

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02ND DAY OF SEPTEMBER 2020

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

WRIT PETITION NO.8704 OF 2020 (KLR-LG)

BETWEEN:

PHILIP STEPHEN
S/O LATE A B STEPHEN
AGED ABOUT 59 YEARS
PRESENTLY R/O NO.347
7TH MAIN ROAD
VIVEK NAGAR
BANGALORE - 560047
ALSO AT R/O HOUSING BOARD
SAKALESH PURA TOWN - 573134

...PETITIONER

(BY SRI: SUMANTH L BHARADWAJ, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REP BY ITS PRINCIPAL SECRETARY
REVENUE DEPARTMENT
BANGALORE - 560001
2. THE DEPUTY COMMISSIONER
HASSAN DISTRICT
HASSAN - 573201

3. THE ASSISTANT COMMISSIONER
SAKALESH PURA TALUK
HASSAN DISTRICT - 573134
4. THE THASILDHAR
SAKALESH PURA TALUK
HASSAN DISTRICT - 573134

...RESPONDENTS

(BY SMT: PRAMODHINI KISHAN, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT OF CERTIORARI TO QUASH CONDITION NO.13 STIPULATED IN THE NOTICE DATED 26.02.2020 ISSUED BY R-4 AT ANNEXURE-A AND ISSUE WRIT OF MANDAMUS DIRECTING THE RESPONDENTS TO GRANT 5 ACRES OF LAND IN SURVEY NO.28 OF HODACHALLI VILLAGE, HANUBALU HOBLI, SAKALESH PURA TALUK, HASSAN DISTRICT, IN FAVOUR OF THE PETITIONER AT THE EARLIEST.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 24.08.2020 AND COMING ON FOR PRONOUNCEMENT OF ORDER, THROUGH VIDEO CONFERENCE, THIS DAY, **JOHN MICHAEL CUNHA. J**, MADE THE FOLLOWING:-

ORDER

Learned counsel appearing for petitioner and learned AGA appearing for respondents – State are heard.

2. Petitioner claims to be an ex-serviceman having served in Indian Defence (Indian Navy) as LME and got discharged on 29.04.1998. The grievance of the petitioner is that, after his retirement, he made an application seeking grant of land in Sy.No.28 of Hodachalli village, Hanubalu Hobli, Sakaleshpura Taluk, Hassan District. Respondent No.4 / Tahsildar, Sakaleshpura Taluk, on 18.09.2014 sent a notice to the petitioner calling upon him to produce various documents and to furnish various details as mentioned in the said notice vide Annexure-'E', in order to consider his application. On receipt of the said notice, petitioner produced the documents and furnished the details vide letter dated 22.11.2014 (Annexure-'F'). Thereafter, the petitioner did not receive any information from the respondents. Like petitioner, other ex-servicemen and soldiers who had applied for grant of land also did not receive any information from the respondents and hence,

the Vice Chairman of the National Ex-servicemen Co-ordination Committee and the Chairman of the Sakaleshpura Unit Sri.T.P.Krishnan filed a writ petition before this Court in W.P.No.31479/2017 (KLR-RES). The said writ petition having been dismissed, the matter was taken up in appeal and the Division Bench of this Court, by its order dated 12.09.2019 in Writ Appeal No.1196/2018 (KLR-RES), allowed the appeal with the observation that, in view of the submission made by learned AGA, an extent of 1189 acres is available to notify in compliance with Rule 5 of the Karnataka Land Grant rules. The Division Bench further directed that the same shall be notified for the purpose of pursuing the applications filed by various ex-servicemen. The respondent No.4 forwarded this order to respondent No.3 apprising him of the factual position and once again recommended for grant of land, as per his letter dated 01.01.2020 vide Annexure-'J'. After a lapse of five months from the date of final order, respondent No.4 issued a notice as per Annexure-'A'. The petitioner is aggrieved by condition No.13 incorporated in the said notice, whereby the petitioner is called upon to submit a report from the jurisdictional Deputy

Commissioner with regard to possessing or non-possessing of any land and to furnish a report to the effect that he has not been granted land under ex-servicemen quota.

3. It is the contention of the petitioner that incorporation of condition No.13 in Annexure-'A' is illegal, unconstitutional and unreasonable. The impugned condition is ultra vires the Act and Rule 8 of the Karnataka Land Grant Rules. Rule 8 of the Karnataka Land Grant Rules stipulates the conditions which every applicant seeking grant of land is required to comply with. The conditions stipulated in Rule 8 are also reflected in the notice issued by respondent No.4 at Annexure-'A' and therefore, the impugned condition is redundant and unwarranted. That apart, the impugned condition No.13 overrides condition No.4 inasmuch as the applicant is called upon to submit a report from the jurisdictional Deputy Commissioner with regard to possessing or non-possessing of any land. The particulars called for by respondent No.4 under condition No.13 are impracticable. In order to comply with the said condition, the petitioner has to visit each village accountant

office in a taluk and each taluk office in a district. That apart, by the notice at Annexure-'A', the applicant has been threatened with deterrent action of rejecting the application, if the required documents and details are not furnished on or before 24.03.2020. Thus, petitioner has sought for a writ of certiorari to quash condition No.13 stipulated in the notice dated 26.02.2020 vide Annexure-'A' and a writ of mandamus directing respondents to grant 5 acres of land in Sy.No.28 of Hodachalli village, Hanubalu hobli, Sakaleshpura taluk, Hassan district to the petitioner.

4. The respondents have not filed any statement of objections in spite of availing sufficient time. However, learned AGA during the course of hearing, has opposed the writ petition contending that the impugned condition is in accordance with law and does not suffer from any vice or arbitrariness or illegality.

5. In the light of the above contentions, the only point that arises for consideration is,

Whether incorporation of condition No.13 by the Tahsildar, Sakaleshpura Taluk (respondent No.4) in the notice dated 26.02.2020 is illegal, arbitrary and without authority of law?

6. Undisputedly, the petitioner had sought for grant of land by making an application under the provisions of the Karnataka Land Grant Rules, 1969. Rule 4 of the Karnataka Land Grant Rules deals with the categories of persons eligible for grant of land for agricultural purposes. There is no dispute that the petitioner being an ex-serviceman qualifies for grant of land for agricultural purposes under the provisions of the Karnataka Land Grant Rules, 1969. Rule 5 provides for reservation of the land to various categories of persons mentioned therein in the following order:

- | | | |
|----|--|-------------|
| a) | Ex-servicemen and soldiers | 10 per cent |
| b) | Persons belonging to Scheduled Castes and Scheduled Tribes | 50 per cent |

(Inclusive of atrocity affected women and persons-10% each)

- | | | |
|----|----------------------------|-------------|
| c) | Project displaced families | 10 per cent |
|----|----------------------------|-------------|

- | | | |
|----|-------------------------------|-------------|
| d) | Physically challenged persons | 10 per cent |
| e) | Others | 20 per cent |

Rule 6 provides that, in disposing of land among persons belonging to Category (iv) of sub-rule (1) of Rule 5, the following order of priority shall be observed, -

- (i) Ex-servicemen and soldiers;
- (ii) Persons belonging to Scheduled Castes and Scheduled Tribes;
- (iii) Landless persons residing in the village;
- (iv) Landless persons residing in other villages in the same or adjacent taluk;
- (v) Others:

In view of this provision, petitioner being an ex-serviceman stands at the top of the list in the order of priority.

7. Rule 8 which is relevant for our purpose, deals with the procedure for grant of lands for agricultural purposes. The said rule reads as under:-

8. Procedure for grant of lands for agricultural purposes-

(1) Any person who under these rules is eligible for grant of lands for agricultural purposes shall make an

application in writing to the Tahsildar of the taluk in Form 1 giving the following particulars.-

- (i) name, age and address of the applicant and his wife;*
- (ii) the extent and particulars of the land asked for namely, survey number, village, taluk, sub-division in which the land is situated;*
- (iii) the extent and details of the land if any already owned or held by him or by any member of his family;*
- (iv) whether he belongs to the Scheduled Caste or the Scheduled Tribe or is a displaced person, displaced holder, displaced tenant, an ex-serviceman, soldier or political sufferer;*
- (v) whether he or any member of his family had previously applied for land, if so, the particulars of the endorsement received thereon;*
- (vi) the particulars of any land previously granted to him or any member of his family.*

As could be seen from this section, it does not require the applicant for grant of land to produce the documents or report as mentioned in impugned condition No.13 of Annexure-A. That apart, sub-rule (8) of Rule 8 further provides that:

8(8) An Ex-serviceman or a soldier shall be entitled to land grant subject to annual income limit as specified in sub-rule(1) of Rule 4. He shall apply for land grant in Form I-A to the Tahsildars of native taluk as entered in his service register. Application for land grant shall be submitted by the serving soldier in his service period and in respect of Ex-serviceman within two years from the date of their retirement in future. All the applications submitted shall be recorded by the Tahsildar in a register as per the seniority of date of submission and action shall be taken for granting land compulsorily based on the same seniority. First priority shall be given to the widows or dependents of soldiers died in the military operation and the soldiers completely disabled in the military operation;

Provided that in case of an Ex-Serviceman who has not got grant of land before; may also make an application within two years from the date of commencement of the Karnataka Land Grant (Amendment) Rules, 2019:

Provided further that, if the land is not available for grant in the native taluk as per his service register then such applications shall be transferred by the respective Tahsildar to the Tahsildar of adjacent taluks.

8. From the above provisions, it is clear that neither Rule 8 nor any other provisions of the Land Grant Rules require an applicant for grant of land under the provisions of the Act, to furnish documents or the details called for by respondent No.4 as per condition No.13 of the impugned notice. It follows therefore that condition No.13 incorporated by respondent No.4 is contrary to the express provisions contained under the Karnataka Land Grant Rules. As a result, it has to be held that the impugned condition is illegal, arbitrary and beyond the competence of Respondent No.4.

9. The learned AGA has not been able to point out the source of power authorizing respondent No.4 to incorporate such a condition in the Notice – Annexure-'A'. Therefore, it has to be held that Respondent No.4 has acted arbitrarily and without authority of law by calling upon the petitioner to comply with condition No.13 within the timeframe delineated therein. That apart the said condition is contrary to Form No.1 prescribed in Rule 8 referred above and the requirements contained therein. Needless to say that where a power is given to do a certain thing

in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. The petitioner having complied with all the requirements prescribed in Rule 8, there was no reason or justification whatsoever for respondent No.4 to insist compliance of condition No.13. The condition incorporated by respondent No.4 does not find backing in the Rules or the Act. Resultantly, condition no.13 incorporated in the notice - Annexure-'A' being ultra vires the Act and the Rules has to be held to be illegal, arbitrary, unreasonable and without authority of law.

Consequently the petition is **allowed**. Condition No.13 stipulated in the notice - Annexure-'A' is quashed. Respondent No.2/Respondent No.4, as the case may be, are directed to consider the application submitted by the petitioner for grant of land in accordance with the provisions of the Karnataka Land Grant Rules, 1969 within 45 days from the date of this order without insisting compliance of condition No.13.

**Sd/-
JUDGE**