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Court : Karnataka

Decided On : Jan-24-2011

Judge : D.V. Shylendra Kumar

Appeal No. : WRIT PETITION No.2685 of 2011 (KLR-LG)

Appellant : Balakrishnarai

Respondent : Deputy Commissioner Hassan, Hassan District and Others

Advocate for Pet/Ap. : For the Petitioner: M. Babu Rao, Advocate. For the Respondent: R1 - R. Omkumar, AGA.

Judgement :

(Prayer: This writ petition is filed under Articles 226 and 227 of the constitution of India with a prayer to set aside the Order dtd 7.12.10 issued by R1 in No. Revision petition No.4A/2006-2007 as per Annex-G in so far as 1 acre 20 guntas of land in Sy.No.146 of Balagodu Village.)

1. People who come to this Court invoking writ jurisdiction but based on misrepresentation either on facts or on legal position are persons who deserve no relief in the extraordinary discretionary jurisdiction in a petition under Articles 226 and 227 of the Constitution of India.

2. Writ petitioner claims to be a person, who has purchased an extent of 1 acre 20 guntas of land in Sy.No.146 of Balagodu Village, Belagodu Hobli, Sakaleshpura Taluk, Hassan District as per the sale transaction dated 3.11.2004, said to have been executed by one Mr. Nagaraj, S/o. Deveeraiah who is the original grantee of the very village, is further claiming that he had been granted an extent of 3 acres 5 guntas in this survey number as per a grant order DCPR 372/81-82 dated 21.6.1982, as noticed somewhere during the year 1985 or earlier as reflected in saguvali chit dated 19.8.1985 (copy produced as Annexure A to the petition).

3. It is the version of the petitioner that the said Nagaraj while sold an extent of 1 acres 20 guantas of this land, another extent is sold by the very person in favour of some 3rd party and when the petitioner based on such sale transaction made efforts to get his name entered in the revenue records, to the extent of interest acquired by him, while it did not prove fruitful and while the Tahsildar was inclined to pass orders to mutate the revenue records in the name of the petitioner, some of the villagers it appears disputed the boundaries of the land granted in favour of the said Nagaraj etc., but nevertheless Tahsildar over ruled the objections and having mutated the entries, the villagers pursued the matter before the Asst. Commissioner who thought it proper not merely for deleting the name, but also, having found that the grantee had violated the condition of the grant, of not using the land within three years from the date of the grant thought it proper to cancel the grant itself, i.e. how the petitioner is aggrieved by the order dated 15.06.2006 (copy produced as Annexure-F).

4. The aggrieved petitioner had carried the matter further to the Deputy Commissioner by way of revision, but the Deputy Commissioner found no occasion to interfere with the order of the Asst. Commissioner and dismissed the revision petition as per order dated 7.12.2010 in No.RP.4A/2006-07 (copy produced as Annexure-G to the petition), the present petition seeking the following prayer:-

“Issue writ of certiorari or order or direction by setting aside the order dated 7.12.2010 issued by respondent no.1 in No.Revision Petition No.4A/2006-07 as per Annexure-G insofar as 1 acre 20 guntas of land in Sy No.146 of Balagodu

Village.”

5. Mr. M. Babu Rao, learned counsel for the petitioner submits that the Asst. Commissioner could not have cancelled the grant in its entirety without any proper enquiry, without notice to the concerned persons and particularly, with the petitioner having acquired interest in an extent of 1 acre 20 guntas of land in the said survey number from out of the total grant in favour of the said Nagaraju even in terms of the sale deed executed by the very grantee; that it is clearly in violation of proviso (2) of Rule 25 of the Karnataka Land Grant Rules, 1969, (hereinafter referred to as ‘the Rules”).

6. It is also submitted that in an appeal under Section 136(2) of the Karnataka Land Revenue Act, 1964, (hereinafter referred to as ‘the KLR Act’) that too at the instance of the villagers who were objecting to the revenue entries being mutated to an extent of 1 acre 20 guntas of land in the name of the petitioner, the Asst. Commissioner could not have embarked upon exercising his power to cancel the grant itself that too on the premise that the original grantee - the 2nd respondent before the Asst. Commissioner in respect of whom the grant was made, when the scope of the appeal was limited to the revenue entries and subject matter was not one relating to a proposal for canceling the grant for violation of the terms and conditions.

7. Mr. M. Babu Rao, learned counsel for the petitioner also submits that while the Asst. Commissioner has committed such a lapse the Deputy Commissioner in revision overlooking the same and dismissing the revision petition is nothing short of affirming the illegal and pre-emptive order passed by the Asst. Commissioner and therefore, the orders deserves to be quashed etc.

8. On the other hand, Mr. Omkumar, learned AGA appearing for 1st respondent points out that while the proceeding for cancellation of grant even in terms of Rule 25 of the Rules does not envisage issue of notice to persons like the petitioner, in the present case, it is nevertheless found that the petitioner herein while figured as 1st respondent and the grantee figured as 2nd respondent in appeal before the Asst. Commissioner and therefore, parties had ample opportunity. It is also pointed out that the condition of grant was that the land should be brought under

cultivation within three years of occupation and that having never been done cancellation of the grant is very correct, justified and no interference is warranted.

9. Petitioner if at all is a person who has acquired interest in terms of sale transaction of the year 2004. No person can get a better right, title and interest than what his vendor or seller had. If the vendor of the petitioner had been subjected to compliance with certain conditions for sustaining the grant, a subsequent purchaser like the petitioner that too in the year 2004 cannot improve upon the nature of the right, title and interest which the vendor had acquired or can acquire in future. It cannot be said that the petitioner is totally ignorant of the proceedings before the Tahsildar. But even here with the petitioner having taken chances before the Deputy Commissioner in revision petition and that also having failed as the Deputy Commissioner found no occasion to interfere with the order passed by the Asst. Commissioner and with report of the revenue authorities having indicated that the grantee had never cultivated the land ever since 21.6.1982 and saguvali chit being dated 10.8.1985 and such report having been made the basis for the order passed on 7.6.2006 by the Asst. Commissioner, such being the factual situation as verified by the very Asst. Commissioner who had conducted a spot inspection and recorded the statement of the villagers and in this view of the matter, the Deputy Commissioner having further directed that the subject land should be taken over by the government and reserved for being used for a public purpose viz., for setting up Anganwadi School or Hospital, the order passed by the Deputy Commissioner is a laudable order, valid in law and definitely does not suffer from any irregularity or illegality.

10. With the revenue authorities having examined the matter on existing facts and having applied relevant provisions of law, the impugned orders being not merely proper but warranted in the circumstances, no interference is called for in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India and therefore, this writ petition is dismissed.

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