

Boregowda Vs. the Special Deputy Commissioner and ors.

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Court : Karnataka

Decided On : Feb-15-2002

Reported in : 2002(5)KarLJ174

Judge : N.K. Patil, J.

Acts : [Karnataka Land Revenue Act, 1964](#) - Sections 71, 91 and 93; Karnataka Land Revenue Rules, 1966 - Rule 108I

Appeal No. : Writ Petition No. 22566 of 2000

Appellant : Boregowda

Respondent : The Special Deputy Commissioner and ors.

Advocate for Def. : N.K. Ramesh, Govt. Adv. for Respondents 1 and 2 and ;S.V. Narayana Murthy, Adv. for Respondent 3

Advocate for Pet/Ap. : P.N. Nanja Reddy, Adv.

Judgement :

N.K. Patil, J.

1. The matter is taken up for hearing with the consent of the learned Counsels appearing for both the parties.

2. The petitioner assailed the legality and validity of the impugned order in R.A. No. 8 of 1987-88, dated 28-3-1990 and order dated 16-7-1991 made in R.A. No. 7 of 1990-91 and further order dated 4-4-1997 made in Revision Petition No. 179 of 1991 passed by the respondents 2 and 1 respectively. Further, sought for a direction directing the respondents to grant any other relief if it is permissible under law.

3. The petitioner contended that he is the absolute owner of the land bearing Sy. No. 154 of Baragooru Village, Dandiganahalli Hobli, Channarayapatna Taluk, Hassan District, measuring 3 acres 4 guntas. The said land was granted to the petitioner by the Tahsildar, Channarayapatna vide grant order dated 30-6-1982. From the date of grant, till today the petitioner is in peaceful possession and the enjoyment of the land in question. Before the Assistant Commissioner, the 3rd respondent herein has challenged the grant on the ground that the said land was being used by the villagers for grazing purpose. The Assistant Commissioner on 7-8-1984 allowed the appeal filed by the 3rd respondent in R.A No. 8 of 1983-84 cancelling the grant made in favour of the petitioner.

4. Aggrieved by the said order passed by the Assistant Commissioner, the petitioner herein has filed an appeal before the Deputy Commissioner. The Deputy Commissioner after hearing both sides has set aside the order passed by the Assistant Commissioner and stood remitted back to the Assistant Commissioner to rehear the matter afresh and pass appropriate order on 10-1-1986 in R.A. No. 67 of 1984-85.

5. After remand, the Assistant Commissioner has heard the matters in detail after considering the relevant materials on record and passed the order on 28th March, 1990 in R.A. No. 8 of 1987-88 setting aside the grant made in favour of the petitioner by the Tahsildar dated 30-6-1982. Assailing the said order passed by the Assistant Commissioner, the petitioner herein has filed an appeal before the Deputy Commissioner in R.A. No. 7 of 1990-91. The Deputy Commissioner after hearing both the parties and after going through the material records has passed the order dated 16-7-1991 confirming the order passed by the Assistant Commissioner and further directed the Tahsildar to issue a show-cause notice to

the petitioner regarding handing over possession of the suit land on or before 31-8-1991.

6. Thereafter, feeling aggrieved by the order passed by the Deputy Commissioner, the petitioner herein has filed a Revision Petition No. 179 of 1990-91 on the file of the Karnataka Appellate Tribunal, Bangalore. The Appellate Tribunal after hearing both the sides at length and in view of the law laid down by this Court held that the revision filed by the petitioner is not maintainable by its order dated 4th April, 1997. Feeling aggrieved by the order passed by the Assistant Commissioner, Deputy Commissioner and the Tribunal respectively, the petitioner has filed this present writ petition in this Court.

7. The principal submission canvassed by the learned Counsel for the petitioner is that the impugned orders passed by the respondents are contrary to law and even further he pointed out that as per Section 49 of the Karnataka Land Revenue Act the 3rd respondent has no locus standi to prefer an appeal. The learned Counsel further pointed out that the Deputy Commissioner ought to have granted an order to de-reserve the land and might have been confirmed the order passed by the Tahsildar and without considering this aspect of the matter, the respondents have proceeded to cancel the grant made in favour of the petitioner. Further, he pointed out that the land in question was not reserved for any special purpose much less date reserve land as per the entries found in the relevant RTC extracts. Hence, it is not sustainable in the eye of law.

8. Per contra, the learned Government Advocate appearing for the respondents 1 and 2 pointed out that the impugned orders passed by the respondents 1 and 2 and the Tribunal are strictly in accordance with law. Further, he submitted that the land in question has been reserved for specific purpose until and unless the same was de-reserved for considering the case of the petitioner by the Competent Authority. The request of the petitioner cannot be considered and it is not permissible. Hence, it is prayed that the impugned orders passed by the respondents 1 and 2 and the Tribunal are in accordance with law and pray that the writ petition may be dismissed and also rightly pointed out that there is an inordinate delay in filing the above writ petition. The delay is not explained nor

assigned any cogent reasons for condoning the delay in filing the writ petition.

9. There is no dispute regarding the grant made by the Tahsildar, Channarayapatna Taluk dated 30-6-1982 in favour of the petitioner without verifying the relevant records. The 3rd respondent has filed an appeal against the grant made in favour of the petitioner before the Assistant Commissioner, the Assistant Commissioner after having gone through the entire material on record pertaining to the case, has given a specific finding that the grant made in favour of the petitioner has been set aside as early as on 13-3-1980 under Section 71 of the [Karnataka Land Revenue Act, 1964](#) and that order is not challenged by the petitioner. There is no occasion for the petitioner to agitate his matter before the Competent Authority. However, in view of the remand order passed by the Deputy Commissioner, Assistant Commissioner once again took up the matter afresh and considered the request of the petitioner holding that the Land Grant Committee has considered the request of the petitioner and resolved to grant in favour of the petitioner on 28-6-1982. Without taking into consideration that the Tahsildar was not aware that it was excise land, this fact has been come on record and the original records have been verified and found that as early as on 27-10-1983, the Excise Inspector has submitted a report that the disputed land was included in the list of date reserve vide Notification No. 131/1181/3r dated 20-3-1983. The notification issued by the Government declaring the particular land as a date reserve and the same Will prevail over the entries made in the revenue records. The reasons for not noting the said land as date reserve in the revenue records is due to communication gap between the Excise Department and the Revenue Department. Further, it is specifically stated that the revenue records are obviously not updated. The Tahsildar was not aware that it was Excise land and therefore, he could not include the same in the availability list nor granted the same. Hence, he arrived at truth as per the provisions of the Act that grant made in favour of the petitioner has been cancelled.

10. Further, it is clarified by the Deputy Commissioner in his order dated 16th July, 1991 that the said land comes under the category of lands reserved for special purposes. Therefore, the disposal of the suit land under the Land Grant Rules without the order of the Competent Authority for the de-reservation and divestment

and releasing it for grant to individuals for cultivation is not permissible. The land in question is reserved for special purposes. Hence, it is not available for grant. Therefore, he has specifically pointed out that the land granted by the Tahsildar is one without jurisdiction and the order passed by the Assistant Commissioner has been upheld.

11. Feeling aggrieved by the order passed by the Deputy Commissioner, the petitioner herein filed a revision petition before the Karnataka Appellate Tribunal. The Tribunal after hearing both the parties has dismissed the revision petition following the judgment of Apex Court in *Puttahnamma v. Gangadhara Murthy*, : [1996]2SCR75 that once the aggrieved party has availed the remedy of second appeal under Section 50 of the Karnataka Land Revenue Act, he is precluded from availing the remedy of revision under Section 56 of the Act. Hence, rightly declared that the revision petition filed by the petitioner is not maintainable.

12. It is clear that all the three authorities have given a clear finding of facts that the land in question has been reserved for specific purpose. When once it is reserved for specific purpose, the question of considering the request of the petitioner for grant of land does not arise at all. Therefore, the respondents 1 and 2 and the Tribunal has rightly held that the order passed by the Assistant Commissioner for granting lands in favour of the petitioner is one without jurisdiction. Hence, I do not find any error of law in the impugned orders passed by the respondents 1 and 2 and the Tribunal nor the petitioner has made out any good ground to interfere with the impugned orders passed by the respondents 1 and 2 and the Tribunal.

13. Yet another reason the writ petition liable to be rejected at threshold is on the ground of delay and laches. The Tribunal has passed the order in Revision Petition No. 179 of 1991 as early as on 4th April, 1997. The present writ petition has been presented on 28th June, 2000. There is an inordinate delay of more than three years in filing the present petition. The said delay has not been explained properly or any reason has been assigned for condoning the delay. This suffice for this Court to dismiss the writ petition on the ground of delay and laches also.

14. As a matter of fact as stated in the preceding paragraphs that the suit land is date reserve land and it comes under the category of land reserve for a specific purpose and therefore, the question of disposal of the said land under the land grant rules without the orders of the Competent Authority for de-reservation and divestment and releasing it for grant to individuals for cultivation is erroneous. Admittedly, the land in question has been reserved for a specific purpose. Once it is reserved for a specific purpose, the same cannot be diverted for any other purposes nor it is permissible under the relevant provisions of the Act and Rules. Therefore, taking into consideration the totality of the facts as a whole, the petitioner has not made out any case to get the orders from the hands of this Court under Article 226 of the Constitution.

15. For the foregoing reasons, writ petition is liable to be dismissed and it is accordingly dismissed. Parties to bear their costs.

16. The learned Government Pleader is permitted to file memo of appearance within four weeks from the today.

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