

(2016) 02 KAR CK 0312

In the Karnataka High Court

Case No : Writ Petition No. 10369 of 2008 (SC/ST)

Lakshmaiah (Dead) By L.Rs

APPELLANT

Vs

Deputy Commissioner, Chickballapur District & Others

RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Karnataka (Personal and Miscellaneous) Inams Abolition Act, 1954 — Section 5
Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 — Section 3(1)(b), 5

Citation : (2016) 3 KantLJ 593

Hon'ble Judges : A.N. Venugopala Gowda, J.

Bench : Single Bench

Advocate : G. Papi Reddy, Advocate, for the Appellant; B. Visweswaraiah, High Court Government Pleader and Hanumanthappa B. Haravigoudar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—Father of respondent 3—Sri Narasappa, had made an application on 20-6-1959, claiming registration of occupancy rights in respect of the land in question, under the provisions made in the Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 and the Mysore (Personal and Miscellaneous) Inams Abolition Rules, 1956 made thereunder. Considering the said application, the Special Deputy Commissioner for Inams Abolition, Bengaluru, in Case No. 69/1959-60 passed an order dated 10-3-1962 and granted occupancy rights over the land in question. The grantee - Narasappa and his family members transferred the land in question to one Sri K.M. Thammaiah, under registered sale deed dated 14-6-1964. Sri K.M. Thammaiah, in turn sold the property as per a sale deed dated 20-11-1974 in favour of the petitioner. Thus, the petitioner is in possession and enjoyment of the land, which is the subject-matter of consideration in this writ petition.

2. The respondent 3 having made an application before respondent 2, for

resumption and restoration of the land in question, under the provisions of Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, by an order dated 20-1-2006, the claim made by respondent 3 was allowed and the land in question was ordered to be resumed from the petitioner and restored to respondent 3. Feeling aggrieved, petitioner filed an appeal under Section 5-A of the Act, before respondent 1. Said appeal having been dismissed by an order dated 21-7-2008, this writ petition was filed to quash the orders passed by respondents 1 and 2, stated supra and grant consequential reliefs.

3. Sri G. Papi Reddy, learned Advocate, contended that the occupancy right in respect of the property in question having been conferred on the father of the 3rd respondent, under the provisions of the Mysore (Personal and Miscellaneous) Inams Abolition Act and the property being not a granted land in respect of which the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, is attracted, the respondent 2 has committed illegality in exercising the jurisdiction and passing the order dated 20-1-2006 vide Annexure-G. He submitted that in the appeal filed, the first respondent without consideration of the matter in accordance with law, having passed the order dated 21-7-2008, vide Annexure-H, the same being contrary to the decision of this Court in the case of Mohammed Jaffar and Another v. State of Karnataka and Others ILR 2002 Kar. 4693 and thus illegal, the impugned orders are liable to be quashed and the claim made by respondent 3 before respondent 2 negated as not maintainable.

4. Sri Hanumarthappa B. Haravigoudar, learned Advocate for respondent 3, did not dispute the fact that Narasappa had made an application on 20-6-1959 for registration of occupancy rights, under the Mysore (Personal and Miscellaneous) Inams Abolition Act and the Special Deputy Commissioner having granted occupancy rights on 10-3-1962 vide Annexure-E. Learned Advocate did not dispute the sale of property by father of respondent 3 in favour of K.M. Thammaiah vide sale deed as per Annexure-A and in turn K.M. Thammaiah having sold the property in favour of the petitioner. He submitted that the 3rd respondent being a person from depressed community, his claim was considered in accordance with law by respondent 2 and hence, the order passed vide Annexure-G and its upholding by respondent 1 vide order at Annexure-H is not liable to be interfered with.

5. Sri B. Visweswaraiah, learned High Court Government Pleader, appearing for respondents 1 and 2, supported the action of the respondents 1 and 2, in the matter of passing orders, as at Annexures-G and H.

6. Perused the writ record. There is no dispute with regard to grant of occupancy rights of the land in question on 10-3-1962 vide Annexure-E, in favour of father of respondent 3-Narasappa. There is also no dispute with regard to sale of property by Narasappa and his family members on 14-6-1964 in favour of K.M. Thammaiah, as per sale deed vide Annexure-A. The petitioner has purchased the

property from Sri K.M. Thammaiah on 20-11-1974, as per registered sale deed, as at Annexure-F. There is no record produced by respondent 3, with regard to the land in question having been granted by the Government/Competent Authority in favour of Sri Narasappa, under the Karnataka Land Grant Rules, 1969. No record relating to the grant has been produced before respondents 1 and 2.

7. In the case of Mohammed Jaffar, the question referred and considered by the Full Bench reads as follows:

"2. A learned Single Judge was considering a writ petition wherein the order dated 8-12-1998 passed by the Assistant Commissioner declaring the sale of the land in Sy. No. 415/1 measuring 7.25 guntas out of the total extent of 1 acre 19 guntas of Susugadi Village in Bhatkal Taluk was challenged. The learned Single Judge, vide his order dated 9-3-2001, having disagreed with the view of another learned Single Judge in the case of Narayan Parameshwar Naik and Others v. Deputy Commissioner, Karwar, Uttara Kannada District and Others, 1999(6) Kar. L.J. 244 and as the issue was a question of law of general importance, thought it to be a fit case for reference to the Division Bench and referred the same to decide the following question:

"Whether the land in respect of which occupancy rights have been conferred in favour of a tenant under the provisions of the Karnataka Land Reforms Act, 1974, can be construed as "granted land" as defined under Section 3(l)(b) of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, wherever the tenant belongs to Scheduled Caste or Scheduled Tribe and thus is amenable to the jurisdiction and operation of the PTCL Act or only restricted meaning to be given in this regard."

By the order of the Chief justice, dated 27-3-2002, the matter was placed before the Division Bench. The Division Bench, while considering the order of reference on 10-7-2002, found that the decision in Narayan Parameshwar Naik's case, was affirmed by a Division Bench in an appeal Smt. Lalitha Nagappa Naik v. The Deputy Commissioner, Karwar, Uttarn Kannada District and Others, 2000(6) Kar. L.J. 635 (DB) and that unreported judgment was not brought to the notice of the learned Single Judges. On consideration, the Division Bench was of the view that the matter required consideration by a larger Bench and referred the same to a Full Bench, and directed the Registry to place the records before the Hon"ble Chief Justice for appropriate orders."

The said question was answered as follows:

"7. Learned Government Advocate reiterating the reasons given by the Division Bench in Smt. Lalitha Nagappa Naik's case, submits that in view of Section 44 the land vests in the Government and even if the occupancy right has been granted that will be subject to certain conditions under provisions of the PTCL Act and the sale of land will automatically become void, if sold within the prohibitory period. Hence, the question has to be answered in the affirmative."

8. In an identical case, which came up for consideration in W.P. No. 63958 of 2010, by an order dated 22-7-2014, following the aforesaid decision of the Full Bench, it was held that the land being not a granted land, as defined under Section 3(l)(b) of Karnataka Act 2 of 1979, the decision rendered in the case of Mohammed Jaffar squarely applies and consequently, allowing of the claim by the Assistant Commissioner and its upholding by the Deputy Commissioner is illegal. The aforesaid order squarely applies to the instant case.

9. In view of the above, the impugned orders, as at Annexures-G and H, being-illegal, as the provisions of Karnataka Act 2 of 1979 is not applicable on account of the land in question being not a granted land, as defined under Section 3(1) (b) of the Act, the 2nd and 3rd respondents having no jurisdiction in the matter, are quashed. Consequently, the claim made by respondent before respondent 2 for resumption and restoration of the land in his favour being not maintainable stands dismissed.

10. No costs.