

(1966) 03 KAR CK 0009

Mysore High Court

Case No: Writ Petition No. 247 of 1964

K. Doreswamy Iyengar

APPELLANT

Vs

The Special Deputy
Commissioner for Abolition of
Inams, Bangalore and Others

RESPONDENT

Date of Decision: March 30, 1966

Acts Referred:

- Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 - Section 10, 32, 9
- Mysore (Personal and Miscellaneous) Inams Abolition Rules, 1956 - Rule 7, 7 (6)

Citation: AIR 1967 Kar 129 : (1966) 1 MysLJ 756

Hon'ble Judges: Ahmed Ali Khan, J; A.R. Somnath Iyer, J

Bench: Division Bench

Advocate: Ramaswamy Iyengar and C.K. Kambeyanda, for the Appellant; G.B. Kulkarni, High Court Government Pleader and M.S. Gopal, for Kadilal Manjappa and Kadidal Manjappa, for the Respondent

Judgement

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1. The petitioner before us is one of the inamdars of the village somedyapanahalli in the District of Bangalore, which vested in the Government under the provisions of the Mysore (Personal and Miscellaneous). Inams Abolition Act, 1955, in the year 1958. This Writ Petition is presented on behalf of the petitioner in his own right and an also as power of attorney holder of the other inamdars.

2. We are asked to quash the order made by the Deputy Commissioner functioning under the Act, made on February 14, 1963 directing the special Amildar, Magadi, to hold a "re-inquiry into the claims of the petitioner and his co-sharers for being registered as occupants u/s 9, and also into the rival claims of respondents 3 to 68. We are also asked to issue a mandamus to respondents 1 to 3 to complete the enquiry expeditiously on the basis of the first report submitted by the Special

Tahsildar and to issue a mandamus to respondents 1 and 2 to collect the arrears of rent due to the petitioner and his co-sharers from respondents 3 to 68.

3. It is seen from the material before us that there were claims by the inamdars for registration u/s 9 while there were rival claims by respondents 3 to 68 u/s 5 of the Act. At one stage, the special Tahsildar, in the exercise of his power under Rule 7 of the Mysore (Personal and Miscellaneous) Inams Abolition Rules 1956, conducted an enquiry under Sub-rule (6) of that Rule and forwarded his report under that sub-rule to the Deputy Commissioner.

4. The complaint made by the petitioner is that after the receipt of that report from the special Tahsildar the Deputy Commissioner directed a further enquiry to be made by the Special Tahsildar and that that order was made by him without hearing the inamdars or any one. The further complaint made is that on receipt of that requisition, the Special Tahsildar collected further information which the Deputy Commissioner required, without making any enquiry such as what is enjoined by Rule 7, Sub-rule (6) and without hearing the inamdars or giving intimation about it to them, and forwarded that information to the Deputy Commissioner. So it is that we are asked to quash what is called the order made by the Deputy Commissioner on February 14, 1963, directing the Special Tahsildar to make what is described as a "re-enquiry".

5. Mr. Kulkarni, the learned Government Pleader, has placed before us the communication addressed by the Deputy Commissioner to the Special Tahsildar, and it is seen that that communication is a memo which required the Special Tahsildar to make a report on the matters to which that memo refers, and, that memo makes it clear that the Deputy Commissioner did not direct the Special Tahsildar to make any re-enquiry or further enquiry, but merely wanted him to gather some information and make it available to the Deputy Commissioner, presumably for the determination which he has to make u/s 10.

6. Section 10 requires the Deputy Commissioner to examine the nature and history of all lands in respect of which there are claims for registration of occupancy rights or in respect of lands which the inamdars assert have vested in them. Rule 7 creates the machinery which assists that determination. That Rule provides for the presentation of an application by the person who wishes to register himself as an occupant to the concerned Amildar. The Rule also specifies the particulars to be mentioned in that application and which are enumerated in Sub-rule (4), and Sub-rule (5) enjoins the issue of a notice to the persons concerned intimating the date on which the enquiry would be held in respect of the application. Sub-rule (6) makes it the duty of the Amildar to hold the enquiry and to make a report to the Deputy Commissioner on the basis of that enquiry. Sub-rule (7) makes it the duty of the Deputy Commissioner to examine the nature and history of the lands which he is required to do by Section 10, on receipt of the information from the Amildar under Sub-rule (6).

7. Mr. Ramaswamy Iyengar, appearing on behalf of the petitioner, is, in our opinion, right in making the submission that once the Amildar holds the enquiry and makes his report under Sub-rule (6) of Rule 7, it becomes the duty of the Deputy Commissioner to examine the nature and history of the lands in question and decide in respect of which lands the claims of the applicants should be allowed which Section 10 requires him to do. Mr. Iyengar, in our opinion, is on firm ground in urging before us that the Deputy Commissioner in that situation should proceed to make a quasi judicial determination in the presence of both sides and after affording an opportunity to both sides to make their representations.

8. It is now clear as explained by this court on more than one occasion that the enquiry to be made by the Amildar under Rule 7, Sub-rule (6) should conform to the requirements of a formal enquiry under the Land Revenue Code and it is also clear from the decision of this court in Venkataranga Iyengar v. Special Deputy Commr. 1963 (2) M1963 sLJ, that u/s 10 it is for the Deputy Commissioner to give a decision on the claims though u/s 32 and Rule 7 he could seek assistance of the Amildar in going through the preliminary stages during which the requisite material has to be gathered.

9. What is clear from the scheme of Sections 10 and 32, and Rule 7 is that after the presentation of the application to the Amildar under Rule 7 by the person seeking registration as an occupant, the Amildar should conduct an enquiry under Sub-rule (6) and make a report under that sub-rule to the Deputy Commissioner, and the Deputy Commissioner should proceed to examine the nature and history of the lands after the receipt of that report. The Amildar is enjoined by Sub-rule (6) of Rule 7 to make an enquiry which he should make, in the presence of both sides, and that enquiry should be a formal enquiry. As explained by this court in Venkataranga Iyengar's case 1963 (2) M1963 sLJ the report of the Amildar does not have the status of a decision and what the Amildar does when he makes a report is to merely collect the information which the Deputy Commissioner may consider relevant. That report will be part of the material on which the Deputy Commissioner can, to the extent possible, depend along with the other materials which constitute the nature and history of the lands.

10. So, on the submission of the report by the Amildar under Rule 7, Sub-rule (6) it becomes the duty of the Deputy Commissioner to proceed to make his determination in the presence of both sides and according to law. It would be open to him to permit both sides to produce further materials before him and to afford an opportunity to each side to let in evidence upon which either side depends and cross-examine witnesses called by the opposite side if any such evidence is produced. All that has to be done in the presence of the parties.

11. It is also clear from what is explained in Venkataranga Iyengar's case 1963 (2) M1963 sLJ that there is nothing in the Act or the Rules which precludes the Deputy Commissioner from directing a further enquiry by the Amildar under Rule 7,

Sub-rule (6), if the enquiry made by the Amildar is discovered to be deficient or inadequate or in any manner defective. But, before he could direct any such enquiry, the Deputy Commissioner has to hear the party before him, and if there be more than one party, both of them, on the question as to whether such further enquiry is necessary. He could not, in the absence of the parties, ask the Amildar to furnish fresh or other information in an informal way, or direct him to make a fuller or further enquiry under Rule 7(6). The only machinery through which any further information or report could be gathered by the Deputy Commissioner through the instrumentality of the Amildar is that provided by Rule 7 which read along with Sections 10 and 32 constitute a complete and exhaustive Code on the subject of the determination to be made u/s 10. If the report transmitted by the Amildar under Rule 7, Sub-rule (6) is, in the opinion of the Deputy Commissioner, which he has to form after hearing both sides, insufficient or defective, what he can do is to direct another or further enquiry under Rule 7(6) which again must be conducted by the Amildar under that sub-rule in the presence of both sides and that enquiry again has to be a formal enquiry.

12. That being the true meaning of Sections 10 and 32, and Rule 7, the endeavour made by the Deputy Commissioner to gather information administratively through a memo which he forwarded to the Tahsildar on February 14, 1963, was not permissible. The proceedings before the Deputy Commissioner u/s 10 are quasi judicial proceedings and in regard to the determination to be made by him in those proceedings, he cannot act on the administrative side for the purpose of collecting information which could assist the determination. Any such step would plainly offend against the tales of natural justice and would transgress the provisions or Section 32 and Rule 7(6)

13. We, therefore, quash the memo sent by the Deputy Commissioner to the Special Tahsildar on February 14, 1963 and we direct that the Deputy Commissioner shall keep aside and exclude from consideration the information Or material supplied by the Tahsildar In obedience to that requisition. The Deputy Commissioner should now proceed with the determination and to make it according to law and in conformity with the observations contained in this order. He will, of course, be at liberty to direct a further or fuller enquiry by the Special Tahsildar under Rule 7(6) if on hearing the concerned parries he forms an opinion that it is necessary to do so, and in the event of any such enquiry being ordered in that way, the Special Tahsildar should make that enquiry in manner enjoined by Rule 7(6).

14. In regard to the mandamus sought by the petitioner that the rent payable to the in amildars should be collected by the Government, it is obvious that we should issue no such mandamus. Section 3(1)(d) to which Mr. Ramaswamy Iyengar appealed does not in our opinion afford any assistance to him. All that clause says is that one of the consequences of the vesting of the inam village is that the rents and land revenue payable to the inamdar shall be payable to the State Government,

There is no other statutory provision to which our attention was called on the basis of which we could issue any mandamus to the State Government or on the foundation of which we could come to the conclusion that there is any legal duty on the part of the State Government to assist the inamdars in that way. It is for the inamdars to enforce their rights, if any, through other appropriate remedies.

15. Mr. Ramaswamy Iyengar however asks us to issue a direction to the Deputy Commissioner that he should expeditiously make his determination u/s 10. Mr. Manjappa, appearing for respondents 3 to 68 also submits that the determination has been pending for a long time and should be made with dispatch. We accordingly issue a direction to the Deputy Commissioner that he should now make the determination with all reasonable dispatch and speed. In the circumstances, we make no order as to costs.

16. Order accordingly.