

**Yellappa Vs. State of Karnataka**

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**Court :** Karnataka

**Decided On :** Nov-16-1990

**Reported in :** ILR1991KAR2726

**Judge :** M. Ramakrishna, J.

**Acts :** Urban Land (Ceiling and Regulation) Act, 1976 - Sections 2(1) and 6(1);  
Karnataka Land Revenue Rules, 1965 - Rule 102A

**Appeal No. :** W.P. No. 2883 of 1984

**Appellant :** Yellappa

**Respondent :** State of Karnataka

**Advocate for Def. :** K. Srinivasa Murthy, HCGP

**Advocate for Pet/Ap. :** Umesh R. Malimath, Adv.

**Disposition :** Writ petition allowed

**Judgement :**

ORDER

**M. Ramakrishna, J.**

1. Heard Sri Umesh R. Malimath, learned Counsel for the petitioner.

2. The order made by this Court on 22-10-1990 is recalled.

3. It is not in dispute that the land bearing R.S.No. 172 of Gopanakoppa village, Hubli Taluk, Dharwad District, came to be granted in favour of Sri Yellappa, the petitioner herein, by order dated 11-8-1971 made by the competent authority. The said grant is made under the provisions of Rule 102A of the Karnataka Land Revenue Rules, 1965. For the purpose of convenience the said Rule is extracted here under:

Planting of trees by private persons on Governments Lands -(1) The Deputy Commissioner may subject to the following conditions, grant permission to any person to plant and grow trees on lands vesting in the State Government, in any village namely -

(i) the grantee and his successor in interest (herein after referred to as 'Hakdar') shall be entitled only to the usufruct of such trees and not to any other right over the trees or lands on which they are planted;

(ii) fee of twenty paise per annum for every tree planted shall be paid as ground rent;

(iii) the Hakdar shall raise trees within two years from the date, the permission is granted;

(iv) the Hakdar shall not do any act which is destructive or permanently injurious to the land;

(v) the Hakdar shall not interfere with any existing or customary rights of the public or of owners of adjoining land over such land;

(vi) the permission will be liable to be cancelled for contravention of any of the above conditions and the Hakdar shall not be entitled to any amount for such cancellation.

(vii) the Hakdar shall not be entitled to any amount when such trees have to be removed for widening of roads or for other public purposes or when the land is disposed of under the Karnataka Land Grant Rules, 1969. If the trees are to 'be

removed for any of the said purposes the Hakdar may be allowed to remove the trees of his own cost.

(2) In cases where trees have already been raised by any person on the lands vesting in Government prior to the coming into force of these Rules, the persons concerned may apply to the Deputy Commissioner for grant of permission to collect the usufruct of such trees. If the Deputy Commissioner is satisfied that such person has raised the trees and is of the opinion that the grant of permission is not objectionable he may grant permission to such person to collect the usufruct of such trees subject to the conditions mentioned in Sub-rule (1);

Provided that the ground rent in respect of such trees shall be paid from the date of their planting.

(3) A register called in respect of such trees for each village shall be maintained wherein a record shall be made of the trees already existing on the land and of the permission hereafter granted to the Hakdar for raising the trees. The register shall be preserved in the Taluk Office.

(4) The Register shall be checked by the Tahsildar at least once in a year.

4. In view of the nature of grant made by the Tahsildar, it is seen that the authority granted the land so as to enable the grantee to grow certain fruit bearing trees subject to the conditions provided under the grant.

5. Accordingly, after taking possession of the land in question pursuant to the grant, the petitioner has raised Guava plants. Now there are standing trees. The Special Deputy Commissioner and Competent Authority, Dharwad (Respondent-2 herein) passed an order on 27-7-1983 vide Annexure-B by which he held that, Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976, ('the Act' for short) having been applied to the land in question, the petitioner is liable to surrender certain extent of land in Survey No. 172 of Gopanakoppa village, Hubli Taluk, Dharwad District

6. After holding an inquiry under Section 8(1) of the Act, he passed the impugned order directing him to surrender 4046.8459 sq. ft. in S.No. 172 in favour of the

Government. It is this order that is called in question in this petition under Articles 226 and 227 of the Constitution of India.

7. The main argument advanced by the learned Counsel for the petitioner is that having regard to the nature of grant made by the competent authority in the year 1971 referred to above, the petitioner has been enjoying the usufruct of the trees raised by him on the land in question subject to the conditions of the grant. Therefore the legal contention is that having regard to the definition found in Section 2(i)(i), the word 'to hold' clearly indicates that the land in question cannot be said to be a land coming within the purview of the above definition. Since the petitioner has been enjoying the granted land under the conditions of the grant, he cannot be said to be owner of the land. Therefore, the view taken by the Deputy Commissioner and Competent Authority holding that Section 6 of the Urban Land (Ceiling and Regulation) Act, 1976, is applicable to the land in question is wholly incorrect and illegal. To appreciate the contention, it is necessary to extract Clause (1) of Section 2(1) of the Act, which reads:

'to hold with its grammatical variations in relation to any vacant land means:

(i) to own such land; or

(ii) to possess such land as owner or as tenant or as mortgagee or under an irrevocable power of attorney or under a hire purchase agreement or partly in one of the said capacities and partly in any other of the said capacity or capacities.

Explanation - Where the same vacant land is held by one person in one capacity and by another person in another capacity then for the purposes of this Act such land shall be deemed to be held by both such persons.

8. Having regarding to the definition found in the Act, as extracted above, it is made clear that the same can be extended only to a land owner as indicated in Section 2(1)(i) of the Act. In the instant case, as the land in question came to be granted under the provisions of Rule 102A of the Karnataka Land Revenue Rules extracted above, one of the conditions of the said grant as can be seen in Condition 6 incorporated in the Grant Certificate is that the petitioner should raise

fruit bearing trees and enjoy the usufructs of the same and the grant will be liable to be cancelled for contravention of any of the conditions and having regard to the scheme of the grant found in Rule 102A, it is clear that it is not the intention of the Government to confirm the ownership or any other right except the right expressly conferred under the grant i.e., to raise fruit bearing trees and to enjoy the usufructs. That being so having regard to the scheme of Rule 102A of the Karnataka Land Revenue Rules, it is made clear that Section 6 of the Act cannot be extended to the petitioner. Therefore the order dated 27-7-1983 impugned in this petition made by the Special Deputy Commissioner and Competent Authority, Hubli Dharwad Urban Agglomeration, Dharwad vide Annexure-B is hereby quashed. Writ Petition is allowed.

9. In the circumstances of the case, there shall be no order as to costs.

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