiah and Others

Respondent : Deputy Commissioner, Mandya District and Others

Advocate for Def. : Sri H.B. Mahesh, High Court Government Pleader and ;Sri B.M. Krishna Bhat, Adv.

Advocate for Pet/Ap. : Sri S.R. Hegde Hudlamane, Adv.

Judgement :

ORDER

G.C. Bharuka, J.

1. This writ petition has been filed for quashing the order dated 25-5-1998 (Annexure-C) passed by the respondent-Deputy Commissioner directing the respondent-Tahsildar to grant 8 guntas of land in Sy. No. 211 of Hulivana Village, Mandya Taluk, Mandya District, in favour of the 4th respondent-Sri H.C. Chowdaiah.

2. According to the petitioners, they are owners of various sub-divided extent of lands in Sy. Nos. 211 and 212 of Hulivana Village. Their grievance is that the disputed land being Halla Karab and which situates between Sy. Nos. 211 and 212, could not have been directed to be granted in favour of the 4th respondent by way of regularisation of his alleged unauthorised occupation under Section 94-A of the Karnataka Land Revenue Act (in short the 'Act') read with the Karnataka Land Grant Rules, 1969 (in short the 'Rules').

3. Keeping in view the nature of the controversy, we had called for the original records of the revenue authorities which have been made available to us. On perusal of the records, it is revealed that the 4th respondent had made an application dated 1-8-1991 in Form 50 for regularisation of 16 guntas of land lying by the side of Sy. No. 211 of Hulivana Village on the ground that the same was in his unauthorised occupation for about 28 years.

4. The records further reveal that on receipt of the said application as provided under Rule 108-D of the Rules, the Revenue Inspector verified the particulars furnished in the application submitted by the 4th respondent. As is evident from the report, he found that the 4th respondent had disclosed only 34 guntas as against 58 guntas of land in column 'the total extent of land the applicant is in possession'. He also reported that the 4th respondent had encroached 8 guntas of Kharab land. However, the office of the Tahsildar reported that since the land in question was a 'Halla Kharab' therefore the same cannot be regularised. The TalukShirastedar of the Mandya Taluk has also made similar report. On the basis of the revenue records, the Tahsildar in his report dated 10-5-1994 observed and opined that the land being Halla Kharab the same cannot be regularised. Accordingly, on the basis of the said reports, the Land Grant Committee, acting through its President, rejected the application for grant on 13-5-1994.

5. Being aggrieved by the order of the Committee, the contesting respondent preferred an appeal under Rule 108-D(6) of the Rules before the Assistant Commissioner, who by his order dated 11-3-1997 (Annexure-B), rejected the claim of the contesting respondent on the ground that he was big landlord and the land to be regularised was of Halla Kharab, tank bund, therefore, the same cannot be regularised without the permission of the Public Works Department. The said order of the Assistant Commissioner was questioned by the contesting respondent by preferring second appeal in case No. RA-61 of 1997 under Section 50 of the Act before the Deputy Commissioner, who by his impugned order dated 25-5-1998 quashed the decision of the Taluka Committee as also the order of Assistant Commissioner and directed the Tahsildar to grant 8 guntas of land in favour of the contesting respondent fixing occupancy price by taking the view that there was no evidence on record to show that the land which was in the occupation of the contesting respondent constitutes 'Halla Kharab'.

6. The above finding recorded by the respondent-Deputy Commissioner is ex facie contrary to the materials referred to by the revenue authorities who have consistently held that the disputed land is a 'Halla Kharab'. Moreover, the respondent-Deputy Commissioner has not referred to any cogent material to hold that the reports of the revenue authorities are not based on revenue records or that they have committed any error of fact in reporting to the Committee that the disputed land was 'Halla Kharab'. Even the Assistant Executive Engineer, No. 3, Vishweswaraiah Channel Sub-Division, Maddur, has reported to the Executive Engineer, Vishweswaraiah Channel Division, Mandya, that the land being 'Halla Kharab' it could not have been granted in favour of the contesting respondent by way of regularisation.

7. In the above connection, it is appropriate to quote Rule 108-I of the Rules, which reads as under.-

'Rule 108-I. Certain lands not to be granted.--Notwithstanding anything contained in this chapter, lands assigned for special purposes under Section 71 of the Act, and land described in revenue records, as Devarakadu, Urduve, Gunduthop Tankbed, Phut Kharab, Kharab Halla, datereserve, burial grounds and such lands,

which in the opinion of the Government is required for public purpose, shall not be granted'.

8. From the above rule, it is clear that it is not permissible for the Committee to regularise unauthorised occupation of land which is described as Kharab Halla in the revenue records. The respondent-Deputy Commissioner has not held that the disputed land was not Kharab Halla as per the revenue records.

9. There is another serious procedural infirmity in the order of the Deputy Commissioner in directing the respondent-Tahsildar to grant 8 guntas of land in favour of the contesting respondent. The land which was unauthorisedly occupied can be granted only after inviting objections from the interested persons and on consideration of the objections received in this regard. This mandatory condition is contained under Rule 108-D of the Rules. Sub-rules (1) and (2) thereof, which are material for the present purpose, are reproduced hereunder:

'108-D. Procedure of the Committee.--(1) The Committee or the Additional Committee shall, after verifying the particulars furnished by the applicant and after holding such enquiry as it deems necessary determine the extent of land to which the applicant is entitled for grant and the amount required to be paid by him for the grant of land, publish a notice which shall be in Form 52 in the Chavdi of the village in which the land is situated and also in the office of the Mandal Panchayat, inviting objections from the interested persons for the proposed grant, within such time as may be specified in the notice, which shall not be less than fifteen days from the date of the notice.

(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'.

10. In the present case, as noticed the Tahsildar having found from the revenue records that the disputed land was Halla Kharab recommended to the Committee that it will be impermissible to grant the said land to respondent 4. The Committee acting on the said recommendation rejected the application of the contesting

respondent. Therefore, there was no occasion or necessity of publishing any notice in the prescribed Form 52 inviting objections from interested persons regarding the request for grant of the respondent. Therefore, even if for a moment the view of the respondent-Deputy Commissioner that the land was not Halla Kharab is accepted but still he could have at best directed the Committee to follow the procedure laid down under Rule 108-D of the Rules of inviting objections from the interested persons and thereafter take appropriate decision regarding grant of land.

11. For the aforesaid reasons, the order dated 25-5-1998 passed in Case No. RA 61 of 1997 on the file of respondent-Deputy Commissioner cannot be held to be sustainable in law. It is accordingly quashed. The writ petition is allowed. The parties to bear their own costs.

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