

(2014) 06 KAR CK 0011

In the Karnataka High Court

Case No : Writ Appeal No. 1869 of 2008 (LR-RES)

K. Srinivas Murthy

APPELLANT

Vs

The Secretary, Government of Karnataka

RESPONDENT

Date of Decision : 16-06-2014

Acts Referred:

Citation : (2015) 1 AKR 253 : (2014) 5 KarLJ 358 : (2015) 1 KCCR 154

Hon'ble Judges : Ravi V. Malimath, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : R.A. Devanand, Advocate for the Appellant; S. Susheela, Additional Government Advocate, Advocate for the Respondent

Judgement

K.L. Manjunath, J.—The order passed by the Special Deputy Commissioner, Bangalore, in No. IN/CR. 227/97-98, dated 31-10-2002 which is confirmed by the Karnataka Appellate Tribunal in Appeal No. 895 of 2003, dated 6-11-2007 and further confirmed by the learned Single Judge on 24th October, 2008 in Writ Petition No. 19756 of 2007 are called in question in this intra-Court appeal. Heard Mr. Devanand, the learned Counsel appearing for the appellants and the learned Government Advocate appearing for the respondents. According to the appellants, appellant 1-Sri K. Srinivasa M. Murthy is the son of late M. Kempaiah and 2nd appellant-Sri S. Govindappa is his brother's son. According to the appellants one Krishna Swamy Iyengar was the Jodidhar of a village known as Jodi Navarathana Agrahara. Kempaiah had purchased certain extent of lands in Jodi Navarathana Agrahara in Sy. No. 3, to an extent of 187 acres 38 guntas vide registered sale deed dated 18-2-1943 from the Jodidhar Kempaiah settled the lands in favour of his 5 children, i.e., Sri K. Muniswamappa, Sri. K. Shamaiah, Sri K. Govindappa, Sri K. Srinivasa Murthy and Sri K. Nagaraj under registered sale deed dated 30-7-1953.

2. Pursuant to a Government Notification dated 15-9-1956 the entire Jodi Navarathana Agrahara Village came to be vested in the Government under the provisions of Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954.

After the land vested in the Government the 5 children of Kempaiah filed applications for regrant in their favour under Section 9 of the Act. The lands were granted to different persons on different occasions including the lands in Sy. No. 3 of aforesaid village. Contending that 35 acres 8 guntas of land including 8 acres 6 guntas of land which is the subject-matter before the Land Tribunal they approached this Court in Anjanappa and Others Vs. The State of Karnataka and Others, , wherein this Court on 4-9-2000 held that the entire survey number is a hiduvali land and not the gomal land.

3. Contending that the application filed before the Competent Authority for regrant of 35 acres 8 guntas in Sy. No. 3 of Jodi Navarathana Agrahara Village by the appellants came to be rejected by the learned Deputy Commissioner on the ground that no land is available for regrant and the entire extent of land has been granted earlier by considering the application of the appellants and their tenants and different persons by inspecting the spot. The Deputy Commissioner further held that though the notice was issued to the appellants they did not appear during spot inspection therefore, in the presence of villagers the spot was inspected, the survey was conducted and held that no land is available to consider the case of the appellants. Accordingly, the application alleged to have been filed by the appellants for grant of 35 acres 8 guntas of land in Sy. No. 3 was rejected.

4. Challenging the legality and the correctness of the same the appellants filed an appeal before the Karnataka Appellate Tribunal in Appeal No. 895 of 2003 which also came to be dismissed by the Tribunal on 6-11-2007 confirming the order passed by the Deputy Commissioner.

5. Aggrieved by the concurrent findings of the Special Deputy Commissioner, Bangalore and the Karnataka Appellate Tribunal the appellants filed Writ Petition No. 19756 of 2007 which writ petition came to be dismissed by the learned Single Judge affirming the concurrent findings and therefore the present appeal is filed.

6. Mr. Devanand, the learned Counsel appearing for the appellants submits that the Deputy Commissioner, the Karnataka Appellate Tribunal and the learned Single Judge have wholly erred in rejecting the application of the appellants contending that no land is available. According to him, the enquiry as required under the Mysore (Personal and Miscellaneous) Inams Abolition Act has not been conducted by the authorities and that the case of the appellants has not been considered properly considered and therefore an error is committed by the learned Single Judge in confirming the orders of the Deputy Commissioner. In the circumstances, he requests the Court to allow the appeal and remand the matter to the Deputy Commissioner for fresh consideration in accordance with law.

7. Smt. S. Susheela, the learned Government Advocate submits that all the authorities have proceeded as if an application had been filed by the appellants under Section 9 of the Act. According to her, no such application was filed by the

appellants at any point of time. Under wrong notion the authorities have proceeded and passed orders as if the appellants have filed the application for regrant. However, the Deputy Commissioner has inspected the village and that the entire village was surveyed and no land is available for grant in favour of the appellants on an earlier occasion certain extent of lands were also granted to the appellants and their tenants pursuant to the applications made by different persons. According to her, Annexure-A relied upon by the appellants before the learned Single Judge is not at all an application filed under Section 9 of the Act. She further contends that there is suppression of facts by the appellants by producing a wrong document as Annexure-A contends that it is an application filed under Section 9 of the Act. She further contends that non-filing of an application under Section 9 was known to the appellants and therefore an attempt was made by them before the Karnataka Appellate Tribunal contending that the Deputy Commissioner was required to regrant the land even though no applications are filed by the appellants. Therefore she contends that Annexure-A is in no way relevant to the facts of this case.

8. Mr. Devanand, submits that Annexure-A is an acknowledgement for having filed an application under Section 9 of the Act. We have seen Annexure-A. Annexure-A is an application said to have been filed in the year 1955-1956. If Annexure-A were to be an acknowledgement issued in 1955-1956 the printed form (Annexure-A) could not have been printed in 1958, two years after the alleged acknowledgement. Therefore, the learned Government Advocate submits that Annexure-A is a concocted one and no way relevant to the case on hand. Hence, she requests the Court to dismiss the appeal as no error is committed by the learned Single Judge in dismissing the writ petition.

9. Having heard the learned Counsel appearing for the parties what is required to be considered by us in this appeal is: "Whether the learned Single Judge has committed an error in dismissing the writ petition and whether the orders of Deputy Commissioner, Karnataka Appellate Tribunal and the order of the learned Single Judge are required to be interfered with in this intra-Court appeal?"

The admitted facts are that one Krishna Swamy Iyengar, was the Jodidhar of village known as Jodi Navarathana Agrahara Village sold certain extent of land in favour of Kempaiah, the father of the appellant is not in dispute. The dispute is whether the appellants are entitled for regrant after the land is vested in the Government pursuant to the Inam Abolition Act or not. In order to consider the claim of the appellants, the appellants are required to make an application under Section 9 of the Act. If an application is not filed under Section 9 of the Act the Deputy Commissioner would not get any jurisdiction to consider the case. Therefore in order to consider the case of the appellants, the first and foremost duty of the appellants is, to produce the application said to have been filed under Section 9 of the Act. On perusal of the entire records produced by the learned Government Advocate there is no iota of evidence to show that the application in fact was made by the appellants under Section 9 of the Act. In addition to that,

on perusal of the order passed by the Karnataka Appellate Tribunal the appellants" Counsel before the Karnataka Appellate Tribunal contended that there was no necessity for the appellants to make an application under Section 9 of the Act and it is further canvassed by him that in the absence of an application under Section 9 of the Act it was obligation for the Deputy Commissioner to consider the case of the Jodidhar for regrant. Considering the arguments advanced before the Tribunal we are of the view that the appellants have not made any application under Section 9 of the Act. Even otherwise Mr. Devanand, has relied upon Annexure-A as an application filed under Section 9 of the Act. On a perusal of Annexure-A it cannot be considered as an application filed under Section 9 of the Act.

Later he contends that Annexure-A is not the application filed under Section 9 of the Act, but it is an acknowledgement for having filed an application under Section 9. Even the said submission has to be brushed aside because on perusal of Annexure-A, it is clear that it is in a printed form which was printed at Government Press, Bangalore, on 19-2-1958. According to the appellants they have filed an application for regrant of land under Section 9 in No. INA/CR. 227/97-98. On perusal of Annexure-A it is mentioned that the Deputy Commissioner had received the application on 6-12-1956 from K. Muniswamappa and another application from K. Shamaiah on 15-11-1957. Another application from the 2nd respondent on 6-12-1956 from the 1st appellant-Srinivasa Murthy, and also application dated 27-9-1957 from one K. Nagaraj and another application on 10-11-1956 from one Govindappa. The applications were received from 5 persons between 1956-1957. If really Annexure-A has to be considered as an acknowledgement it cannot be given for all the 5 applicants who had filed on different dates. Even otherwise, the acknowledgement has to bear the date on which the application is filed by the applicants but the acknowledgement form itself is printed on 11-2-1958, two years later to the alleged application filed by the applicant. On perusal of Annexure-A it is clear that based on the applications filed by the applicants therein the compensation is also determined under Sections 4, 5, 6, 7 to 9 of the Act. Therefore, it cannot be considered as an acknowledgement for having filed an application. As could be seen from Annexure-A the compensation is determined under Section 20. Therefore it cannot be an acknowledgement as contended by Mr. Devanand. Though the appellants have not filed an application under Section 9 of the Act, the question of considering their claim either by the Deputy Commissioner or by the Tribunal would not arise. Even otherwise if there was no need for the Deputy Commissioner to conduct a Mahazar and survey still the Deputy Commissioner has taken pain to make a spot inspection and it is found by him that no land is available for considering the alleged application of the appellants. Viewed from any angle, we find no illegality in the concurrent findings of the authorities including the order of the learned Single Judge and does not suffer from any irregularity or illegality. In the circumstances we cannot hold that there was an error committed by the learned Single Judge in dismissing the writ petition. In

the result, we find no ground to interfere with the concurrent findings of fact. Accordingly, the writ appeal is dismissed.