

(2011) 5 KarLJ 668

Karnataka High Court

Case No: Writ Petition No. 16060 of 2011 (KLR RR/SUR)

Primary Health Centre

APPELLANT

Vs

The Deputy
Commissioner
Dakshina Kannada,
Mangalore and Others

RESPONDENT

Date of Decision: June 16, 2011

Acts Referred:

Constitution of India, 1950 " Article 227#Karnataka Land Revenue Act, 1964 " Section 136, 136 (3)

Citation: (2011) 5 KarLJ 668

Hon'ble Judges: D.V. Shylendra Kumar, J

Bench: Single Bench

Advocate: Prashanth, Anandarama and Vikram, for the Appellant; R.B. Sathyanarayana Singh, HCGP for R1 to 3, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D.V. Shylendra Kumar

1. Writ Petitioner claims to be a Primary Health Centre at Adyanadka Post, Bantwala Taluk, Dakshina Kannada, represented by its Medical

Officer Dr. Subodha Kumar Rai, who has approached this Court seeking the following relief:

a. Issue a writ of mandamus or writ in the nature of mandamus or other writ, order or direction quashing the impugned order dated 16.03.2009

passed by the 1st Respondent in Revision Petition No. C. Dis.RAP. 137/08-09 (Annexure-F).

b. Issue a writ in the nature of mandamus or any other writ or order, directing the Respondents No. 1 to 3 to restore the name of the Petitioner in

the records of rights maintained for the land measuring 0.04 acres situated in Sy. No. 449/3B in Kepu Village, Bantwala Taluk, Dakshina

Kannada.

2. It is averred in the writ petition that the Primary Health Centre is one established under the supervision of Ministry of Health and Family Welfare

and in Association with Zilla Panchayath, Dakshina Kannada and caters to the health care of the people around the place and there are also sub-

centres and para medical staff to support the Primary Health Centre in its activities.

3. It is the version of the Petitioner that 0.04 acres of land situated in Sy. No. 449/3B in Kepu Village, Bantwala Taluk, Dakshina Kannada, had

been settled in favour of the Petitioner-organization by late Sri. Kuirama Maniyani and the writ Petitioner in association with Zilla Panchayath,

Dakshina Kannada had developed the said land and constructed hospital building and has been serving the general public in the vicinity of

Adyanadka Village. It is also claimed that pursuant to the settlement deed dated 19.8.1991 (copy produced as Annexure - A to the petition) the

revenue officer of the Village Office, Vittal, had as per his order dated 29.6.1992 on the basis of the settlement deed had ordered for erasing the

name of the Petitioner in the record of rights in column No. 11 and it had been so done for the years 1995-96 onwards and to evidence this certain

pahani extracts for the years 1995-96 are produced as Annexures - B, C and D to the petition, to show that was the position after 1995-96 and

thereafter for the years 2006-2007. It is averred that the revenue entry went missing in the year 2008 and thereafter Petitioner had approached the

3rd Respondent -Tahsildar, Bantwala Taluk, for restoration of the missing entry who in turn it appears had referred to matter to the Asst.

Commissioner, Dakshina Kannada and who in terms of his order dated 27.11.2008 had directed proper correction of column No. 11 in the

revenue records (copy produced as Annexure E to the petition).

4. It is the version of the Petitioner that Respondent Nos. 4 and 5 are private persons and residents of the same place had invoked the jurisdiction

of the Deputy Commissioner u/s 136(3) of the Karnataka Land Revenue Act, 1964, (for short "the Act") as against the orders passed by the Asst.

Commissioner and the Deputy Commissioner in gross violation of the provisions of the Section 136 of the Act, even without assigning valid

reasons for interfering with the order passed by the Asst. Commissioner has allowed the revision petition vide order dated 16.03.2009 (copy

produced as Annexure F to the petition) and it is under these circumstances, Petitioner has approached this Court seeking the relief as indicated

above.

5. Appearing on behalf of the writ Petitioner, submission of Sri. Prashanth, Learned Counsel is that the Deputy Commissioner has acted in a highly

arbitrary manner; that he could not have passed the order in the manner he has done; that the order is per se contrary to the provisions of Section

136(3) of the Act; that the Deputy Commissioner has not provided any proper opportunity to the writ Petitioner before passing the impugned

order and therefore, the impugned order at Annexure F should be quashed and a writ of mandamus issued and that the Deputy Commissioner be

further directed to dispose of the revision petition after according an opportunity of hearing to the writ Petitioner etc.

6. This writ petition only deserves to be dismissed for more than one reason. In the first instance a petition by a Primary Health Centre which is part

of the State Government coming up with a writ petition to question the orders passed by the Deputy Commissioner on the revenue side exercising

his power u/s 136(3) of the Act can only demonstrate either the ineptness or the incompetence of the State Government, as the primary health

centre is part of a governmental department of the state government and if the state government does not know, how to go about in protecting its

properties etc., !

7. A writ petition cannot be in the name of a Primary Health Centre and being represented by its Medical Officer as though Primary Health Centre,

which is a part of the State, and therefore while the writ Petitioner should have been the State government, it is presented by the person claiming to

be the Medical Officer at the Primary Health Centre, as though the Primary Health Centre is owned or possessed by the Medical Officer !

8. While there may be situations, when even the State becomes helpless in certain circumstances when the officials of the State Government,

doubling as statutory authorities go berserk and if orders passed, while they are in such intoxication causes great public damage or even is of

nuisance value, and the State government feels helpless in the immediate vicinity of such orders, either to get over the order against the erring,

misconducting marauding officials of the State Government and may be as an emergency measure and due to the exigency of the fact situation,

perhaps the State Government while examining the possibilities of getting over/or nullifying such an order, even take recourse to invoking writ

jurisdiction of this Court, but it could be only by the State Government, properly represented and through an authorized officer and the situation

being one which is inevitably warranting the writ court to exercise discretion in favour of the State to examine such a matter, but not at the instance

of all sundry and by persons claiming to espouse some public cause, whether duly authorised or otherwise, as in the case of the present petition.

9. Subject matter of the present petition is a run of the mill situation, wherein revenue officials exercising power u/s 136 of the Act, conduct or

behave in a most arbitrary, whimsical, biased or prejudicial manner, only to pass orders to victimize persons interested in agricultural land, passing

of such orders has become the order of the day and private affected citizens keep flocking this Court day in and day out for relief in such situations,

no extra ordinary situation is pointed out warranting interference by this Court in Article 227 jurisdiction.

10. This Court having taken note of this very ugly scene has in fact directed the State Government to take action against the erring revenue officials

and to take suitable steps also to examine as to what kind of powers should be left in them, particularly, in the context of the changed scenario after

the legislation for regulating the lands for revenue collection i.e., land revenue and for grants being made and such related matters have undergone a

sea of change in terms of developments and the present Karnataka Land Revenue Act, 1964, is nothing but a continuation of the earlier land

revenue legislations in vogue in the erstwhile Mysore State when it was under the rule of a king and which perhaps suited a bygone era and also

may be when our country was under the rule of a foreign regime, when large extents of forest lands were brought under cultivation, mainly and with

the object of augmenting the income to the State by levy of land revenue on agriculture lands making generous and liberal grants of lands was the

need of the day. In this background perhaps the State, that too - a foreign power was keen on bringing more and more forest land under

cultivation which was being granted, apart from dry useless lands also being granted for cultivation to private persons only to collect some revenue

from them after assessing the land revenue acre wise.

11. Powers which had been then conferred on statutory authorities like the Tahsildar, the Asst. Commissioner, and the Deputy Commissioner has

now come in handy for such officials in the present day, to indulge in nefarious activities by misusing and abusing these powers. If at all the State is

concerned for the people and as a sensitive government, it should have not only taken note of such developments, but also, should have denuded

such powers for grant of lands from the all marauding officials in the Revenue Department, so that citizens travails are reduced, their grievance

examined and relief given to them. Unfortunately this is not happening.

12. The irony in the present writ petition is that even a part of the Government Department is also feeling the heat and facing the tyranny of the

Deputy Commissioner who has indulged in passing the impugned order, whether he has jurisdiction or otherwise!

13. Be that as it may, the subject being only one relating to entries in the revenue records which will have to necessarily follow the transfer of

interest in the land and not otherwise than in a manner recognized by law, cannot make much difference by itself. The Government Department

feeling helpless against the order passed by the Deputy Commissioner is only symbolic of the ineptness of the governance!

14. Writ jurisdiction which is a discretionary jurisdiction of the High Court, particularly, while reviewing the administrative orders under Article 227

of the Constitution of India, is not one either of appellate jurisdiction where examination is based on the merits of orders passed by the revenue

authorities u/s 136 of the Act, or even before, and therefore such orders are all not matters for examination by the High Court to ascertain as to

whose name should be entered in the revenue records, as to whether it should be of the Petitioner or the Respondents, but what is examined is the

manner of functioning of the statutory authorities, while exercising the statutory powers and if that has very adversely, critically affected the interest

of the Petitioner, only because of the misuse or abuse of the power than to interfere and not as to whether the Petitioner has any real right over the

subject land or the Respondent has, which are all not matters for examination by the High Court.

15. That apart this writ petition filed more than two years after the passing of the impugned order even otherwise, is one hit by delay and laches

due to lack of diligence on the person claiming interest as the Petitioner.

This Writ petition only bristles with all sorts of inconsistencies, irregularities and its very tenability is in doubt. It is not necessary to go into the

merits of an order passed by the Deputy Commissioner, in such a petition but this writ petition is dismissed without exercising the discretionary

jurisdiction in favour of the Petitioner but without prejudice to other rights of the Petitioner, if any, elsewhere in accordance with law.