

**(1991) 07 KAR CK 0031**  
**In the Karnataka High Court**  
**Case No : W.P. Nos. 12849-12851/1991**

G.R. Basappa and Others

APPELLANT

Vs

Tahsildar, Shimoga and Another

RESPONDENT

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**Date of Decision :** 09-07-1991

**Acts Referred:**

Karnataka Village Offices Abolition Act, 1961 — Section 5

**Citation :** (1991) 3 KarLJ 401

**Hon'ble Judges :** M. Ramakrishna, J

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**Judgement**

1. Since the facts, circumstances and the order impugned herein being common in these writ petitions, I propose to hear and dispose of them by the following common order.

2. Eight survey numbers viz., 5, 32, 33, 42, 53, 68, 76 and 84-certain extent of these survey numbers is the subject matter of these petitions-situate in Bullapur village, Shimoga Taluk, are endowed upon the village office called "patel" of the said village and therefore they are governed by the provisions of the Karnataka Village Offices Abolition Act, 1961 ("the Act" for short).

3. On the coming into force of the Act, the Tahsildar, by his order dated 16-5-1980 in case No. VOAC 3/1979-80, rejected the claim of deceased Rudramma and other persons claiming under her for regrant. I will pause for a moment and state a few facts which are necessary for the disposal of these petitions.

4. Para 6 of the order of the Tahsildar produced in the writ petition at Annexure-R1 discloses the genealogy of the family of Channabasappa, original barawardar of the lands in question. The said Channabasappa had two sons by name Erappa and Channabasappa and a daughter Channabasamma (died). Erappa had a son by name Nanjundappa whose only son is G.N. Channabasappa, respondent-2 herein. Channabasappa had five children viz., (1) Basamma, (2) Rudramma, (3) Shantamma, (4) Channabasappa and (5) Veerabhadrappa. All of them died issueless except Rudramma whose three sons are the present petitioners.

5. It is necessary to mention here that as on the date when respondent-2-Channabasappa filed an application seeking regrant under Sections 5 and 6 of the Act, Rudramma was alive and it was she who filed an application for regrant as rival claimant. However, during the pendency of the proceedings, she died leaving behind the present petitioners, as legal representatives.

6. It is again undisputed that on the death of Channabasappa, father of Rudramma, she having been married, left her father's family for her husband's home and neither she nor her husband was visiting the village office muchless they were enjoying the lands in question. The Tahsildar, respondent-1, having held an enquiry, rejected the application of Rudramma holding that her legal representatives had no right to seek for regrant of the lands in question. In the very order, the Tahsildar regranted the lands in favour of respondent-2-Channabasappa.

7. Para 21 of the order (Annexure-R1) of the Tahsildar disclosing rights and liabilities arising out of the abolition of the village offices with reference to Sections 4 and 5 of the Act, and consideration of the rival claims and observations of the Tahsildar, is important and therefore I extract it as below:

"21. The above are relevant provisions concerning the regrant of service inam lands attached to the hereditary village offices. The applicant is the barawardar of Bullapura pateli office. This fact is not disputed by the respondents. The contention of the learned counsel for the applicant is that as per Section 5 of the Mysore Village Offices Act, 1908, the emoluments of village offices are inalienable and impartible. He vehemently argued that the legal representatives of Rudramma who was the second daughter of Channabasappa lost her right over the pateli umbli lands the moment she went out of her father's family consequent to her marriage. According to him, she could only enjoy the lands but she has no right to claim the regrant of the lands attached to the pateli office as she is not a co-parcener. His contention is that the respondents have been in unauthorised possession of some portion of the suit land and they are not entitled to get their regrant since Section 7 contemplates the eviction of unauthorised holder by the Deputy Commissioner. Sub-section (3) of Section 7 contemplates regrant of such lands in the possession of unauthorised holders in respect of inferior village office and in other cases land has to be disposed of in accordance with law applicable to the grant of unoccupied unalienated lands. The learned counsel for the applicant contended that such contingency as disposal of lands under the possession of unauthorised holders in accordance with law applicable to the grant of unoccupied and unalienated lands arises only when there is no holder or authorised holder to the village office. In the instant case there is a holder to the village office who is the barawardar of the pateli office. In the presence of the holder, the question of disposal of the lands according to law for disposal of unoccupied unalienated lands does not arise. This contention appears to be well founded and supported by the provisions of Section 7 of the Act. The reading of said Section shows that unauthorised holders in respect of

lands resumed under clause (3) of Section 4 have to be summarily evicted therefrom. After such summary eviction of the land in respect of inferior village office, it shall be granted to holder of such village office and in other cases it has to be disposed of in accordance with law applicable to the disposal of unalienated lands. Such a contingency of disposal of lands arises only when there is no holder to the office. Here there is a holder to the office who is entitled to regrant of lands under Section 4 of the Act. The contention of the learned counsel for the respondents-2 to 4 that the applicant is not entitled to be registered in respect of the lands which are not in his possession cannot be accepted for the reasons stated above. Neither Rudramma nor her sons come under the purview of the definition of authorised holder or holder as defined in Section 2 of the Act. After their marriage, Basamma, Rudramma and Shanthamma lost their right over pateli lands as they are not members of pateli family."

8. It seems to me that having regard to the scope and object of the Act, the Tahsildar was justified in holding that neither Rudramma nor her sons had any right in the village office and that therefore they could not putforward their claim seeking regrant of the lands endowed upon the village office. Thus her claim came to be rejected. Aggrieved by this order, petitioners preferred an appeal before the District Judge who dismissed the appeal. As against the said order, W.P. No. 1295 of 1986 was filed before this Court challenging the legality and correctness of the order of the Appellate Authority. This Court dismissed the petition.

9. Thus, the first round of litigation ended against the petitioners. However, fortunately, according to them, they continued to be in possession of the lands.

10. Thereafter, they resorted to another remedy under Section 8 of the Act. In other words, the petitioners putforward their claims that they were the tenants cultivating the lands under the original holders of the village office, and that occupancy rights may be granted to them under Section 48-A of the Karnataka Land Reforms Act, 1961 (the Act of 1961). It is now submitted by Sri Gopal, learned counsel for the petitioners, that that application also came to be rejected. As against the rejection, they filed W.P. Nos. 18238 to 18240 of 1988 before this Court and they are still pending in which Rule has been issued; but no stay granted.

11. Litigation did not stop there. As against the dismissal of W.P. No. 1295 of 1986, Writ Appeal No. 2720 of 1986 was presented by the petitioners. That appeal also came to be dismissed with the following observations:

"13. The Act, which provides for abolition of village offices, resumption of inam land held in connection with those offices and their regrant, does not provide for resolving any family dispute or claim regarding those regranted lands. If any person has a right to claim partition, he may have to seek relief elsewhere. Therefore, we are of the view that the impugned order of the Tahsildar as affirmed by the District Judge is unassailable.

In the result, for the reasons stated above, this appeal fails and is dismissed."

These are the facts as disclosed from the pleadings of the writ petition.

12. The petitioners appear to be very resourceful and therefore they intend to fight and continue the litigation. That is why now we are having second round of litigation before this Court.

13. Pursuant to the action taken by the Tahsildar regrating the lands under Sections 5 and 6 of the Act in favour of respondent-2 herein, which led to the filing of appeals, writ petitions and writ appeals, ultimately an eviction notice as per Annexure-A impugned herein came to be issued intending to evict the petitioners from the lands in question. In the said notice, the Tahsildar has called upon the petitioners to vacate and handover vacant possession of the lands in question in terms of Section 7 of the Act, failing which action would be taken to evict them from the lands, inaccordance with law.

14. This notice came to be challenged before this Court by the petitioners in W.P. Nos. 13078 to 13080 of 1990. Hanumanthappa, J., by his order dated 20-6-1990, allowed the writ petitions solely on the ground that the matter was pending before the Tribunal considering occupancy rights in favour of the petitioners and there was no proper opportunity given to them in the enquiry and remitted the matter for reconsideration.

15. It is necessary for me to mention here that while passing the above order, the learned Judge did not feel quashing Annexure-A, eviction notice, subject matter of the writ petition. In other words, Annexure-A remained in tact.

16. Pursuant to the direction given by this Court in the above writ petition, the Tahsildar took up the matter on his file, reconsidered the entire aspect by providing opportunity to both parties, and passed an order as per Annexure-C impugned herein on 31-5-1991 holding that the petitioners had no case as they were neither purchasers nor holders of the village office. Thus, the Tahsildar has passed a speaking order which has been challenged by the petitioners in these writ petitions.

17. Sri Gopal, learned counsel for the petitioners, who took me through the impugned order, Annexure-C, and other documentary evidence produced, argued the following four points-(1) Section 7 of the Act was not available for taking action to evict the petitioners after the order of regrant was made in favour of the holders of the village office. (2) On the claim putforward by the petitioners under Section 8 of the Act seeking to establish tenancy rights, the Tribunal having granted occupancy rights in their favour in respect of the lands, subject matter of these writ petitions, the Tahsildar could not have taken action to evict the petitioners therefrom. (3) In view of the decision of the Division Bench of this Court in Laxmana Gowda v State of Karnataka, ILR 1980(2) Kar. 892, the petitioners being in possession of the lands prior to the amendment in 1978 and the lands having been regranted, petitioners cannot be evicted from the lands.

(4) It is not proper for the Tahsildar to observe in Annexure-C that the petitioners have already vacated the lands by virtue of the Order No. VOAC 3/1979-80, dated 16-5-1980.

18. In view of the law declared by this Court, which is against the petitioners, I can deal with points 1 to 3 together.

19. Firstly, let me extract the provisions of Section 7 of the Act. It reads:

"7. Eviction of unauthorised holders etc.-(1) Where any land resumed under clause (3) of Section 4 is in the possession of an unauthorised holder such unauthorised holder shall be summarily evicted therefrom and the land shall be taken possession of by the Deputy Commissioner or in accordance with law:"

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20. It is no doubt true that the lands in question came to be regranted in favour of respondent-2 as far back as in the year 1980. Pursuant to the order of regrant, action was taken by the Tahsildar to evict the petitioners from the lands granted. The question is whether a person in unlawful and unauthorised possession of the granted lands is liable to be evicted thereof.

21. A Division Bench of this Court had an occasion to consider this question in *Hanumaiah v State of Karnataka*, ILR 1987 Kar. 550 wherein it has been held as follows:

"These provisions make it clear that after summary eviction of the unauthorised holder, the land shall be disposed of in accordance with the law applicable to the disposal of unoccupied and unalienated lands. Sub-sections (3) of Section 7 of the Act provides the categories of persons who are eligible for grant of such lands. The vital difference between a grantee under Section 7(3) and Sections 5 and 6 is that while "holder" and "authorised holder" have a right to make application for regrant under Sections 5 and 6 of the Act respectively, no such right is provided for an unauthorised holder. The prospective grantee is preferred for the disposal of land after summary eviction of the unauthorised holder. The holders of the inferior offices under Section 7(3) are those who have failed to secure the regrant under Section 5 of the Act. Preference under Section 7(3) of the Act is restricted to "holders of inferior village office" and not to "authorised holders" of inferior village office. The alienations in favour of the petitioners being null and void and having lost possession, they cannot plead equity or estoppel."

22. Applying the ruling in *Hanumaiah*'s case to the facts of this case, I am of the opinion that even the protection that can be given to the alienees or purchasers who were the petitioners in *Hanumaiah*'s case is not available to persons like the petitioners herein because they are not purchasers of the lands in questions. On the other hand, they are rival claimants seeking regrant under Sections 5 and 6 of the Act and they have failed to obtain relief at the hands of the competent authority. Further, having exhausted all the remedies and failed, they continued

to squat on the lands in question. Therefore, following the ruling in Hanumaiah's case, I have got to say that the legal contention of Sri Gopal has to fail.

23. Sri Gopal, with a view to derive support for his arguments, drew my attention to certain observations made by the Division Bench of this Court in Laxmana Gowda's case. Indeed, the observations made in Laxmana Gowda's case came to be distinguished in Chikkanarasaiah v Thirupathiah, ILR 1989 Kar. 1520 wherein it has been held as follows:

"(iii) The application of principle of "feeding the estoppel" and that of Section 43 of the Transfer of Property Act, would be inconsistent with the provisions of Section 7 of the Act; a new mode of conferring title to the land on an unauthorised holder not provided by the Act will be contrary to the scheme of the Act."

24. In the instant case, admittedly, the petitioners are not purchasers nor were they able to establish a case under Section 8 of the Act, inasmuch as they have failed in their attempt to establish their tenancy rights. However that is a matter to be examined in W.P. Nos. 18238 to 18240 of 1988. However, I refrain to make any observations which may affect the rights of the petitioners therein. Be that as it may, in view of the law laid down in Chikkanarasaiah's case, the observations made in Laxmana Gowda's case would not come to the aid of the petitioners as that view in Laxmana Gowda's case came to be distinguished in two subsequent cases-one in Hanumaiah's case and another, a latest Judgment, in Gopalappa v Secretary to the Government of Karnataka, 1990(3) Kar. L.J. 351: ILR 1991 Kar. 42. In Gopalappa's case referring to the principle of "feeding the grant by estoppel" as laid down in Laxmana Gowda's case, it has been distinguished in the following manner:

"(ii) The principle contained in Section 43 of the Transfer of Property Act which lays down the principle of feeding or estoppel by grant has no application to the facts of the case. If there was no prohibition for sale of the lands after regrant in favour of the holders of the inam, it could have been contended that though on the date on which the agreements were entered into, they were hit by sub-section (6) of Section 5 after the regrants were made as the respondents were entitled to sell the land, the petitioner was entitled to retain the possession and it was for the grantees to file a suit for recovery of possession of the land from the petitioner in which event he could not only rely on Section 43 of the Transfer of Property Act but also on Section 53-A of the Transfer of Property Act which incorporates the doctrine of part performance. But in the present case the position is sub-section (3) of Section 5 prohibits transfer of lands regranted under Section 5(1) for a period of 15 years from the date on which the 1978 (Amendment) Act, came into force."

25. As I have already observed, even the observations made by the Division Bench in para 71 of the Judgment in Laxmana Gowda's case will not come to the aid of the petitioners herein because they are not alienees. On the other hand,

they having put forward their claims as rival claimants against the claim of respondent-2, failed in their attempt; Now they cannot turn round and say that they would be entitled to the benefit that may be accrued in favour of the holders of the village office. Besides, the petitioners also failed in their attempt to establish their case of tenancy. Under these circumstances, I do not see any force in any of the contentions of Sri Gopal.

26. Before parting with this case, there is one more aspect which I have got to notice. In the course of the order, Annexure-C, the Tahsildar has observed at page 12 at follows:

"For the foregoing facts, the petitioners are made them to be vacated the following lands and deliver the same to the respondent Sri G.N. Channabasappa S/o Nanjundappa, Bullapur village as per Order No. VOAC 3/7- 9-1980, dated 16th May, 1980 of the Tahsildar, Shimoga Taluk immediately. The petitioners and other claimants have lost legal support from all the ends."

27. Sri Rudragowda, learned counsel for respondent-2, produced a copy of the mahazar said to have been drawn on 11-7-1990 and submitted that by virtue of this mahazar, the petitioners came to be dispossessed in the presence of panchas and the lands were redelivered to respondent-2. Thus, the petitioners have lost their possession as on 11-7-1990 and it is not open to them now to contend that they are in possession of the lands. As against this contention, Sri Gopal drew my attention to the further observations made by the Tahsildar at page 14 that if the above unauthorised holders failed to vacate and deliver the suit Inam property at once, coercive steps will be taken to evict them from the occupation.....and submitted that, on the face of the observations as above, it was clear that the petitioners were in possession of the lands and hence their possession must be protected. At this stage, let me not make any observations on the question of possession because, by virtue of the rival claims in regard to possession, I would not like to resolve the controversy in this petition. That is not the question involved in this case. However, it is open to the authorities to take appropriate action as they deem fit.

With the above observations, these writ petitions fail and are dismissed. No costs.

Sri Siddagangaiah, learned High Court Government Pleader, is permitted to file memo of appearance for respondent-1 in four weeks.