

B. Mallappa Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Jun-17-1999

Reported in : ILR1999KAR193; 1999(6)KarLJ517

Judge : T.N. Vallinayagam, J.

Acts : [Karnataka Land Revenue Act, 1964](#) - Sections 69; Karnataka Land Grant Rules, 1969 - Rules 4(2) and 25; [Constitution of India](#) - Articles 226 and 227; [Karnataka Land Reforms Act, 1961](#)

Appeal No. : Writ Petition No. 42684 of 1993

Appellant : B. Mallappa

Respondent : State of Karnataka and Others

Advocate for Def. : Sri B. Veerappa, High Court Government Pleader and ;Sri K.T. Mohan, Adv.

Advocate for Pet/Ap. : Sri T.S. Amarkumar, Adv.

Judgement :

ORDER

1. The learned Government Pleader takes notice on behalf of respondents 1 and
2. In this writ petition, the petitioner seeks to quash the order passed by the Appellate Tribunal and Annexure-K under which the Appellate Tribunal has

chosen to cancel the grant in favour of the petitioner to the extent of 1 acre 38 guntas in Survey No. 96 under order dated 3-6-1987. It is seen from the order of the Appellate Tribunal that the petitioner and the 3rd respondent who are brothers, were granted 4 acres 38 guntas on 25-6-1983. On 3-6-1987, an additional 1 acre 38 guntas were granted by the Deputy Commissioner on the ground that the land of the petitioner is nearer to the land granted and such land is necessary for enjoyment of the petitioner's land. It is seen in both the cases that the lands granted are claimed to be Gomal lands and in both the cases, the extremes are ordered to be reduced to the extent of the grants. It is the case of the petitioner that the 4th respondent who had absolutely no interest or concern with any kind of grant, preferred an appeal to cancel the grant made in favour of the petitioner on the ground that there was a tank bund in Survey No. 96 situated above the lands belonging to him and in between the said tank and his lands, a Halla was in existence since times immemorial, and the water in the said tank runs through the Halla for the benefit of himself and other land owners to use the water to irrigate their lands. It is also contended by the 4th respondent that the grant was opposed to the principles of land grant rules. It is further contended that Survey No. 96 was not included in the lease and therefore, it could not be the subject-matter of the grant. Claiming further that no sufficient opportunity was given to the petitioners by the Tribunal, the order of the Tribunal was challenged in this writ petition. The Tribunal finds from the records that the lands were granted to the very same person within a short time and under suspicious circumstances with reference to the grant. The Tribunal found that the granting authority and its subordinates were persuaded and yielded to the pressures rather than on merits. It is also seen from the finding rendered by the Tribunal that files have been so built up to oblige the petitioners and an application for grant was granted. The granting authority has not exercised jurisdiction properly and the Government land was casually dealt with without any rhyme or reason. The definite finding of the Appellate Court is that the impugned order is vitiated on account of favouritism and total disregard of the norms of grant and without considering the earlier grant by suppressing it from the official records subsequently built up. Therefore, the Tribunal has set aside the grant in favour of the petitioner. It is this order that is being challenged in this writ petition.

2. The learned Counsel submitted that under Rule 4(2) of the Rules, he is entitled to the grant of the adjacent or close to his land on collection of the market value. Rule 4(2) of the Karnataka Land Grant Rules, 1969, reads as under:

'Notwithstanding anything contained in sub-rule (1) any person may be granted land adjacent or close to the land already held by him on collection of market value as on the date of the grant to be determined by the authority granting land, if such land is, in the opinion of the authority required for better enjoyment or better cultivation of the land so held:

Provided that no such grant shall be made of an extent exceeding in the case of wet or garden land half hectare and in the case of dry land one hectare and that the total extent of land after such grant does not exceed the ceiling area according to the [Karnataka Land Reforms Act, 1961](#)'.

The petitioner now wants the said land by way of right. Rule 4 does not confer on him a right. It gives a discretion to the authorities to grant the land. In fact, the words used are 'may be granted'. Once it is found by the Tribunal as a final fact-finding authority that favouritism has been showered on the petitioner and files have been so built up to confer such benefit to the petitioner, this Court, sitting under Article 226 of the Constitution, cannot come to a different conclusion to set aside the findings. The Tribunal, as a final Court of fact, has seen the original records and various files and then come to the conclusion. It is also not shown before me as to how such a finding can be attacked as wrong and what is the infirmity in such a finding. The only ground the learned Counsel addresses is, because it is the adjacent land, he is entitled to have it for the purpose of better enjoyment of his land. Simply because the land is adjacent, he does not get a right over it. Of course, the Government may, in exercise of its discretion grant such land if it is found to be absolutely necessary for the purpose of enjoyment of the other land which has been granted to him. If the property is to be extended like this, then a man who was given a small piece of land can go on claiming that the adjacent land is required for the purpose of enjoyment and ultimately it will result in a situation where one who gets only a bit of land will become the owner of hundred of acres of land. This is not what the Act contemplates. For enjoying a property

measuring 2.17 acres, if a property measuring 1 acre 13 guntas is to be given, then there is no meaning for the word 'grant' at all. Therefore, apart from the factual-finding of the Tribunal, I am also convinced that the Tribunal has rightly, in exercise of its discretion, cancelled the grant.

3. I do not find any infirmity in the order. Consequently, this writ petition is dismissed.

4. My view is supported by a ruling of the Division Bench of this Court in K. Narasappa v Tahsildar, Honnali Taluk, Honnali and Others, which is to the following effect:

'In the present case, request is made to regularise unauthorised occupation. The family is already granted land, that is not disputed. If the land is granted to the persons who are already granted or the land which is in their unauthorised occupation is regularised the other persons who have no land will be deprived of the grant of land; that itself will defeat the purpose of the constitutional scheme envisaged under Article 39 of the Directive Principles of State Policy. Therefore, the High Court while exercising jurisdiction under Article 226 of the [Constitution of India](#) will restrain from granting reliefs which are against the constitutional scheme and legislative spirit of enactments. Therefore, the purport of Land Grant Rules and provisions for regularisation of unauthorised occupation is meant only to the landless poor persons but not to the persons who are already holding the land. If the unauthorised occupation to be regularised irrespective of the economic status of persons seeking it, every landlord will occupy Government land and the purpose envisaged under the legislation will fail and it is against cannons of social justice'.

Following the above view also, I find no merit in the writ petition. Hence, this petition is dismissed. No costs.