

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 30TH DAY OF AUGUST 2014

BEFORE

THE HON'BLE DR.JUSTICE JAWAD RAHIM

WRIT PETITION NO.33633/2009 (KLR)

BETWEEN:

1. M.MUNIYAPPA
S/O.LATE MUNISWAMAPPA
SINCE DECEASED BY HIS LRs.

1(a) SMT.NIRMALA
WO.LATE SRINIVASA
AGED ABOUT 52 YEARS.

1(b) SRI UMAPATHY
S/O.LATE SRINIVASA
AGED ABOUT 25 YEARS

BOTH ARE R/AT NO.7/2
22ND CROSS, 15TH MAIN
3RD SECTOR, H.S.R.LAYOUT
BANGALORE – 560 102.

1(c) NAGARAJ M
S/O.LATE MUNIYAPPA
AGED ABOUT 56 YEARS.

1(d) TYAGARAJ M
S/O.LATE MUNIYAPPA
AGED ABOUT 54 YEARS.

1(e) KRISHNAMURTHY M
S/O.LATE MUNIYAPPA
AGED ABOUT 48 YEARS.

1(f) VENKATESH M
S/O.LATE MUNIYAPPA
AGED ABOUT 44 YEARS.

1(g) MUNIGOWDA M
S/O.LATE MUNIYAPPA
AGED ABOUT 38 YEARS.

1(h) RAVICHANDRA M
S/O.LATE MUNIYAPPA
AGED ABOUT 36 YEARS.

ALL ARE R/AT NO.6/1
LAKSHMIVENKATESHWARA TEMPLE ROAD
MANGAMMANAPALYA
BOMMANAHALLI (POST)
BANGALORE – 68.

2. M.RAMANNA
S/O.LATE MUNISWAMAPPA
SINCE DECEASED BY HIS L.Rs.

2(a) M.R.SIDDALINGEGOUDA
S/O.LATE M.RAMANNA
AGED ABOUT 40 YEARS.

2(b) M.R.JAGADISH
S/O.LATE M.RAMANNA
AGED ABOUT 40 YEARS.

2(c) M.R.MUNISWAMEGOUDA
S/O.LATE M.RAMANNA
AGED ABOUT 38 YEARS.

2(d) M.R.RAGHAVENDRA
S/O.LATE M.RAMANNA
AGED ABOUT 36 YEARS.

3. M.KIRSHNAPPA
S/O.LATE MUNISWAMAPPA
SINCE DECEASED BY HIS LRs.

3(a) K.SURESH
S/O.LATE M.KRISHNAPPA
AGED ABOUT 53 YEARS.

3(b) M.K.RAMESH
S/O.LATE M.KRISHNAPPA
AGED ABOUT 49 YEARS.

3(c) K.SOMESHA
S/O.LATE M.KRISHNAPPA
AGED ABOUT 47 YEARS

ALL ARE R/AT NO.6/1
LAKSHMIVENKATESHWARA TEMPLE ROAD
MANGAMMANAPALYA
BOMMANAHALLI (POST)
BANGALORE – 68.

4. M.VENKATASWAMY
S/O.LATE MUNISWAMAPPA
SINCE DECEASED BY HIS L.Rs.

4(a) M.V.RAJENDRA
S/O.LATE M.VENKATASWAMY
AGED ABOUT 42 YEARS.

4(b) M.V.NAGENDRA
S/O.LATE M.VENKATASWAMY
AGED ABOUT 40 YEARS.

4(c) M.V.SRINIVASA
S/O.LATE M.VENKATASWAMY
AGED ABOUT 38 YEARS.

ALL ARE R/AT MANGAMMANAPALYA
YELLAKINTE DAKHALE
BEGUR HOBLI, BANGALORE SOUTH TALUK
BANGALORE CITY.

...PETITIONERS
(BY SRI PRAVEEN KUMAR RAIKOTE, ADV. FOR
SRI MANIKAPPA PATIL, ADV.)

AND:

1. THE STATE OF KARNATAKA
REP. BY THE SECRETARY TO
GOVERNMENT OF KARNATAKA
REVENUE DEPARTMENT

M.S.BUILDING, DR.B.R.AMBEDKAR ROAD
BANGALORE
BANGALORE CITY.

2. THE SPECIAL DEPUTY COMMISSIONER
BANGALORE DISTRICT
BANGALORE
BANGALORE CITY.
3. THE TAHSILDAR
BANGALORE SOUTH TALUK
BANGALORE URBAN.

...RESPONDENTS

(BY SRI VASANTH FERNANDES, HCGP &
SMT.ELIZABETH, HCGP FOR R-1 TO 3)

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA WITH A PRAYER TO QUASH THE IMPUGNED ORDER PASSED BY THE R-2 DATED 26.8.2009 VIDE ANNEX-N.

THIS PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

O R D E R

The petitioners have brought in question the order dated 26.8.2009 Annexure 'N' passed by the 2nd respondent, the Special Deputy Commissioner and also seeking writ in the nature of mandamus to direct respondents 2 and 3 to restore the name of petitioners in the record of rights to an extent of 13 acres 21 guntas in terms of the Sale Deed Annexures 'B' and 'B1' in respect of lands in Sy.No.41 of

Hongasandra village, Begur Hobli, Bangalore South Taluk. On issuance of notice regarding rule, respondents are represented by the learned Government Advocates Smt. Elizabeth and Sri Vasantha Fernandes.

2. I have heard the learned counsel. Perused the records in supplementation thereto.

3. The contextual facts needing reference are:

The petitioners claim to be the sons and grandsons of one Muniswamappa, who had acquired property bearing Sy.No.41 measuring 18 acres 4 guntas situate at Hongasandra village, Begur Hobli, Bangalore City Taluk from Jodidars namely, A.C.Krishnaswamy Modaliar, Sabhapathi Modahar, Vishwar Modaliar, Arunachala Modaliar and Vishveshwara Modaliar measuring 4 acres 21 guntas under the Sale Deed dated 6.4.1943 and the land measuring 9 acres 2 guntas under Sale Deed dated 11.9.1943. Based on the Sale Deeds, the revenue records were mutated incorporating his name vide

Annexure 'C', 'C1' for a period 1969-70 as evidenced from the proceedings in mutation entry No.3/1969-70 and M.E.No.9/1969-70. Muniswamappa expired on 12.12.1974, consequent to which the petitioners submitted a report to the revenue authorities as envisaged under Section 128 of the Karnataka Land Revenue Act (for short 'the Act'). The authorities on verification of records effected entries in the name of petitioners vide Annexure 'E' and further updated the Record of Rights, as evidenced from Annexures 'F', 'F-1' and 'F-2'.

4. The petitioners claim they have been in continuous physical possession and cultivation of land up to 1990 and the same position continued. However it is alleged, from 11.2.1988, they learnt that by Notification bearing No.PWD 82 IBM 85 dated 11.2.1988, the name of the Government was entered in the Record of Rights.

5. The petitioners having learnt of such illegal acts in the month of October, 1995 filed W.P.Nos.37900-904/1995 seeking a direction not to delete the names of petitioners in R.S.No.41 to an extent of 13-21 guntas and sought regularization of their unauthorized cultivation of the three acres. The writ petition was disposed of vide Annexure 'G', rejecting the request of petitioners for regularization of land to an extent of 3 acres. The order is at Annexure 'H'.

6. It is alleged, the second respondent without issuing any notice to the petitioners and without giving them any opportunity, initiated proceedings under Section 136(3) of the Act and by impugned order Annexure 'J' deleted the names of petitioners and entered the name of Government/Sarkar. Challenging the validity of the order, they preferred W.P.No.10515/2004. This Court quashed the order and remanded the case to the second respondent to reconsider afresh, after issuing notice to the

petitioners. They rely on Annexure 'K', the order of this Court.

7. It is alleged, the second respondent conducted remand proceeding in which they filed written arguments. In the meanwhile, petitioners 2 and 4 died on 22.12.2009 and 23.1.2009. It was brought to the notice of second respondent but without directing the legal representatives of petitioners 2 and 4, he has proceeded to pass orders Annexures 'M' and 'M1'.

8. The grievance of the petitioners is respondent No.2 has failed to comply with the directions of this Court to give opportunity to the petitioners and had failed to take into consideration, the grounds urged in the written statement filed. They, thus question the order of second respondent directing the third respondent to cancel all the entries in the name of petitioners and hence, questioned Annexure 'N'.

9. In support of the relief so sought, learned counsel for the petitioners would submit the second respondent has unjustifiably resorted to action under Section 136(3) of the Act and while exercising such suo moto power, has exceeded the jurisdiction conferred. He has undone the purchase of property by Muniswamappa, thereby, annulling the sale transaction itself. He submits that such an action by the second respondent is unsustainable and therefore, the order impugned is unsustainable. He submits that the ultimate conclusion of the second respondent is with reference to order passed in W.P.Nos.37900-904/95 filed by the petitioners which has no relevance as writ petition was seeking regularization of 3 acres of land which was not part of the property in question. The rejection of that request had not impacted the right of petitioners in respect of the land presently under consideration and hence, erroneously the respondent has passed such an order. He therefore, seeks setting aside.

10. He submits, he has cancelled the mutation only on the ground that mutation to enter petitioners father's name was made 25 years after purchase and hence was not correct. He relies on the decision of the Apex Court in the case of Mohamad KaviMohamad Amin vs. Fatmabai Ibrahim reported in (1997) 6 SCC 71.

11. He further submits that on behalf of the State Government, a counter has been filed relying on certain documents which documents are not part of the records before the second respondent and hence could not be taken into consideration in this writ petition. In this regard, he relies on the decision of the Apex Court in the case of Mohinder Singh Gill vs. The Chief Election Commissioner, New Delhi reported in AIR 1978 SC 851.

12. In negation of these grounds, learned Government Advocate, with vehemence, contends, the State has filed a detailed counter and has produced certain records which by itself demonstrate

that petitioners have no subsisting right, title and interest in the property in question and therefore, the order passed by the Deputy Commissioner based on the report of the Tahsildar, after due enquiry under Section 136(3) of Cr.P.C is tenable and calls for no interference.

13. Learned Government Advocate has filed a memo to be read in continuation of memorandum of written arguments filed by the respondents and has produced certain copies of documents marked as Annexures 'R-3' to 'R-9A', which includes the copy of the order passed in W.P.No.10515/2004 dated 5.12.2006 by this Court and the order impugned in this case.

14. By the memorandum of written statement on behalf of the State, it is contended that the property which is the subject matter of this writ action is a Government lake and is shown as such in the revenue records from 1904 till date. He submits, it is the part of Sy.No.41 of Hongasandra Village, Begur Hobli. The

petitioners in this writ petition have fabricated documents pertaining to the Government land without any authority of law claiming to be the unauthorized occupants and without filing any application for regularization of their unauthorized occupation seeking to claim a right.

The second ground urged is, the petitioners by corrupt practice, with a view to cheat the Government had made efforts to appear their names in the revenue records. When the same was noticed, the Special Deputy Commissioner, after verifying, has directed the Tahsildar to investigate and report as to how the name of petitioners appear in the R.T.C for the years 1969-75. Annexure 'R-1' is said to be the direction of the Deputy Commissioner.

The third ground urged is, the Tahsildar, after due process of law investigated and enquired into the circumstances in which petitioners' name appeared and has submitted a report to the Special Deputy Commissioner vide Annexure 'R-2'.

The fourth ground is the respondent has learnt that some transactions between the petitioners and others has taken place under Sale Deeds without authority of law. As the said transactions are illegal, it does not effect the Government's right. Thus, the Government issued Notification No.PWD 82 IBM 85 dated 11.2.1998 indicating that the land in Sy.No.41 is a Government lake which has not been allotted nor regularized in favour of the petitioners and further that the Statute of the Land Revenue Act prohibits allocation of such types of land to anybody.

Alternatively, it is urged, even assuming but not conceding that such a land was granted to the petitioners, it is illegal and has no sanctity in law.

15. Referring to the order of the Special Deputy Commissioner in RRT(2) CR.261/1995-96, it is contended, he has exercised power under Section 136(3) of the Act to correct the error in the revenue entries and has thus exercised power conferred under

Section 136(3) of the Act justifiably and there is no illegality in such action.

16. Describing the statement in the writ petition as factually incorrect, they seek dismissal of the petition. Learned counsel has placed reliance on the decision in the case of Union of India vs. Tejram Parashramji Bombhate and others reported in (1991) 3 SCC 11 and a decision in the case of State of Tamil Nadu vs. St.Joseph Teachers Training Institute reported in 1991(2) U.J (S.C) 162 to support the Government's stand. The written arguments is signed by the learned Government Advocate Smt. Elizabeth and the same has been used even today. Besides, learned Government Advocate would contend this Court, no doubt, on had occasion to deal with the Deputy Commissioner's power under Section 136(3) of the Act in W.P.Nos.32140-143/2010 disposed of on 25.4.2014 laying down proposition with reference to Section 136(3) of the Act, it does not apply to the facts of this case, as in this case, the Deputy

Commissioner has not either annulled the title of any one nor as he passed an order touching the title of individuals. All that the Deputy Commissioner has done is to examine the records for ascertainment as to whether change of entries in the name of petitioners or their predecessors in title were legally justified when the land in question was shown as a lake as in the year 1904 itself. Thus, he submits erroneous entries in the revenue records could be corrected by the order of Special Deputy Commissioner in exercise of suo moto power under Section 136(3) of the Act and hence, there is no illegality in the order. He submits that the issue dealt by this Court in W.P.No.32140-143/2010 was with regard to jurisdiction of the Special Deputy Commissioner under Section 136(3) of the Act and taking note of all attending provisions, this Court opined the power is confined only to action under Sections 127 and 129 of the Act. He submits in the instant case, the petitioners had already availed the benefit of approaching this Court in

W.P.No.10515/2004 to question the first order passed by the Deputy Commissioner and the order was set aside permitting the petitioners to participate in the proceedings as seen from the order passed in W.P.No.10515/2004. He submits in terms of that order, the Deputy Commissioner has re-examined the issue and has reached a logical conclusion that the revenue entries in the name of petitioners were illegal and there is a tampering of original entries and hence, he has rightly set aside.

17. To appreciate the contentions of both sides, it is necessary to examine the impugned order itself. As could be seen from the impugned order, the Deputy Commissioner has exercised his suo moto power conferred under Section 136(3) of the Act and has taken up the proceedings in terms of the order passed in W.P.No.10515/2004. During such remand proceedings, the Deputy Commissioner has recorded the facts under consideration. The contextual facts referred to by him show that the respondents before

him were the legal heirs of Muniswamappa and they claim that Muniswamappa had purchased the property in Sy.No.41 of Hongasandra village, Begur Hobli, measuring 18 acres 4 guntas from A.C.Krishnaswamy Modaliar, Sabjapathi Modahar, Vishwar Modaliar and his brothers under two Sale Deeds dated 6.4.1943 and 11.9.1943 and subsequently entries were updated in their names in the years 1969-70 in M.E Nos.3/1969-70 and 9/1969-70. There is also reference that after the death of Muniswamappa, the Special Deputy Commissioner, by an order dated 26.4.1996 cancelled the entries and ordered entry to show it has a Government tank the said order was impugned in W.P.No.10515/2004 and this Court noticed that petitioners were not heard and not given opportunity and thus, the order dated 26.4.1996 was set aside.

18. Now coming to the issues that has been raised before him, the second respondent has referred to the decision in the case of Collector of Customs vs.

Bhoormall reported in 1974 SC 859, where the Deputy Commissioner has power to correct the wrong and illegal entries in the revenue records pertaining to the lands.

19. Now the issue is whether the entries made in the revenue records in respect to the land measuring 9 acres 2 guntas situated at Hongasandra village as per M.R.No. stands to reason. Having framed that question he proceeded to consider the material on record and has noticed that M.Muniyappa S/o. late Muniswamappa, M.Ramanna S/o. late Muniswamappa, M.Krishnappa, S/o. late Muniswamappa, M.Venkataswamy S/o.late Muniswamappa and R.Narayana S/o.Ramaiah had preferred W.P.Nos.37900-9044/1995 seeking direction to the respondents not to interfere and cancel the entries pertaining to land in Sy.No.41 of Hongasandra village etc. and has referred to the order passed by this Court on 2.11.1995 which is extracted as follows:

"The impugned order directs for not entering the names of the petitioners to the extent of 3 acres of land on the ground that they are in unauthorized occupation of the same. The petitioners have not produced any material to show that their unauthorized occupancy has been regularized by the authority nor they have produced any records to show that they have obtained any declaration from a competent court of law that they have become absolute owners of this land by virtue of adverse possession. In view of this position, the impugned order directing possession of the petitioners to the extent of 3 acres of land is not improper or illegal. No grounds to admit this writ petition. Writ petition is dismissed."

20. Learned Deputy Commissioner referring to the order of the High Court has opined as the issue under consideration was considered by this Court in that writ petition, it has rejected their claim and hence, there is no material to substantiate petitioners' claim. In the next para, the Deputy Commissioner has further recorded that the father of petitioners'

Muniswamappa claims he has purchased the land in question of Sale Deed dated 6.4.1943 i.e., 4 acres 21 guntas and Sale Deed dated 11.9.1943 measuring 9 acres 2 guntas from A.C.Krishnaswamy and brothers. They have not produced any such documents as to how the vendors of Muniswamappa had acquired the title in question. Besides, he has observed that the lands have been purchased during 1943 itself. It is not known why the mutation of lands has not got transferred till 1969-70. He has commented on the delay of 26 years on the part of the petitioners father in obtaining change of revenue entries in M.E.Nos.3/1969-70 and 9/69-70.

21. Relying on the decision in the case of S.Shivanna vs. Special Tahsildar, Bangalore North Taluk reported in 2006(1) KCCR 652 he opined petitioners claim is unsustainable.

22. Relying on the case laws, he opined as, after 26 years, they approached for change of khatha but the land in Sy.No.41 is classified as tank and as such,

it is reserved for forestation as seen from order by Government Order No.PWD 82 IBM 85 dated 11.2.1988. He opined that revenue entries brought in the name of petitioners were not legal and liable to be set aside. Based on that reasoning, the Deputy Commissioner has ordered cancellation of entries.

23. Learned counsel for the petitioners has opposed reference to documents filed by the Government in this writ petition on the ground they were not at all referred to by the Deputy Commissioner in the impugned order and therefore, they cannot be used by the State at this stage. He relies on the decision reported in AIR 1978 SC 851. I am satisfied, only such of the material which was produced before the authority has to be examined to test whether the findings recorded is justified. Any material placed subsequently in appeal stage or any further proceedings will not cure the illegality in the order.

24. Be that as it may. I have considered the documents filed by the State. First of all, the order passed in W.P.Nos.37900-904/1995 referred by the Deputy Commissioner shows that by that writ petition, the petitioners had sought regularization of 3 acres of land on the ground it was under their unauthorized cultivation. That relief was rejected. There is nothing in the order to show that it pertains to claim of petitioners about lands in question. The Deputy Commissioner has misconstrued the order as to mean that the claim of petitioners was negated in respect of the land which is subject matter of these proceedings. It is undoubtedly an erroneous understanding of the order passed in W.P.No.10515/2004. The order in writ petition pertains to 3 acres of land which undisputedly was not subject to proceedings before the Deputy Commissioner.

25. Now coming to the Gazette Notification of the Government describing the land as lake, it is seen the notification is issued in the year 1985. The

petitioner claims that Muniswamappa purchased the property in the year 1943. Therefore, the claim of the petitioners is their father purchased the property in the year 1943. As on that date, there was no notification by the Government that the land in Sy.No.41 is a lake and was handed over to the forest department. Therefore, the question is if as alleged, the petitioners' father purchased the property in the year 1943, then the prescribed officer under Section 127 of the Act was required to bring about necessary entries showing their names. Besides, even the purchasers had an obligation to report about the acquisition under Section 128 of the Act. The Karnataka Land Revenue Act is of the year 1964. Therefore, as on the date, the lands are purchased by the father of the petitioners, the land Revenue Act was not even enacted and therefore, there was no obligation for them to report their acquisition as envisaged under Section 128 of the Act.

26. In this context, it is material to note, Section 127 of the Act has been incorporated requires the prescribed officer to verify and ascertain the person in occupation of the revenue land and the nature of right under which they occupied and then to conduct survey and record it in the revenue records. Therefore, Section 127 of the Act is a provision which deals with pre existing entries and rights of properties whereas Section 128 of the Act deals with situation after the Act coming into force.

27. In the circumstances, if a question arises as to whether the persons whose names appear in revenue entries prior to commencement of the Act has the title and claim it has to be enquired into. An order under Section 136(3) of the Act is permissible only if an action has been taken by the prescribed officer under Sections 127, 128 and 129 of the Act. If such entries have been made, then they are subject to suo moto power under Section 136(3) of the Act but if certain preexisting rights were shown prior to coming

into force of Act then suo moto power is not sufficient as it deals with the claim prior to the Act itself.

28. In the instance, whether the petitioners' father had purchased the property in the year 1943 is a question of fact and that had to be enquired into and ascertained. Suo moto power under Section 136(3) of the Act does not confer upon the Deputy Commissioner, a power to enquire into the question of title. Section 67 of the Act is also relevant. Section 67 refers to the properties which are not public properties are the properties of the Government. Therefore, the properties which are not private properties only can be Government properties but when a person claims it is his personal property, then, the revenue authorities have no power to adjudicate such issues.

29. It is in this context, Section 62-B of the Act becomes relevant. It specifies the suits between private parties. Therefore, it is a civil Court which have a jurisdiction to decide this issue.

30. In the instant case, as the claim is, the properties was purchased in the year 1943, it is before the Act was enacted. Therefore, in subsequent action by resorting to Section 136(3) of the Act, the Deputy Commissioner could not have cancelled the entry only on the basis that they had got it entered in the year 1969-70, 26 years after purchase. Be that as it may. There were proceedings in the year 1969 in M.E.Nos.3/1969-70 and 9/1960-70 and in those proceedings, the names of petitioners' father was entered. After his demise, their names were entered subsequently. Merely because, such entries are made in 1969-70 cannot be construed as illegal. Even if we consider the time factor, the Deputy Commissioner has now resorted to cancellation of those entries, after 26 years in the year 1966-67. This itself would show it is a total irrational approach. It must be emphasized that when a suo moto power is exercised by an authority by virtue of statutory conferment, it performs quasi judicial function requiring judicial approach. A casual approach may impact the

legitimate right of a citizen. Learned counsel for the petitioners cites a decision in (1997) 6 SCC 71, which shows suo moto power is to be exercised within a reasonable time. In this case, suo moto power has been exercised, 26 years after names of petitioners' father was mutated in the year 1969 and therefore, the impugned order cannot be sustained.

31. Besides, it could be seen the Seputy Commissioner has failed to consider petitioners had produced Sale Deeds of the year 1943 evidencing purchase of properties in question by petitioners' father and these transactions were never disputed by any one and as they are registered documents evidencing transfer of title, it required due credence. Also he has failed to notice such transactions were prior to coming into force the Karnataka Land Revenue Act and hence if any question had arisen about validity of such transaction, he had no legal competence to decide that issue in the guise of exercising suo moto power under Section 136 (3) of

the Act as held by this Court in W.P.No.32140-32143/2010 disposed of on 25.4.2014.

32. I am constrained to hold that the order impugned suffers from illegality and unsustainable. It is hereby quashed. In view of quashing of this order, the entries in the revenue records, as it stood shall be retained. Writ petition is allowed. Rule issued is made absolute.

Sd/-
JUDGE

nas.