

KAMS600001062023



O.S./63/2023

**IN THE COURT OF THE SENIOR CIVIL JUDGE AT
PERIYAPATNA.**

Present

Sri.A.SAMIULLA

B.Sc., LL.B.,

Senior Civil Judge,

Periyapatna.

Dated: 21st Day of July 2023

OS.No.63 of 2023

Sri.P.S.Sanjeeva.

..... Plaintiff.

Versus

Chief Secretary,
Government of Karnataka & Ors.

..... Defendants.

IA.No.6

Thasildar, Periyapatna Taluk.

.... Applicant/D4.

Versus

Sri.P.S.Sanjeeva.

.... Opponent/Plaintiff.

**:Order on IA-6; u/Sections 10 (A) and 20 of the
Karnataka Land Grabbing Prohibition Act 2011 r/w
Section 151 of CPC:**

Defendant-4 moved this application seeking to transfer the suit to the Special Court established under Section 10(A) & 20 of the Karnataka Land Grabbing Prohibition Act, 2011, (for short Act) Kandaya Bhavana, KG Road, Bengaluru.

2. Plaintiff resisted the application by filing statement of objection.

3. Heard arguments from both side.

4. Following point arises for consideration:

Whether the defendant-4 made out a case to allow the application as prayed?

5. Answer to the above point is in **negative** for the following;

REASONS

6. At the outset; suit is filed for declaration to declare that; plaintiff is the owner in possession of

suit property and for perpetual injunction by asserting that; suit property belongs to Government; he is cultivating the same from 40 years; constructed a farm house; obtained electricity connection; residing therein and grown coconut trees. He is unauthorized occupant; his mother filed Form-53 for grant of land; same is pending for consideration. After demise of his mother; he has given requisition to defendant-4 to consider the grant of land but he (D4) has not taken any action, due to this he moved a representation to defendant-3, who directed the defendant-4 to submit report; as per direction No.LND 139/13-14 the defendant-4 visited the spot; drawn the mahazar, wherein his (plaintiff) cultivation of land as well as grown of coconut trees are mentioned; fixed the market value of land

as Rs.2 lakhs and recommended to grant the land. In LND (2) 32/13-14 dated 21.11.13 the defendant-4 submitted another report to defendant-3 stating that land is fit to grant by taking market value. On that basis defendant-3 submitted report to defendant-2 on 27.04.15 recommending for grant of land. Since no action has taken to grant the land, he moved the Hon'ble High Court of Karnataka by filing WP.No.28505/19, wherein the Hon'ble Court directed the defendants to consider the claim independently by taking into account the recommendations made by defendants-3 and 4. In spite of direction the defendant-2 has not taken action, due to this Civil Contempt Petition No.1563/19 was filed, wherein the defendant-2 appeared & produced endorsement dated 03.02.22 stating that property is not fit to grant to the

plaintiff. Said endorsement is given without seeing the documents and visiting the spot. In said petition the Hon'ble Court observed that it is always open to the complainant (plaintiff) to challenge the endorsement dated 03.02.22 in accordance with law. Defendants are trying to take possession of suit property by demolishing farm house constructed therein. Hence, suit is filed.

7. Learned AGP represents defendants-1 to 4. When the matter is set down for filing of written statement; defendants filed the application at hand for the relief stated *supra* by stating that; land bearing Sy.No.27/2 measuring 2As 4Gs of Giragur village is a government land and it is reserved for the construction of Pre University College. Plaintiff has illegally grabbed the government land and constructed a farm house and compound. Since he

has grabbed government land there is a clear bar in the Act, wherein he (plaintiff) has to approach the Special Court established for conducting of cases related to government lands.

8. Plaintiff resisted the application by stating that; the suit land does not come within the purview of 'land' defined under Section 2(d) of the Act. Said Act is not applicable to the case on hand because plaintiff's mother filed application in Form-53 for grant of suit property and it is still pending from the last 30 years. Since, application filed for grant is pending the above Act is not applicable to the case. Hence, he prayed to reject the application.

9. In the light of facts stated *supra* the small question that arises for consideration is whether the bar enshrined under the Act is applicable to the facts at hand or not.

10. To answer above question first let us consider the definition of Land as per Section 2(d) of the Karnataka Land Grabbing Prohibition Act, 2011; Karnataka Act No.38 of 2014 (As amended by Act No.30 of 2022) with effect from 13.10.2022.

“Land” includes **(i)** *Land falling in all urban areas of the State and also land falling within 18 Kms from the Bruhat Bengaluru Mahanagara Palike limits, land falling within 10 Kms from the city limit notified under the provisions of the Karnataka Municipal Corporations Act, 1976, land falling within 5 Kms from the City Municipal Council limits, land falling within 3 Kms from the Town Municipal Council limits and Town Panchayath limits belonging to the Government, Wakf or the Hindu Religious Institutions and Charitable Endowments, a local authority, a statutory or non-statutory body owned, controlled or managed by the Government: Provided that, excluding the land specified above in all other areas the cases pending related to land*

grabbing shall stand abated forthwith”.

(ii) rights in or over land, benefits to arise out of land, and buildings, structures and other things attached to the earth and permanently fastened to anything attached to the earth;

Provided that 'land' shall not include lands in respect of which applications for grant are pending on the date of commencement of this Act.

11. Plaintiff has produced documents including number of official correspondence made by the defendants. Among them the documents i.e., letter dated 07.10.13 addressed by the Deputy Tahsildar, Haranhalli Hobli to the Tahsildar, Periyapatna and letter dated 21.11.13 issued by the Tahsildar, Periyapatna to the Assistant Commissioner, Hunsur and letter dated 27.04.15 issued by the Assistant Commissioner, Hunsur to the Deputy Commissioner, Mysuru depict that; mother of

plaintiff filed Form-53 for grant of land and said application is pending for consideration and above authorities have recommended for grant of land in favour of plaintiff.

12. Endorsement dated 03.02.22 issued from the office of Deputy Commissioner, Mysuru depict that the application filed for grant of land is kept in abeyance.

13. Facts stated *supra* manifest that; the application filed for grant of land is pending, as such the proviso of Section 2(d) is applicable to the factual matrix at hand.

14. In addition to above the disputed land is situated at Girgur village, Haranhalli Hobli, Periyapatna Taluk, which shows that the land in question is not falling within three Kms from the

Town Municipal Council limits. On this count also the said Act is not made applicable to the facts at hand.

15. In the light of above discussion one can say without any hesitation that as per the Karnataka Land Grabbing Prohibition Act, 2011 (As amended by Act No.30 of 2022) with effect from 13.10.2022 the provisions of said Act are not applicable to the case on hand. Hence, above point is answered in negative and proceeds to pass the following;

ORDER

IA-6 filed under Sections 10 (A) and 20 of the Karnataka Land Grabbing Prohibition Act 2011 r/w Section 151 of CPC by the defendant-4 is rejected.

No order as to costs.

(Dictated to the Stenographer directly on computer, typed by her, corrected and initialed by me & then pronounced in the open Court on 21.07.23).

sd/-

(A.Samiulla)

Senior Civil Judge,

Periyapatna.