

H. Puttaiah and anr. Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Aug-06-2002

Reported in : ILR2002KAR3810; 2002(6)KarLJ1

Judge : N.K. Jain, C.J. and ;V.G. Sabhahit, J.

Acts : [Karnataka Land Revenue Act, 1964](#) - Sections 71 and 91; Karnataka Land Grant Rules, 1969 - Rule 27; [Constitution of India](#) - Articles 14, 226 and 227

Appeal No. : Writ Petition No. 3250 of 2002 (KLR/RR/SUR/PIL)

Appellant : H. Puttaiah and anr.

Respondent : State of Karnataka and ors.

Advocate for Def. : M.N. Seshadri, Additional Government Adv. for Respondent 1 to 3 and ;N. Shivappa, Adv. for Respondent -4

Advocate for Pet/Ap. : S.K. Jayachandrappa, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

1. One H. Puttaiah and another claiming to be the residents of Channanayakanapalya Village, Doddabidarakallu Dakhale, Yeshwanthapura Hobli and Thippenahalli Village, Yeshwanthapura Hobli respectively have filed this

petition as public interest litigation. It is stated that the land bearing Sy. No. 64 measuring 40 acres 12 guntas is a Government gomal land reserved for grazing purpose of the live stocks of all the villages of Doddabidarakallu, Thippenahalli and Channanayakanapalya and also the neighbouring villages like Nallakadaranahalli, Kariobana-halli, Thirumalapura and Chikkabidarakallu. R.T.C. extracts for the years 1997-98 and 2000-01 have been produced at Annexure-A and B respectively at their translated copies at Annexure-A1 and B1. It is stated that there is no other gomal land except the land in Sy. No. 64 in the village is available for grazing. It is stated that the population of the aforesaid three villages is 10,000 and the villagers are agriculturists and that all the survey numbers of Doddabidarakallu Village comes under the 'Green Belt Area' as per the Comprehensive Development Plan, Bangalore. It is stated that on an application being filed by the 4th respondent for grant of land in Sy. No. 64 in its favour, the 1st respondent without calling for any objections from the villagers has passed an order dated 15-7-1997 directing the 2nd respondent to hand over possession of 10 acres of land in question. It is stated that the 2nd respondent has, pursuant to the direction issued by the 1st respondent, passed an official memorandum dated 5-1-1999 directing the jurisdictional Tahsildar to hand over possession of 10 acres of land to the 4th respondent as per the revised plan. It is stated that by Annexure-C, the 2nd respondent has also granted 20 areas of land in the same land in favour of Karnataka State Handicrafts Development Corporation and that the petitioners are challenging in this writ petition only the grant in favour of the 4th respondent by reserving liberty to question the validity of the grant made in favour of Karnataka State Handicrafts Development Corporation. It is also stated that the petitioners have filed W.P. No. 36084 of 1997 by way of public interest litigation, challenging the order of the 1st respondent, dated 29-8-1997 directing the 2nd respondent to distribute sites to the members of the Karnataka Dalit Kriya Samithi in an area of 10 acres 12 guntas of land in the said survey number and this Court on 27-1-1998 disposed off the matter reserving liberty to the petitioners to agitate the matter before the 2nd respondent and the same is pending before him.

2. The main grievance of the petitioners is, since the land in question comes under the 'Green Belt Area', the same should not be granted for commercial purpose and the price of Rs. 1,00,000/- per acre, at which the land is allotted is on lower side,

whereas, its market value is more than Rs. 10,00,000/- per acre. The petitioners also contend that the 4th respondent is not a registered institution and no land could be allotted in its favour and the land is being utilised for the purpose for which it has not been allotted. Hence, it is prayed that the order dated 15-7-1997 passed by the 1st respondent and the impugned official memorandum dated 5-1-1999 issued by the 2nd respondent be quashed.

3. In response to notice, the learned Government Advocate has filed statement of objections on behalf of respondents 1 to 3, denying the allegations made in the petition. It is stated that the land in Sy. No. 64 has lost the characteristic of gomal land and under Section 71 of the [Karnataka Land Revenue Act, 1964](#) (in short, 'the Act'), the Deputy Commissioner has the power to set apart the lands for free pasturage for village cattle and said reservation is subject to the orders and notifications passed by the Government from time to time. It is also stated that the fourth respondent had made an application for grant of land for establishing institution in public interest and for the establishment of Rehabilitation Welfare Centres and other laudable purpose. It is also stated that the Government has taken decision under Rule 27 of the Karnataka Land Grant Rules (in short, 'the Rules'), and only after the recommendation of the Tahsildar, the Deputy Commissioner and the Divisional Commissioner after complying with the provisions of the Act and the Rules, valid order has been passed in favour of the 4th respondent and the petitioners are not entitled to any relief in this writ petition in the garb of public interest litigation and the same is liable to be dismissed. It is also stated that there is no question of mala fides and that everything is in order. That apart in absence of any specific allegations of mala fides, it cannot be said that there is violation of some alleged statutory provisions. The fourth respondent has produced photographs to show that the fourth respondent has put up construction of building for establishment of rehabilitation centre and old age home.

4. We have heard the learned Counsel appearing for the petitioners and the learned Government Advocate for respondents 1 to 3 and the learned Counsel appearing for respondent 4.

5. The learned Counsel appearing for the petitioners has relied upon the following decisions in support of his contention:

1. C. Kenchappa and Ors. v. State of Karnataka and Ors, 2000(4) Kar. L.J. 1 : ILR 2000 Kar. 1072

2. S. Siddappa and Ors. v. State of Karnataka and Anr., : ILR 1998 KAR2757

3. B. Veeranna and Ors. v. State of Karnataka, : ILR 1992 KAR1683

4. Gram Panchayat, Ugargol Village, Parasadgad Taluk, Bel-gaum District v. State of Karnataka and Ors., 2000(1) Kar. L.J. 120

6. The learned Government Advocate appearing for respondents 1 to 3 has relied upon the decision of the Supreme Court in Netai Bag and Ors. v. State of West Bengal and Ors : AIR 2000 SC3313 and the Division Bench decision of this Court in W.P. No. 28225 of 1999, DD; 29-11-2000.

7. We have perused the decisions relied upon by the learned Counsels appealing for the parties. No doubt, in an appropriate case, this Court can issue directions if there is gross violation of fundamental rights or if the issue touches the conscience of the Court but not for personal gain or publicity or political motive. It is clear that in respect of gomal land which lies within the Green Belt Area, no acquisition can be made without following the procedure as required by law and villagers have to be given an opportunity of hearing before denotifying the same as it would affect their right as held by this Court in C. Kenchappa's case, supra. However, in the said case since it was found that the acquisition could not be made in respect of gomal land which was lying within the Green Belt Area and not denotified in accordance with law, acquisition was liable to be quashed. Even therein, this Court held that allotment made in favour of respondent 3 therein which was essential for the growth of computer industry and research and development, information and technology was not disturbed. In the other cases relied upon by the learned Counsel appearing for the petitioners it is held that the Deputy Commissioner has to follow the procedure for denotifying the gomal land and has to take into account the requirement of villagers for gomal land and any order passed in violation of the

provisions of the Act and the Rules would be bad in law,

8. It is clear from the decision of Netai Bag's case, referred to by the learned Government Advocate that mere violation of some statutory provisions would not by itself render the decision of the Government illegal unless motive is attributed and action is shown to be mala fide and in the present case, there is no specific allegation about the mala fides attributed to the respondents. It is also clear that the Government is entitled to make pragmatic adjustments and policy decision which may be necessary or called for under the prevalent peculiar circumstances and the Court cannot strike down a policy decision taken by the Government because it feels that another decision would have been fairer or wiser or more scientific or logical. It is also clear from the perusal of the order passed by this Court in W.P. No. 28225 of 1999, DD: 29-11-2000 relied upon by the learned Government Advocate that in view of the provision of Section 71 of the Land Revenue Act, the reservation of the land as gomal land is subject to the order or notification that may be passed by the Government and wherefore the Government has power to denotify the gomal land in appropriate cases by passing an order or notification,

9. It is clear from the objections statement filed by respondents 1 to 4 that the land had lost the characteristic of gomal land due to its topography and location and the averment made in the writ petition also shows that request made by the villagers for allotment of the land comprised in the said Sy. No. 64 for establishment of schools and other purpose and also for construction of residential houses and the same has not been granted by the Government. The said question as to whether the land comprised in Sy. No. 64 has lost the characteristic of a gomal land is a pure question of fact which requires detailed investigation by holding an enquiry which cannot be done in exercise of the power under Article 226 of the Constitution. Even otherwise, we have perused the proceedings produced by the learned Government Advocate culminating in the allotment of land in favour of the fourth respondent and it is clear from the said records that the Village Panchayat has given no objection for denotifying the said land the allotment of land to the fourth respondent recommendation was made by the Tahsildar to the Deputy Commissioner, thereafter, the Deputy Commissioner has forwarded the proposal

to the Government through the Divisional Commissioner and ultimately the Government has passed the order.

10. The learned Government Advocate has relied upon the provisions of Rule 27 of the Karnataka Land Grant Rules, which reads as follows:

'27. Powers of the State Government--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 any 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'.

11. In view of the proceedings culminating the order of allotment of land to the fourth respondent, we are satisfied that the requisite procedure under Section 71 of the Karnataka Land Revenue Act and Rule 27 of the Karnataka Land Grant Rules have been complied with and all the formalities have been complied with by passing the order and it is clear from the perusal of the order communicated to the Deputy Commissioner that the said allotment was made after taking into consideration all the aspects of the case and the allotment was subject to the condition that the land allotted shall be used for the purpose of construction of rehabilitation centre.

12. The petitioners have not produced any material to show that the land in question lies within the Green Belt Area and notification of the Government has not been produced to substantiate the contention. Even otherwise, in view of the above said Rule 27 of the Karnataka Land Grant Rules, it is clear that the Government is entitled to grant land by relaxing the condition in a fit case, having regard to the circumstances of each case. There is no merit in the contention of the learned Counsel that fourth respondent could not have been granted land as it is not entitled to hold land under Section 79-B of the Karnataka Land Reforms Act as it is clear from the order granting the land that it is granted to the fourth respondent for the purpose of putting up rehabilitation centre and specific

conditions have been imposed that it should be registered under the Societies Act or the Trust Act and that it should be used for specific purpose for which it was allotted. If there is any violation of condition of the grant, it is open to the petitioners to make representation before the appropriate authority to take action in accordance with law and in this case what is challenged is the order of allotment in favour of fourth respondent. The allotment of land was made in favour of the fourth respondent on 15-7-1997, the writ petition has been filed on 28-1-2002, i.e., after the lapse of five years. In the meanwhile, pursuant to the order of allotment, the fourth respondent has already put up construction for rehabilitation centre which is clear from the material produced by the fourth respondent and it is well-settled that when certain actions have already flown from the impugned order and the petitioners have not approached the Court within the reasonable time for the appropriate relief, they would not be entitled to the discretionary order of this Court. Further, it is clear from the material on record that petitioners had challenged the grant made in favour of Dalit Kriya Samithi in the same survey number in W.P. No. 36084 of 1997 and the said writ petition was disposed off on 27-1-1998 and Deputy Commissioner was directed to dispose off the application in accordance with law and therefore, the contention of the petitioners that they are not aware of the order granting land in favour of fourth respondent cannot be accepted and it is also clear from the averment made in the petition that the allotment made in favour of Karnataka State Handicrafts Development Corporation in the same land to the extent of 20 acres has not been challenged by the petitioners and liberty is sought to be reserved for challenging the same in future and accordingly on consideration of entire material on record, we hold that this is not a fit case wherein the petitioners are entitled to any direction as sought for in this public interest litigation petition and accordingly, we pass the following order:

The public interest litigation petition is dismissed.

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