D. Venkatesha Gowda Vs. State

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Court : Karnataka

Decided On : May-28-1990

Reported in : ILR1991KAR3096; 1990(1)KarLJ242

Judge : M. Ramakrishna, J.

Acts : Karnataka Land Grant Rules, 1969 - Rule 25

Appeal No. : W.P. No. 20582 of 1983

Appellant : D. Venkatesha Gowda

Respondent : State

Advocate for Def. : Patel D. Karigowda, HCGP for R-1, R-3 and R-4

Advocate for Pet/Ap. : B.M. Krishna Bhat, Adv.

Disposition : Writ petition dismissed

Judgement :
ORDER

M. Ramakrishna, J.

1. The petitioner in this Writ Petition has challenged the legality and correctness of the orders (Annexure-C and D) passed by the Special Deputy Commissioner, Kolar District, Kolar and the Karnataka Appellate Tribunal, respondents 3 and 2

respectively.

2. The matter arises in this way:

Sy. No. 218 to the extent of 10 acres was a Government land. That land came to be granted in favour of the petitioner by the Tahsildar, Chintamani as per Annexure-A. By a perusal of Annexure-A it is seen that the land in question came to be granted for a specific purpose viz., for planting 200 honge and 200 tamarind trees, subject to certain other conditions laid down in the Certificate (Annexure-A). I will refer to the conditions later.

3. The Deputy Commissioner, Kolar by an order dated 20-10-1979 (copy not produced), cancelled the grant of the Tahsildar made in favour of the petitioner mainly on the ground that there was breach of the condition of the grant in that the petitioner failed to raise the trees within a period of two years as stipulated in Condition No. 3 of Annexure-A. Aggrieved by the said order, the matter was taken up before the Karnataka Appellate Tribunal in Appeal No. 536 of 1979. The Tribunal allowed the appeal, set aside the order of the Deputy Commissioner and remitted the matter for reconsideration on the ground that the petitioner was not given proper opportunity of being heard before passing the order impugned therein. Pursuant to the said order, the Deputy Commissioner reconsidered the matter a fresh and passed the order impugned herein at Annexure-C, by which he held that the petitioner, failed to raise the trees within two years as stipulated in Condition No. 3 of Hakdar Certificate (Annexure-A), that though the land was cultivable and there were a number of landless Harijan applicants for grant of this land, their case could not be considered on account of the permission granted to the petitioner to take up plantation and that the petitioner grantee had sufficient land owned by him in the adjoining Survey No. 258.

4. Aggrieved by the said order of the Deputy Commissioner, again the matter was taken up before the Karnataka Appellate Tribunal in Appeal No. 326 of 1982. The Tribunal having heard both parties, agreed with the view taken by the Deputy Commissioner on all the three findings and dismissed the appeal, Hence, this petition.

5. The main ground of attack taken by the learned Counsel for the petitioner is that the Deputy Commissioner was in error in having gone outside the purview of the enquiry as to the compliance or otherwise of the condition of the grant and therefore the impugned orders resulting in cancellation of the permission for plantation cannot be sustained. The first limb of argument of the learned Counsel for the petitioner is that the Deputy Commissioner ought to have confined himself as to the non-compliance or breach of the condition of the grant made by the Tahsildar. The other limb of the argument is that the Deputy Commissioner was not right in saying that there was breach of the condition inasmuch as, according to him, Condition No. 3 had been complied with because the petitioner raised plants within two years on the land in question. Therefore, factually the view taken by the Deputy Commissioner is incorrect. I do not see any force in either of these contentions.

6. Dealing with the first contention that the Deputy Commissioner had no power to consider any aspects alien to the enquiry for purposes of recording as to whether there is compliance of the condition of the grant and therefore the Deputy Commissioner was not right in considering the needs of other villagers or landless people seeking grant of land in the said Survey number, I must say that it is one without force for the reason firstly that in view of the sovereign power of the State Government, it has all the rights as to the disposal of the Government land under its control and secondly in view of the language employed in Annexure-A, what is granted in favour of the petitioner is only permission to plant 200 honge and 200 tamarind plants in Sy. No. 218 of Santhekallahalli village in an extent of 10 acres which exclusively under the control of the State Government, subject to the conditions laid down therein. Thirdly, while granting permission in favour of the petitioner for planting honge and tamarind trees, right to dispose of the said land has been continued to vest in the State Government. To demonstrate this aspect of the matter, Condition 6 -incorporated in the grant is necessary to be noticed. It reads:-

'6. 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 purpose, the hakdar may be allowed to remove the trees at his own costs.'

(Underlining is mine)

7. In view of the foregoing, it is undisputed that mere permission being granted to the petitioner to enable him to take up plantation of honge and tamarind trees in the land granted to him does not mean that a right to cultivation of the land in question is given in favour of the petitioner in terms of the Land Grant Rules. In other words, grant confines itself to the permission granted to the petitioner only for purposes of plantation of honge and tamarind trees. Lastly, in view of the right reserved in the State Government as found in Condition 6, mere grant of permission to plant trees would not take away that right of the Authorities to grant occupancy right in favour of others, if they so desire in the interests of public. Therefore, the argument that the Deputy Commissioner while passing the impugned order cancelling the grant is again outside the purview of the enquiry for the purpose of cancellation, cannot be sustained as that power of granting land for purposes of cultivation is still vested in the State Government, in view of the Condition referred to above. It is therefore open to the Deputy Commissioner to consider this aspect of the matter also while taking into account the question whether the grantee has failed to comply with any condition for the purpose of cancellation of the grant. That power is always there with the granting authority. Therefore, this argument of the petitioner must fail.

8. Dealing with the second contention that the Deputy Commissioner was in error in recording a finding that there is breach of Condition No. 3 of the grant inasmuch as the grantee has failed to take up plantation of the trees within two years from the date of grant, now we will have to examine whether the said finding is correct or not.

9. To answer this question, we need not go far as in para-5 of the order, Annexure-C, the Deputy Commissioner has observed:

10. From the above it is clear that the Deputy Commissioner having inspected the spot came to the conclusion that the petitioner had not planted 200 honge and 200

tamarind trees as provided in Condition 3 of the grant made on 2-1-1978. Therefore, the submission that the Deputy Commissioner has not recorded a specific finding that there is breach of Condition 3, is not correct. Even after the expiry of two years, the petitioner had not taken up plantation which was the object of the grant. Thus, the argument that the Deputy Commissioner did not apply his mind for recording a correct finding on factual position is again one without any force.

11. Although the observation of the Deputy Commissioner that the land in question may be granted to landless Harijans, is extraneous for the purposes of the enquiry, there is a specific finding recorded by the Deputy Commissioner that there is breach of Condition No. 3 which is enough to cancel the permission granted to the petitioner. No material is produced before the Court to show that the petitioner did comply with Condition 3 within the given time. Therefore, I do not see any good ground to interfere with the conclusion reached on facts by the Deputy Commissioner and upheld by the Appellate Tribunal.

12. Merely because the Deputy Commissioner has observed in the impugned order that the land is cultivable and fit for being granted to landless Harijans so that they could make out their living, it cannot be said that his conclusion is bad for, the Deputy Commissioner did apply his mind to verify whether the petitioner complied with the Conditions of the grant. Indeed, he has specifically pointed out that the petitioner is a sufficient holder inasmuch as he owns some land in Sy. No. 258 adjoining this land. This is again a ground to cancel the grant.

13. In the result, I make the following: