

Gurappa and Others Vs. the Deputy Commissioner and Others

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Court : Karnataka

Decided On : Jun-10-2011

Reported in : 2011(5)KantLJ616; 2011ILR(Kar)5625

Judge : D.V. Shylendra Kumar

Appeal No. : Writ Petition Nos. 15018 & 19225 to 19229 of 2011 (KLR-RES)

Appellant : Gurappa and Others

Respondent : The Deputy Commissioner and Others

Advocate for Pet/Ap. : For the Petitioners: Harish H.V., Advocate. For the Respondents: R. Omkumar, Additional Government Advocate.

Judgement :

1. Writ jurisdiction is more abused and misused by persons who may not for bona fide or genuine grievance to be redressed by imposters, by persons who more often than not grab Government lands, but jump into High Court invoking writ jurisdiction when corrective action is proposed against them by filing writ petitions whose duty it is to take such action against encroachers, illegal occupants and such other persons when Government land or public land is gobbled up by such greedy persons.

2. In the name of development all sorts of mal practices take place. People seek for conversion of lands not belonging to them and approaching revenue officials

who are more often than not amenable to other considerations pass orders or do not pass orders to enable such persons to claim the benefit of a deeming provision by persons to assert their rights in writ jurisdiction etc.

3. Present writ petitioners (six in number) claim that they are the owners of total extent of 5 acres 38 guntas of land in Sy.No.356 of Pavagada Town, Tumkur District and as such land was in the possession and ownership of their ancestors.

4. It is the version of the petitioners that they got a part of this land converted for non-agricultural purpose, particularly, the land lying on the western part of their other land abutting a halla known as Dollara Halal.

5. It appears that good number of residents of Pavagada Town, who had their properties abutting this stream known as Dollara Halal had conveniently encroached on different parts of this stream resulting in clogging of the same and perhaps would have led to several problems in the town. It appears action had been initiated in the year 2008 to inquire and to take action against such encroachment and illegal inroad into the sarkari Halla by the Assistant Commissioner and the Deputy Commissioner, Madhugiri Sub-Division, Tumkur District and certain proceedings had taken place resulting in the order dated 16-2-2008 passed by the Assistant Commissioner of Madhugiri Sub-Division.

6. First writ petitioner had questioned such order of the Assistant Commissioner before this Court by filing W.P.No.3689 of 2008 (KLR RES) and this Court prima facie was of the view that if the petitioners were to be evicted by removing them from the encroached portion it was only proper they would be given a proper opportunity and after issuing of notice in accordance with law by the Competent Authority and on such premise had allowed the petition when it was found even before becoming sure such a procedure was followed, the revenue authorities had embarked on demolition of portions of the buildings on the premise that they were built on parts of halla which had been encroached etc., and action purporting to have been taken under Section 67 of the Karnataka Land Revenue Act, 1964 (for short, 'the Act') being one contemplated to be taken by the authorities gave a go by to the proper procedure in taking such drastic action which is not permitted in law and therefore, particularly, the Assistant Commissioner acting as a delegate of

the Deputy Commissioner whose duty it was under Section 67 of the Act to have taken such an action, allowed the writ petition and quashed the order dated 16-2-2008, only questioned in that writ petition, but reserving liberty to the authorities to take action in accordance with law.

7. It is thereafter the Deputy Commissioner himself caused issue of notice to encroachers, get it served through the office of the Tahsildar, Pavagada, had thereafter received the report of the Tahsildar with regard to the existing State of affairs and submitted a report after preparing a sketch and after verifying the factual position etc., and adjudicated the show-cause notice dated 3-11-2010 which had been issued in respect of as many as 19 persons; that the writ petitioner and persons claiming under the common title under writ petitioner figuring at Sl.No.17 wherein it had been shown that the petitioners and others had encroached an extent of 19 guntas of the halla in Sy.No.356/6, but nevertheless on noticing that all the six writ petitioner had approached the Civil Court by filing O.S.No.301 of 2010 and by impleading the Deputy Commissioner as 5th defendant though did pass orders in respect of other 18 persons after causing notices to the encroachers on their part, for action to evict them, nevertheless refrained from passing such an order insofar as the writ petitioners are concerned and passed orders in respect of others only after verifying the report of the Tahsildar and other material submitted by the Tahsildar and on noticing that such other persons had not either filed any objections to the show-cause notice nor had appeared and objected to the proposed action etc.

8. Even when the Deputy Commissioner had not passed by orders insofar as the petitioners are concerned, only in deference to the matter pending before the Civil Court in O.S.No.301 of 2010 at the instance of the writ petitioners, the writ petitioners six in number without any rhyme or reason and even without any cause of action, have filed the present petitions, seeking for quashing the order passed by the Deputy Commissioner, contending either the ground of not giving sufficient opportunity to the writ petitioners, or on the further premise that the Deputy Commissioner has recorded a finding that petitioners have encroached an extent of 19 guntas of land in the Halla and a finding of this nature recorded by the Deputy Commissioner in his order is adverse to the interest of the petitioners and

therefore not only the order at Annexure-A, dated 3-11-2010 passed by the Deputy Commissioner should be quashed, but also the report and the sketch prepared by the Tahsildar and submitted to the Deputy Commissioner based on which the impugned order at Annexure-A has come to be passed seeking for the following prayer in the writ petition:

“Issue a writ or order quashing the order dated 25-11-2010 passed in No.LND (M) CR 118/2008-09 by 1st respondent/The Deputy Commissioner, Tumkur, wherein the 1st respondent has shown the petitioners have encroached land of Government (Dollara Halal) to an extent of 19 guntas abutting land of petitioners in Sy.No.356/6 vide Annexure-A, and consequently, set aside the sketch prepared by the Tahsildar, showing that the petitioners have encroached 19 guntas of land of Government abutting Dollara Halla, vide Annexure-B, so far as the petitioners are concerned”.

9. Mr. Harish H.V., learned Counsel for the petitioners has reiterated the grounds urged in the writ petitions and has vociferously submitted that no opportunity had been given to the petitioners to put forth their case, the finding that the petitioners having encroached 19 guntas of land in the Halla is a finding adverse to their interest and therefore, the petition should be allowed and the impugned order insofar as the petitioners are concerned should be quashed and the matter if at all be remanded to the Deputy Commissioner for a proper opportunity etc.

10. Mr. R. Omkumar, learned AGA, who has been served with an advance copy of these writ petitions points out that in respect of the order passed by the Deputy Commissioner invoking the jurisdiction under Section 67(2) and Section 67(3) of the Act provides for aggrieved persons instituting a civil suit to get over that order and even if at all there was an order passed against the petitioners when that was the remedy available, to the petitioners, unnecessarily approaching this Court, even when there is no adverse action taken against the petitioners on imaginary grounds and on mere apprehension is not a cause worthy of examination in writ jurisdiction.

11. Section 67 of the Act reads as under:

“67. Public Roads etc., and all lands which are not the property of others belong to the Government.- (1) All public roads, streets, lanes and paths, bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water mark and of rivers, streams, nallas, lakes and tanks and all canals and water-courses and all standing and flowing waters, and all lands wherever situated which are not the property of individuals or of aggregate of persons legally capable of holding property, and except insofar as any rights of such persons may be established, in or over the same, and except as may be otherwise provided in any law for the time being in force, are and are hereby declared to be with all rights in or over the same or appertaining thereto, the property of the State Government.

(2) Where any property or any right in or over any property is claimed by or on behalf of the State Government or by any person as against the State Government, it shall be lawful for the Deputy Commissioner or a Survey Officer not lower in rank than a Deputy Commissioner, after formal inquiry to pass an order deciding the claim.

(3) Any person aggrieved by an order made under sub-section (2) or in appeal or revision therefrom may institute a civil suit contesting the order within a period of one year from the date of such order and the final decision in the civil suit shall be binding on the parties”.

12. In fact the Deputy Commissioner who had noticed the writ petitioners having instituted a suit in O.S.No.301/2010 in respect of the encroachment aspect on the part of the petitioners in Survey No.356/6 of Pavagada Village had consciously excluded the direction for taking action only insofar as it relates to this extent whereas in respect of other encroachers, they were directed to take action and which is obvious from the following part of the conclusion of the order passed by the Deputy Commissioner which reads as under:

“KARNATAKA”

13. Even if there is an adverse order, correctness of that order passed by the Deputy Commissioner in exercise of his powers under Section 67(2) of the Act,

cannot be examined by this Court as if this is Court of appeal. Statute itself provides for proper course of action to be taken. When such is the legal position coming up with petitions even when no adverse action is taken by the Deputy Commissioner as contained in the order dated 3-11-2010, but the action taken if at all should be in consonance with the determination by the Civil Court in the suit instituted by the writ petitioners and till such time when the Deputy Commissioner had directed to maintain status quo, there is absolutely no cause of action for petitioners to come to this Court even while pursuing them, their remedies in the suit before the Civil Court and even during the pendency of the suit, is nothing short of a misuse of the process of this Court and more so, when there is no cause of action at all for filing the present writ petitions.

14. Such petitions which are an abuse of the process of writ jurisdiction of this Court, unfortunately eats away the scarce and precious judicial time which is required to apportioned amongst the bona fide, genuine litigants, but is further reduced because of such frivolous matters and it is therefore these writ petitions are dismissed levying exemplary deterrent cost of Rs.50,000/- on the writ petitioners.

15. Cost to be deposited to the credit of the Karnataka High Court Legal Services Committee account and the Secretary of High Court Legal Services Committee is directed to ensure this amount is received and utilised properly for extending legal aid to deserving litigants who seek relief before the High Court, but cannot afford to meet the litigation costs.

16. Costs to be deposited within four weeks from today before this Court by the petitioners, failing which the registry is directed to issue certificate in favour of the Secretary, High Court Legal Services Committee, to realise this amount as though it is a decree passed by the Civil Court.

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