

(1985) 04 KAR CK 0037
In the Karnataka High Court
Case No : CRP No. 3756 of 1980

G. Shankaranarayan

APPELLANT

Vs

G. Srinivasa Rao

RESPONDENT

Date of Decision : 15-04-1985

Acts Referred:

Karnataka Village Offices Abolition Act, 1961 — Section 2 (b), 2 (m)
Mysore Village Offices Act, 1908 — Section 5

Citation : (1985) ILR (Kar) 2217 : (1986) 1 KarLJ 30

Hon'ble Judges : Kulkarni, J

Bench : Single Bench

Advocate : T.S. Ramachandra, for the Appellant; G.E. Kotre, for the Respondent

Final Decision : Allowed

Judgement

Kulkarni, J.—The revision by Claimant No.3 revision petitioner is directed against the order dated 23-7-76 passed by the II Addl. District Judge, Bangalore in M.A. 210/74, affirming the order dated 11-7-74 passed by the Asst. Commissioner, Doddaballapur Sub-Division, Bangalore in Case No. BOA (DEV) 70/69-70 regranteeing the eastern portion of S Nos. 85 and 98 of Gokare Village and Sy. No. 13 of Attibele Village to G. Srinivasa Rao, Claimant No. 5.

2. It is undisputed that one Subbanna was the holder of Shanbogue village office of Gokare, Attibele, Rayasandra, Binnamangala, Agalakote and Chikkamaranahalli villages. It is undisputed that the entire survey numbers 85 and 98 of Gokare village and survey number 13 of Attibele village were assigned or attached to that Shanbogue office. The present revision petitioner is Claimant No. 3. Srinivasa Rao, in whose favour the said three lands were regranted is Claimant No. 5. The other three claimants are Nanjundiah, the father of Claimant No. 3 Shankaranarayana, Gopal Rao, s/o Subanna and Rama Rao -Claimant No. 4 another son of Nanjundiah. So far as the case of other three claimants namely, Nanjundiah, Gopal Rao and Rama Rao are concerned, their claims have been rejected and they have not come up in revision and so we are not concerned with

their case in this revision. It is undisputed that all the claimants belong to the Shanbough family of Subbanna.

3. Learned District Judge has clearly stated in para No. 5 of his order as :

"Hence, we have to confine ourselves to the decision made by the Asst. Commissioner u/s 3(1) of the Act only. That Shankaranaryana is the holder of the office, was his contention, Srinivasa Rao has admitted this contention. The Assistant Commissioner has held that Shankaranarayana is the holder of the office. Therefore, Shankar narayana cannot have any grievance against this finding of the Assistant Commissioner. Srinivasa Rao claimed to be an authorised holder. The learned Asst. Commissioner having held that the lands in question were attached to the village office, he recognised the partition of the year 1929. Sufficient material has been produced in proof of the partition. I have perused the evidence recorded by the Assistant Commissioner. I find that the partition deed has been duly proved. I also affirm the findings of the learned Asst. Commissioner that the lands in question are attached to the village office, but not assigned to the village office as contended by the appellant Shankaranarayana."

Therefore, it becomes clear that the present revision petitioner claimant No. 3 is, even according to the views expressed by the Asst. Commissioner and the District Judge, is a holder of the Shanbough office. Both the Courts below have held that the lands in question have been attached to the Shanbough office.

4. The Assistant Commissioner as well as the District Judge have committed an error in holding that though the lands were attached to the village office, they were not assigned to the village office. Unless they are assigned, they cannot be attached to the village office. When they come to the conclusion that they were attached to the village office, it only means that they were assigned to the village office. The distinction sought to be made by the Courts below is without substance. Therefore, it becomes clear that Sy. Nos. 85 and 98 of Gokare village and Sy. No. 13 of Attibele village were assigned or attached to the Shanbough village office.

5. Now, the next question is whether the partition of 1929, said to have taken place between Nanjundiah and Gopa Rao, would invalidate the allotment of these three lands.

6. Section 5 of the Mysore Village Offices Act, 1908 reads :

"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 that in the case of lands which are not assigned as emoluments to the holder of a village office under rules framed u/s 22, nothing contained in this Section shall be deemed to affect transfers, partitions or encumbrances, as

between different members of a Hakdar's family."

Thus, it becomes clear that if the lands are not assigned or attached to the village office as emoluments, then there can be a partition of the lands between the members of the Hakdar family. The word, "emoluments" as defined in the 1908 Act includes lands also. The word "emoluments" defined by the Village Offices Abolition Act, 1961 also includes lands. If the lands constitute "emoluments" then they cannot be partitioned between the members of the Hakdar family at all. If the lands are not given to the Shanbough as emoluments, than such lands can be partitioned between the members of the Hakdar family. As already stated above, both the Courts below have concluded that the lands in question have been attached to the village office. Potige katha produced by the revision petitioner also shows that these three lands have been assigned or attached to the village office itself. Therefore, I have no difficulty in concluding that the three lands in question are the ones attached or assigned to the village office. The proviso to Section 5 of the 1908 Act only enables the partition in respect of the lands not attached to the Shanbough office at all.

7. Section 6 of the 1961 Act reads as :

"Where any land resumed under clause (3) of Section 4 is held by an authorised holder it shall be regranted to the authorised holder on the payment by him to the State Government of the occupancy price equal to six times the full assessment of the land and subject to the conditions and consequences mentioned in Section 5 : and all the provisions of Section 5 shall mutatis mutandis apply in relation to the regrant of the land under this section to the authorised holder as if he were the holder of the village office."

Section 5 of the 1961 Act reads :

" (1) A land resumed under clause (3) of Section 4 shall, in cases not falling u/s 6 and Section 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 there under: 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.

" 8. Therefore, Section 5 makes it clear that it would come into play only if there is no authorised holder. If there is an authorised holder, he alone is entitled to the regrant of the land in preference to the holder of the office. If there is no

authorised holder, then the lands must be granted in favour of the holder of the village office itself.

Authorised holder has been defined by Section 2(b) of the 1961 Act as :

" "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 such village offices."

Therefore, in order to become "authorised holder" he must have got the land in a partition which has been validly brought about. If the partition itself was not valid, the person in possession of such lands, though they might have been allotted to him in the partition, cannot be considered to be an authorised holder. The word "unauthorised holder" has been defined in Section 2(m) as :

" "unauthorised holder" means a person in possession of a land granted or continued in respect of or annexed to a village office by the State without any right, or under any lease, mortgage, sale, gift or any other kind of alienation thereof, which is null and void under the existing law, relating to such village office."

The word "partition" has been omitted in the definition of unauthorised holder. A partition in the legal sense does not amount to an alienation at all. Assuming for a moment that these three lands Sy. Nos. 85 and 98 of Gokare village and S.No. 13 of Attibelle village have been allotted to Srinivasa Rao in the partition of 1929, he will neither be an authorised holder nor an unauthorised holder within the meaning of the 1961 of the Act. If it is so, then these lands will have to be regranted in favour of the holder of the Shanbough office, who according to the Court below, is claimant No. 3- Shankaranarayan.

9. Therefore, under these circumstances, the order passed by the Asst. Commissioner and the order passed by the District Judge affirming the order of the Asst. Commissioner are set aside. The revision is allowed. The order granting the eastern portion of Sy. Nos. 85 and 98 of Gokare village and regranteeing of Sy. No. 13 of Attibelle village to claimant No. 5 by the Courts below, is set aside. The said three lands are regranted in favour of the Revision Petitioner claimant No. 3- Shankaranarayan.