

(2013) 07 KAR CK 0196

In the Karnataka High Court

Case No : Writ Petition No. 4822 of 2009 (KVOA)

G.S. Narayana Rao

APPELLANT

Vs

The Deputy Tahsildar and Others

RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Karnataka Village Officers Abolition Act, 1961 — Section 3

Citation : (2013) 07 KAR CK 0196

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Vijaya Krishna Bhat, for the Appellant; Gopal Bilal Mane, HCGP for R1, 2 and 6, A. Balakrishnan, Advocate for R3, M.A. Sebastian, Advocate for R4 and M.R. Rajagopal, Advocate for R5, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—Petitioner's father is said to have filed an application for regrant of lands in Sy. No. 63 and 82. of Bommanahalli village, Hoskote taluk, Bangalore District u/s 3 of the Karnataka Village Officers Abolition Act, 1961, for short "KVOA Act", which when not considered led to petitioner filing representations before the Tahsildar which too when not considered resulted in W.P. 47772/2004 whence by order dated 3.12.2004, a learned Single Judge disposed of the petition directing the Tahsildar to consider either the representation filed by the petitioner's father or representations filed by the petitioner and pass orders in accordance with law. Thereafterwards it appears that the Tahsildar issued notices to the parties, more appropriately the respondents herein whence the petitioner did not adduce evidence either oral or documentary but filed written submissions. The Tahsildar having noticed that the petitioner had failed to lay before him relevant material constituting substantial legal evidence of the fact that the lands in question were service inam i.e. Shanubhog inam and having secured the revenue records maintained in his office relating to the said lands noticed that the lands in question were not service

inam lands, hence, rejected the application by order dated 16.4.2007 in HOA.CR. 26/2006-07. Petitioner aggrieved by the said order preferred MA 39/2007 before the District and Sessions Judge, FTC-5, Bangalore Rural, along with an application under Order 41 Rule 27 CPC enclosing Xerox copies of certain documents. The District Judge by order dated 19.2.2009 Annexure-F rejected the IA under Order 41 Rule 27 CPC on the premise that the documents enclosed therein were only Xerox copies of documents and not the certified extracts and concurred with the findings of the Tahasildar, to dismiss the appeal. Hence this writ petition. Learned Counsel for the petitioner submits that if extended one last and final opportunity would produce before the District Court, certified copies of the documents enclosed to IA under Order 41 Rule 27 CPC disclosing the factum of the lands in question being service inam lands granted to his grandfather the then Shanubhog.

2. Learned Counsel for the respondents jointly oppose the said submission to submit that though enough and more opportunity was extended to the petitioner, nevertheless the relevant records when not forthcoming the orders of the Tahsildar and the District Judge in appeal do not call for interference. In addition it is submitted that the proceeding before court under Article 277 of the Constitution of India is in exercise of supervisory jurisdiction and cannot dwell into factual findings.

3. Having heard the learned counsel for the parties, perused the pleadings and examined the orders impugned indisputably petitioner did not place before the Tahsildar relevant material constituting substantial legal evidence of the fact that the lands in question were service inam lands and that they were granted to the petitioner's grandfather who said to have held the office of Shanubhog. The Tahsildar apparently looked into certain records like the I.L. and Revenue Records maintained in his office, in respect of the lands in question and opined that the lands were not service inam lands. However no reference is made to "baravaradi register", as also "kethavar register" which would perhaps throw light over whether or not the lands in question were inam lands. That exercise having not been done, while the petitioner sought to place that material, though Xerox copies, enclosed to the application under Order 41 Rule 27 CPC along with the appeal memorandum filed before the lower Appellate Court, in my opinion ends of justice, would be met by extending an opportunity to the petitioner, however subject to payment of costs.

4. This petition is accordingly allowed. The order of the District Judge is quashed. Proceeding is remitted for consideration afresh only if the petitioner were to make available on the next date of hearing the certified extract of the documents enclosed to the application under Order 41 Rule 27 CPC whereafter wards the District Judge to consider the same after extending reasonable opportunity of hearing to the parties concerned and to pass orders in accordance with law. In the event the petitioner fails to make available the certified copies, the order of the District Judge shall stand revived and this petition dismissed. The petition is

allowed on payment of cost of Rs. 3,000/- to each of the respondents payable on the next date of hearing before the Lower Appellate Court. Parties since represented by learned counsel are directed to be present before the Lower Appellate Court on 5.8.2013.