

IN THE COURT OF DEPUTY COMMISSIONER UTTARA KANNADA KARWAR

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

No. RB/RTR/CR-26/15-16



Between

1. Smt. Kavita w/o Sudarshan Shetti
2. Sudarshan Magabaleshwar Shetti
Both R/o Hadin Tq: Bhatkal
(Represented through Advocate Sri S M Pandit)

.... Revision Petitioners

V/s

1. Badka @ Timmappa Gonda
2. Sukra @ Soma Marathi
3. Sukra @ Nagayya Gonda
4. Irayya @ Kuppa Gonda
All R/o Abre Kaikini Tq: Bhatkal
5. Jatta Shaniyar Naik
6. Mohan Shaniyar Naik
7. Sayiuddin Abdul Khadar Damda Abu
8. Mohammed Hassan Abdul Khadar Damda Abu
9. Bibi Ayesha w/o Mohammed Moula Abu Damda
10. Nafisa w/o Abdul Khadir Basha Motisham
11. Sujida w/o Mohammadul Hassan Damda
12. Mohammed Asif Damdi Ahamad Hussain Damda
13. Shahid w/o Ismail Damda
14. Rahila w/o Ibrahim Damda
15. Fouziya S M Sayyed Shakeel
16. Jaharabanu Ahmed Hussain Damdi
R/o Usman Nagar Tq: Bhatkal
17. Revenue Inspector Mavalli
18. Tahsildar Bhatkal
(Represented through Advocate Sri. R V Bhat for R1 and R2)

.... Respondents

Sub: Revision Petition filed u/s 136(3) of Karnataka Land Revenue Act 1964 against the order of Assistant Commissioner, Bhatkal in file No. RTS/AP/SR-80/09-10 dated: 30-08-2012.

Preamble:

The revision petition came to be filed against the order of Assistant Commissioner, Bhatkal in file No. RTS/AP/SR-80/09-10 dated:30-08-2012. Notices were issued to both parties.

The brief facts of the case are as follows:

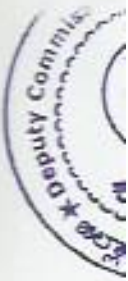
As per Peta Hukum No. 467/210 dated: 23-08-1954, Peta Hukum No. 1152 dated:13-01-1956 and Peta Hukum No. 457 dated: 23-03-1956 the name of Hassan Biri Ahmed Basha was entered as Deputy Custodian of Evacuee Property regarding Sy No. 749, 751, 752, 753, 754, 755, 756, 758, 759 and 762 of Kaikini village in Bhatkal Taluk. However the property in Sy No. 754, 755, 756, 758, 759 and 762 were got sold and Mutation entry No. A564, Mutation entry No. 128/07-08, Mutation entry No. 308/06-07, Mutation entry No. 288/06-07, Mutation entry No. 43/09-10, Mutation entry No. 45/09-10 and Mutation entry No. 44/09-10 were certified. The present Respondent No. 1 to 4 challenged these entries before Assistant Commissioner, Bhatkal by his order dated: 30-08-2012 cancelled these entries and directed the Tahsildar to make entry in the RTC in respect of these properties as Evacuee Property Custodian Central Government. Being aggrieved by this order the petitioners filed the revision petition before this court.

The argument of the petitioner is as follows:

1. The revision petitioner No.1 has purchased an extent of 1-23-0(A-G-A) area in Sy NO. 758/1A of Kaikini village through registered sale deed dated: 21-07-2009 and Revision petitioner No. 2 has purchased an extent of 1-23-0(A-G-A) area in Sy No. 758/1B of Kaikini village through registered sale deed dated: 23-07-2009 on the basis of "J" Form Mutation entry was certified.
2. The Respondent No. 1 to 4 challenged this entry before Assistant Commissioner, Bhatkal and Assistant Commissioner, Bhatkal cancelled the Mutation entry.
3. An extent of 1-23-0(A-G-A) in Sy No. 758/1A and 758/1B of Kaikini village is tenanted land and which was granted by the Land Tribunal. As per the Karnataka Land Reforms Act the person is declared as occupant who was in possession of the land as on 1-3-1973. The land Tribunal order cannot be questioned by Assistant Commissioner.
4. As per the registered sale deed "J" Form Mutation entry is certified. Revenue Authorities have no right to consider the legality of the sale deed. But in this case Assistant Commissioner, Bhatkal passed the order without jurisdiction.
5. When the impugned entry certified by the Tahsildar then the respondents not filed any objection.
6. The proceeding is Mutation entry proceeding. So the land in question is Evacuee or not cannot be decided in this proceeding.
7. The petitioners are the bonafide purchasers of the suit land. At the time of purchasing the property there was restriction mentioned in the RTC. The petitioners raised loans and used it for the development of the land. So the cancellation of Mutation entry has resulted in miscarriage of justice. So as per the Citation reported in ILR 1999(3) Page No. 3250 and ILR 2001(3) Page No. 3445 the petitioner requested to set aside the order of Assistant Commissioner, Bhatkal.

The argument of the petitioner is as follows:

1. The revision petition deserves to be dismissed on the ground of limitation.
2. The property is Evacuee Property and accordingly the same is shown in the old RTC. Assistant Commissioner, Bhatkal has clearly explained the Evacuee property Act 1950 in detail about the Evacuee Property and appointment of Administrator etc.
3. The petitioner stated that the suit property was granted by the Land Tribunal Bhatkal. But the Appellant has not produced any Land Tribunal order as to whom the said property was granted. So the land Tribunal order is not genuine.
4. The petitioner has stated about the "J" Form. But if the seller has no right title or interest over the property the sale deed is illegal and no question of "J" Form for certifying the Mutation entry.
5. The petitioner has stated about the bonafide purchaser of the land etc. But this can be pleaded before Civil Court and not before Revenue Court.
6. In this case old records clearly show that the suit property is Evacuee property. Hence the Administration of Evacuee Property Act 1950 applies to this case. As per Section of this Act the Revenue or Civil Courts have no jurisdiction to decide anything pertains to the Act.
7. As per Mutation entry No. 5372 the suit property was declared as Evacuee property. Later by giving wrong information to the Revenue Officials Varsa entry was made and their names appeared in the RTC. As per Section 41 of the said Act without the previous approval of the Custodian the transactions is null and void.



per the Section 18 of the Administration of Evacuee Property Act 1950 "occupancy or tenancy right not to be extinguished where any person acquires or acquired property"

Hence he requested to dismiss the appeal.

On perusal of Lower Court records and written argument of both parties it reveals that as per Peta Hukum No. 467/210 dated: 23-08-1954, Peta Hukum No. 1152 dated:13-01-1956 and Peta Hukum No. 457 dated: 23-03-1956 the name of Hassan Bin Ahmed Basha was entered as Deputy Custodian of Evacuee Property regarding Sy No. 749, 751, 752, 753, 754, 755, 756, 758, 759 and 762 of Kaikini village in Bhatkal Taluk. But however giving wrong information to revenue Officials these properties were sold and Mutation entry No. A564, Mutation entry No. 128/07-08, Mutation entry No. 308/06-07, Mutation entry No. 288/06-07, Mutation entry No. 43/09-10, Mutation entry No. 45/09-10 and Mutation entry No. 44/09-10 were certified. The Respondents challenged this entry before Assistant Commissioner, Bhatkal and Assistant Commissioner, Bhatkal cancelled these entries. It is evident from Mutation entry No. 5064 dated: 31-08-1954 and Mutation entry No. 5372 the name of Hassan Bin Ahamed Basha was certified as the Custodian of the Evacuee property. It is undoubtedly proved that the suit property is Evacuee property and Administration of Evacuee Property Act 1950 applies to this case.

As per the section 2(C) of this act " Custodian means the Custodian for the State and includes any Additional Deputy or Assistant Custodian of Evacuee Property appointed in the State" and the Government has appointed the Custodian to safeguard the property. The contention of the petitioner is that he had purchased the property through registered sale deed. As per the citation submitted by Revision petitioner Indian Law Report Karnataka 1993(3) Page No. 3250 T.N. VALLINAYAGAM, J K. Jayamma & others v/s Tahsildar & another.

In view of facts of the case mentioned above and citation referred above, I proceed the following order.

No.RB/RTR/CR/26/15-16

Date:24-04-2017

Order

Appeal is dismissed

(Order dictated to the Sisingrapher, not to be taken as a precedent and pronounced in open court on 24-04-2017)



J. Bhat
24/4
Deputy Commissioner,
Uttara Kannada, Karwar

Copy to:-

1. Advocate Sri. S M Pandit & Sri. N.V.Bhat for information.
2. Assistant Commissioner, Bhatkal for information and necessary action with Lower court file No. RTS/AP/SR-80/09-10 dated: 30-08-2012. page No.1 to page No.362
3. Tahasildar Bhatkal for information and necessary action.