

(2014) 06 KAR CK 0100

In the Karnataka High Court

Case No : Writ Petition No. 949 of 2014 (KVOA)

Goudra Krishnappa

APPELLANT

Vs

The Deputy Commissioner

RESPONDENT

Date of Decision : 05-06-2014

Acts Referred:

Karnataka Village Officers Abolition Act, 1961 — Section 5, 5(1), 6

Citation : (2014) 4 KarLJ 554 : (2014) 4 KCCR 3551

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : M. Vinayakeerthy, Advocate for the Appellant; Savithramma, Government Pleader and Basavaraj M. Mekki, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

B.V. Nagarathna, J.—Though this matter is listed for preliminary hearing, with the consent of the learned Counsel on both sides, it is heard finally. The order of the learned Principal District and Sessions Judge, Davanagere dated 2-12-2013 passed in MA No. 182 of 2011 at Annexure-C is assailed by the petitioner in this writ petition.

2. The grievance of the petitioner is that the learned District Judge ought not to have remanded the matter to the Deputy Commissioner for a fresh adjudication.

3. Briefly stated, the facts are that one Kenchappa S/o. Ningappa, was the holder of the village office. He had executed registered sale deeds in respect of Sy. No. 32 measuring 2 acres 20 guntas in Chikkabidari Village of Harihara Taluk, in favour of one Nagappa, brother of the petitioner herein. The petitioner had filed an application for regrant of the aforesaid land u/s 5 of the Karnataka Village Offices Abolition Act, 1961 (hereinafter referred to as the "Act" for brevity). After enquiry, an order was passed by the Tahsildar, which was assailed by the petitioner in M.A. No. 12 of 2003. The order of the Tahsildar dated 18-5-1999 was set aside and the matter was remanded for fresh adjudication.

Subsequently, the Deputy Commissioner, Davanagere, held in favour of the petitioner herein, by his order dated 30-10-2010. That order was assailed by the L.Rs of Late Nagappa--respondents 4 to 9, in M.A. No. 182 of 2011. By order dated 2-12-2013, learned District Judge has once again remanded the matter for fresh adjudication. Being aggrieved by the order of remand, the petitioner has filed this writ petition.

4. I have heard learned Counsel for the petitioner and learned Caveator for respondent 4 and perused the material on record.

5. Learned District Judge while considering the facts of the case has noted that the holder of the village office had sold the land in favour of Nagappa, under a registered sale deed dated 7-6-1976 and 27-5-1977 and subsequently, Nagappa and his brothers had partitioned the land and the land had fallen to the share of the petitioner herein. While considering the decision of this Court in the case of Syed Bhasheer Ahamed and others Vs. State of Karnataka and others, , the learned District Judge has noted that the alienation had taken place between 1-2-1963 and 7-8-1978, the latter being the date of the amendment Act. He has also held that the Deputy Commissioner was not right in making the order of regrant in the name of the petitioner and that it had to be made in the name of the holder or authorised holder and for that purpose, the matter has been remanded. Having noted the aforesaid aspects in the operative portion, the learned District Judge has stated that the matter is remanded back to the respondent 2 i.e., the Deputy Commissioner, Davanagere District, Davanagere, to decide the matter in accordance with law. When once the learned District Judge has held that the regrant had to be made in the name of the holder or authorised holder of the village office, it was not necessary to once again remand the matter to be decided in accordance with law. All that was required was to give a direction to the Deputy Commissioner to pass the order of regrant in the name of the respondents 4 to 10 herein. Therefore, while the order of remand is in accordance with law, the said order requires a clarification in the sense that the purpose of remand is to enable the Deputy Commissioner to pass the order of regrant in the name of the holder/authorised holder of the village office and not in the name of the alienee. As stated by the Full Bench, at paragraph 30(c), the regrant would enure to the benefit of the petitioner, who is the alienee of the said lands. Paragraphs 30(c) and 30(e) of the aforesaid decision read as under:

"(c) Alienation of service inam land between 1-2-1963 and 7-8-1978, by a holder or an authorised holder before regrant, is not invalid, as he had a vested right to get regrant and as there was no bar regarding alienation during that period; but the alienee will be a person with imperfect title entitled to continue in possession and when the land is regranted to the alienor, the title obtained by the alienor will enure to the benefit of the alienee;

.....

(e) The alienee between 1-2-1963 and 7-8-1978 has no right to seek regrant in

his own name and his right is only to claim the benefit of doctrine of feeding the grant by estoppel as and when regrant is made to his alienor u/s 5(1) or 16; and for this purpose he may support or pursue any application for regrant in favour of his alienor".

Therefore, the impugned order does not call for any interference. The first respondent-Deputy Commissioner is directed to pass the order in terms of paragraphs 30(c) and 30(e) of the aforesaid decision.

With the aforesaid observations, the writ petition stands disposed.