Putte Gowda Vs. State of Mysore and ors.

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Court : Karnataka

Decided On : Jan-30-1959

Reported in : AIR1960Kant243; AIR1960Mys243; ILR1959KAR356

Judge : S.R. Das Gupta, C.J. and ;A.R. Somnath Iyer, J.

Acts : Constitution of India - Article 166

Appeal No. : Writ Petn. No. 48 of 1957

Appellant : Putte Gowda

Respondent : State of Mysore and ors.

Judgement :

S.R. Das Gupta, C.J.

(1) The Petitioner before us challenges in this writ petition the order passed by the Government cancelling the previous grant which was made to him and dividing the lands between himself and respondents 5 and 6.

(2) The facts of this case would appear more clearly from the recommendation made by the Revenue Commissioner to the Government on 14th November 1955 than from the petition or from the counter-affidavit which are filed before us. It appears from the said reference that the Deputy Commissioner had submitted to the Revenue Commissioner for confirmation of the lease grant of the lands in

dispute made to the petitioner at an upset price of Rs. 500 per acre. The Revenue Commissioner in his turn recommended to the Government that the lease grant in respect of the lands in question in favour of the petitioner may be confirmed at an upset price of Rs. 600 per acre.

It appears from the records of the Government relating to this matter, which have been produced before us by the Assistant Advocate-General, that a note had been put up before the Revenue Minister by the Revenue Secretary recommending that the proposal of the Revenue Commissioner treating as a case of cancellation of the lease and regrant may be sanctioned. The Revenue Minister gave his sanction to the said recommendation by putting his initials on the file on the 18th December 1955. From the subsequent records relation containing the Revenue Minister's initials was returned to the Revenue Secretary on 19th December 1955.

On 30th December 1955 another not e was put up in this matter by the Secretary to the Revenue Minister. In the said note is stated that two other persons have made applications praying for giving an opportunity to be heard in this matter. The Secretary in his note recommended that these applications have either to be rejected or posted for hearing and that as orders have been passed on 18th December 1955 by the Revenue Minister, the same may be given effect to and the petition may be rejected. On this note, however, the Revenue Minister ordered that the Advocate should be heard on 23rd January 1956.

It was on 23rd January 1956 that the Advocate for the parties were heard and a final order was made by the Revenue Minister although the order communicated to the petitioner bears the date December 14, 1956. It is this order which the petitioner is challenging in this writ petition. By this order the Revenue Minister directed that the land in question may be divided and allotted to the petitioner and to the other persons, (respondents 5 and 6 before us) who had applied to the Revenue Commissioner, in certain proportions mentioned in the order.

(3) The learned Advocate for the petitioner urged only one point before us in support of this petition. He contended that the Revenue Minister having once passed an order on 18th December 1955 had no jurisdiction to review the same and pass a different order which he has purported to do. In support of this

proposition he relied on a decision of the Mysore High Court reported in Sampu Gowda v. State of Mysore, AIR 1953 Mys 156, which was a Full Bench decision of the said High Court.

The learned Advocate contended on the authority of this decision that there is no inherent power or authority vested in Government to review the orders passed for grant of land under the Land Revenue Code. The learned Advocate, as I have mentioned, urged before us that the order passed by the Revenue Minister on 18th December 1955 cannot be reviewed by him.

(4) The learned Assistant Advocate-General appearing on behalf of the State did not dispute the proposition propounded the learned Advocate for the petitioner as a proposition of law. What he, however, contended was that there was no order of the Government passed on 18th December 1955 which can be said to have been reconsidered. He contended in the first place that the mere fact that the Minister had put down his signature or initial on particular proposal put forth before him does not mean that there has been an order of the Government.

He relied on a decision of the Madras High Court reported in Pioneer Motors Ltd. v. O. M. A. Majeed, : AIR1957 Mad48 , in support of his aforesaid contention and urged that it is only when the order is finally published in the name of the Governor by the Secretary that it becomes an order of the Government. The learned Assistant Advocated-General also contended before us that even though it can be said to be an order to the Govt. it has to be expressed formally as required by Art. 166 of the Constitution in the name of the Government.

(5) As for the first contention urged by the learned Assistant Advocate-General it should be mentioned that the Madras High Court in the said decision proceeded on the Business Rules which were in force in Madras State. It cannot be said that the Business Rules Madras State, on which the High Court of Madras based its said decision are same as Business Rules of the Mysore State. The learned Assistant Advocate-General, however, referred us to certain Rules of Business as in existence in the Mysore State and contended that the said rules would also lead us to the same conclusion. The rules on which he relied are Rules 12, 13 and 14. Rule 12 lays down that no Department shall, without previous consultation with the

Finance Department, authorise any order other than order pursuant to any general delegation made by the Finance Department which amongst others involve any grant of land or assignment or revenue or concession. Rule 13 provides the same thing which Art. 166 of the Constitution lays down. I shall consider this point hereafter when I come to deal with the second contention of the learned Assistant Advocate-General. Rule 14 provides that orders or instruments made and executed in the name of the Governor shall be Additional Secretary, a joint Secretary, a Deputy Secretary, an Under Secretary, an Assistant Secretary or by specifically empowered in that behalf by the Government and such signature shall be deemed to be the proper authentication of such order or instrument. The only other provision to which also our attention was drawn by the learned Assistant Advocate-General is Para 18 of the Instructions regarding the Business of Government which provides that where in any case the Government which provides that where in any case the Governor considers that any further action should be taken or that action should be taken otherwise than in accordance with orders passed by the Minister-in-charge the Governor may refer the case to the Chief Minister and should he require the case to be laid before the Council of Ministers for consideration, the case shall be so laid.

(6) The learned Advocate, relying on these rules, argued before us that as an order passed by a Minister can be referred to a Council of Ministers, and as an order requires to authenticated by the signature of a Secretary, Additional Secretary, Joint Secretary, Deputy Secretary, etc., as mentioned in Rule 14, it is only when an order is finally published in the name of the Governor by the Secretary, as held in the Madras decision that it can be said to be an order of the Government. I am unable to accept this contention of the learned Assistant Advocate-General.

(7) Before I deal with this contention I should mention that although the petitioner in his affidavit filed in support of the petition before us had clearly stated that the 1st respondent, i.e. the State of Mysore had on receipt of this recommendation by the 2nd respondent to the petitioner, the State in the counter-affidavit filed in reply to the said affidavit only contented itself by saying that the order of the Government in respect of this matter. It was not stated in the said counter-affidavit

that although the Minister purported to make an order the same in law cannot be said to be an order as it was not authenticated in the manner as required by Rule 14 and as it was still liable to reopened at the instance of the Governor and sent back to the Council of Ministers. These Pleas do not find a place in the counter-affidavit filed on behalf of the State. However, as these pleas were raised and argued before us I would deal with the same. I do not agree with contention of the learned Assistant Advocate-General that the order in question, because it was not yet put in the form in which it is required to be done or because it was liable to be reopened at the instance of the Governor under Rule 18, cannot be said to be an order of the Government. The order in question was still an order of the Government. How the order has to be expressed and whether or not it is liable to reopened by the Governor are different matters. They do not affect the question whether or not an order has been made by Government. That question depends upon whether or not Revenue Minister was empowered to make it. Rule 10 of the said Rule lays down that without prejudice to the provisions of Rule 9 and Rule 12 the Minister-in-charge Shall be primarily responsible for the Department. Rule 9 and purpose of determining this matter. It follows, therefore, that the Revenue Minister is primarily responsible for the disposal of this particular matter and any order passed by him must be said to also refer to Para 5 of the Instructions regarding the business of Government issued under rules made under Article 166 of the Constitution Of India. The said para provides that subject to the provisions of the Rules, the Minister-in-charge may dispose of all cases arising in Departments under his control. Having regard to these provisions, it is clear to may mind that an order passed by the Minister-in-charge would be an order which would dispose the matter which was before him. This particular matter coming within the portfolio of the Revenue Minister could be, and was in fact, disposed of by the order by him on 18-12-1955. I am unable to agree with contention of the learned Assistant advocate-General on this point.

(8) I shall now deal with the contention relation to Art. 166 of the Constitution. It appears that their Lordships of the Supreme Court in the case reported in Dattatraya v. State Bombay, : 1952 CriLJ955 , considered in full the effect of Art. 166 if the Constitution. Their Lordships laid down affects an outsider when the executive decision affects an outsider or is required to officially notified or to

communicated, it should normally be expressed in the form mentioned in Art. 166(1) i.e. in the name of the Governor. This non compliance with Art. 166(1), however, their Lordships made it quite clear, does not vitiate the order itself. Article 166, their Lordships held, directs all executive action to be expressed and authenticated in the manner therein laid down but omission to comply with these provisions does not render an executive action a nullity. On this point, namely, that non-compliance with Art. 166 did not vitiate the order itself and did not render the action in question a nullity, all the learned Judges of the Supreme Court, who decided that being so, the order itself cannot be said to have been vitiated because it was not expressed in the manner as required by Art. 166(1) of the Constitution. I am for the moment assuming that this order has to be communicated to the parties in question. Even then, the order remains valid and is not a nullity. Therefore, on the principle laid down by their Lordships of the Mysore High Court in the case reported in AIR 1953 MYS 156 (FB), I should hold that the Government having once passed an order, which is still a valid order, cannot review it on a subsequent application. In my opinion, all the contentions of the learned Assistant Advocate-General on this point should fail, and the contention urged before us by the petition should be accepted.

(9) The result, therefore, is that this writ petition succeeds and on order is made quashing the order and proceedings in Order No. R(A)12621-22--L. R. 18-56-262, dated 13-12-1956, passed by the Government in Misc. Petition No. 6550/R. The petitioner is entitled to costs of this application from Respondents 5 and 6(Advocate's fee assessed at Rs. 100).

Somanath Iyer, J.

(10) I agree.

(11) Petition allowed.