

(1998) 01 KAR CK 0035
In the Karnataka High Court
Case No : Writ Appeal No. 3770 of 1995

G.V. Subba Rao

APPELLANT

Vs

Tahsildar, Chickaballapur Town, Kolar District and Others

RESPONDENT

Date of Decision : 13-01-1998

Acts Referred:

Karnataka Village Offices Abolition (Amendment) Act, 1978 — Section 1
Karnataka Village Offices Abolition Act, 1961 — Section 3, 4, 5, 6, 7

Citation : (1998) ILR (Kar) 2371 : (1998) 3 KarLJ 413

Hon'ble Judges : Mohamed Anwar, J; Ashok Bhan, J

Bench : Division Bench

Advocate : Sri B.N. Ananthanarayana, for the Appellant; Sri K. Prabhakar, Sri B.S. Sundar Raj, Sri M.S. Siddaraju and Sri H.R. Anantha Krishnamurthy, for the Respondent

Judgement

Mohamed Anwar, J.—We have heard the arguments of the learned Counsel on both sides.

2. Certain undisputed facts giving rise to this appeal are as stated under:

Various extents of lands in Sy. Nos. 150, 30, 154 and 78 situate in the villages Arikere and Musthur of Chickballapur taluk, Kolar District were the service mam lands attached to the village office of Shanbhog of Musthur Village. One Gopala Rao was the original Barawardar i.e., the holder of the said office. He had three children by name Lakshmamma, Narayana Rao and Lakshmiddevamma. Narayana Rao pre-deceased him leaving behind his son Suryanarayana Rao. After the death of Gopala Rao, Suryanarayana Rao was directed by the concerned Revenue Authority to take charge of the said village office but he failed to assume charge of the said office. The functions of the said office were, therefore, being discharged for some time by gumastha of the said office. Later the appellant-Subba Rao, who is the son of Gopal Rao's daughter Lakshmiddevamma since deceased formally came to be appointed to the said office of Shanbhog by the concerned Revenue Authority in 1936 and his appointment was subsequently

confirmed in 1939 by the concerned Sub-Divisional Officer. He continued to hold the said village office of Shanbhog and acted as such till the appointed day i.e., 1-2-1963 on which date the Karnataka Village Offices Abolition Act, 1961, ("the Act" for short) was brought into force; and, in fact, he had been acting as such till he officially handed over the charge of the said office on 5-10-1976 to the Village Accountant duly appointed by the Government on abolition of the said office on coming into force of the Act.

Respondent 2 Rukmaniyamma is the widow of late Suryanarayana Rao -- who was the grandson of Gopala Rao. It appears from the observation of the learned District Judge in his impugned judgment as also from the contents of the impugned order of the Tahsildar that Rukmaniyamma was in actual possession and enjoyment of the said service inam lands, although she was not holding the said office of Shanbhog.

After the Act came into force, both appellant Subba Rao and respondent 2-Rukmaniyamma made applications before the Tahsildar seeking regrant of the said inam lands to them. By the impugned order No. HOA 3 SHO 23 of 1971-72, dated 19-12-1983 at Annexure-B, the appellant's application was rejected by the Tahsildar on the sole ground that the land revenue for the said lands was being paid by Rukmaniyamma and not by the appellant. On the other hand, those lands were therefore granted by the Tahsildar to Rukmaniyamma.

That order of the Tahsildar was challenged by the appellant before the learned District Judge in appeal u/s 3 of the Act. On consideration of the relevant material the learned District Judge passed his impugned judgment dated 7-2-1992 in M.A. No. 16 of 1984 dismissing the appeal and upholding the order of the Tahsildar. Aggrieved by that judgment of the learned District Judge, the legality and correctness thereof was challenged by the appellant in W.P. No. 10798 of 1993 which also came to be dismissed by the impugned order of the learned Single Judge on a different ground that Rukmaniyamma being the widow of said deceased Gopal Rao's grand son, late Suryanarayan Rao, had a superior right to regrant of the said land as against the right of appellant as he was the maternal grand son of Gopal Rao.

Admittedly, the lands in question were the service inam lands attached to the Shanbhog Office of the village of Musthur and that after the death of original Barawardar Gopala Rao his surviving grandson Suryanarayana Rao failed to assume charge of the said office though he was called upon to do so by the concerned authorities with the result the said office had fallen vacant. Therefore, undisputedly, appellant-Subba Rao came to be officially appointed to the said village office by the concerned revenue Authority in the year 1936 which appointment was stated to have been subsequently confirmed by another order of the competent Authority. It is also sufficiently borne out from the material on record that he had been holding the village office and was discharging the functions of Shanbhog right from the year of his appointment i.e., 1936, till 5-10-1976 on which date the charge of that office was formally handed over by

him to the concerned village accountant on the directions of the Government. It is also an undisputed fact that the occupancy price of the said land was duly paid by the appellant in compliance of imperative legal requirement u/s 5 of the Act, which is the material provision under the Act dealing with the regrant of service inam lands to the village office holder entitled to regrant thereof.

3. The learned Counsel for appellant argued assailing the validity of the impugned judgment on the ground that it was erroneously based on the relationship of appellant and Rukmaniyamma with the deceased Barawarder Gopala Rao when such relationship is entirely foreign to the scope of Section 5 of the Act. On the contrary, respondent 2's learned Counsel argued otherwise upholding impugned judgment of the learned Single Judge.

4. The moot point for consideration then would be what are the legal requirements that are to be satisfied by a village office holder to entitle him to regrant of the service inam land attached to the particular village office. We find these requirements contained in Section 5 of the Act. It reads:

"5. Regrant of land resumed u/s 4 to the holder of the village office.--(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 thereunder; 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:

Provided that in respect of land which was not assigned under an existing law relating to the village office as the remuneration of the village office, an occupancy price equal to the amount of the full assessment of such land in the case of holders of inferior village offices and three times such amount in the case of holders of other village offices, shall be paid by or on behalf of the holder for its regrant.

(2) If there is a failure to pay the occupancy price under sub-section (1) within the prescribed period and in the prescribed manner, the holder shall be deemed to be unauthorisedly occupying the land and shall be liable to be summarily evicted therefrom by the Deputy Commissioner, in accordance with the provisions of the Code.

(3) The occupancy or the ryotwari patta of the land, as the case may be,

regranted under sub-section (1) shall not be transferable otherwise than by partition among members of Hindu Joint family [for a period of fifteen years from the date of commencement of Section 1 of the Karnataka Village Offices Abolition (Amendment) Act, 1978]".

5. The other relevant provisions are contained in Rules 4 and 5 of the Karnataka Village Offices Abolition Rules, 1965 ("the Rules" for short) framed under the Act. Rule 4 relates to the time and manner of payment of occupancy price envisaged in Sections 5 and 6. Rule 5 prescribes the form of application to be made by an applicant seeking regrant of the lands and the procedure for the Deputy Commissioner to deal with such application. One of the material particulars required to be mentioned in the said application is the mention of the challan for having credited the occupancy price under Rule 4 and the receipt obtained from the treasury for such payment.

6. A plain reading of the aforequoted relevant provisions of Section 5 together with Rules 4 and 5 makes this legal position clear that an applicant for regrant of the service Inam land will have to fulfil only two legal requirements to entitle him to the regrant of the land/lands. They are: that he was the holder of the village office immediately prior to the appointed day, and, next, that the requisite occupancy price calculated in the manner stated in sub-section (1) of Section 5 had been duly credited by him. The later portion of sub-section (1) of Section 5 stipulates that the liability to make payment of the land revenue for such lands arises only after the inam land is regranted to the concerned village office holder, which part of Section 5(1) creates liability on the regranted to pay the land revenue to the Government with respect to the regranted inam land from the appointed date and in accordance with the provisions of land Revenue Act and the Rules and the orders made thereunder. But then from the above requirements of Section 5 of the Act, it legally follows that for entitlement to regrant of the service Inam land, the village office holder need not necessarily be in actual possession and cultivation of that land and that the payment of land revenue with respect thereto from the appointed day is also not a condition precedent for the same. It is left open for him to pursue the remedy to recover possession of the land in due course of law after the same is regranted to him. In that view of the legal position we find that the finding of the Tahsildar in his impugned order that appellant (petitioner) was disentitled to regrant of the land simply because he had failed to pay the land revenue with respect thereto is clearly an erroneous finding in law. Therefore, his impugned order does not sustain and the learned District Judge has also committed an error in upholding the order of the Tahsildar by his impugned judgment dated February 7, 1992. The observation of the learned Single Judge made in his impugned order that by reason of nearness in the degree of the relationship of respondent 2-Rukmaniyamma with the original Barawardar, deceased Gopal Rao, she gets a superior right to claim regrant of the lands in question as against the appellant's claim to the same is also legally unsustainable in the light of the relevant provisions of Section 5 of the Act. Therefore, we are of the considered opinion

that the impugned order of the learned Single Judge and the impugned orders of the authorities below are liable to be set aside.

7. But then Mr. Prabhakar, learned Counsel representing L.Rs of respondent 2-Rukmaniyamma canvassed his contention that right from the beginning she having regularly paid the land revenue in respect of said lands and she being in actual possession thereof, she was the "authorised holder" in relation to the said lands within the "meaning of the term defined by Section 2(1)(b) of the Act. He maintained that by virtue of clause (b) of sub-section (1) of Section 2 as also clause (g) thereof she as the "authorised holder" of the said lands gets the right to regrant thereof u/s 6 of the Act. So submitting he sought to maintain that impugned orders of the Tahsildar and the District Judge are entitled to be upheld.

8. Therefore we need to consider the import of Section 6. It reads:

"6. Regrant of land resumed u/s 4 to authorised holders.--Where any land is 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 6 no doubt confers a right on the "authorised holder" to regrant of the service inam land, but, subject to the conditions and consequences mentioned in Section 5. We, therefore, find sufficient force in the contention of Mr. Prabhakar that the case of respondent 2-Rukmaniyamma since deceased represented by her legal representatives (L.Rs) for regrant of the lands in question calls for serious examination in the light of the provisions of Section 6 of the Act, and certainly not by reason of her simply being a close relative of the deceased Gopala Rao. The Tahsildar has failed to examine the question of Rukmaniyamma's claim to regrant of the land from this angle. He is, therefore, required to examine and determine the question whether Rukmaniyamma was an "authorised holder" of the lands in question within the meaning of clause (b) of sub-section (1) of Section 2 read with Section 2(1)(g) of the Act; and if so, whether she is entitled to regrant of the lands vis-a-vis the appellant's claim to regrant thereof as holder of the said village office immediately prior to the appointed date. Under the circumstances we find that it is proper to leave this question open for determination by the Tahsildar.

9. However, we do not agree and accept, in the facts and circumstances of the case, the further contention of Mr. Prabhakar that late Rukmaniyamma being the grand son's wife of original Barawardar Gopala Rao, she had the right to inherit the said village office of Shanbhog through her deceased husband Suryanarayana Rao. Because, as indicated above, the said village office was relinquished by her husband Suryanarayana during her life time which act of his necessitated the

concerned revenue authority to appoint appellant as holder of the said village office i.e., as Shanbhog. This apart, it is not the case of Rukmaniyamma that at any time prior to the appointed date the said village office was ever held by her and that she had acted and performed the duties of Shanbhog of the village which is an essential requirement of law to stake her claim to regrant of the land u/s 5 of the Act as "holder of the village office".

10. Learned Counsel representing respondent 7 brought to our notice that this respondent is impleaded for the first time in this appeal who was not made a party in any of the legal proceedings either before the Tahsildar or before the learned District Judge or in W.P. No. 10798 of 1993 and as such he was not a necessary party to this appeal. His contention finds favour with us.

11. For the reasons aforesaid we allow this appeal. The impugned order dated 8-6-1993 of the learned Single Judge is set aside and the impugned judgment of the learned District Judge dated 7-2-1997 in Miscellaneous Appeal No. 16 of 1984 and the impugned order of the respondent-Tahsildar dated 19-12-1983 passed in HOA 3 SHA 23 of 1971-72 are quashed. The matter is remitted to respondent 1-Tahsildar to dispose of the same by his fresh speaking order deciding the rival claims of the appellant (petitioner) G.V. Subba Rao and the legal representatives of respondent 2, to the regrant of the lands in question in the light of the observations made hereinabove and in accordance with law, after holding fresh enquiry. He is directed to finally dispose of the matter within a period of six months from the date of receipt of the copy of this order. However, it is made clear that the undisputed concurrent finding recorded by the respondent-Tahsildar and by the appellate District Judge that appellant-Subba Rao was the holder of the concerned village office of Shanbhog immediately prior to the appointed day i.e., 1-2-1963, stands confirmed and the same shall not be permitted to be reopened or reagitated by respondents.

The appeal as against respondent 7 is dismissed.

Parties to bear their own costs.