

(1995) 10 KAR CK 0014

In the Karnataka High Court

Case No : Civil Revision Petition No. 2025 of 1987

Deshaiah

APPELLANT

Vs

Chinnaswamy and Others

RESPONDENT

Date of Decision : 20-10-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Karnataka Village Offices Abolition Act, 1961 — Section 2 (1) (F), 2 (1) (g), 5, 6, 7

Citation : AIR 1996 Kar 164 : (1995) ILR (Kar) 3465 : (1995) 5 KarLJ 402

Hon'ble Judges : H.N. Narayan, J

Bench : Single Bench

Advocate : M. Shivapa, for the Appellant; Padubidri Raghavendra Rao, C.S. Hiremath and M.R. Rajagopal, for the Respondent

Judgement

1. This revision u/s 115, CPC is directed against the Judgment of the District Judge, Mandya, dismissing the petitioner's appeal for re-grant of Thoti Service Land measuring 5 acres 19 guntas in Sy. No. 131 of Manigere village. This case has a chequered career. Parties to the proceedings have made applications for re-grant of lands before the concerned Revenue Authorities claiming to be the holders of the office of Neerganti and thoti in the village called "Manigere", Mandya District. The Assistant Commissioner after an enquiry rejected the claim of the petitioner for re-grant of 5 acres 19 guntas in Sy. No. 131 of Manigere Village while granting the said land in favour of the respondents. The said order was challenged before the District Judge, who had set aside the order and remanded the matter for fresh disposal. The matter then came before the Tahsildar Maddur. The Tahsildar after fresh enquiry has also come to a similar conclusion and rejected the petitioner's claim for re-grant of land in Sy. No. 131. The learned District Judge before whom the appeal was preferred confirmed the finding of the Tahsildar and dismissed his claim so far as this land is concerned. Hence, this revision. .

2. The petitioner has confined his case in this revision only in respect of land

measuring 5 acres 19 guntas in Sy. No. 131 of Manigere village. He claims this land on the ground that the said land is attached to Thoti service inam and he has been performing the thoti service since long. According to him, his ancestors were also cultivating the said land, performing thoti service in the village. However, this claim as stated, is rejected by both the Courts below.

3. The contentions of Sri M. Shivappa --learned counsel for the petitioner are that the Tahsildar has not conducted the enquiry in accordance with_ Section 10 of the Karnataka Village Offices Abolition Act, 1961 ("the Act" for short) and therefore required re-consideration. Secondly, he submits that the material on record clearly disclose that the petitioner and his fore fathers were performing the duties of thoti and they were actually cultivating the land measuring 5 acres 19 guntas in Sy. No. 131 of Manigere village and is therefore entitled for re-grant of the said land.

4. Perusal of the records clearly disclose that the Tahsildar has given sufficient opportunity to both the parties to participate in the enquiry. The petitioner was represented by a counsel before the Tahsildar. There was no such contention before the learned District Judge and therefore, this contention in my opinion, has no force.

5. The second contention of Sri M. Shivappa learned counsel for the petitioner that the petitioner and his fore-fathers were performing the duties of thoti and they were in actual cultivation of land measuring 5 acres 19 guntas attached to this thoti office, appears to have some force.

6. Parties have let in both oral and documentary evidence in support of their respective contentions. There is a reference in the order of the Tahsildar and the learned District Judge regarding possession of this land by the petitioner. Reference is made to the entries in the RTC for the years 1949-50, 1951-52 and 1973-74 to 1977-78. These entries clearly disclose possession of this particular land by the petitioner and his ancestors. He has also produced certain land revenue receipts for having paid kadayam to the said land. Moreover, the first witness examined on behalf of the respondents clearly admits performance of duties of thoti by the petitioner and his ancestors and cultivation of land in Sy. No. 131. During the course of enquiry, a report was made to the Assistant Commissioner by the Shanbhogue of that village to the effect that the petitioner and prior to him his father had been performing the duties of thoti and were cultivating the land attached to it. One of the claimants has also admitted that the petitioner was performing the duties of thoti and that he was cultivating some extent of land for the said service. Though the Courts below have doubted this claim on different context, there is no denial of this fact by the other side.

7. In his application before the Tahsildar. Maddur, petitioner has only stated that he has been performing the office of thoti service since time immemorial and he has been cultivating the land attached to it to the extent of 5 acres 19 guntas and therefore he is entitled for the same. However, in his objections to the claim

made by the respondents filed through his counsel, he has claimed the right as hereditary barawardar of the office of neergami and also the office of Thoti Service of Manigere village. There appears to be no dispute regarding his claim to the office of Neeragati. But the dispute arose regarding his claim as barawardar to the office of thoti. The contention of the respondents throughout has been that the petitioner belongs to the besta community. Therefore, he is not entitled to any emoluments attached to the thoti service and he is not at all barawardar of the office. This contention finds favour with the Courts below. Parties have produced the extracts of barawardar register or "karda" register. There is no entry that the petitioner or his ancestors were barawardars of the thoti inam. It appears that the petitioner has based his claim under the guise of his continuous possession of the inam land. Therefore, according to the counsel for the petitioner he is entitled for re-grant of the said land.

8. Therefore, the main contention for consideration in this revision is, whether the petitioner is a holder of the office as defined under the Act. Section 2(l)(g) defines "holder of a village office" or "holder" means a person having an interest in a village office under an existing law relating to such office;

Provided that where any village office has been entered in a register or record under an existing law relating to such village office, as held by the whole body of persons having interest in the village office, the whole of such body shall be deemed to be the holder.

9. The existing law as defined u/s 2(l)(f) includes any enactment, ordinance, rule, bye-law, regulation, order, notification, firman, hukum, vat hukum or any other instrument of any custom or usage having the force of law, relating to a village office, which may be in force immediately before the appointed date.

10. Therefore, it is incumbent upon the petitioner to show before the Courts that he is a holder of the village office and he has got an interest in the village office under the existing law.

11. There is no dispute that the petitioner claims interest in the inferior village office. It is not his case that he is an authorised holder as defined u/s 2(I)(b) of the Act. The learned counsel for the respondents contends that petitioner has no interest in the village office and therefore he is not entitled for re-grant of land. Reliance is placed by him to the ruling laid down by this Court in Hanumaiah Vs. State of Karnataka, ; G. Shankaranarayan Vs. G. Srinivasa Rao, . In my opinion the said decisions have no bearing on the point at issue.

12. Therefore, this Court has to determine his status or his interest, if any, in the village office. The evidence collected by the Courts below has any indication, goes to show that his father or grand-father have been directed to perform the duties of thoti in the village temporarily as a substitute. A reference may be made to definition "officiator" found in the definition clause.

"Officiator" -- means the person actually performing the duties of a village office,

whether he be a person having a right to perform the duties of such office or a substitute appointed under the existing law relating to such office."

It is undisputed from the facts extracted above, that the petitioner is not a person having a right to perform the duties of such office under the existing law as he is not a holder of the office. The petitioner has also failed to produce any record to show that his forefathers were appointed as substitutes. Therefore, it is inferable that himself and his forefathers have been performing the duties as substitutes and were enjoying the emoluments attached to the office. Possibility of some dissidents of the original barawardar refused to perform the duties or abandoned to perform the duties, is not ruled out. Therefore, under these circumstances it can only be said that the petitioner and his forefathers might have working as substitute to carry on day-to-day work. By virtue of Section 4 of the Act, village offices together with incidents thereof were abolished, notwithstanding anything in any usage, custom, settlement, grant, agreement, sanad, or in any decree or order of a Court, or in an existing law relating to village officers, and all the rights thereof extinguished. A person who was the holder of the village office immediately prior to the appointed date is entitled for re-grant of the emoluments attached to this office subject to payment" of occupancy price determined by the State Government. There is no reference to the officiator in Sections 5, 6 and 7 of the Act. The purport and object of the Act is to, confer benefits only to the barawardars and the persons who are holders of the office. The Legislature has clearly excluded the officiator or are substitute for re-grant of land. In view of this legislative intendment, the petitioner is not entitled for re-grant of inam land. No special benefits accrued to the substitute or an officiator under the said Act. The only benefit that was granted to him for performance of duty was to enjoy the land. In view of the discussion made above, I am of the opinion that the petitioner is not entitled for re-grant of inam land. Though the Courts below have not adverted their attention to these questions, in my opinion they have reached the correct conclusion and therefore, no interference is called for. Hence, revision is dismissed.

13. Revision dismissed.