

Sri. N.G. Chandra Reddy and Others Vs State of Karnataka

Court: Karnataka High Court

Date of Decision: Sept. 26, 2013

Acts Referred: Constitution of India, 1950 " Article 226, 227
Karnataka Land Revenue Act, 1964 " Section 136(3)

Hon'ble Judges: H. Billappa, J

Bench: Single Bench

Advocate: V. Lakshminarayana, for the Appellant; Gopal Bilalmane, HCGP, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

H. Billappa, J.

In this writ petition under Articles 226 and 227 of the Constitution of India, the petitioners have called in question, the order

dated 4.5.2009, passed by the 3rd respondent vide Annexure-R and the order dated 29.8.2008, passed by the 4th respondent vide Annexure-Q.

By the impugned order at Annexure-Q, the 4th respondent has submitted the records to the Deputy Commissioner for further action holding that

the land bearing Sy. No. 17 of Chinnappanahalli village was a tank. In case No. 146/71-72, the Special Deputy Commissioner for Inam Abolition,

Bangalore, has granted land in favour of N.C. Gurumurthy Reddy. Thereafter, the 3rd respondent by order dated 4.5.2009 vide Annexure-R has

held that the entries made in respect of the land bearing Sy. No. 17 measuring 11 acres 10 guntas situated at Chinnappanahalli village in the names

of the petitioners and their ancestors are illegal. Consequently, the Tahsildar is directed to take necessary action to delete the names of the

petitioners and their ancestors and to enter in the revenue records as "Government - Tank bed". Aggrieved by that, the petitioners have filed this

petition.

2. The petitioners claim that petitioners 1 to 6 are the LRs of late Sri. N.C. Gurumurthy Reddy. Petitioners 7(a) and 7(b) are the LRs of late N.C.

Srinivasa Reddy. Petitioners 8(a) to 8(c) are the LRs of late N.C. Munireddy. Petitioners 9(a) and (b) are the LRs of late N.C. Papaiah Reddy.

The property bearing Sy. No. 17, measuring 11 acres 10 guntas, situated at Chinnappanahalli village originally belonged to Sri. Hoodi

Chikkamuniswamy Reddy. The children of Sri. Hoodi Chikkamuniswamy Reddy executed sale deeds in favour of late Sri N C Gurumurthy Reddy

in the year 1972 in respect of Sy. No. 17 as per Annexures -A to G. Initially Sy. No. 17 had no independent Achukat, though the tank was

constructed by Chikkamuniswamy Reddy as he was in possession. The survey records and the mahazar clearly indicate that Sy. No. 17 did not

belong to the State Government. It was in possession and enjoyment of Chikkamuniswamy Reddy. There is no notification declaring Sy. No. 17 as

tank belonging to the Government. The sale deeds in favour of N.C. Gurumurthy Reddy have not been challenged. It is stated, Sri. H.M.

Veerappa Reddy and his brother who are the children of Chikkamuniswamy Reddy filed application for grant of occupancy rights. It was rejected

by the Special Deputy Commissioner on 9.4.1963. When the entire village was declared as inam, the private lakes and other tanks constructed by

the private parties are entitled for regrant. The order rejecting the application in respect of Sy. No. 17 was challenged in Appeal No. 1303/1963.

The Appellate Tribunal by its order dated 10/12.6.1963 has ordered to register the appellant who is the son of Chikkamuniswamy Reddy as

occupant in respect of Sy. No. 17 and two other survey numbers as per Annexure-H. Subsequently, the appeal filed in respect of Sy. No. 17 was

again subject matter of challenge before the Appellate Tribunal in Appeal Nos. 1602/63 and other connected appeals. The Appellate Tribunal by

its order dated 10.9.1965 remitted the matter to the Special Deputy Commissioner as per Annexure-J. The Appellate Tribunal has held that Sy.

No. 17 did not belong to the Government. It belonged to Sri. Chikkamuniswamy Reddy. He had constructed the tank. There was no notification

except showing it as a Tank Bed in the year 2000-01 by the Assistant Director of Land Records. At no point of time, the land was declared as a

tank belonging to the Government. The initial survey settlement conducted in the year 1957-58 shows that the land did not belong to the

Government. The Appellate Tribunal has also recorded a finding that the land is not a government land.

3. After remand, the Special Deputy Commissioner has regranted the land on 10.9.1974 as per Annexure-K. Pursuant to that, the entries have

been made in the names of the petitioners and their ancestors. It is stated, the land is cultivable and the petitioners have grown, coconut, mango,

sapota and other trees. As per the sale deeds, Chikkamuniswamy Reddy was in possession of the property and subsequently, N.C. Gurumurthy

Reddy was in possession. Thereafter, the land was partitioned through partition deed dated 7.1.2004. The petitioners are in possession and

enjoyment of the property.

4. It is stated, the Tahsildar reported the matter through letter dated 16.12.2000 that the land was in cultivation of the petitioners and though the

pahanies were entered in respect of Sy. No. 17 as Government land. Thereafter, on 8.12.2000, a spot inspection has been conducted. It reveals

that coconut, sapota and mango trees were grown in Sy. No. 17. The Deputy Commissioner by order dated 3.11.2006 referred the matter to the

Assistant Commissioner to examine the records as per Annexure "P". Thereafter, the Assistant Commissioner has submitted his report stating that

the land has been regranted but it is a Government Tank. The Assistant Commissioner has clearly recorded a finding that N.C. Gurumurthy Reddy,

the petitioners" ancestor was cultivating the land and the land was regranted. But, the revenue records show that it is a government land. Based on

that, the Deputy Commissioner has passed an order dated 4.5.2009 stating that the names of the petitioners and their ancestors be deleted from

the revenue records and in the revenue records it may be entered as "Government-Tank bed". Aggrieved by that, the petitioners have filed this writ

petition.

5. The respondents have filed statement of objections contending that the writ petition is not maintainable. It is stated, the Special Deputy

Commissioner, Bangalore District, based on the report of the Tahsildar, Bangalore East Taluk has initiated proceedings u/s 136(3) of the

Karnataka Land Revenue Act, 1964. The Tahsildar, Bangalore East Taluk through letter dated 16.12.2000 has reported that land bearing Sy. No.

17 measuring 11 acres 10 guntas of Chinnappanahalli village is classified as tank (kere) and there are no original entries in the revenue records in

the names of the petitioners in respect of land bearing Sy. No. 17 measuring 11 acres 10 guntas of Chinnappanahalli village vide order dated

3.11.2006, the matter has been referred to the Assistant Commissioner, Bangalore North Sub-Division, Bangalore with a direction to procure the

records from the office of the Special Deputy Commissioner for Inams Abolition and examine the same as to whether the matter in respect of the

land in question was taken up on remand by the Karnataka Appellate Tribunal. Till such time, the entries in the revenue records shall continue as

they exist. Thereafter, the Assistant Commissioner, Bangalore North Sub-Division, Bangalore has referred the matter to the Special Deputy

Commissioner, Bangalore to initiate proceedings u/s 136(3) of the Karnataka Land Revenue Act.

6. It is stated, on earlier occasion, the 3rd respondent i.e., the Special Deputy Commissioner, Bangalore having considered the case referred the

matter to the Assistant Commissioner, Bangalore North Sub-division, Bangalore to verify the original records relating to the alleged conferment of

occupancy rights in respect of the land in question in favour of N.C. Gurumurthy Reddy by the Special Deputy Commissioner for Inams Abolition.

The Assistant Commissioner, Bangalore North Sub-Division, Bangalore, having held an enquiry has come to the conclusion that as per the

documents made available, N.C. Gurumurthy Reddy was conferred with the occupancy rights in respect of the land in question by the Special

Deputy Commissioner for Inams Abolition by order dated 10.9.1974 in case No. A146/71-72. However, according to the entries in the survey

records, it is clear that the land in question is classified as sarkari kere. Sy. No. 17 of Chinnappanahalli village is a Government Tank and

occupancy rights cannot be granted in respect of the tank bed. The Special Deputy Commissioner after giving an opportunity has held that the land

in question is a tank bed and there was no grant of occupancy rights in respect of the land in question and therefore has directed to cancel the

entries made in the name of the petitioners and their ancestors and enter the name of the government in the revenue records as "Government -Tank

bed". Therefore, the respondents have prayed for dismissal of the writ petition.

7. The learned counsel for the petitioners contended that the impugned order cannot be sustained in law. He also submitted that the land was

regranted in favour of N.C. Gurumurthy Reddy by order dated 10.9.1974 as per Annexure-K. Thereafter, the mutation has been effected. The

petitioners and their ancestors have been in possession and enjoyment of the land in question. The 4th respondent by order dated 29.8.2008 has

referred the matter to the 3rd respondent stating that there are documents showing that the Special Deputy Commissioner for Inams Abolition has

granted the land, but in the records, the land has been shown as government land. Based on that, the 3rd respondent has passed the impugned

order vide Annexure-R holding that the entries in respect of the land bearing Sy. No. 17 measuring 11 acres 10 guntas situated at Chinnappanahalli

village made in the name of petitioners and their ancestors are illegal. The Tahsildar has been directed to enter the name of government in the

revenue records as "Government - Tank bed" which is totally incorrect. Further he submitted that the regrant made in favour of N.C. Gurumurthy

Reddy has become final. Mutation has been effected. The petitioners are in possession and enjoyment of the land in question. They have grown

coconut, mango and sapota and other trees. The 3rd and 4th respondents have considered this. Therefore, the impugned order cannot be

sustained in law.

8. As against this, the learned Government Pleader supported the impugned order. He submitted that the land in question is a government land and

the 3rd respondent considering the material on record and the documents has held that the land in question is a government land and consequently

has directed to cancel the entries made in the name of the petitioners and their ancestors and to enter the name of the Government as

"Government- Tank bed". Therefore, the impugned order does not call for interference.

9. I have carefully considered the submissions made by the learned counsel for the parties. It is relevant to note, the petitioners claim that originally

the land bearing Sy. No. 17, measuring 11 acres 10 guntas, situated at Chinnappanahalli village belonged to Hoodi Chikkamuniswamy Reddy. The

children of Hoodi Chikkamuniswamy Reddy have sold the land in favour of late N.C. Gurumurthy Reddy in the year 1972 as per Annexures "A"

to "G". Thereafter, Sri. H.M. Veerappa Reddy and his brother who are the children of Chikkamuniswamy Reddy have filed an application for

grant of occupancy rights. It has been rejected by the Special Deputy Commissioner on 9.4.1963. It was challenged in Appeal No. 1303/1963.

The Appellate Tribunal by its order dated 10/12.06.1963 has ordered to register the appellant therein as occupant in respect of Sy. No. 17 and

two other Sy. Nos. Subsequently, the appeal filed in respect of Sy. No. 17 was again the subject matter of challenge before the Appellate Tribunal

in Appeal Nos. 1602/63 and other connected appeals. The Appellate Tribunal by its order dated 10.09.1965 remitted the matter to the Special

Deputy Commissioner as per Annexure "J". The Special Deputy Commissioner by order dated 10.9.1974 has regranted the land as per

Annexure-K in favour of N.C. Gurumurthy Reddy. Pursuant to that, mutation has been effected and the entries have been made in the revenue

records right from 1974 onwards. The 4th respondent by order 29.8.2008 has submitted the records to the 3rd respondent for further action

holding that Sy. No. 17 (old No. 6) of Chinnappanahalli village was originally a tank. In case No. 146/71-72, the Special Deputy Commissioner

for Inam Abolition has granted land in favour of N.C. Gurumurthy Reddy. The 3rd respondent by his order dated 4.5.2009 has held that the

entries made in respect of the land in Sy. No. 17 measuring 11 acres 10 guntas situated at Chinnappanahalli village in the name of the petitioners

and their ancestors are illegal and has ordered to delete the entries. The Tahsildar has been directed to take action to delete the names of the

petitioners and their ancestors and to enter in the revenue records as "Government-Tank bed". While passing the impugned order, the 3rd

respondent has not considered that the land was re-granted in favour of N.C. Gurumurthy vide Annexure-K. Pursuant to that, mutation was

effected in the name of N.C. Gurumurthy Reddy and thereafter, the petitioners. The documents produced by the petitioners show that they have

grown coconut, mango, sapota and other trees. This aspect has not been considered while passing the impugned order. The regrant made in favour

of N.C. Gurumurthy Reddy has become final. In the circumstances, the matter requires reconsideration.

Accordingly, the writ petition is allowed and the impugned order dated 4.5.2009 passed by the 2nd respondent vide Annexure-R and the

impugned order dated 29.8.2008 passed by the 3rd respondent vide Annexure-Q are hereby quashed. The matter is remitted to the 3rd

respondent with a direction to reconsider the same, in accordance with law, in the light of the observations made above, by giving opportunity to

the parties concerned.

Till the matter is considered, it is directed to maintain status quo regarding possession, nature and entries as it exist now.