

Thimmaiah Vs. Kariyappa

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Court : Karnataka

Decided On : Jan-07-1987

Reported in : ILR1987KAR2589; 1987(2)KarLJ73

Judge : K.A. Swami, J.

Acts : Karnataka Land Grant Rules, 1969 - Rules 25 and 27

Appeal No. : W.P. No. 15504 of 1984 etc.

Appellant : Thimmaiah

Respondent : Kariyappa

Advocate for Def. : K.K. Thayamma, Adv. and ;S. Laxminarayana, HCGP

Advocate for Pet/Ap. : M.S. Gopal, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

K.A. Swami, J.

1. The petitioners in W.Ps. 2205 to 2207/85 are also the petitioners in W.Ps. 2301 and 2302/85. In W.Ps. 15504/84 and W.Ps. 2301 and 2302 of 1985, the Order dated 17th November 1980, passed by the Deputy Commissioner, Bangalore, in

Case No. L.N.D. RA.1/80-81 and also the order dated 16-6-1984 passed by the Karnataka Appellate Tribunal, in Appeal Nos. 383, 384 and 385 of 1980, are challenged. Whereas, in W.Ps. 2205 to 2207 of 1985, the Order dated 28th March, 1981 passed by the Special Deputy Commissioner, Bangalore in No. LND RA 221/80-81 ; and the order dated 16-6-1984 passed by the Karnataka Appellate Tribunal in Appeal Nos.115 of 1982 and 228 of 1981 are challenged.

2. In these petitions the subject-matter relates to validity of the grant of land. An extent of 4 acres in favour of Thimmaiah and 4 acres in favour of Sadan and two acres in favour of Goolappa, granted by the Deputy Commissioner, Bangalore, in No. B.Dis. L. & D (CR 202/77-78) dated 12th October 1978, is challenged.

3.1. Shri M.S. Gopal, Learned Counsel for the petitioners, submits that the applications filed by the respondents under Rule 25 of the Karnataka Land Grant Rules 1969 (hereinafter referred to as 'the Rules'), were not maintainable because the grant of lands in question was made in favour of the petitioners under the order issued by the State Government in No. RD 105 LGP 77, dated 1-9 1977, produced as ; that Rule 25 of the Rules, is available only when the land is granted under the normal circumstances in accordance with the Rules; that the grant has been made in favour of the petitioners after holding due enquiry and on being satisfied that the petitioners were in unauthorised occupation of the portions in Sy. No. 20 granted in their favour that the respondents have never been in occupation of the lands in question granted to the petitioners.

3.2. It is alternatively submitted that Rule 25 of the Rules, is attracted only when the grant is obtained on suppression of material facts or on misrepresentation ; and as the grant in question is not obtained either by suppression of material facts or by misrepresentation, therefore, the order of the Deputy Commissioner, setting aside the grant is arbitrary, that the Tribunal, has rightly held that the order of the Special Deputy Commissioner is not sustainable as the same has been passed without affording an opportunity to the petitioners to file their objections and without hearing ; but it ought not to have further remanded the matter for fresh consideration. It is also further contended that the grant made in favour of the petitioners was a subject matter of discussion in the Legislative Assembly ;

therefore the Government went into the matter and found that there was nothing wrong with the grant made in favour of the petitioners, hence there is no question of interference with the grant made in favour of the petitioners, which has been, on a special enquiry found to have been properly made.

3.3 It is also the contention of the petitioners that Thimmaiah s/o Kivuda Thimmaiah and Honneerappa the father of the petitioners, by way of W.Ps. 12469/79 challenged the very grant, which was dismissed on 12-10-1979 ; that the Misc. Petition No, 733/79 filed for restoration was also dismissed ; that thereafter they filed an appeal before the Tribunal, which was dismissed as barred by time. Thus, the order of grant made in favour of the petitioners stood affirmed by the Tribunal ; hence it was not open to the D.C. to exercise jurisdiction under Rule 25 of the Rules.

3.4. With reference to the contention of the petitioners that in view of the dismissal of the appeals filed by Honneerappa & Thimmaiah s/o Kivuda Thimmaiah, it is submitted that those appeals were not decided on merits and they were dismissed as barred by time. The Writ Petitions were not decided on merits. In addition to this, it is submitted that there are other respondents who have challenged the very grant on the ground that the petitioners were not in unauthorised occupation of the lands in question at any time and it is they who have been in unauthorised occupation of the land in question and as such they are entitled to the grant.

4. On the contrary, it is contended on behalf of the respondents including learned Government Pleader that the whole proceeding relating to the grant in favour of the petitioners is opposed to the facts, as the petitioners had never been in unauthorised occupation of the land that has been granted to them; that it is the respondents who have been in unauthorised occupation of the land; that among the respondents, Kivuda Thimmaiah was even granted an extent of 4-00 acres in Sy.No. 20 of Nagadevanahalli, as long back as in 1952 itself and in pursuance of the grant, he has been in occupation and cultivation of the same and this is amply supported by the entries in record of rights, patta and index of lands; that in addition to this, there was an application filed by Honneerappa the father of Gubbachaia -on 13-7-1972 for grant of 3 acres on the basis of unauthorised

occupation, in Sy.No-20 of Nagadevanahalli, and that application has not been considered; that the village panchayat has also passed a resolution supporting the case of the respondents; that they have been in possession for several years and the land be granted in their favour; that Rule 25 of the Rules applies to the case on hand inasmuch as even though the grant is made pursuant to the order dated 1-9-1977 relaxing the conditions of grant, nevertheless it is the grant made under the Rules, hence Rule 25 of the Rules is attracted; that the petitioner in W.P.15504/84 and also the petitioner in W.P.2301/85 are Government Servants; therefore they are not entitled to have the land granted in their favour. In addition to this, it is the case of the respondents that the petitioner in W.P.15504/84 possessed an extent of 2 acres in Sy.No. 45/1 of Nagadevanahalli and also 45/3 of the same village and as such, they were not the landless persons entitled to be granted the land in question It is also further contended that the other two petitioners also have the lands of their own and as such they cannot be considered as landless agriculturists.

5. Having regard to the contentions urged on both the sides, the following points arise for consideration :

1) Whether having regard to the facts and circumstances of the case, Rule 25 of the Rules is available ?

2) Whether the order of remand made by the Tribunal re-quires to be interfered with ?

Point No. 1

6.1 It is not in dispute that the land in question is Sy.No. 20 of Nagadevanahalli. It measures 12 acres 13 guntas. It is a 'Sarakari Mufat Kaval', in other words, it is a gomal reserved for grazing of village cattle. The State Government by the Order dated 1st September 1977 bearing No. RD 105 LGP 77 (Annexure-A), in exercise of its power conferred upon it under Rule 27 of the Rules relaxed the conditions for grant of land to the. landless unauthorised occupants. The order reads thus :

'In exercise of the powers conferred under Rule 27 of the K.L.G. Rules 1969, Government hereby direct the Deputy Commissioners of all the Districts to take immediate action to grant land to the landless unauthorised occupants in relaxation of the said Rules, the maximum extent being not more than 2 hectares of dry land or its equivalent as mentioned below :-

i) Two hectares of dry land or rainfed wet land ; or

ii) Two hectares of land fit for growing plantation crops; or

iii) One hectare of garden or wet land possessing facilities for assured irrigation ;
or

iv) 50 acres (i.e. 1/2 hectare) of wet land with assured irrigation facilities for growing one crop of paddy every year ; or

v) 25 acres (i.e. 1/4 hectare) of wet land with assured irrigation facilities capable of growing two crops of paddy every year. Government further direct that this class of cases need not be referred to the Land Grant Consultative Committee.

The Deputy Commissioner of Districts shall also take action to resume to Government encroached lands held by the unauthorised occupant in excess of the extents indicated above, and to bring such lands on the availability list for disposal as per the normal Land Grant Rules.

The grant of land to landless people in the manner indicated above Shall be completed by the Deputy Commissioner of the Districts within a period of one month and compliance report sent to Government.

This order also applies to encroachments made in plantation area. The orders communicated previously vide Circular dated 24-5-1975 cited (2) above are hereby withdrawn.'

[The extent mentioned in acres in Clauses IV and V above in Annexure A, does not appear to be correct as it does not correspond to the hectare mentioned in the brackets. It appears to be 2 1/2 acres and 1 and 1/4th acre respectively.]

It is pursuant to this order the land in question has been granted to the petitioners by the Deputy Commissioner Bangalore by his Official Memorandum dated 12th October 1978 bearing No. B.Dis.LND (3) CR.202/77-78, produced as Annexure 'B'.

6.2 It is the contention of the petitioners that as they have been granted the land in question pursuant to the Government Order dated 1-9-1977 (Annexure-A), Rule 25 of the Rules is not attracted, because it is submitted that under that Order, the land is required to be granted only on satisfying two conditions - that the grantee must have been a landless person; and he must have been in unauthorised occupation of the land sought for grant. Whereas, under the Rules, there are several other conditions which an applicant for grant of land is required to satisfy; therefore the grant in question cannot be considered to be the one made under the Rules, but the one made under the Government Order dated 1-9-1977 (Annexure-A).

6.3. I am of the view that it is not possible to accept this contention. The Government Order dated 1-9-1977 is issued in exercise of its power under Rule 27 of the Rules which enables the State Government to relax the conditions for grant of the land under the Rules. In other words, the Government Order dated 1-9-1977 only lays down that the land may be granted to unauthorised occupants in case they are landless persons. In other words, all other conditions laid down under the Rules need not be followed if the case falls under the Government Order- Thus, the effect of the Government Order dated 1-9-1977 is only to relax the conditions of grant. The grant is not made under the Government Order, but it is made under the Rules only. But the other conditions mentioned in the Rules need not be satisfied because those conditions are relaxed by the State Government in respect of the cases falling under the Government Order ; therefore, the grant is under the provisions of the Rules only.

6.4. Rule 25 of the Rules provides that any grant of land made under the Rules, shall be liable to be cancelled and the land resumed by the authority which granted it, where the grant has been obtained by making false or fraudulent representations or is contrary to the Rules. It further provides that no such

cancellation shall be made without giving the grantee an opportunity of being heard. Thus, Rule 25 of the Rules lays down that the grant can be set aside if it is obtained by making false or fraudulent representations or is contrary to the Rules. The case of the respondents is that the petitioners have obtained the grant on misrepresentation and also on suppressing the material facts. It is not necessary for me to express any opinion on this contention because, I am of the view that the order of remand does not call for interference. This question can be gone into by the Deputy Commissioner. Point No. 1 is answered accordingly.

POINT NO. 2

7.1. In the instant case, the Special Deputy Commissioner after making a spot inspection and on being satisfied that the grant made was not in accordance with law, and the petitioners were not in unauthorised occupation, set aside the grant made in favour of the petitioners. The Tribunal has set aside the order of the Deputy Commissioner only on the ground that he has not afforded sufficient opportunity to the petitioners. The respondents submit that the ground on which the remand is made to the Special Deputy Commissioner, is unexceptionable and it is not a matter for interference.

7.2. The contention of the petitioners that they have obtained the grant in accordance with law, can be gone into by the Special Deputy Commissioner. In this view of the matter, the contention raised by the respondent that the appropriation of the 'Gomal land' has not been made in accordance with a Division Bench decision of this Court in Manjunath K.P. and ors. v. State of Karnataka, 1976 (1)KLJ 380 need not be gone into as that contention can very well be urged before the Special Deputy Commissioner.

7.3. Similarly, the other contentions raised by the respondents that Thimmaiah is not a landless agriculturist and he owns more than 2 acres of land in Sy. Nos. 45/1 and 45/3 of Nagadevanahalli and so also the other grantees own agricultural lands ; that Sadan and Thimmaiah being Government Servants are not entitled to the grant of lands and Goolappa is not an agriculturist as he is a contractor and none of them had been in unauthorised occupation of the land and it is the Respondents who have been in unauthorised occupation of the land, need not be gone into as

all these questions are required to be considered by the Special Deputy Commissioner afresh.

7.4 The contention of the petitioners that Rule 25 of the Rules should not have been invoked having regard to the fact that the Appellate Tribunal has dismissed the appeals preferred by Thimmaiah S/o Kivuda Thimmaiah and Honneerappa, cannot also be accepted. Firstly, the appeals were not decided on merits. They were dismissed as barred by time, Secondly, even if it is held that Honneerappa and Thimmaiah son of Kivuda Thimmaiah were not entitled to challenge the order of grant in a petition under Rule 25 of the Rules, the same cannot hold good against the other applicants who have not challenged the order by way of appeal. They have filed application under Rule 25 of the Rules for setting aside the grant on the ground that the grantees have never been in unauthorised occupation of the land in question, and even otherwise, they are not entitled to the grant, will have to be enquired into. Therefore, having regard to the facts and circumstances of the case, I am of the view that the circumstance that the appeals filed by Thimmaiah S/o Kivuda Thimmaiah and Honneerappa were dismissed as barred by time, does not come in the way of the Deputy Commissioner to exercise the power under Rule 25 of the Rules.

8. For the reasons stated above, the Writ Petitions fail and the same are dismissed. It is made clear that except the contention relating to maintainability of the application, Which is negatived, all other contentions are left open.

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