

(1998) 07 KAR CK 0069
In the Karnataka High Court
Case No : Writ Petition No. 7385 of 1997

Balasahed and Others

APPELLANT

Vs

The Tahsildar, Chikodi, Belgaum District and Others

RESPONDENT

Date of Decision : 24-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Land Reforms Act, 1961 — Section 48 A
Karnataka Village Offices Abolition Act, 1961 — Section 5, 7

Citation : (1999) 1 KarLJ 252

Hon'ble Judges : B.N. Mallikarjuna, J

Bench : Single Bench

Advocate : Sri G. Balakrishna Shastry, for the Appellant; Sri Karigannanavar, Government Pleader and Sri K.S. Savanoor, for the Respondent

Judgement

1. In this writ petition under Articles 226 and 227 of the Constitution of India, petitioners have sought for quashing the order dated 30-8-1996 of respondent 1-Tahsildar, Chikodi in the District of Belgaum in No. WTN/Cr. (53)131 of 1995-96, Annexure-A is the order. Tahsildar, by the said order has directed eviction of the petitioners from the land ad-measuring 8-38 acres in Sy. No. 400/1+2 of Kurli Village in Chikodi Taluk, old number being 586/1+2 of Appachiwadi Village and to put respondents 2 to 7 in possession of the said land. This order is made in exercise of the powers under Sections 5 and 7 of the Karnataka Village Offices Abolition Act, 1961 (hereinafter referred to as "the Act"). However, Tahsildar has said that this order is subject to the decision in civil suit pending before the Civil Court.

2. It is undisputed that the land in dispute was attached to the village office of Sanadi and one Naru Sanadi was the holder of this office. He died leaving behind him two sons by name Rama and Laxmana. Petitioners 1 to 4 and respondents 2 to 7 belong to the branch of Rama's family. It appears, Laxmana died leaving behind no heirs. Rama had two sons by name Appa Saheb and Vittoba (petitioner 2). Appa Saheb had three sons by name Dadu Sindhe, Ganapathi Sindhe and

Siddarama, First and 3rd petitioners are the sons of Ganapathi Sindhe, 4th petitioner is the brother of Dadu Sindhe. Respondents 2 to 7 are the children and grandchildren of Dadu Sindhe. It is also undisputed that Dadu Sindhe attended the services of Sanadi enjoying the properties attached to the said village office.

3. Petitioners contend that in a family arrangement in about the year 1905 property in question was given to the possession of petitioners and certain two other items of lands attached to the village office were given to Dadu Appa Sindhe, his children and grandchildren.

4. It would appear that Dadu Appa Sindhe approached the Pranth Officer, Chikodi with a request to restore the possession of the land in question and also to assign the remuneration of the office of Sanadi and that was resisted by the petitioners. Pranth Officer, by order dated 30-9-1956 refused to disturb the family arrangement, but however directed the petitioners herein to pay Rs. 6-6-0 to the working Sanadi viz., Dadu Appa Sindhe. Annexure-C is the said order. It would appear that Dadu Appa Sindhe questioned in appeal before the Collector of Bel-gaum, the correctness of the order of Pranth Officer unsuccessfully. Dadu Appa Sindhe, aggrieved by the order of the Collector, it appears approached the Divisional Commissioner in Appeal No. RB. WTN. AP of 1930, Divisional Commissioner on 17-2-1958 modified the order of the Pranth Officer and directed restoration of the land to Dadu Appa Sindhe on the ground that the land was assigned for sanadi services. It would appear that the order was challenged before this Court in C.P. No. 28 of 1961 and this Court by order dated 23-10-1968 set aside the order of the Divisional Commissioner and restored the order of the Deputy Commissioner.

5. In the meantime, State of Karnataka introduced the Act called "The Karnataka Village Offices Abolition Act, 1961" which came into force with effect from 1-2-1963. Consequent upon the introduction of the Act, village offices came to be abolished and provision was made for regrant of the land. Assistant Commissioner, Chikodi by order dated 25-3-1969, it is stated acting u/s 5 of the Act regranted the disputed land and two other items of land in favour of Dadu Appa Sindhe, Annexure-R2 is the copy of the said order. Petitioners instead of challenging the said order in appeal u/s 3 of the Act, it would appear made an application u/s 48A of the Karnataka Land Reforms Act for registering their occupancy right contending that they are in possession of the land in dispute as tenants. The Tribunal it would appear, made an order in favour of the petitioners on 11-12-1984. Dadu Appa Sindhe questioned the correctness of that order before this Court in W.P. No. 15329 of 1984, writ petition came to be allowed and the matter was remanded to the Tribunal for fresh disposal. After the remand, Tribunal held enquiry in the matter and by order dated 11-4-1989 dismissed the application, Annexure-D is the copy of the order of the Land Tribunal. Thereafter, petitioners, filed the suit in O.S. No. 72 of 1993 in the Court of Civil Judge at Chikodi for partition and separate possession of their share. It is submitted at the hearing of this writ petition (filed on 11-3-1997) that the suit came to be decreed

on 27-3-1997 declaring that the plaintiffs have share in the disputed property and two other items of the property and directed drawing up of a preliminary decree. It is further submitted that the said judgment and decree is challenged by the respondent in R.F.A. No. 454 of 1997 before this Court and that is pending.

6. In view of the continued litigation before one forum or the other, it is stated that petitioners continued to be in possession of the land measuring 8-38 acres in Sy. No. 400/1+2 and therefore respondents 2 to 7 made an application on 2-1-1996 before the Tahsildar, Chikodi requesting the Tahsildar to evict the petitioners and to put them in possession of the land in dispute. Annexure-R4 (annexed to the statement of objections) is the copy of the said application. Petitioners herein, it would appear filed their objections dated 28-8-1996 before the Deputy Tahsildar, Nada, office Nippani disputing the claim of the respondents contending inter alia that they have a right in the property and entitled to continue in possession of the property being the members of the same family and in view of the family arrangement. The Tahsildar after considering the objections, by the order impugned dated 30-8-1996 directed eviction of the petitioners from the land in question, Annexure-A is the said order. Petitioners in this petition have called in question the legality and the correctness of the said order.

7. Sri Balakrishna Shastry, learned Counsel for the petitioners contended that no application u/s 7 of the Act would lie when once there is regrant, therefore the order impugned being made without jurisdiction is not, in law sustainable. In support of his arguments, he relied on the decision of the Division Bench of this Court in V. Channanarasimhaiah Vs. Additional Tahsildar, Bangalore North Taluk and Others, .

8. Sri Savanoor, learned Counsel for respondents 2 to 7 contended that the decision of the Division Bench is not attracted to the facts and circumstances of the case. Facts and circumstances came up before the Bench are clearly distinguishable, what was considered in the said decision was the scope and purport of Section 7, but in the instant case, grant was u/s 5(1) in favour of the holder of village office, application Annexure-R4 is both under Sections 5 and 7 of the Act, and therefore u/s 5(6) of the Act, authority continued to exercise power to evict till such time the grantee is put in possession of the land. Secondly, his argument is that the petitioners having not challenged the order of regrant u/s 5 dated 25-3-1969 (Annexure-R2) in appeal as provided u/s 3 of the Act, cannot resist the application u/s 5(6) of the Act. He further submitted that petitioners having not approached this Court promptly and with clean hands, they are not only guilty of laches, but guilty of delay and as such writ petition is not maintainable. Learned High Court Government Pleader appearing for respondent 1 supported the arguments of the learned Counsel for respondents 2 to 7.

9. In view of the rival contentions, point that would arise for consideration is:

Whether in the facts and circumstances of the case, an application for evicting the petitioners did He and the authority (Tahsildar) could have ordered eviction acting u/s 5(6) of the Act, 1961?

10. The land in dispute measuring 8-38 acres in Sy. No. 400/1+2 (old No. 586/1+2) of Kuril Village was attached to the village office Sanadi. Consequent upon the introduction of the Act, all village offices came to be abolished with effect from 1-2-1963. Provisions are made in the Act for regrant of lands attached to village office, modes of regrant were different. Sections 5, 6 and 7 provided for regrant of such lands. Section 4 contemplated resumption of land consequent upon the abolition of the village offices. Section 5 provided for regrant of land to the holder of the village office. Section 6 provided for regrant of land to authorised holders. Section 7 provided for eviction of unauthorised holders and after eviction regrant in favour of the holder of such village office and in other cases to dispose of in accordance with law applicable to the disposal of unoccupied unalienated lands. Here is a case where the land had been regranted by the authority to the holder of village office and that order is in the year 1969 (dated 25-3-1969 vide Annexure-R2). Section 3 of the Act provided for appeal against regrant before the District and Sessions Judge of the jurisdiction within 90 days from the date of regrant. Admittedly, petitioners have not questioned the order of regrant before the appropriate authority nor did they claim that the regrant was in the name of the head of the joint family of themselves, Dadu Appa Sindhe and respondents 2 to 7. They do not even approach the competent Civil Court for appropriate relief in the matter after the regrant. On the other hand they approached the Land Tribunal claiming to be tenants of the land and the Tribunal dismissed their application for grant of occupancy right. Petitioners challenge that order of the Land Tribunal dated 11-4-1989 (Annexure-D is the order dated 11-4-1989) before this Court in W.P. No. 12501 of 1991. On 24-8-1993 Division Bench dismissed the said writ application holding that petitioners having not availed the opportunity u/s 118(1-A) of the Land Reforms Act which was available to them at the relevant time cannot question the correctness of the order in writ proceedings. Annexure-R5 is the copy of the order in W.P. No. 12501 of 1991. Thus, the order of regrant became conclusive and final.

11. It is undisputed that petitioners herein file suit for partition and for their separate share in all the three items of the properties including the land in dispute before the Civil Judge, Chikodi in O.S. No. 72 of 1993. During the pendency of the suit, respondents 2 to 7 approach the Tahsildar with a request to evict the petitioners. The principal argument of Sri Balakrishna Shastry is that when once there is re-grant, authority under the Act becomes functus officio and an application for eviction would not lie. True, a plain reading of Section 7 of the Act makes it clear that when an action is taken u/s 7(1) of the Act and there is a regrant u/s 7(3) of the Act, any further application for eviction would not lie before the Tahsildar. In Channanarasim-haiah's case, supra, Division Bench dealing with the scope and purport of Section 7 of the Act has declared that

when once there is a regrant, further application for eviction would not lie and the authority under the Act would become functus officio.

12. Learned Counsel for the respondents contend that in the instant case, regrant in favour of Dadu Appa Sindhe was u/s 5(1) and in such circumstances, if the holder of the village office was not put in possession, an application would lie and the authority continue to exercise power to evict in view of sub-section (6) of Section 5 of the Act. I find considerable merit in this argument. Sub-sections (1) and (6) of Section 5 of the Act read thus:

"5. Regrant of land resumed u/s 4 to the holder of the village office.-(1) A land resumed under clause (3) of Section 4 shall, in cases not falling under Sections 6 and 7, be granted to the person who was the holder of the village office immediately prior to the appointed date (hereinafter referred to as the holder) on payment by or on behalf of such holder to the State Government, of the occupancy price equal to three times in the case of holders of inferior village office and six times in the case of holders of other village offices, the amount of the full assessment of such land within the prescribed period and in the prescribed manner and the holder shall be deemed to be an occupant or holder of a ryotwari patta within the meaning of the Code in respect of such land and shall primarily be liable to pay land revenue to the State Government from the appointed date in accordance with the provisions of the Code and the rules and orders made thereunder; and all the provisions of the Code and the rules and orders relating to unalienated land or ryotwari land shall, subject to the provisions of this Act, apply to the said land:

(2)....

(3)....

(4)....

(5)....

(6) Notwithstanding anything contained in any law for the time being in force, any agreement for transfer of land resumed under clause (3) of Section 4, entered into prior to regrant thereof under sub-section (1), shall be null and void and any person in possession thereof in furtherance of such agreement shall be summarily evicted therefrom by the Deputy Commissioner."

(emphasis supplied)

A plain reading of sub-sections (1) and (6) of Section 5 makes it clear that the authority under the Act has power to put the regrante in possession of the regranted land if the land is in possession of any other person other than the holder of office. It is stated that the petitioners and respondents 2 to 7 are members of Hindu Joint Family. Land in possession of a member of the joint family is for and on behalf of all the members of the family. In the instant case whether the parties to this proceedings continued to be members of one and the

same joint family is a question of fact. It may be in law, if the petitioners are the members of the joint family entitled to a share in the land because when once there is a regrant of the land u/s 5(1) of the Act in favour of the elder member of the family, that property loses the nature of impartibility and would be available for partition amongst members of the said joint family. But that question can only be decided by a Civil Court and not by an authority under the Act more importantly after the regrant. What was required to be considered by the authority in such a situation is as to whether the holder of the village office has to be put in possession of the land or not. In that circumstance, application for evicting the person in possession other than the holder of the village office is maintainable.

13. Facts and circumstances of the case that came up for consideration in Channanarasimhaiah's case, *supra*, are different and distinguishable from the facts and circumstances of the case. In that case, petitioners had purchased the land from members of one of the branches of the family before the regrant. Subsequent to the regrant there was partition and in that partition property in question fell to the share of the vendors of the petitioners. The sale and partition were all subsequent to 1-2-1963, the date on which the Act came into force. Division Bench, taking into consideration these facts and circumstances and considering the scope of Section 7 of the Act held that provisions of Section 7 of the Act can be invoked only as against unauthorised holders who are in possession of the land as on 1-2-1963 and that cannot be invoked in respect of persons even though they are in unauthorised occupation who come in possession of the land only after 1-2-1963. In the instant case, facts and circumstances are quite different, regrant is u/s 5(1) of the Act in favour of the holder of the village office, may be there is dispute amongst the members of the family to which the holder of village office belong. But that does not preclude the authority in the circumstances of this case in entertaining the application u/s 5(6) of the Act so long as the holder of the village office is not put in possession of the property pursuant to regrant u/s 5(1) of the Act. Therefore, in that view of the matter, petitioners herein cannot derive any assistance from the decision in Channanarasimhaiah's case, *supra*.

14. Learned Counsel for the respondents further contended that petitioners are guilty of misconduct and therefore they are not entitled to any discretionary relief in writ proceedings. He also contended that there is a delay in approaching this Court and the writ petition is not maintainable. The impugned order is dated 30-8-1996 and the writ petition is filed on 11-3-1997 viz., after nearly about 6 and half months after the impugned order. In the meantime, petitioners have filed an appeal before the District and Sessions Judge, Belgaum in Misc. A. No. 30 of 1996, that appeal appears to have been filed on 21-9-1996 questioning the very order dated 30-8-1996. In the writ petition there is an interim order on 20-3-1997 staying the operation of the order impugned. On 25-3-1997 submission is made on behalf of the petitioners/appellants before the District Judge that they intend to withdraw the appeal and on 5-4-1997 they withdrew

the appeal. Neither on 25-3-1997 nor on 5-4-1997 did petitioners make a submission before the District Judge, the filing of writ petition nor the interim order in the writ petition on 20-3-1997. Annexure-R3 is the copy of the order-sheet in Misc. A. No. 30 of 1996. Inviting my attention to this, learned Counsel for respondents 2 to 7 argued that petitioners are not entitled to the relief sought for in the petition. In view of the long drawn litigation between the parties and the change in law and circumstances in the meantime, I read the entire matter carefully and pondered over the points urged anxiously. I am of the considered view that it would not be just and appropriate to interfere with the impugned order, if not for the reasons argued by the learned Counsel for the respondents but for the other reason which I would presently state.

15. Respondent 1-Tahsildar in making the order has clearly stated that the decision would be subject to the decision in the suit pending between the parties. Petitioners suit (O.S. No. 72 of 1973) in the Court of Civil Judge, Chikodi for partition and separate possession of their share is decreed by judgment dated 27-3-1997, copy is produced. It is also admitted that the respondents have challenged the said judgment and decree before this Court in R.F.A. No. 454 of 1997. The impugned order directs that it is subject to the decision in the civil suit pending between the parties. The Tahsildar was competent to make the impugned order u/s 5(6) of the Act since the regrant u/s 5(1) of the Act dated 25-3-1969 did not indicate that it was for and on behalf of the joint family of the petitioners and respondents. Therefore, whatever the Court directs in the suit now in appeal pending between the parties, that would bind the parties and in that event the order of the Tahsildar becomes ineffective. In these circumstances, it is rather difficult to fault the impugned order and set it aside.

16. Accordingly, and in view of the reasons hereinabove stated, this writ petition is disposed of without interfering with the order impugned with an observation that the parties would be bound by the decision in appeal R.F.A. No. 454 of 1997. No costs.