

Smt. Jayamma Vs The Revenue Secretary, Government of Karnataka and Others

Court: Karnataka High Court

Date of Decision: Jan. 30, 2014

Acts Referred: Karnataka Land Revenue Act, 1964 â€” Section 136(3)

Citation: (2014) 2 KarLJ 342

Hon'ble Judges: Jawad Rahim, J

Bench: Single Bench

Advocate: T.S. Mahabaleshwara, Advocate for the Appellant; D. Aswathappa, Additional Government Advocate, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Jawad Rahim, J.

Petitioner claiming to be the legal heir of H.G. Shama(sic) has sought in this writ action issuance of certiorari to quash the

order at Annexure-Q, dated 11-6-2012 passed by the 2nd respondent, denuding her right in respect of lands indicated therein. Sri D.

Ashwathappa, learned Additional Government Advocate, has taken notice for respondents 1 to 3.

2. Heard learned Counsel for the petitioner and learned Additional Government Advocate. Perused records from which the following contextual

facts emerge:

(a) Petitioner-Smt. Jayamma was issued with notice by the 2nd respondent invoking Section 136(3) of the Karnataka Land Revenue Act, 1964,

calling upon her to produce records only pertaining to lands in Survey No. 27 to an extent of 0.17 acres situate in Amanikere Village, on the

premise, the land is Gomal land belonging to the Government.

(b) She authorised H.A. Vijaykumar to appear before the Deputy Commissioner and to produce the documents and depose on her behalf in the

enquiry, and by virtue of such authorization, Vijaykumar is said to have appeared and produced records relating to land in Survey No. 27

measuring 0.17 along with RTC, pahani, etc. All notarised copies of documents, i.e. index of lands, re-grant order, RTCs for the period 1966-

1967 to 2001-2002 and 2011-2012 were produced on 23-5-2012.

(c) Thereafter the 2nd respondent has passed the impugned order at Annexure-Q declaring lands indicated therein apart from Survey No. 27 to

belong to the Government and thus negated her claim. Aggrieved by it, she is in writ action and to seek relief, she has referred to certain facts

relating to acquisition of the property in question.

(d) From the material propositions in the pleadings, it is seen, originally the land in question was formed out of Survey No. 27 of Hebbal

Amanikere Village referred to as Survey No. 7/2. The same was entered in preliminary revenue records. Shanbhog Inam land attached to Hebbal

Amanikere Village was taken over for agricultural farm and in lieu of the same, land measuring 2 acres 39 guntas in was granted. One Gopalaiah

was in possession and enjoyment of the same. He had a son H.G. Shamanna (husband of the petitioner). Earlier Gopalaiah was registered as

Shanbhog and on his demise, Shamanna was registered as Shanbhog; records in this regard are built up as could be seen from Annexures-A and

B.

(e) Consequent to abolition of the post of Mysore Village Officer, an application for re-grant was necessary which Shamanna filed, and it was

registered in HOA 296 + 299/1968-69 and in the enquiry that ensued, necessary material was placed which the Assistant Commissioner accepted

and by order dated 13-3-1970, re-granted the land to him in Survey No. 7/2 of Hebbal Amanikere Village and it was fortified by another

endorsement at Annexure-C. Upon re-grant, khatha was made in the name of H.G. Shamanna followed by mutation. The index of lands and RTCs

are relied by her to substantiate this contention and they are found at Annexures-D, E and F.

(f) Petitioner has further averred, after the death of Shamanna on 8-11-1984, she as his wife, applied for change of khatha of Survey No. 7/2

based on inheritance and produced relevant records vide Annexure-G. The Assistant Director of Land Records requested the concerned

authorities to issue a new survey number for the portion owned by the petitioner by following the procedure. In response to such directions, the

jurisdictional Tahsildar vide letter No. MR. 14/1985-86 reported indicated that pukka phodi was made by the Survey Department and Akar

Bundh Dhurasth was also made, tax was fixed and new Survey No. 27 was carved out. Copy of the Akar Bunch Dhurasth, Tippani copy and

village map are found at Annexures-H, J and K.

(g) It is averred, out of the extent of 13 acres 23 guntas in Survey No. 7, 2 acres 39 guntas + 0.8 guntas kharab was carved out and Survey No.

28 having 1 acre 28 guntas became part of Survey No 7 The RTCs for the years 1966-1967, 1971-1972, 1977-1978 to 1980-1981, 1986-

1987 to 1987-1988, 1988-1989 to 1992-1993, 1993-1994 to 1994-1995, 1996-1997, 2000-2001, 2001-2002, 2002-2003, 2007-2008 and

2011-2012 issued on 8-5-2012 and 31-8-2012 were issued on which she relies. They are at L-1 to L-12. Similarly names of other Haqdars are

mentioned in the re-grant order.

(h) However, due to some interference from unscrupulous elements, she filed a suit in O.S. No. 4857 of 1995 which resulted in a compromise with

the defendants on 17-4-1997 as seen from Annexure-M.

(i) Petitioner has further averred, based on the compromise and co-related documents, RTC was issued for 2011-2012 on 8-5-2012

incorporating her name in columns (9) and (12), but in the RTC issued on 31-8-2012, her name was found to have been deleted.

(j) Meanwhile petitioner received a notice on 17-10-2011 from the 2nd respondent relating to land in Survey No. 27, Hebbal Amanikere Village,

measuring 0.17 guntas declaring that it belongs to Government, being Gomal and thus she was asked to produce documentary evidence if her

claim was contrary to such fact. A report from the 3rd respondent was called by the 2nd respondent who sent it vide Annexure-N.

(k) During the proceedings pursuant to the notice dated 17-10-2011, petitioner authorised Vijaykumar to appear, who has participated in the

proceedings and has produced all records. He filed necessary documents and also authorisation, but the 2nd respondent did not pronounce the

order in appeal No. CR-38 till 23-5-2012. In the meantime, she learnt 2nd respondent has passed the order resuming the lands, not only in Survey

No. 27 but also adjacent lands as well owned by the petitioner regarding which no notice was issued and against which there was no dispute.

3. In this behalf, the main grievance of the petitioner is, the notice of show-cause is only in respect of land measures 0.17 guntas in Survey No. 27

of Amanikere Village whereas the impugned order relates to several other lands owner by her. Thus a legal issue is raised regarding deprivation of

opportunity to the petitioner and violation of principles of natural justice and contravention of the mandatory provisions of the Karnataka Land

Revenue Act, 1964 and Karnataka land Revenue Rules, 1966 regarding conduct of enquiry. Arbitrariness in the decision is an alternate but

assertive contention in the writ petition.

4. On behalf of the State, the contention initially advanced was, no doubt seemingly Shamanna husband of the petitioner was re-grantee of the land

in question, but subsequently the land was acquired and became part of the lake and therefore it could not have been the subject-matter of grant.

Since it was part of the lake, it was not amenable for grant and hence any further action taken during the proceedings under Mysore (Religious and

Charitable) Inams Abolition Act, 1955 are vitiated.

5. Several other contentions are sought to be advanced on behalf of the State, but after urging for sometime, learned Additional Government

Advocate, Mr. Ashwathappa very fairly conceded that even though Government may assert that the land belongs to it, being Gomal, and was not

available for re-grant and that it is now a lake, yet the show-cause notice which preceded the enquiry relates only to land to the extent of 0.17

guntas in Survey No. 27 whereas the impugned order is passed in respect of several other lands. Therefore the 2nd respondent fell seriously in

error in adjudicating, or rather denuding the right of the petitioner in respect of lands regarding which he did not call upon her to show cause nor

any enquiry was conducted properly.

6. Though the narration of facts in the petition is too elaborate referring to all that has transpired for over five decades, for the purpose of disposal

of this writ petition, it is material to note, petitioner claims she has succeeded to the estate of her husband H.G. Shamanna who had acquired the

property in the manner aforesaid by re-grant, Till date Government has not disputed grant or re-grant of land in his favour and it was not brought to

test in any quasi-judicial proceedings. As of now, petitioner is shown to be the Khatedar and her name appear so in the relevant records till 8-5-

2012, but the same was found not have been deleted in the pahani issued on 31-8-2012. That necessitated her to file application for restoration

her name.

7. Deletion of her name is undoubtedly, based on the impugned order at Annexure-Q. The fact that proceedings before the 2nd respondent are

vitiated as he has considered and passed the order in respect of not only land in Survey No. 27 measuring 0.17 guntas but in respect of other lands

measuring 2 acres 39 guntas of the same survey number. It is also noticed, the order of re-grant and all proceedings related thereto which was the

subject-matter of proceedings in H.O.A. Nos. 296-299/1968-69 which culminated in the order dated 13-5-1970 have not been taken into

consideration or adverted to. But there is no reference to the continuous uninterrupted physical possession of the land in question by he petitioner

as also proof regarding payment of revenue to the Government. There is also no reference to the material documents filed by her and the statement

made on other behalf by her duly authorized agent, Vijaykumar in the enquiry in question. The impugned order is truncated, lacking in application

of mind ignoring the material documents on record and also result of judicial or quasi-judicial proceedings earlier, including the decree in O.S. No.

4857 of 1995. Such order can hardly be sustained. Being of this view, the writ petition is allowed. Rule issued is made absolute. The impugned

order at Annexure-Q is quashed directing the respondents to restore khatha in the name of the petitioner, of course, reserving liberty to the

respondents to decide the question of validity of the grant/re-grant in favour of petitioner's husband in separate permissible enquiry, in accordance

with law.

Sri D. Ashwathapa, learned Additional Government Advocate is permitted to file memo of appearance within three weeks.