

(2014) 03 KAR CK 0224
In the Karnataka High Court
Case No : Writ Appeal No. 1051 of 2008(LR)

Karnataka State Board of Wakf

APPELLANT

Vs

The Special Deputy Commissioner

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Citation : (2014) 03 KAR CK 0224

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

Bench : Division Bench

Advocate : Jayakumar S. Patil, Senior Advocate and Sri R. Kothwal, Advocate for the Appellant; S.K. Chalapathy, Senior Advocate, Sri G. Papi Reddy, Advocate for C/R3, Sri R. Devadas, AGA for R1 and R2 and Sri Mehter M. Azzam, Advocate for R4, Advocate for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—The legality and correctness of the order passed by the learned Single Judge in W.P. No. 6971/2008, dated 26.05.2008, is called in question in this petition.

2. We have heard the learned Senior Counsel for both the parties.

3. The appellant was the petitioner in W.P. No. 6971/2008, which was filed by him challenging the order passed by the Karnataka Appellate Tribunal, Bangalore, dated 20.03.2008, passed in Appeal No. 341/2007. The said appeal was filed by respondent no. 3, Sri. Ameer Pasha, challenging the order passed by the first respondent-Special Deputy Commissioner, dated 05.03.2007 in case No. INA. CR. 19/2000-2001.

4. The facts leading to his appeal are as hereunder:

The third respondent-Sri. Ameer Pasha, claiming to be a tenant under the fourth respondent-mosque in respect of 10 acres of land situated in survey No. 209/10 and survey No. 126/3 of Varthur village made an application before the Land

Tribunal, Bangalore in Form No. 7 claiming to be a tenant of the mosque in LRF No. 129/1974-74. The Land Tribunal, Bangalore by its order dated 07.08.1975, granted the occupancy rights in favour of the third respondent, which order was questioned by the fourth respondent-mosque before this Court in W.P. No. 6576/1975. By an order dated 10.01.1983, the writ petition came to be allowed. The matter was remanded to the Land Tribunal for fresh consideration in accordance with law.

5. Subsequently, the Land Tribunal by its order dated 25.07.1986, rejected the application filed by the third respondent. Against which the third respondent filed an appeal before the District Land Appellate Authority in LRA No. 242/1986 which authority came to be abolished by virtue of amendment brought into the Karnataka Land Reforms Act. Accordingly, the matter was transferred to this Court as a Civil Petition in C.P. No. 6315/1991 and it was later converted as W.P. No. 38793/1992.

6. The Writ Petition No. 38793/1992 was allowed and the order of the Land Tribunal, dated 25.07.1986 was quashed and the matter was remanded to the Tribunal for fresh consideration in accordance with Law.

7. When the matter was pending before the Land Tribunal, considering that the land in question is an Inam land and that the Tribunal had no jurisdiction to entertain the same, the matter was referred to the Deputy Commissioner, Inam abolition and as per Order No. INA. CR. 19/2000-2001. The Deputy Commissioner without verifying whether the land in question is an Inam land or not, rejected the application filed by the third respondent.

8. Aggrieved by the same, the third respondent filed an appeal before the Karnataka Appellate Tribunal, Bangalore in Appeal No. 341/2007, which appeal came to be allowed on 20.03.2008 granting occupancy rights in favour of the third respondent.

9. Aggrieved by the order of the Karnataka Appellate Tribunal, the appellant filed a writ petition in W.P. No. 6971/2008, which petition came to be dismissed confirming the order of the Tribunal. Aggrieved by the order of the learned Single Judge and Karnataka Appellate Tribunal, the present appeal is filed.

10. After hearing the learned counsel appearing for the parties, the only point to be considered by this court in this appeal is:

Whether an error is committed by the learned Single Judge while dismissing the petition and whether the Deputy Commissioner, Bangalore and the Karnataka Appellate Tribunal had right to decide the case of the third respondent when he had filed an application in Form No. 7, before the Tribunal without giving a finding whether the land in question is an inam land or a tenanted land under the Karnataka Reforms Act?

11. Admittedly, Form No. 7, was filed by the third respondent, as the tenant of the land contending that the land has been vested in the State pursuant to the

Karnataka Land Reforms Act and nobody has contended before the Tribunal that land in question is a land vested under the provisions of the Mysore (Religious and Charitable) Inams Abolition Act 1955. The Tribunal referring to the Government order that since the land in question belongs to the fourth respondent-mosque, considering the land as an inam land referred the matter to the Deputy Commissioner for Inam Abolition.

12. The Deputy Commissioner has also proceeded with the matter treating it as an inam land. Either the appellant or the third respondent did not raise the question of maintainability or jurisdiction of the Deputy Commissioner in deciding the matter by applying the provisions of the Mysore (Religious and Charitable) Inams Abolition Act 1955.

13. Now certain documents are also sought to be produced by the appellant to show the nature of the land held by the third respondent. According to the appellant the land in question was never an inam land. If it was not an inam land, if it was not really an inam land and the third respondent were to be the tenant, the application filed by the third respondent has to be considered only by the Tribunal and not by the Deputy Commissioner, Inam Abolition. Therefore, any order passed either by the Deputy Commissioner, Inam Abolition order by the Karnataka Appellate Tribunal, which has been confirmed by the learned Single Judge are liable to be set-aside and the matter requires to be remanded to the land tribunal for fresh consideration to give a finding whether the land in question is an inam land or a granted land to the third respondent and order of grant does not attract the provisions of the Inam Abolition Act and if the provisions of the Inam Abolition Act is not attracted, it is for the Tribunal to decide the matter on merits in accordance with Law, by giving reasonable opportunity to both the parties. If it is an inam land, then the matter is requires to be reconsidered by the Deputy Commissioner, Inam Abolition in accordance with law.

14. Accordingly, this appeal is allowed. The order passed by the learned Single Judge in W.P. No. 6971/2008, dated 26.05.2008 and the order passed by the Karnataka Appellate Tribunal, dated 20.03.2008 in Appeal No. 341/2007 and the order passed by the Deputy Commissioner, Bangalore in Order No. INA. CR. 19/2000 2001 are hereby quashed.

15. The matter is remanded to the Land Tribunal, Bangalore to reconsider the case in LRF No. 129/1974-75. The parties to maintain status-quo till the disposal of the matter by the Tribunal.

16. Since the matter is disposed off all the Interlocutory Applications filed in the present case, does not survive for consideration and accordingly dismissed.