

IN THE COURT OF DEPUTY COMMISSIONER UTTARA KANNADA KARWAR

**Present: Sri. S S Nakul, IAS,  
Deputy Commissioner,  
Uttar Kannada, Karwar**

No. RB/LND-II/CR-2/08-09



**Between**

1. Sri. Seetaram Ganapati Hegde  
At: Mundaganmane Taluk Sirsi  
(Represented through Advocate Sri. N.S.Bhat)

.... Appellant

**V/s**

1. Tahsildar Sirsi
2. Assistant Commissioner Sirsi  
r/o Adukula Taluk Honnavar
3. Vasu Purusu Marathe  
At: Mundaganmane Taluk Sirsi

.... Respondents

**Sub:** Appeal filed u/s 50 of Karnataka Land Revenue Act 1964 against the order of Assistant Commissioner, Sirsi in file No.Bhoomi/Appeal/Viva-1/1997-98 dated 08-09-2008.

\*\*\*\*\*

**Preamble:**

The appeal has been filed against the order of Assistant Commissioner, Sirsi in file No.Bhoomi/Appeal/Viva-1/1997-98 dated 08-09-2008. Notices were issued to both parties. Hearing started on 24-11-2008 and finally on 29-06-2016 it was posted for order after according sufficient opportunity to both sides. Due to change of presiding officer case was reopened and one final opportunity was given to both sides and posted for orders on 22-08-2016.

**The brief facts of the case are as follows.**

The Govt. land in Sy.No.86 an extent of 0-4-12 of Mundaganamane was granted to Sri. Vasu Marathe the Respondent No.3 on 10-08-1994 by the Encroachment Regularization Committee with some conditions. Again the same land was granted to the Appellant by the Encroachment Regularization Committee dated 26-06-1996. Original grant was challenged before Assistant Commissioner, Sirsi by Sri. Vasu Marathe and Assistant Commissioner, Sirsi by his order dated 21-11-1998 rejected the appeal. At the same time Appellant Sri Seetaram Hegde filed OS.No.58/1997 before Additional Civil Judge, Sirsi in 1997 for possession of suit property. It was pending in the Civil Court for enquiry. Meantime Sri Vasu Marathe filed appeal against the order of Assistant Commissioner, Sirsi before Deputy Commissioner, Karwar and Deputy Commissioner as per the order dated 17-05-1999 rejected the appeal. Against the order of Assistant Commissioner and Deputy Commissioner Sri Vasu Marathe filed W.P.No.23231/1999 before High Court. The High Court passed the order on 03-08-1999 upholding the order of Deputy Commissioner. This order was challenged before Division Bench in RA No.7328/1999. As per the order dated 04-01-2002 in RA No.7328/1999 directed Assistant Commissioner, Sirsi to consider the case of the Appellant and Respondent independently on merest in accordance with law. Assistant Commissioner, Sirsi conducted enquiry and as per the order No.Bhoomi/Appeal/ Viva-1/1997-98 dated 08-09-2008 allowed the appeal. Being aggrieved by this order the Appellant filed the instant appeal before this Court.



The Advocate for the appellant argued that

1. Respondent No.3 challenged the land grant made by the Encroachment Regularization Committee in respect of Appellant before Deputy Commissioner, Karwar and it was also rejected and also the W.P. filed before the High Court is also rejected. As per the High Court order Assistant Commissioner, Sirsi was directed to conduct fresh enquiry. But Assistant Commissioner, Sirsi has not conducted the enquiry as per the law.
2. Assistant Commissioner, Sirsi has no power to cancel the grant made by the Encroachment Regularization Committee.
3. The respondent has not challenged the order of Encroachment Regularization Committee.
4. Assistant Commissioner, Sirsi wrongly passed the order without considering the fact that Respondent No.3 has violated the grant condition and the Appellant is in actual possession of the suit land.
5. Assistant Commissioner passed the order without taking report from Tahsildar, Sirsi or Encroachment Regularization Committee.
6. The reasons mentioned in the order is against law.
7. Earlier Assistant Commissioner, Sirsi opined that Sri Vasu Marathe has violated the grant condition. But later he ordered to grant the land. He has no power to grant the land. He has to refer the case to Encroachment Regularization Committee. The impugned order is passed beyond his jurisdiction.
8. The suit property is in the possession of the Appellant.
9. The Appellant has filed OS No.58/1997 before Civil Judge, Sirsi and as per the order dated 01-10-2008 the suit of the Appellant is decreed with costs and the defendants are restrained from interfering with plaintiff's peaceful possession and enjoyment of suit scheduled property by way of permanent injunction.

Hence he requested to allow the appeal.

Sri. Raju N. Harikant, Advocate has filed memo of appearance behalf of Respondent No.3. But he has not filed Vakalat nama or written argument. Hence it is decided to final the case on the records available in the case.

After going through the records available in the case it reveals that Govt. land in Sy.No. 86 an extent of 0-4-12 of Mundaganmane village was originally granted to Sri Vasu Marathe by the Encroachment Regularization Committee on 10-08-1994 with some conditions. But without legally canceling the original grant the Encroachment Regularization Committee granted the same land to Sri Seetaram Hegde filed. The original grantee challenged this before Assistant Commissioner and also Deputy Commissioner. Mean while Sri Seetaram Hegde filed OS No.58/1997 before Additional Civil Judge, Sirsi for possession and injunction. As per the order dated 01-10-2008 in OS No.58/1997 the suit of the plaintiff is decreed and the defendant was restrained from interfering with plaintiff's suit property by way of permanent injunction. It was further observed by the court below the land measuring an extent of 7-29-0(A-G-A) was in possession of the appellant as stated in OS No. 58/97 and that suit was also decreed in favour of present appellant who was plaintiff in that suit. The said suit was decided on 01-10-2008 between same parties and in respect of same property and the respondent has not produced documents showing said judgment and decree has been set aside or reversed by any Appellate Court. Therefore, said decision binding on all the parties. So it leads to the conclusion that the order passed by the Assistant Commissioner, Sirsi is a not legal and valid in the eye of law. It is also against the judgment and decree passed in



favour of appellant Seetaram Ganapati Hegde in OS No. 58/97 dated: 01-10-2008 on the file of Additional Civil Judge (Jr. Dn), Sirsi. So the order passed by Assistant Commissioner, Sirsi is not sustainable in law. Hence, I proceed to pass following order.

Date: 19-09-2016

No. RB/LND-II/CR-2/08-09

Order

Appeal is allowed. Assistant Commissioner, Sirsi's order No. Bhoomi/  
Appeal/Viva-1/1997-98 dated 08-09-2008 is quashed.

(Order dictated to the Stenographer, got computerized, verified and pronounced in open court on 19-09-2016)



*[Handwritten Signature]*  
19/9  
Deputy Commissioner,  
Uttara Kannada, Karwar.