

STATE OF KARNATAKA AND ORS.

v.

KRISHNOJI REO AND ANR.

MARCH 25, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Land Laws*

*Bombay Paragana and Kulkarniki Watan (Abolition) Act, 1950 :*

*Ss.4, 4A—Unassessed and uncultivated waste land—Assistant Commissioner assigned 109 acres 34 guntas of land of one survey number for grazing purpose for village cattle and 100 acres for afforestation—Deputy Commissioner by suo motu order cancelled the order—High Court directing to grant 201 acres 34 guntas land to respondent—Held, right of watan under s.4 is subject to right created in s.4A—Order granting 100 acres of land for afforestation and 109 acres and 34 guntas for grazing purpose having become final and not challenged by Watandar, cannot be challenged due to reversal of the order by Deputy Commissioner in exercise of suo motu power—Watandar could have challenged only with regard to residue of land which should have been considered—Matter remitted to High Court for disposal of writ petition in accordance with law.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5345 of 1996.

From the Judgment and Order dated 11.6.90 of the Karnataka High Court in W.A. No. 1941 of 1986.

M. Veerappa for the Appellants.

The following Order of the Court was delivered :

Leave granted.

This appeal by special leave arises from the order of the Division Bench of the Karnataka High Court made on June 11, 1990 in Writ Appeal No. 283/1986. The controversy is regulated by the Bombay Paragana and Kulkarniki Watan (Abolition) Act, 1950 (for short, the 'Act'). The land

bearing Survey No. 87 of Revadihal village was unassessed and uncultivable waste land as per the Mutation Entry 313 dated August 20, 1960. The Assistant Commissioner, Dharwad in his order dated June 17, 1964 assigned an extent of 109 acres 34 guntas of land in the said Survey for public purpose, namely, grazing purposes for the village cattle. On 6.4.1964, it was decided that an extent of 100 acres of land in the said Survey be transferred to the Forest Department for afforestation. The Government in its order dated August 1, 1964 granted actual possession of 100 acres of land to be handed over to the Forest Department. It was entered in the Revenue records by Mutation Entry No. 413 dated August 1, 1966. The Divisional Commissioner in his order dated November 27, 1964 granted 92 acres out of 100 acres to 23 persons for cultivation and remanded the matter for fresh enquiry. On March 4, 1968, the Assistant Commissioner regranted an extent of 201 acres 34 guntas of land in the same Survey number to the respondents setting apart an area of 109 acres 34 guntas for grazing purposes of the village cattles and he also reserved 100 acres for the Forest Department for afforestation. The Deputy Commissioner by *suo motu* order dated January 24, 1977 has cancelled the order of the Assistant Commissioner dated March 4, 1968.

Feeling aggrieved, the respondent filed Writ petition No. 2236/77 in the High Court. The learned single Judge of the High Court by order dated December 4, 1985 has partly allowed the writ petition and directed to grant an extent of 201 acres 34 guntas to the respondent. When the appellant filed appeal, the Division Bench dismissed the same. Thus, this appeal by special leave.

Whereas the first respondent has been served, whereabouts of the second respondent are not known. So he must be deemed to have been served. They are not appearing either in person or through counsel. In view of the fact that the order granting 100 acres for afforestation and 109.34 guntas for grazing purposes having become final and not challenged earlier by the Watandar, they cannot challenge the same due to reversal of the earlier order by Deputy Commissioner in exercise of *suo motu* power. In the writ petition, they could not have challenge the order. They could have challenged only with regard to the residue of the land which should have been considered. The reason being that the right of the Watan under Section 4 is subject to the rights created in Section 4-A of the Act. The Division Bench and the learned single Judge, therefore, have not properly

considered the controversy. Since the respondents are not appearing, the orders of the High Court are set aside and the matter is remitted to the High Court with a request to dispose of the writ petition on merits in accordance with law. The part of the order of the learned single Judge in favour of the State which became final stands confirmed.

The appeal is accordingly allowed. No costs.

Appeals allowed.