# Manjappa Vs. Assistant Commissioner, Sagar Sub-division, Sagar and Others

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**SooperKanoon Citation** : sooperkanoon.com/384218

**Court** : Karnataka

**Decided On :** Jul-05-1999

**Reported in** : ILR2000KAR178; 1999(5)KarLJ545

**Judge** : T.N. Vallinayagam, J.

**Acts** : Mysore Land Revenue Code, 1888 - Sections 233; Mysore Land Grant Rules, 1960 - Rule 43-G(7); Karnataka Land Grant Rules, 1968 - Sections 40, Rule 40; Mysore Land Grant Rules, 1969 - Rule 40

**Appeal No.** : Writ Petition No. 14715 of 1996

**Appellant** : Manjappa

**Respondent** : Assistant Commissioner, Sagar Sub-division, Sagar and Others

**Advocate for Def.** : Sri B. Veerappa, High Court Governement Pleader

**Advocate for Pet/Ap.** : Sri R. Gopal, Adv.

**Judgement** :
ORDER

1. Heard Mr. Gopal, learned Counsel for the petitioner and Sri B. Veerappa, learned Government Pleader for respondents 1 to 4.

2. The subject-matter of the writ petition is 3 acres of land in Sy. No. 36, Block No. II of Bilasugodu Village, Sagar Taluk. The said land was granted to one Kannappa for full market price under the then Mysore Land Revenue Rules as amended by the Mysore Land Revenue (Amendment) Rules, 1960, by the Special Land Acquisition Officer, Sagar, vide Order No. Dis. R3. DAR. 76/62-63, dated 4-12-1962. The said saguvali chit was issued to Kannappa on 5-5-1964. The said grantee and his son sold the land in favour of the petitioner by a registered sale deed dated 20-4-1968 for a valuable consideration and ever since then the petitioner has been in possession and enjoyment of the land. The name of the petitioner has been mutated as per Annexure-J on the basis of the sale deed. The name of the petitioner has been entered in the revenue records as could be seen from the RTC and pahanies for the years 1970-71 to 1973-74, 1989-90 to 1995 produced as Annexure-A, Al and B. The petitioner has paid kandayam Annexure-C to H. After purchase, the petitioner claimed that he has invested huge amount for levelling the land, constructing farm house, putting up fence, for installing the pump set for irrigation and for various developmental works and for bringing the land under fertile cultivation. The petitioner is earning livelihood and maintaining his family from the income derived from the land. As per Annexure-M, the Assistant Commissioner (Darkast), Shimoga has cancelled the grant on the ground that there is violation of the terms of the grant in selling the land and he however directed the Tahsildar to submit proposals for resumption to the Government. The Government has not initiated any proceedings for resumption of the land and there is no resumption by the Government as observed in Annexure-M.

3. It is alleged that without notice to the petitioner whose name was appearing in the revenue records, a mutation came to be effected on the basis of Annexure-M to delete the name and to enter the name of Government as per the said mutation is produced as Annexure-K. Immediately after coming to know of mutation entry, vide Annexure-K through the Revenue Inspector, the petitioner filed appeal before 1st respondent, who by his order Annexure-L dismissed the appeal. The petitioner has sought for a writ for declaring Annexure-M as null and void and without authority of law or in the alternative for quashing Annexure-M. He has also sought for quashing of mutation entry at Annexure-K and the order at Annexure-L.

4. It is contended that Annexure-M is a nullity and the second respondent has no authority or jurisdiction to cancel the grant for violation of the alleged conditions of grant as the grant was made under the then Mysore Land Revenue Rules, the cancellation of violation of the conditions of the grant is governed by 43-G(7) of the old rules, as amended in 1960. The Government has notified on 20-1-1979 that the Divisional Commissioner or the State Government is the authority to cancel the grant. Therefore, only the Divisional Commissioner is competent to cancel the grant. Rule 43-G(7) reads as follows:

'The grant is liable to be terminated by the Divisional Commissioner or the State Government and the land resumed if any of the aforesaid conditions is not fulfilled and on such resumption the land shall vest in Government free from all encumbrances'.

There is no dispute that there is a violation of the conditions, in the sense that alienation has taken place. The only question is whether the action taken by the Assistant Commissioner, Shimoga is valid.

5. The learned Counsel for the petitioner relied upon the dictum in M. Ramaiah v Special Deputy Commissioner, Banglore. The following passage is relied upon:

'Though Mysore Land Revenue Rules pertaining to the land grant came to be repealed by the Mysore Land Grant Rules, 1969, Rule 40 of the 1969 Rules has saved the right accured and liability incurred under the old rules. The grant in this case was made during the year 1962. At that time the rules framed under the Mysore Land Revenue Code were in force. According to Rule 43-G(4) of the Mysore Land Revenue Rules, there was a liability incurred by the grantees that they should not alienate the land granted for a period of 15 years from the date of the grantees taking possession of the land. Thus that liability incurred under the repealed rules continued to subsist even after the coming into force of the new rules. Therefore, the Divisional Commissioner as well as the State Government are competent to take action for cancellation of the grant of land made during the period when the rules framed under Mysore Land Revenue Code were in force. In view of this conclusion, the direction issued by the Special Deputy Commissioner to the Tahsildar cannot be sustained'.

In that case the question was whether the Tahsildar can cancel the grant in pursuance of the order of the Special Deputy Commissioner and the Court held that the Tahsildar has no power.

6. The ruling of the Supreme Court in Kiran Singh v Chaman Paswan, also was relied upon to show that a decree passed without jurisdiction is a nullity. The following passage is relied upon;

'It is a fundamental principle that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties'.

7. The ruling in Bhoomireddy v State of Karnataka, was relied upon to show whether the land is granted at an upset price; the question of imposing a restriction on the land does not arise, because the grant of land at upset price amounts to sale of land.

8. A perusal of Annexure-M shows that the contention of the petitioner is not correct. It is seen that saguvali chit was issued to the original grantee was on 5-4-1964 and the said Saguvali chit did contain a condition of non-alienation of the land for a period of 15 years from the date of the grant. It does not disclose whether it was for a price or not and there is no record produced before this Court to show that the grant was for a price. The Assistant Commissioner under Annexure-M has found that 'as the grantees have violated the conditions of grant by alienating the land within the stipulated period, the grant is cancelled'. It is significant to note that this order was passed long before the amendment, as the amendment came into force only in 1978. It is set-tied law that amendment unless it saves the orders passed earlier cannot come to the aid of the petitioner to attack Annexure-M. It is seen from the records that this order of the Assistant Commissioner under Annexure-M as on 24-5-1973 has become final as no appeal against the order was preferred by the petitioner. In fact, it is mentioned in the

order that notices were sent not only to the grantees Kannappa and Rajappa but also the purchaser Manjappa and Srinivasa Rao to show cause as to why the grant should not be cancelled and the very same Manjappa, the petitioner herein, appeared before the Assistant Commissioner and filed his written statement. Therefore, it is not fair nor proper for the petitioner to come now and allege that the order Annexure-M was passed without affording an opportunity to him and without holding an enquiry and without following the procedure. When this order has become final, based on this order the mutation entry was changed by cancelling on 30-3-1976. As against such cancellation, an appeal was filed under Annexure-L in R.A. No. 103 of 1993-94. The Appellate Authority rightly found that the order of the Assistant Commissioner has become final in not having been challenged and the present cancellation of the mutation entry was the consequence of that order. It is also significant to note that in the above case, the question of jurisdiction was not raised by the petitioner. Even otherwise once the order has become final, without the original order being attacked, no legal purpose will be served in attacking the later orders on any grounds whatsoever.

9. The question raised has to be answered against the petitioner because on the date of passing of the order, the order was valid and the amendment cannot revive an order passed prior to the amendment. Therefore, rejecting the contention raised by the petitioner, the writ petition is dismissed.

10. Learned Government Pleader is directed to take notice for respondents 1 to 4 and file his memo of appearance within four weeks.