

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 1<sup>ST</sup> DAY OF APRIL, 2014

:PRESENT:

THE HON'BLE MR. JUSTICE N.K. PATIL

AND

THE HON'BLE MR.JUSTICE PRADEEP D. WAINGANKAR

WA No.4823/2012 (KLR-LG)

BETWEEN:

K THARANATHA GOWDA  
S/O KADYA CHINNAPPA GOWDA  
AGED ABOUT 65 YEARS  
KADYA HOUSE  
MADAPPADI VILLAGE  
SULLIA TALUK  
DAKSHINA KANNADA DISTRICT-574 239

... APPELLANT

(BY SRI S N BHAT, ADVOCATE)

AND

1. THE STATE OF KARNATAKA  
REPRESENTED BY ITS SECRETARY  
TO THE REVENUE DEPARTMENT  
VIDHANA SOUDHA  
BANGALORE-560 001
2. DEPUTY COMMISSIONER  
DAKSHINA KANNADA  
MANGALORE-575 001
3. ASSISTANT COMMISSIONER  
PUTTUR SUB DIVISION  
PUTTUR-574 201
4. THAHSILDAR  
SULLYA TALUK

SULLYA-574 239

5. P K CHANDRASHEKAR  
S/O KOOSAPPA GOWDA  
KADDAPERALU HOUSE  
SULLYA TALUK-574 239

... RESPONDENTS

(BY SRI D. ASHWATHAPPA, AGA FOR R1-R4)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION 15614/2009 DATED 20/7/12.

THIS WRIT APPEAL COMING ON FOR PRELIMINARY HEARING THIS DAY, N.K. PATIL, J., DELIVERED THE FOLLOWING:-

**: J U D G M E N T :**

This appeal is by the appellant/petitioner assailing the correctness of the impugned order of dismissal dated 20.07.2012 passed by the learned Single Judge in WP No.15614/2009, wherein the appellant had questioned the correctness of the order dated 18.10.2000 vide Annexure-C and the order dated 10.06.2002 vide Annexure-D, passed by the 3<sup>rd</sup> and 2<sup>nd</sup> respondents, respectively.

2. In brief, the facts of the case in hand are that:

The appellant filed an application for regularization of unauthorized land to an extent of 1 acre in Sy.No.149/1A and 1B of Madapaddi village of Sullya Taluk and the Regularization Committee has granted occupancy right in his favour and he was in peaceful possession and enjoyment of the said lands since decades. 5<sup>th</sup> respondent, who is of the same village, without having any locus-standi, has questioned the correctness of the order before the 3<sup>rd</sup> respondent, passed by the Regularization Committee granting the land in question, in favour of the appellant. The 3<sup>rd</sup> respondent, in turn, vide its proceedings bearing No.CDS REA SR/142/99-2000 heard the appellant and the 5<sup>th</sup> respondent and after going through the entire records available on file, has held that, the appellant's family is holding land in excess of the permitted limit, for being eligible for grant of government land and therefore, dismissed the grant of regularization by its order dated 18.10.2000

vide Annexure-C. Being aggrieved by the said order passed by the Assistant Commissioner, Puttur, the appellant has filed an appeal before the 2<sup>nd</sup> respondent-Deputy Commissioner, Dakshina Kannada. The Deputy Commissioner in turn, after due appreciation of the oral and documentary evidence available on record and after going through the relevant provisions of the Act and Rules and after affording opportunity on several occasions commencing from 17.04.2012 to 29.04.2012 to the parties to adduce their oral and documentary evidence, has confirmed the order passed by the 3<sup>rd</sup> respondent. Being dissatisfied with the order passed by the Deputy Commissioner, appellant has filed a writ petition in WP No.15614/2009. The said matter had come up for consideration before the learned Single Judge on 20.07.2012 and the learned Single Judge after hearing the learned counsel appearing for the appellant and the learned appearing for the

respondent Nos.1 to 4 and on perusal of the records available on file, has recorded a finding of fact holding that, the appellant has not made out any case to allow the writ petition and observed that the Assistant Commissioner, Puttur, had looked into the record and was satisfied that the appellant's family was holding land in excess of the permitted limit for seeking regularization of his unauthorized occupation of government land and that proviso to sub-section (4) of Section 94-A of the Karnataka Land Revenue Act, 1961 clearly indicated that the granted land in combination with the land already held by the grantee should not exceed 2 Hectares of 'D' class land or its equivalent and the Deputy Commissioner had looked into the record and found that as per Partition Deed an extent of 4.75 acres of punja land had fallen to the share of the appellant and therefore was satisfied that no interference was warranted and rightly confirmed the order passed by the Assistant Commissioner,

Puttur. It is held that, when two authorities have concurrently found on fact that the appellant had held land in excess of the permitted limit in terms of proviso to sub-section (4) of Section 94-A of the Act, there is no scope for interference with such orders and dismissed the same reserving liberty to the appellant to work out his remedy elsewhere in accordance with law. Being dissatisfied with the order passed by the Assistant Commissioner, Puttur, the Deputy Commissioner, Dakshina Kannada and the learned Single Judge as referred above the appellant has presented this appeal.

3. The submission of Sri S.N. Bhat, learned counsel appearing for the appellant at the outset is that, both the authorities and the learned Single Judge have committed an error resulting in miscarriage of justice in not considering the material on record, while rejected the application holding that the appellant's family is holding 4.75 acres of punja

land, therefore, they are not entitled for regularization of the unauthorized occupancy rights in respect of Survey No.149/1A and 1B situated at Madappadi village, Sullya taluk. The reasoning given cannot be sustained. To substantiate the same he vehemently submitted that the appellant is in possession of the land in question since decades, constructed a residential house and residing along with the cattle, and at this stage disturbing him would be injustice and he will become a houseless person. This aspect is neither looked into nor appreciated by the authorities nor by the learned Single Judge. Therefore, the orders impugned passed by the jurisdictional authorities and the learned Single Judge are liable to be set aside by confirming the grant made by the regularization Committee in favour of the appellant.

4. Per contra, learned Government Advocate appearing for the respondent Nos. 1 to 4 inter alia

contended and substantiated that the impugned order passed by the learned Single Judge confirming the orders passed by the jurisdictional authorized authorities is just and proper. It is passed after conducting enquiry and going through the entire material available on record. The appellant has not approached the Court with clean hands nor has stated the true facts and it is not in dispute that the Deputy Commissioner in the order vide Annexure-D, has specifically observed that, the appellant filed an application for regularization of unauthorized occupation of land on 17.06.1991 and the Partition Deed was registered on 20.01.1997. As per Partition Deed the father of the appellant has got 4.75 acres of land as his share. At the time of filing an application in Form No.50 for regularization of unauthorized occupation, the family was having the exceeding limit of land. Therefore, both the authorities after critical evaluation of the oral and documentary evidence,

recorded the finding of fact and held that the appellant has not approached the authority with clean hands nor stated true facts. Therefore, the authorities are justified in rejecting the claim granted in his favour by the Regularization Committee and the same has been rightly confirmed by the learned Single Judge. Therefore, interference by this Court is not called for, in view of well settled law laid down by the Apex Court in Catena of judgments. Therefore, he submits, the prayer sought by the appellant cannot be sustained and liable to be dismissed with costs.

5. After hearing the learned counsel appearing for the appellant and the learned Addl. Govt. Advocate appearing for the respondent Nos.1 to 4 and on perusal of the orders passed by the Assistant Commissioner, Puttur vide Annexure-C dated 18.10.2010 in proceedings bearing No. CDS REA SR 142/99-2000, it is significant to note that, the Assistant Commissioner, Puttur, after affording

reasonable opportunities to adduce arguments to both the parties and after perusal of the material available on file, has held that the appellant had held the lands exceeding ceiling limits and therefore, he is not entitled for regularization of unauthorized cultivation of land in question and the order passed by the Deputy Commissioner in proceedings bearing No. CDS REP 174/2000-01 on 10.06.2002 vide Annexure-D is after conduct of enquiry and after appreciating the oral and documentary evidence, after affording reasonable opportunities to the parties on several occasions, wherein, it is referred that, as per registered Partition Deed dated 20.01.1997 in partition letter No.733/96-97, at the time of filing of application in form No.50 the appellant is holding land more than ceiling limits and therefore the appellant is not entitled to 4.75 acre of land and in the said registered Partition Deed, the father of the appellant Sri K. Chinnappa has got that extent 4.75

acres punja land. Therefore, it is held that, the appellant is holding land beyond the prescribed limit. Hence, form No.50 filed for regularization of unauthorized occupancy rights cannot be sustained. Nor the appellant has approached the Court with clean hands. He is bound to disclose the extent of land he is holding. Taking into consideration the facts of the case, the respondent Nos.3 and 2 recorded the finding of fact and held that the appellant is not entitled to continue the possession of the land in question and the order passed by the regularization Committee cannot be sustained and liable to be set aside and justified in setting aside the order passed by the Regularization Committee on the basis of the application filed in person by the 5<sup>th</sup> respondent.

6. Being aggrieved by the order passed by the respondent Nos.3 and 2 herein the appellant has filed the writ petition No.15614/2009. The said matter had come up for consideration before the learned

Single Judge on 20.07.2012 and the learned Single Judge after due appreciation of the oral and documentary evidence and on perusal of the entire records available on file, is justified in holding that while the Assistant Commissioner had looked into the record and was satisfied that the appellant was holding land in excess of the permitted limit, seeking for regularization of his unauthorized occupation of government land; that proviso to sub-section (4) of Section 94-A of the Karnataka Land Revenue Act, 1961 clearly indicated that the granted land in combination with the land already held by the grantee should not exceed 2 Hectares of 'D' class land or its equivalent; that the Deputy Commissioner had looked into the record and found that as per Partition Deed an extent of 4.75 acres of punja land had fallen to the share of the appellant and therefore was satisfied that no interference was warranted and it is a fortiori so in the writ petition also.

The two authorities have concurrently found on fact that the appellant had held land in excess of the permitted limit in terms of proviso to sub-Section (4) of Section 94-A of the Act and observed specifically that he does not find any scope for interference with such orders and dismissed the writ petition without prejudice to the rights and remedies, if any, available to the appellant elsewhere in accordance with law. The said reasoning given by the learned Single Judge at Para Nos.4 and 5 of the order is well founded and well reasoned and all the three orders passed by the authorities and learned Single Judge are after recording concurrent finding of fact against the appellant in the light of the Judgment of the Apex Court and this Court in Catena of decisions and therefore, interference by this Court is not called for. Nor the appellant has made out any good ground to interfere with the same. For the forgoing reasons, appeal stands dismissed as devoid of merits.

Learned AGA is permitted to file memo of appearance for respondent Nos.1 to 4, within three weeks, from today.

Sd/-  
JUDGE

Sd/-  
JUDGE

Sbs\*

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