

Venkatagiriyappa Vs. the State of Karnataka Revenue Development

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Court : Karnataka

Decided On : Jun-17-1998

Reported in : ILR1998KAR4000

Judge : P. Vishwanatha Shetty, J.

Acts : [Constitution of India](#) - Articles 226 and 227

Appeal No. : Writ Petition Nos. 5969 to 5971/1995

Appellant : Venkatagiriyappa

Respondent : The State of Karnataka Revenue Development

Advocate for Def. : B.E. Kotian, Government Adv.

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

Disposition : Petition allowed

Judgement :

ORDER

P. Vishwanatha Setty, J.

1. Each of the petitioners in these petitions, was granted land measuring 10 acres in Survey No. 106 of Keladhi Village, Sagar Taluk, in the year 1962 by the State Government.

2. In these petitions, the petitioners have called in question the correctness of the order dated 25th of November 1994, a copy of which has been produced as Annexure-U, passed by the respondent.

3. R. Gopal, learned Counsel appearing for the petitioners, in support of the prayer made in these petitions, made three submissions. Firstly, he submitted that the finding recorded by the respondent that the petitioners have not brought the land in question under cultivation even after the expiry of five years from the date of the grant, is totally erroneous in law and the said finding is not based on any evidence. Elaborating this submission, he submitted that the fact that the respondent did not take any action within a reasonable time after the expiry of five years from the date of the grant, is a clear indication to show that the petitioner had complied with the terms of the grant and brought the land under cultivation. Secondly, he submitted that even if the petitioner had not brought the land under cultivation within five years from the date of the grant, as claimed by the respondent, the respondent having failed to take any action within a reasonable period after the expiry of five years, it must be held that the respondent has lost his right to initiate proceedings for cancellation of the grant made in favour of the petitioner. Finally, he submitted that the order impugned is also liable to be quashed on the ground that it is not a speaking order.

4. However, Sri Kotian, learned Government Advocate, tried to support the impugned order. He submitted that the finding recorded by the respondent that the petitioners have not brought the land under cultivation within five years, which is purely a question of fact, it is not liable to be interfered with by this Court in exercise of its jurisdiction under Articles 226 and 227 of the [Constitution of India](#).

5. While I find considerable force in all the three submissions made by the learned Counsel for the petitioners, I am unable to persuade myself to agree with the submission made by the learned Government Advocate. Admittedly, the grant of the lands in question was made in favour of the petitioners in the year 1962. The proceedings for cancellation of the grant were initiated in the year 1992. Except the assertion made in the order, there is absolutely no material, on the basis of which the respondents came to the conclusion that the petitioners did not bring the

lands in question under cultivation within a period of five years from the date of the grant. The fact that the Authority did not initiate any action within a reasonable period from the date of the grant as pointed out by the learned Counsel for the petitioner, is a factor, which would clearly show that there was no violation of the terms of the grant. Otherwise, it is reasonable to expect that the Authorities would have taken action for cancellation of the grant within a reasonable period from the date of the grant. Further, even otherwise, the material on record shows that the proceedings are initiated for cancellation of the grant after 30 years from the date of the grant. Since the respondents have failed to initiate action within a reasonable period, I am of the view that the order impugned passed by the respondent cancelling the grant is illegal. The power conferred on the respondent to cancel the grant for violation of the terms of the grant is required to be exercised within a reasonable period. The power conferred on the respondent to cancellation the grant is an enabling power. It does not mean that in all cases, the respondent should exercise power and cancel the grant. The view I have taken above, is also supported by the decision of the Supreme Court in the case of MANSARAM v. S.P. PATHAK AND ORS 1. : [1984]1SCR139 . In the said decision, the Supreme Court, at Paragraph - 12, has observed thus:

'...where power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner and the reasonable exercise of powers in hers its exercise within a reasonable time. This is too well established to need buttressing by a precedent. However, one is readily available in State of Gujarat v. Patel Raghav Natha : [1970]1SCR335 . In that case Commissioner exercised suo motu revisional jurisdiction under Section 211 of the Bombay Land Revenue Code which did not prescribe any period of limitation for exercise of revisional jurisdiction. The Commissioner exercised revisional jurisdiction one year after the Collector made the order which was sought to be revised. The High Court set aside the order of the Commissioner. In the appeal by State of Gujarat, this Court declined to interfere holding interalia that the revisional power in the absence of prescribed period of limitation must be exercised within a reasonable time and period of one year was held to be too late. This aspect must be present to the mind of House Allotment Officer before just rushing in on an unproved technical contravention brought to his notice contrived by the successor-in-interest of the

deceased landlord, and evicting the appellant 22 years after his entry and 9 years after his retirement, on the short ground that his entry in the year 1954 was in contravention of Clause 22(2).'

The principle laid down by the Supreme Court in the case of *Mansaram v. S.P. Pathak* (supra), in my view, fully applied to the facts of the present case.

6. In the light of the discussion made above, the order impugned is liable to be quashed and accordingly, it is quashed.

7. In terms stated above, these writ petitions are allowed and disposed of. Rule issued is made absolute.

8. Sri B.E. Kotian, learned Government Advocate, is permitted to file his memo of appearance within four weeks from today.

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