

IN THE COURT OF DEPUTY COMMISSIONER UTTARA KANNADA KARWAR

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

No. RB/RTR/CR-46/13-14



Between

Laxman Manjajya Naik
R/o Abrekaikini Tq: Bhatkal
(Represented through Advocate Sri. N S Bhat)

.... Revision petitioners

V/s

1. Assistant Commissioner, Bhatkal
2. Ramchandra Kuppaiah Naik
R/o Abrekaikini Tq: Bhatkal
3. Jatti Shaniyar Naik
R/o Mavalli I Tq: Bhatkal
4. Sayiddin Abdul Khadar
GPA Holder Mohammed Faisal Mohammed Hanif Zabbar Ali, Bhatkal
5. Mohammed Hasan Abdul Khadar Damda Abu, Bhatkal
6. Bibi Ayesha Kom Mohammed Moula Abu Damda
7. Nafisa Kom Abdul Khadar Basha Motisam, Bhatkal
8. Sajida Kom Mohamadul Hasan Damda, Bhatkal
9. Mohammed Asif Damda Ahmed Hussain Damda
10. Shahida Kom Ismail Damda
11. Rahila Kom Ibrahim Damda
12. Fouziya Kom S M Sayed Shakil
13. Johara Banu Kom Ahmed Hussain Damda.
14. Revenue Inspector, Mavalli
15. Tahsildar, Bhatkal
(Represented through Advocate Sri. R V Bhat)

.... Respondents

Sub: Revision petition filed u/s 136(3) of Karnataka Land Revenue Act, 1964 against the Mutation entry No. 128/07-08, 288/06-07 and 270/08-09 of Kaikini village in Bhatkal Taluk.

Preamble:

The instant revision petition has been filed against the order of Assistant Commissioner, Bhatkal in file No. RTS/AP/SR-69/09-10 dated: 23-08-2012. Notices were issued to both parties.

The brief facts of the case are as follows:

As per Peta hukum No. 1152 dated: 13-01-1956 and Peta Hukum No. 467 dated: 29-03-1956 the name of Hussan Bin Ahmed Basha Siddique was entered as Deputy Custodian of Evacuee property vide Mutation entry No. 5372 in respect of Sy No. 749, 751 and 753 of Kaikini village in Bhatkal Taluk. However these properties got divided inherited and sold among the Respondents No. 3 to 13 vide Mutation entry No. 288/06-07, 128/07-08 and 270/08-09. Against the certification of these entries the Respondent No.1 filed appeal before Assistant Commissioner, Bhatkal and Assistant Commissioner, Bhatkal vide his order dated: 23-08-2012 cancelled the impugned entries. Being aggrieved by this order the revision petition filed revision petition before this court.

The Advocate for Appellant argued that.

1. An extent of 2-0-0(A-G-A) in Sy No. 751/2 and an extent of 1-0-0(A-G-A) in Sy No. 754 is in the possession and enjoyment of the petitioner since from his predecessors. The

petitioner invested lot of money for the development of the suit land. But without issuing any notice Assistant Commissioner, Bhatkal cancelled the entries.

2. Impugned order is contrary to the law.
3. The suit property is in the possession of the Petitioner. Assistant Commissioner, Bhatkal order caused great loss to the petitioner.
4. The petitioner filed OS No. 122/2009 before Additional Civil Judge, Bhatkal and the Court by its order dated: 16-01-2012 issued Permanent Injunction against the Respondents from alienating the land and interfering with the suit property.

Hence he requested to allow the appeal.

The Advocate for the Respondent No. 4 and 5 argued that.

1. Assistant Commissioner, Bhatkal has passed a detailed order by giving proper reasons, hence there is no question to interfere with the order.
2. Respondent No. 2 is in actual possession and enjoyment of the property. He developed the property which is in his possession.
3. The petitioner has full knowledge about the possession of the Respondent No.2 but also he is trying to interfere with the suit land.

Hence he requested to dismiss the petition.

After going through the lower court records and written argument of both parties it is pertinent to note that as per Mutation entry No. 5372 the name of Hasan Bin Ahamed Basha Siddique was entered as Deputy Custodian of Evacuee property to the suit land and all the rights vest with the custodian. As per Section 46 of Evacuee Property Act, 1950 the revenue or Civil Court cannot question it without the permission of the Custodian of the Evacuee property, nobody cannot claim right, interest or possession over it. But however the Respondents managed to get their names entered in the RTC by giving false information. Section 41 of Administration Evacuee Property Act, 1950 discloses that "transaction relating to evacuee property void in certain circumstances- subject to the other provisions contained in this Act, every transaction entered into by any person in respect of property declared or deemed to be declared to be evacuee property within the meaning of this Act- shall be void unless entered into by or with the previous approval of the custodian". In the instant case Sy No. 749, 751/2 and 753/3 are the Evacuee properties and vide Mutation entry No.128/07-08 the Respondents acquired rights by way of purchase and Varasa without the prior permission of the custodian. Also Section 18(2) of Evacuee Property Act reads as follows-" where any person acquires or has acquired any right under Provincial Act or a State Act in respect of any property by reason of being in possession of that property, whether is pursuance of a grant, lease or allotment made by the custodian or otherwise, the acquisition of such right shall not in any way affect or be deemed to have affected the right and powers conferred on the custodian under this Act in respect of that property. As per the rule cited above prior permission of the custodian has not taken by the Land Tribunal while conferring the occupancy right in respect of Evacuee Property. Thus by observing all these things Assistant Commissioner, Bhatkal has rightly ordered for cancellation of impugned entries and also directed the Tahsildar to send a proposal to Government. In the circumstances, cited above it is not necessary to interfere with the order of Assistant Commissioner, Bhatkal



Hence, I proceed to order as follows:

No. RB/RTR/CR-46/13-14

Date: 19-09-2016

Order

Revision petition is dismissed. Assistant Commissioner, Bhatkal order No.

RTS/AP/SR-69/09-10 dated: 23-08-2012 is upheld.

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

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19/9
Deputy Commissioner,
Uttara Kannada, Karwar.

