

State of Karnataka and Others

Vs

Krishnoji Rao and Another

Civil Appeal No. 5345 of 1996

25.03.1996

ORDER

1. Leave granted.

2. This appeal by special leave arises from the order of the Division Bench of the Karnataka High Court made on 11-6-1990 in Writ Appeal No. 283 of 1986. The controversy is regulated by the Bombay Pargana and Kulkarni Watans (Abolition) Act, 1950 (60 of 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 No. 313 dated 20-8-1960. The Assistant Commissioner, Dharwad in his order dated 17-6-1964 assigned as extent of 109 acres 34 guntas of land in the said survey for public purpose, namely, grazing purpose 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 1-8-1964 granted actual possession of 100 acres of land to be handed over to the Forest Department. It was entered in the Revenue recorded by Mutation Entry No. 413 dated 1-8-1966. The Divisional Commissioner in his order dated 27-11-1964 granted 92 acres out of 100 acres to 23 persons for cultivation and remanded the matter for fresh equity. On 4-3-1968, the Assistant Commissioner regarded 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 cattle and he also reserved 100 acres for the Forest Department for afforestation. The Deputy Commissioner by suo motu order dated 24-1-1977 has cancelled the order of the Assistant Commissioner dated 4-3-1968.

3. Felling aggrieved, the respondent filed Writ Petition No. 2236 of 1977 in the High Court. The learned Single Judge of the High Court by order dated 4-12-1985 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.

4. 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 the Deputy Commissioner in exercise of suo motu power. In the writ petition, they could not have challenged 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.

5. The appeal is accordingly allowed. No costs.