

IN THE COURT OF DEPUTY COMMISSIONER UTTARA KANNADA KARWAR

Present: Sri. S S Nakul, I.A.S  
Deputy Commissioner,  
Uttar Kannada, Karwar.

No. RB/LND-1/AP/CR-01/15-16



**Between**

1. The North Canara District,  
Co-operative Tile Manufacturing Society Ltd.,  
Kasarkod Tq:- Honnavar,  
Represented by its Secretary  
(Represented through Advocate Sri. N. S.Bhat)

.... Revision Petitioner

V/s

1. Assistant Commissioner, Kumta Sub Division Kumta.
2. Tahassildar Kumta

.... Respondents

**Sub:** Revision petition filed u/s 136(3) of KLR Act 1964 against the order of Assistant Commissioner, Kumta in file No.Bhoomi/viva-118/2014-15 relating to Mutation Entry No. H35/2015-16 dated 05-08-2015 in respect of Sy. No.440/A/B an extent of 43-20-0(A-G-A) of Kumta village in Kumta Taluk.

**Preamble:**

The instant revision petition has been filed against the order of Assistant Commissioner, Kumta in file No.Bhoomi/viva-118/2014-15 relating to Mutation Entry No. H35/2015-16 dated 05-08-2015 in respect of Sy. No.440/A/B an extent of 43-20-0(A-G-A) of Kumta village in Kumta Taluk. Notices were issued to both parties.

**The brief facts of the case are as follows:**

Survey No. 440/A/B a extent of 43-20-0 (A G A) of Hogde vilge in Kumta Taluka was granted to Kumta Consumer Co-operative Society for cultivation of cashew trees as per the then Deputy Commissioner Uttat Kannada Karwar order No. LND II/3/SR/2 dated 8-11-1967. The said society was amalgamated with North Kanara District Co-operative Tile Manufacturing Society Ltd.,Kasarkod Honnavar as per order of the Registrar for Co-operative Societies Belguam, order No G.R.L.229/HOT-1993-94 dated 8-9-1994. Out of 43-20-0 (A-G-A) of the land an extent of 17-14-0(A-G-A) was acquired by Konkan Railways and out of remaining extent of 26-6-0(A-G-A) an extent of 16-37-8(A-G-A) was resumed and reserved for public purpose vide order dated 20-2-1998 in No. ಕಂಕಣರೈಲ್ವೆ-2/ಕವ/25/97-98 ದಿನಾಂಕ: 20-2-1998 passed by the then Deputy Commissioner and remaining 9-8-8(A-G-A) is with Co-operative Tile Manufacturing Society Ltd.,Kasarkod, Government of Karnataka pledge amount Rs. 60,000/-. At the time of data entry Tahashildar Kumta by typographical error entered it as 26-6-0(A-G-A) in the name of Co-operative Tile Manufacturing Society Ltd.,Kasarkod. Thereafter, as per report of the Tahashildar Kumta for correction of RTC in respect of Sy no. 440/A/B, Assistant Commissioner Kumta in his order no. Bhoomi/Viva-118/2014-15 rejected the mutation entry no. H35/2015-16 of Kumta village and ordered for correction of RTC. Being aggrieved by this order the revision petitioner filed the instant revision petition before this court.

**The advocate for the appellant argued that**

1. The impugned order passed by the Assistant Commissioner, Kumta is contrary to law and facts of the case.
2. Assistant Commissioner Kumta passed the order sumoto without giving any notice to the concerned parties.



3. Assistant Commissioner Kumta has not mentioned date of hearing and date of pronouncing the order.
4. Order passed by the Assistant Commissioner Kumta is illegal, politically motivated, unjust and against the settled principles of law.

Hence he requested to allow the revision petition.

Respondents are the Assistant Commissioner, Kumta and Tahashildar Kumta.

Perused the entire records available in the case file.

#### Question before this court is

1. Whether the prayer of the revision petitioner can be considered?

Ans:- In the Negative.

After perusal of the lower court records and written argument of revision petitioner it reveals that in Survey No. 440/A/B an extent of 43-20-0 (A-G-A) of Hegde village in Kumta Taluka was granted to Kumta Consumer Co-operative Society for cultivation of cashew trees as per the then Deputy Commissioner Uttara Kannada Karwar order No. LND II/3/SR/2 dated 8-11-1967. The said society was amalgamated with North Kanara District Co-operative Society Ltd., Kasarkod Honnavar as per order of the Registrar for Co-operative Societies Belgaum order No G.R.L.229/HOT-1993-94 dated 8-9-1994. Out of 43-20-0 (A-G-A) of land an extent of 17-14-0(A-G-A) was acquired by Konkan Railways and out of remaining extent of 26-6-0(A-G-A) an extent of 16-37-8(A-G-A) was resumed and reserved for public purpose vide order dated 20-2-1998 in No. 8058/20-2/83/25/97-98 ದಿನಾಂಕ: 20-2-1998 passed by the then Deputy Commissioner and remaining 9-8-8(A-G-A) is with Co-operative Tile Manufacturing Society Ltd., Kasarkod, Government of Karnataka pledge amount Rs. 60,000/-. At the time of data entry Tahashildar Kumta by typographical error entered it as 26-6-0(A-G-A) in the name of District Tiles Manufacturing Society Kasarkod. As per report of the Tahashildar Kumta for correction of RTC in respect of Sy no. 440/A/B, Assistant Commissioner Kumta in his order no. Bhoomi/Viva-118/2014-15 rejected the mutation entry no. H35/2015-16 of Kumta village and ordered for correction of RTC.

On perusal of records it is seen that the above said order dated 20-2-1998 passed by the then Deputy Commissioner was set aside by Karnataka Appellate Tribunal Bangalore in its order dated 20-8-1999 in appeal no. 148/98. Whether this order confers title to the revision petitioner in respect of the resumed land as against the state is a point to be considered. In this regard it is pertinent to note that when the Railway Authority failed to pay compensation for the acquired land, the revision petitioner herein approached the Hon'ble High Court of Karnataka in W.P. No. 37088/01 claiming compensation on the basis of the order passed by the KAT and also for restoration of their name in column no. 9 of RTC. The said writ petition was dismissed as per order dated 22-11-2002 wherein at para 8 of the order we find the following observations.

".....Merely because, while allowing the appeal setting aside the order of the Deputy Commissioner the Tribunal has observed that the grant in question is a permanent grant that does not constitute a declaration of title in favour of the petitioner so as to grant compensation to the petitioner by the land acquisition authorities or the revenue authorities to enter its name in column no. 9"

It is further revealed that as against the above said order in the writ petition the revision petitioner went in writ appeal in W. A. No. 1403/2003. Said writ appeal was also dismissed vide order dated 31-7-2003 upholding the order passed by the Hon'ble Single Judge in W.P.No. 37088/01. In this order also the Hon'ble High Court has mentioned the very same observation stated above.



From the above said orders it is clear that just because the KAT set aside the order of Deputy Commissioner, it does not mean that the Revision petitioner has acquired title over the property as against the state. It appears, the revision petitioner has filed Civil suit in OS No. 26/01 on the file of Civil Judge (Sr. Dn) Honnavar which was decreed in favour of the revision petitioner. What will be the effect of this order is a point to be considered. In this regard it is pertinent to note that after dismissal of above said writ petition and writ appeal the revision petitioner again filed another writ petition challenging the endorsement dated 24-1-2008 rejecting the prayer of the revision petitioner to enter its name in Column no. 9 of RTC. This writ petition is also dismissed vide order dated 23-11-2011 imposing cost of Rs. 25000/-. So far as the binding nature of the decree in the civil suit as against the state is concerned, at para 7 of the order in the writ petition it is observed as here under.

"Despite the specific observation contained in the order dated 22-11-2002 passed in W.P.No. 37088/2001 and also the judgment dated 31-7-2003 passed in W.A.No. 1403/2003, the petitioner did not take steps to implead the respondents herein as additional defendants in OS No. 26/2001 which was decided on 21-6-2005. Hence, based on the judgment and decree as at Annexure-B, the petitioner cannot put forth any claim to the property in dispute against the respondents. The said judgment and decree does not bind the respondents who were deliberately not impleaded as party/defendants by the petitioner.

The above observations by the Hon'ble High Court of Karnataka are sufficient to hold that the revision petitioner cannot seek for entering its name in the ownership column of the RTC and also cannot establish its title over the resumed land on the basis of the order passed by the KAT and Civil Court.

In the above background let me now advert to the impugned order passed by the Assistant Commissioner. The facts already narrated above make it very clear that there is no legal hurdle to give effect to the order no. ಕೂಟ/ಬೂ-2/ಕು/25/97-98 ದಿನಾಂಕ: 20-2-1998. But unfortunately at the time of data entry the Tahashildar Kumta by typographical error entered the entire 26-6-0 (A-G-A) of the land in the name of revision petitioner. This entry includes the resumed land of 16-37-8(A-G-A). When such a bonafide mistake was reported by the Tahashildar, the Assistant Commissioner has got power to pass the impugned order for correction of typographical errors in the record of rights. Hence I do not find any merit on the arguments advanced on behalf of the revision petitioner. Consequently I proceed to pass the following order.

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Date: 24-03-2017

Order

Revision petition is rejected

(Order dictated to the stenographer, typed, verified and pronounced in open court on 24-03-2017)



*[Signature]*  
Deputy Commissioner,  
Uttar Kannada, Karwar.

Copy to:-

1. Advocate Sri. N.S.Bhat for information.
2. Assistant Commissioner, Kumta for information and necessary action with Lower court file No. Bhoomi/viva-118/2014-15, page No.1 to page No.
3. Tahasildar Kumta for information and necessary action.