

APPELLATE CIVIL.

Before Mr. Justice Munro and Mr. Justice Sankaran-Nair.

1908.
January 10.

HUMMADE BEARI (PLAINTIFF), APPELLANT,

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL
BY THE COLLECTOR OF SOUTH CANARA

(DEFENDANT), RESPONDENT.*

Darkhast, grant of land on—Grant good if made by competent authority, unless set aside on appeal—Omission to consult one whose opinion is not binding, does not vitiate the grant.

A grant of land purporting to have been made under the darkhast rules by the officer empowered by the rules to make the grant is binding on the Crown unless it is revoked by an officer of a higher grade on appeal.

The omission on the part of the officer making the grant to consult an authority whom he is directed to consult by an order of Government, which, however, does not make the opinion of such authority binding on him, is a mere irregularity which does not invalidate the grant.

SUIT against the Secretary of State for a declaration that an order passed by the Collector of South Canara cancelling the grant of the plaint lands on darkhast to plaintiff and demanding surrender of possession or execution of lease deed is illegal, and not binding on the plaintiff.

The plaintiff applied for the plaint lands on darkhast, but the Tahsildar, at first, refused to assess the same to him. His order was revoked by the Sub-Divisional Officer on appeal, and the land was assessed in the name of plaintiff in 1895. In 1901, the Collector of South Canara issued an order cancelling the grant on the ground that the land was within port limits, and that under the Circular Order of the Board of Revenue, the application should have been referred to the Presidency Port Officer before it was complied with. The Collector called on the plaintiff either to vacate the land or to execute a lease deed for the same, and intimated that in default of plaintiff doing either, penal assessment would be levied. The plaintiff brought this suit.

* Second Appeal No. 343 of 1905, presented against the decree of H. O. D. Harding, Esq., District Judge of South Canara, in Appeal Suit No. 81 of 1904, presented against the decree of Mr. C. D. J. Pinto, in Original Suit No. 343 of 1902.

The District Munsif dismissed the suit with costs. The District Judge upheld the decision on the ground that the grant was *ultra vires*.

Plaintiff appealed to the High Court.

K. Narayana Row for appellant.

The Government Pleader for respondent.

JUDGMENT—MUNRO, J.—In 1895 certain land within the limits of the port of Koombla was granted on darkhast to the plaintiff (appellant) by the Divisional Officer on appeal from the order of the Tahsildar refusing to grant it. Before making the grant the Divisional Officer did not refer the plaintiff's application to the Presidency Port Officer as required by Government Order, dated 4th July 1890, Mis. No. 4107, Revenue, embodied in the Board's Proceedings No. 434, dated the 21st July 1890, exhibit II. On this ground the Collector, five years later, cancelled the grant, and called upon the plaintiff to execute a muchilika in respect of the land or vacate the same by a certain date, failing which, penal assessment would be imposed. The plaintiff then sued for a declaration that the Collector's order was not binding upon him, and, having failed in both the Courts below, has filed this second appeal.

The counsel for the crown was unable to support the decree except on the ground that the grant by the Divisional Officer was bad inasmuch as the Presidency Port Officer was not first consulted.

For the appellant it was contended that the failure to consult the Presidency Port Officer was a mere irregularity which did not justify the cancellation of the grant.

The grant by the Divisional Officer in appeal was binding upon the Crown and could not be revoked by the Collector if within the scope of the Divisional Officer's authority. *The Secretary of State for India in Council v. Kasturi Reddi*(1). The only question then is whether, in the face of the Government Order above referred to, the Divisional Officer had authority to make the grant without consulting the Presidency Port Officer. In *Sappani Asari v. The Collector of Coimbatore*(2), the question arose whether a grant by a Tahsildar without consulting the Municipal Council, as by the rules he was required to do, was an act within the scope of his authority.

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(1) I. L. R., 26 Mad., 268.

(2) I. L. R., 26 Mad., 742.

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Bhashyam Ayyangar, J., for reasons which appear at pages 753 and 754 of the report, held that the grant was within the scope of the Tahsildar's authority. With his remarks I entirely agree, *mutatis mutandis*, they exactly apply to the present case. Though under the Government Order the Divisional Officer was enjoined to consult the Presidency Port Officer before making a grant of land in port limits, the ultimate decision rested with him. The Government Order does not say that he was bound to follow the opinion of the Presidency Port Officer. I therefore think that the Divisional Officer in making the grant was acting within the scope of his authority, and that the grant binds the Crown. The lower Court's decree is therefore reversed and the plaintiff will have a decree as prayed for with costs throughout.

SANKARAN-NAIR, J.—The land in dispute was granted on darkhast by the Tahsildar under the darkhast rules on the 20th February 1895 (exhibit K). The Tahsildar had previously rejected the application of the plaintiff and directed the land to be sold by public auction, but that order had been reversed by the Divisional Officer on the 29th December 1894, who ordered that the land should be granted to the plaintiff (exhibit J), and the Tahsildar accordingly assessed the land in the plaintiff's name and placed him in possession. The Munsif has also found that the plaintiff has effected improvements which are now valued at Rs. 1,839-5-6.

On the 21st November 1901, the Collector ordered that the plaintiff should be asked to execute a lease for these lands on certain conditions or vacate the land, failing which, a prohibitory assessment of one rupee a cent was to be levied from him (see exhibit O).

No order in terms cancelling the grant has been produced, though it is admitted that the grant of February 1895 has been cancelled. None has been communicated to the plaintiff.

The plaintiff now sues for a declaration of his right under his grant and contends that the order of the Collector is invalid. The Munsif dismissed the suit on the ground that the land is within the port of Koombla, and therefore the grant is illegal and invalid under section 67 of Act X of 1889.

The Judge, in appeal, also held that the grant was *ultra vires* and was properly cancelled. It is quite clear that section 67 of Act X of 1889 has nothing whatever to do with this case. It

authorizes "any local authority in whom any immoveable property in or near a port is vested" to alienate such property for certain purposes with the consent of the local Government. It is not alleged that the property now in dispute is vested in any local authority. The learned counsel for the respondent does not support the judgment on this ground. But he contends that the grant was made against the orders passed by the Board of Revenue that all applications for land in a port must be referred to a Presidency Port Officer before they are complied with, and that, therefore, the grant is irregular and unauthorized.

A grant purporting to have been made under the darkhast rules by an officer empowered by them to make it is binding on the Crown unless it is revoked or annulled by an officer of a higher grade on an appeal being preferred to him. See *The Secretary for India in Council v. Kasturi Reddi* (1).

In the case before us no appeal was preferred within the time allowed by the Port Officer or any person interested. On the other hand the plaintiff was placed in possession and allowed to continue in possession. It is not even now alleged that any objection has been raised by the Port Officer.

It is pointed out in *Collector of Salem v. Rangappa* (2) that where the plaintiff has taken possession and is in possession under a pattah which can be issued only after the expiry of the time allowed for appeal, and when the pattah was not issued conditionally or by an officer not competent to act in the matter, the Collector is not entitled to dispute the plaintiff's title on the ground that the pattah was granted under a mistake by the Tahsildar without knowledge of all the facts. No fraud was alleged.

In *Periaroyalu Reddi v. Royalu Reddi* (3) it was decided that a Civil Court is not entitled to cancel a pattah granted under the darkhast rules on the ground that the formalities prescribed by the darkhast rules have not been observed. It was pointed out in that case that "darkhast rules are departmental, and if they are infringed, the remedy for such infringement is also departmental"; or in other words the appellate authority may set it aside within the time allowed.

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(1) I. L. R., 26 Mad., 268.

(2) I. L. R. 12 Mad., 406.

(3) I. L. R., 18 Mad., 434.

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In this case the appellate officer has not cancelled the grant within the time allowed by law. It is unnecessary, therefore, to consider whether the Collector could have set aside the grant on account of the failure by the Tahsildar to give notice to the Port Officer in the absence of any objection on the part of that officer.

The notice to the Port Officer is only a formality, and the omission to give such notice cannot be more than an irregularity, as the revenue officers are not bound to follow the opinion of the Port Officer, and are entitled to make the grant even in opposition to it. If the grant in favour of the plaintiff is taken to have been made by the Tahsildar on the 20th February 1895 (exhibit K), then, as he was a competent officer to make the grant, and his order has not been cancelled by the Appellate Court within the time allowed, the plaintiff has acquired a valid title to the property.

If, on the other hand, the grant must be deemed to have been made by the Divisional Officer by his order (exhibit J) passed on appeal on the 29th December 1894 from a previous order of the Tahsildar refusing the plaintiff's application, the same result follows, as there was no appeal from the order passed by the Divisional Officer within the prescribed time.

The lower Court's decrees are therefore reversed, and a decree will be passed in favour of the plaintiff with costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Munro and Mr. Justice Sankaran-Nair.

SETTAPPA GOUNDAN AND OTHERS (COUNTER-PETITIONERS),
APPELLANTS,

v.

MUTHIA GOUNDAN AND SEVEN OTHERS (PETITIONERS),
RESPONDENTS.*

Transfer of Property Act, Act IV of 1882, s. 52 - Lis pendens exists until the final decree in appeal is passed.

The functions of an Appellate Court are not the same in India as in England and America.

* Civil Miscellaneous Appeal No. 193 of 1906, presented against the order of Lionel Vibert, Esq., District Judge of Coimbatore, in Civil Miscellaneous Petition No. 245 of 1906, dated the 5th November 1906.