

IN THE COURT OF DEPUTY COMMISSIONER UTTARA KANNADA KARWAR

Present: Dr. Harish Kumar K., I.A.S.
Deputy Commissioner,
Uttar Kannada, Karwar.

No. RB/FOR/VIVA-27/2012-13



Between

Smt. Vidhya Nagabhushan Godbole
R/o Honnegundi Village, Taluk Siddapur.
(Represented through Advocate Sri. S.S. Hegde)

....Petitioner

V/s

1. Assistant Commissioner, Sirsi
2. Tahasildar Siddapur

.... Respondents

Sub: Petition filed by the petitioner after disposal of W.P. No. 80886/2013 by the Hon'ble High Court of Karnataka Dharwad Bench Dharwad.

Preamble:

This petition has been filed by the petitioner after disposal of W.P. No. 80886/2013 by the Hon'ble High Court of Karnataka Dharwad Bench Dharwad vide order dated 01-09-2015. Notices were issued to both the parties.

Brief facts of the case are as hereunder:

That, 2-20-0 (A-G-A) of land in Sy.No. 36 in Halagaddikoppa village Siddapur Taluk was originally granted temporarily (*Hangami Lagani*) to the petitioner's father-in-law by name Dattatreya Gopal Godbole as per order dated 09-11-1971 subject to various conditions. Both Dattatreya Gopal Godbole and his son Nagabhushan Dattatreya Godbole, the husband of the petitioner are no more. Thereafter, according to the petitioner, she has been in possession and cultivation of the entire extent of 2-20-0 (A-G-A) of land. However, the villagers submitted representation dated:15-07-2011 stating that the above said land was kept fallow for several years and the land is now being encroached by others and thereby prayed to forfeit the land to the government so as to make use of the same for better public purpose. The application was referred to the Tahasildar Siddapur with a direction to hold enquiry and submit report. Accordingly, the Tahasildar held enquiry and submitted his report stating that the land is found kept fallow for about 23 years and at present the neighbor, one Ishwar Biliya Naik had encroached 1-0-0 (A-G-A) in the entire extent of the said land and therefore proposed for cancellation of the grant. The report of Tahasildar is corroborated by the report of Assistant Commissioner Sirsi. Hence, notice dated 29-09-2012 was issued to the petitioner as to why the land should not be resumed/forfeited to the government for violation of conditions i.e. keeping the land fallow for several years. This notice was issued under Rule 25 of Karnataka Land Grant Rules. The petitioner sent her reply dated 20-10-2012 along with annexures. Simultaneously, she had also filed representation dated 06-09-2012 to the Deputy Commissioner and another representation dated 19-04-2012 to the Tahasildar Siddapur. Enquiry was however held by giving ample opportunity to the petitioner. The then Deputy Commissioner visited the spot on 12-12-2012 and inspected the land in the presence of the Tahasildar, his staff and Taluk Surveyor and also the petitioner and prepared spot inspection report wherein it is stated that out of 2-20-0 (A-G-A) of the land in Sy.No. 36, a portion measuring about 1-0-0 (A-G-A) was found encroached by one Nagaraj Ishwar Naik the grandson of Biliya Subbu Naik and also by others. The encroached portion was found consisting of well, and 5 to 10 coconut trees, cashew and banana plants. The

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remaining portion was found fallow. The petitioner was very well present during the spot inspection and her statement was also recorded before the witnesses. Thus, after being satisfied that the granted land was kept fallow and it was also encroached by others, the then Deputy Commissioner issued direction to the Tahasildar on 26-12-2012 to take measurement of the land and further take possession of the land after clearing the encroachments so that the said land may be used for alternative public purpose. This direction is also found incorporated in the above said spot mahajar. Thereafter, the petitioner approached the Hon'ble High Court of Karnataka in W.P. No. 80886/2013 and sought for writ of mandamus by issuing direction to the Deputy Commissioner to consider representation dated 06-09-2012 and 19-04-2012 of the petitioner and also the representation filed by the villagers. The writ petition was disposed of vide order dated 01-09-2015 by issuing direction to the Deputy Commissioner as prayed for.

After disposal of the writ petition as stated above, the petitioner filed the present petition before this Court with a request to consider her representation stated above and also for permanent grant of the land after cancellation of forfeiture of the land as stated above.

The Advocate for the petitioner argued that-

1. After the grant, name of Dattatreya Godbole, the original grantee and after his death, the name of his son Nagabhushan Dattatreya Godbole were entered in the RTC from the year 1972-73 to 2003-04. Thereafter, Sy.No. 36 was divided as hissa No. 36A and 36B and since there were some errors in the computerization of the record of rights, the name of the petitioner was not continued in the record of right. The Tahasildar has failed to enter her name despite filing applications.
2. In the year 2011, the villagers including one Ishwar Naik filed application to the Tahasildar falsely stating that the land was kept fallow. The Tahasildar however without proper enquiry submitted report to the Assistant Commissioner Sirsi and Deputy Commissioner Karwar.
3. The Deputy Commissioner issued show cause notice dated 29-09-2012 to the petitioner for which she submitted her written statement dated 20-10-2012.
4. During spot inspection by the Deputy Commissioner on 12-12-2012, the petitioner had shown the planted banana trees, cashew trees and a well and explained that she has been in person cultivation of the same.
5. As per the direction of the Hon'ble High Court of Karnataka in W.P. No. 80886/2013, the petitioner filed application to the Assistant Commissioner Sirsi for regularization of the temporary grant. But the Assistant Commissioner dismissed the application with a direction to the petitioner to approach the Deputy Commissioner.
6. The family of the petitioner occupied and cultivated the land ever since the grant in the year 1971.

Hence on these among other grounds, the advocate for the petitioner has prayed for allowing the petition.

The point for consideration before this Court is-

1. Whether there are sufficient grounds to allow the petition?

Ans. In the Negative.

On hearing the learned counsel for the petitioner in the background of the direction given by the Hon'ble High Court of Karnataka in the above said writ petition, temporary grant (*Hangami Lagani*) in favour of Dattatreya Gopal Godbole the father-in-law of the petitioner as per order dated 09-11-1971 is not in dispute. The villagers submitted representation dated 15-07-2011 stating that the above said

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land was kept fallow for several years and the land is now being encroached by others and thereby prayed to forfeit the land to the government so as to make use of the same for better public purpose. The Tahasildar conducted detailed enquiry and reported that the land is found kept fallow for about 23 years and at present the neighbour one Ishwar Biliya Naik had encroached 1-0-0 (A-G-A) in the entire extent of the said land. The report of Tahasildar is corroborated by the report of Assistant Commissioner Sirsi. Therefore, the then Deputy Commissioner initiated proceedings by issuing notice dated 29-09-2012 to the petitioner for which she had submitted her reply dated 20-10-2012. She had also filed representation dated 06-09-2012 to the Deputy Commissioner and another representation dated 19-04-2012 to the Tahasildar Siddapur. It is found from the records that, as part of the enquiry, the then Deputy Commissioner had visited the spot on 12-12-2012 and inspected the land in the presence of the Tahasildar, his staff and Taluk Surveyor and also the petitioner and prepared spot inspection report wherein it is stated that out of 2-20-0 (A-G-A) of the land in Sy.No. 36, a portion measuring about 1-0-0 (A-G-A) was found encroached by one Nagaraj Ishwar Naik the grandson of Biliya Subbu Naik and also by others. The encroached portion was found consisting of well, 5 to 10 coconut trees, cashew and banana plants. The remaining portion was found fallow. The petitioner was very well present during the spot inspection and her statement was also recorded before the witnesses. The alleged cultivation was found only in the portion encroached by Nagaraj Ishwar Naik and others and rest of the portion was found fallow. It is pertinent to note that the petitioner has not denied spot inspection and she has not produced any documents to show that she had cultivated the land. She has not only kept the land fallow but also allowed others to encroach the same so also to defeat the very purpose of the grant. It is pertinent to note that as per the report of the Tahasildar, she kept the land fallow for about 23 years which is not refuted by the petitioner by producing better evidence. That being so, I do not find any valid grounds to justify her prayer for permanent grant of the said land in her favour. Hence, I proceed to pass the following order.

No. RB/FOR/VIVA-27/2012-13

Date: 26 -08-2019

Order

Petition is dismissed.

(Order dictated to the Stenographer, got computerized, verified and pronounced in open court on 26-08-2019)



**Deputy Commissioner,
Uttar Kannada, Karwar.**

Copy to:-

1. Advocates Sri. S.S. Hegde for information.
2. Assistant Commissioner, Sirsi for information and necessary action.
3. Tahasildar Siddapur for information and necessary action.