

B. Sidramappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Oct-31-1989

Reported in : ILR1990KAR1233

Judge : Shyamasundar, J.

Acts : Karnataka Land Grant Rules, 1969 - Rules 7(3) and 27; Land Revenue Act

Appeal No. : W.P. No. 811 of 1980

Appellant : B. Sidramappa

Respondent : State of Karnataka

Advocate for Def. : M. Siddagangaiah, HCGP for R-1 to R-5 and ;Krishnappa, Adv. for R-6 to 10, 12, 15 to 17, 19, 20(b) to (e), 21 and 23

Advocate for Pet/Ap. : D.S. Lingappa, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Shyamasundar, J.

1. The on-going dispute herein is between villagers and grantees of lands in few survey numbers of the village in question aggregating in all 30 acres distributed

among the various grantees at 3 acres per head.

2. The villagers successfully assailed these grants firstly before the Assistant Commissioner and thereafter on appeal by the grantees before the Deputy Commissioner, both of whom set aside the grants made to the grantees in the year 1972 and ultimately by the order of the Deputy Commissioner made in the year 1976 as per Annexure 'G' the grantees finally lost the grants on the ground that the land used for grants being the village gomal land, if large chunks of it was given away the village cattle will suffer since they were already under nourished because the extent of gomal available was far below the needs of the village cattle in that they exceed 1000 and odd heads as seen from the orders of Assistant Commissioner and Deputy Commissioner at Annexures D and G.

2A. It has transpired that after the grant was set aside by the Assistant Commissioner the grantees were stripped of the lands and the lands reverted back for the common use of the village for grazing of the village cattle and this becomes apparent from the series of R.T.C. extracts filed by the petitioners. After 1976 the lands are being shown as gomal whereas earlier thereto they were shown as occupied by grantees.

3. When that was the prevailing state of affairs the jurisdictional Tahsildar at Tarikere issued a memo as per Annexure-H dated 16-7-1989 which reads:

'The memo issued on 7-2-1976 to the Revenue Inspector, Shivane Hobli and to the R.R. Section in withdrawal of the Saguvali chits, issued to the following grantees in respect of the above S.Nos. in pursuance of the orders in cancelling the grants by the appropriate authority is hereby withdrawn in pursuance of the Deputy Commissioner's letter cited, at reference (2) above read with Government letter No. RD.131.L.Gu.78, dated 29-5-1979 in set aiding the orders of appeal orders in cancelling the grants made and also regulated the grants made by the Spl.A.C. for disposal of Darkhast, Chickmagalur.'

The villagers thereafter tried to secure copies of the Government Order mentioned in the Tahsildar's memo but met with no success because they were endorsed by the Deputy Commissioner that copy of the Government Order could not be given

as it was in the nature of inter-departmental correspondence. The Stand of the Assistant Commissioner and the Tahsildar having been made apparent from the endorsements made at Exs. 'K' and 'L' on 30th and 20th August, 1979 the villagers unable to obtain the Government Order under which the grantees were again ordered to be conferred rights to the lands in question notwithstanding the appellate order of the Assistant Commissioner and the Deputy Commissioner, filed this Writ Petition in January, 1980 and obtained a stay of the Government Order dated 29th May made in Government Letter No. RD 131.L.Gu.78 referred to in Tahsildar's memo at Ex.H.

4. At the hearing of the Writ Petition I directed the Government Pleader to get an order of this Government Order and furnish it to the petitioners and accordingly the said order was furnished to the petitioners who, thereafter, took the opportunity of challenging the said order marked as Annexure-M. This order which has the effect of unsettling the order of Assistant Commissioner and the Deputy Commissioner makes curious reading and it reads:

'I am directed to state that in exercise of the powers vested in Government under Rule 27 of the Karnataka Land Grant Rules, the orders passed by the Deputy Commissioner, in his order No. RA 18/75-76 dated 29-9-1976 confirming the order of the Assistant Commissioner, Tarikere cancelling the said grants and to withdraw the saguvalli chits issued to the grantee are hereby set aside, the Deputy Commissioner is hereby directed to take action to grant the lands in favour of Bachappa and 16 other Harijana as per the order of the Special Assistant Commissioner for disposal of darkhasts in his No. Spl.DAR(T) 116/72-73 dated 20-7-1973 by taking action to reduce the gomal as contemplated under Rule 97(A) of the Karnataka Land Revenue Rules 1966 in view of the situation in the jungle area.'

Amongst the manifold challenge to the said order the ground which forms the foundation for contesting the interest of grantees in the lands in question, following the order made in 1971, is, that it had been passed without any application of mind as is evident from the fact that power under Rule 27 intended for making certain concessions regards grants in certain special cases was used to annul the orders

of the Assistant Commissioner and the Deputy Commissioner made in exercise of the appellate powers of the Land Revenue Act.. It is also pointed out that Rule 27 enjoined recording of reasons for the exercise of power under the said provision an aspect not taken notice of in the instant case would itself suffice to smother the said order. It seems to me there is considerable force in this criticism levelled against the Government Order.

5. Rule 27 which is cited in the order at Annexure-M as furnishing power to Government to pass the said order reads:

'Notwithstanding anything contained in the preceding rules, the State Government may, suo motu, or on the recommendation of the Divisional Commissioner or the Deputy Commissioner , if it is of the opinion that in the circumstances of the case or classes of cases, it is just and reasonable to relax any of the provisions of these rules, it may, by order direct such relaxation, recording the reasons for such relaxation subject to such conditions as may be specified in the orders and thereupon lands may be granted in such a case or classes of cases in accordance with such direction.'

Under the scheme of Land Grant Rules, the Government has no direct role to play since power to grant lands under the Rules is distributed amongst the subordinate authorities, the lone exception being under Rule 7(3)(iii) whereunder Government will have to be consulted in case lands sought to be granted are beyond the powers of the subordinate authority. In this case the land granted to each of the individual grantees being less than three acres, the same was well within the powers of the Tahsildar and it is he who had granted the lands to the grantees. Therefore, Government had nothing to do with the grants made. But, then, Government has the exceptional power under Rule 27 by virtue of which in certain special cases it can intervene to remove difficulties in the making of a grant by relaxing the conditions stipulated for grant of land. Following such relaxation the land becomes amenable to grant without offending the existing Rules. But, that power can be exercised only in the manner laid down by that Rule and amongst other things by recording reasons for Government's intervention in the matter. The Government is also required to make it clear as to why it was seeking to interfere

in a given case to the negation of Rules which will also lead to a countermanding of the power exercised by the granting authorities under the Rules. Herein the order made by Government under Annexure-M purporting to be one made under Rule 27 is certainly open to the twin objections put forward by the petitioners. The first one is that in the guise of exercising power under Rule 27 the Government purported to liquidate the orders of the Deputy Commissioner that had in turn affirmed the order of the Assistant Commissioner, on appeal. Judicial or quasi-judicial orders can only be interfered with in exercise of appellate powers or by a revisional authority. In exercise of powers to relax land grant rules, the order of an Appellate Authority made under the Land Revenue Act cannot be wished away as has been done herein. In exercise of that extra-ordinary power under Rule 27 the Government cannot set aside the order of the Deputy Commissioner made on appeal under the Land Revenue Act. This is the first of the two vices that afflict the Government Order.

6. The other and the second vice which affects the Government Order is the exercise of authority under Rule 27 bereft of reasons although Government is statutorily enjoined to give reasons. Power being given to a particular authority and norms laid down as to the manner in which the power has to be exercised then such power has to be exercised only in that manner and not otherwise. In *RAMACHANDRA v. GOVIND*, : [1975]3SCR839 the Court laid down:

'Where a power is given to do a certain thing; in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. This rule squarely applies where the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other.'

In the case on hand the rule in question enjoins recording of reasons for relaxing the Land Grant Rules in certain cases to overcome impediments if any in the way of granting lands. Such a deviation from the rule becomes permissible if requisite inputs are there and not otherwise. Where Government has not recorded reasons at all and not stated as to why they had thought fit to interfere in the matter by exercising power under Rule 27, it would be a case of rendition of jurisdiction in a

manner contrary to law and, therefore, the same without more renders such an order otiose.

7. For the foregoing reasons the order at Annexure-H which is found to be without jurisdiction has to be declared as such.

8. The Government Pleader, however, maintained that the Government being the supreme authority in these matters could have undone the orders of the Deputy Commissioner and the Assistant Commissioner as well. I do not think Government can depend on such unlimited authority to interfere in the manner it has done. If it thinks it has such a fund of inexhaustible power it is desirable to dislodge the mind of the Government of any such fantasy and to tell the Government that its powers are as much limited as any of its surrogates under the law viz. the Land Revenue Act. At any rate under Rule 27 Government certainly does not have such overriding powers and that at any rate becomes clear from the plain format of the rule itself.

9. In the result, the Writ Petition succeeds and is allowed. The Government Order at Annexure-M and the order of the Tahsildar at Annexure-H shall stand quashed. But, notwithstanding the striking down of these orders it will still be open to the authorities to grant lands to the respondents herein if lands are available and they are under the law eligible for such grants. No costs.