

(1982) 03 KAPT CK 0026
In the Karnataka Appellate Tribunal
Case No : Appeal 891/76 (I.A.T.)

K.S. Venkataraja Bhattar

APPELLANT

Vs

C. Hanumantiah and Others

RESPONDENT

Date of Decision : 24-03-1982

Acts Referred:

Karnataka (Religious and Charitable) Inams Abolition Act, 1955 — Section 6A

Citation : (1982) 1 KarLJ 71

Hon'ble Judges : K. V. Narayana Raju, Member; R. Shankarappa, J

Judgement

Per K.V. Narayanaraju, M.-This appeal under S. 29 of the Mysore Religious and Charitable Inams Abolition Act is from the order dated 5-2-1976 passed by the learned Special Deputy Commissioner for Abolition of Inams, Bangalore in I.N.A. 3/M. I.T. 60/74-75 and 13/75-76 rejecting the claim of the appellant for occupancy in respect of Sy. Nos. 8/1, 12, 19, 27 etc., of Kaidala village, Gulur Hobli, Tumkur Taluk endowed to Sri Chennakeshava Swamy Temple.

2. The appeal is filed on 9-4-1976 with an application for condonation of delay. In the affidavit the appellant has said that he waited on 5-2-1976 at Pravasi Mandir, Tumkur, that the Deputy Commissioner did not arrive at all, that the order was not pronounced on 5-2-1976; that he went away thinking that the next date of hearing would be intimated; that on 11-3-1976 he received the endorsement that his claim has been rejected and respondent 1 was registered as occupant of Sy. No. 8/1 of Kaidal; that he came to Bangalore on 26-3-1976 and applied for a copy which was supplied on 2-4-1976; and that therefore the delay if any may be condoned.

3. The Counsel for the appellant and the learned Assistant State Representative were heard. Respondent 1 remained absent.

4. A perusal of the order sheet maintained by the Deputy Commissioner reveals that on 9-1-1976 the Tahsildar recorded the statement of the present appellant and the case was posted for order without mentioning the date. We should however state some date written is scored out. Later, on some other day the

Deputy Commissioner has written in his own hand that the case was posted for orders on 5-2-1976. Then on 5-2-1976 is the note that orders were pronounced in open court and further note that parties be endorsed. It is clear that the appellant might not have been aware of the date of order until he was served with the endorsement. The time taken after such endorsement cannot be said to be unduly long. The delay therefore is condoned.

5. The learned Deputy Commissioner has conferred occupancy over Sy. No. 8/1 in favour of, respondent 1 and rejected the claim of the appellant to other lands on the ground that he had not established his possession and enjoyment of the same.

6. The appellant has contended that he who was the Archak ought to have been registered as occupant of all lands under S. 6-A of the Mysore Religious and Charitable Inams Abolition Act; that he was not given full opportunity of adducing evidence; that the learned Deputy Commissioner failed to note that the appellant was paying regularly reserve fund and rent for enjoyment of the lands and so was a tenant entitled to be registered etc.

7. It may be noticed that the appellant has taken inconsistent stand saying at one place that he was an archak entitled to be registered under S. 6-A, and at another place asserting that he was paying rent and so was a tenant. If he is entitled under S. 6-A, he cannot and should not be a tenant and if he was a tenant he could not claim under S. 6-A of the Inam Abolition Act. "Such a stand naturally excites suspicion about the entire case. What is more is the statement made on 9-1-1976 before the Gazetted Assistant to the Deputy Commissioner at Tumkur Camp. He has clearly and categorically said:

The lands were sold in panchasal gutha auction by the Government and the final bidders are in possession of these lands from 1953. I am getting remuneration at Rs. 60 p.m. for performing poojas etc in the temple. Since 1953 I am not in possession of these lands.

That evidence establishes beyond doubt that the appellant was not at all in possession and enjoyment of the land, and that on the other hand the auction bidders were in possession and enjoyment as tenants.

8. If tenants are entitled to be registered as occupants of the lands endowed to the temple, the archak of such a temple cannot also claim occupancy in preference to or in opposition to the other person who is entitled to be registered as a tenant. There cannot be two occupants at the same time. There can be no doubt that unless Archak is in possession and enjoyment of the land without paying rent as such he would not be entitled to be registered as an occupant under S. 6-A of the Inams Abolition Act. Likewise if there is another person who is cultivating the land as a tenant and is entitled to be registered, there can be no question of registering the Archak also under S. 6-A and producing two occupants of the same land.

9. For the foregoing reasons, we are of the opinion that there is no ground whatsoever to disturb the order passed by the learned Deputy Commissioner. The appeal is dismissed.