

(2000) 03 KAR CK 0070

Karnataka High Court

Case No: Writ Petition No. 7830 of 1984

K. Aswathanarayana

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision: March 3, 2000

Acts Referred:

- Karnataka Village Offices Abolition Act, 1961 - Section 6

Citation: (2000) 7 KarLJ 203

Hon'ble Judges: Harinath Tilhari, J

Judgement

@JUDGMENTTAG-ORDER

Hari Nath Tilhari, J.-I have heard Sri Shanth Kumar, on behalf of M/s. Vagdevi Associates, Counsel for the petitioner.

This petition is directed against the order dated 26th of August, 1983, passed by the respondent 2, the Tahsildar at Annexure-E to the writ petition and petitioner has sought the quashing thereof. He has further sought the issuance of writ of mandamus directing Tahsildar, Chikkaballapur to consider the petitioner's claim for re-grant of land in question bearing No. 137, Agalakurki Village, Nandi Hobli, Chikkaballapur, District Kolar, after affording him opportunity.

2. Petitioner's case is that petitioner is the son of one Kunchi Narasimhaiah. The land in question, according to petitioner was service Inam Land attached to then existing office of Shanbhogues.

Petitioner's case is that under the provisions of Karnataka Village Offices Abolition Act, 1961, the said office was abolished. The petitioner alleged that petitioner has held the land as a tenant under Shanbhogues concerned, whose names as given in the petition are Suryanarayana Rao, (respondent 7) and also his father Venkatasubbaiah. Petitioner alleged that since he held the land as on and immediately prior to the date of vesting, petitioner made claim for re-grant of land

in his favour and the proceedings culminated by passing of the final order dated 26-8-1983, making re-grant of the land in favour of the respondents 4 to 8, who are the heirs of Suryanarayana Rao and Venkatasubbaiah, the original office holders of Shanbhogues. Petitioner's case is that the land in question had been transferred by way of lease in favour of the father of the petitioner and he continued to use the land.

3. Petitioner in paragraph 2, is no doubt states that for conferment of occupancy rights petitioner was not aware as to the fate of the proceedings, since he has not been served with notice of the order made in the matter, but in paragraph 4, it has been very clearly stated that petitioner has, however, been notified to appear before Tahsildar on 31-8-1983, for enquiry into the claim of re-grant in question vide Annexure-C.

Petitioner has averred that on the said date and subsequent dates petitioner made statement, as per Annexure-D to the writ petition and thereafter the order was passed.

4. Petitioner's Counsel contended, firstly that the order passed by the Tahsildar re-granting the land in favour of respondents 4 to 8, is illegal, null and void, as it is in violation of principles of natural justice, as he had no notice.

In my opinion the contention of the petitioner is negated by allegations contained in paragraphs 4 and 5 of the writ petition, where it has been very clearly stated that petitioner had been notified and those proceedings were brought to his notice by notice dated 20th April, 1983, directing the petitioner to appear on 31st May, 1983 and his statement was also recorded as per Annexure-D to the writ petition. In this view of the matter, it cannot be said that order made had been passed by the Tahsildar without any notice to the petitioner and it cannot be said that the order made is in violation of principles of natural justice. Petitioner's contention is that petitioner and his father had been cultivating the land on the basis of the lease granted in favour of petitioner's father by the Village Office holders.

5. Under Section 5 of the Karnataka Village Offices Abolition Act, 1961, it is provided for re-grant of land which has been resumed. That the land may be re-granted on fulfillment of conditions mentioned therein in favour of the holder of the office and if within the prescribed period he does not pay the occupancy price, the holder shall be deemed to be an unauthorised occupant. This Section 5 provides that re-grant shall be made, only in cases not covered by Sections 6 and 7.

6. Section 6 of the Karnataka Village Offices Abolition Act provides that where land resumed, under sub-section (3) of Section 6, is held by an authorised holder, it may be granted to the authorised holder on the payment by him to the State Government of occupancy price equal of six times of full assessment subject to conditions and consequences mentioned in Section 5 and all the provisions under Section 5 shall mutates and mutandis apply in relation to the re-grant of the land

under this section to the authorised holder, as if he were the holder of the Village Office.

A reading of this section reveal that there is, if an authorised holder, within the meaning and covered by definition of authorised holder given in the Act vide Section 2(b), he will get preference in the matter of re-grant, but if land is not covered by Section 6 and there is no authorised holder, then it may be considered for a re-grant to be made in favour of the holder of the Village Office.

7. Section 7 deals with eviction of unauthorised holders, who is an authorised holder has been defined in Section 2(b) as under:

"Authorised holder means a person, in whose favour a land granted or continued in respect of or annexed to, a Village Office by the State or a part thereof, has been validly alienated permanently, whether by sale, gift, partition.... or otherwise under the existing law relating to Village Offices".

8. Section 8 is also to be material at this juncture, it deals with the lease or lessees reads as under:

"Section 8. Application of tenancy law.-If any land granted or continued in respect of or annexed to a Village Office by the State has been lawfully leased and such lease is subsisting on the appointed date, the provisions of tenancy law for the time being in force in that area in which land is situated shall apply to the said lease and rights and liabilities of the person, to whom the land is granted under Sections 5, 6 or 7 and as tenant or tenants shall subject to the provisions of this Act, be governed by the provision of Tenancy Law".

Expression unauthorised holder is also defined in this Act. Unauthorised holder means a person in possession of the land granted or continued in respect of or annexed to a Village Office of the State-without any right or under any lease, mortgage, sale, gift or any other kind of alienation thereof which is null and void either under the existing law relating to Village Office, or law relating to transfer as well.

In the view of these provisions, it will be material to have a glance to the provisions of the Mysore Village Offices Act IV of 1908.

9. Section 5 of the Mysore Act IV of 1908, provides and reads as under:

"The emoluments of Village Offices, whether such offices be or be not hereditary shall not be liable to be transferred, partitioned or encumbered in any manner whatsoever and it shall not be lawful for any Court to attach or sell such emoluments or any portion thereof: Provided in the cases of lands which are not assigned as emoluments to the holder of the Village Office under rules framed under Section 22, nothing contained in this section shall be deemed to affect transfers, partitions or encumbrances as between different members of hakdar's

family".

The law relating to Village Offices, therefore provides that, emoluments of the Village Offices are not transferable nor this can be subject to partition, nor emoluments be encumbered in any manner and no Court can attach or sell those emoluments.

The expression "Emoluments" has been defined in Mysore Act IV of 1908 as under:

"Section 4.-Emoluments means and includes (i) Lands;

(ii) Assignments of revenue payable in respect of lands;

(iii) Fees in money or agricultural produce;

(iv) Money salaries and all other kinds of remuneration, granted or continued in respect of or annexed to any Village Office by the State Government".

Thus, "emoluments" includes in itself lands which are granted in respect of or as annexed to any Village Office of the State Government. It is only the land which is not granted or assigned, as emolument to the holder of Village Office that may not be effected by provisions of bar created under Section 5.

10. Here, in the present case in paragraph 1, the petitioner himself states that the above land was service Inam Land attached to then existing hereditary Village Office of Shanbhogues. Once this fact is admitted, that it has been attached to and annexed to the Village Office it did come within the framework of emoluments granted to two persons, who were holding Village Office and Section 5, did operate and appear therein, did come into picture. Transfer means, transfer of land or transfer of right to enjoy the land. Lease is also a transfer and when the lease of land is granted, the land is given to a person to enjoy the land under the lease of the period. In terms of lease means an encumbrance as when a right is given to a person to make use of the land as a tenant, then the right under a lease will also come within the clutches of bar granted under Section 5 of the Mysore Act IV of 1908. In this view of the matter, in my opinion neither the petitioner cannot be said to come within the framework of authorised holder nor within the framework of the holder of lease lawfully granted.

11. Section 8 will apply only to cases, where land had been lawfully leased and when Section 5 of Mysore Act IV of 1908, creates a bar against the transfer of land annexed to the Village Office, no lease could have been granted, so even if he was holding the land under a lease, but lease being illegal and not lawfully granted, instead having been granted in breach under the provisions of Section 5 of Mysore Act IV of 1908, petitioner had not been entitled to any benefit of either of Section 8 or under Section 6 of the Karnataka Village Offices Abolition Act and land not being covered by Sections 6, 7 or 8, in my opinion re-grant of land which has been made in favour of the respondent under Section 5, cannot be said to be bad in law or to be

suffering from any error of law. The contention that order has been passed in violation of the terms of any lease, is without substance, in view of contents of paragraphs 4 and 5 of the writ petition.

Thus considered, in my opinion, the petition has got no merits and is being dismissed of devoid of merits.

The civil petition is allowed and the writ petition is dismissed on merits.