

(2007) 11 KAR CK 0043
In the Karnataka High Court
Case No : Writ Petition No. 12608 of 2006

Marikalamma

APPELLANT

Vs

The Assistant Commissioner, Hunsur Revenue Sub Division
and Others

RESPONDENT

Date of Decision : 13-11-2007

Acts Referred:

Karnataka Village Offices Abolition Act, 1961 — Section 3 (2)

Citation : (2008) 4 KarLJ 568

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Abhinav R., for Kumar and Kumar, for the Appellant; H.T. Narendra Prasad, HCGP for R1 and R2 and T.N. Raghupathy, for R3 to, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—Petitioner, assailing the correctness of the order dated 5th June 2006 passed by the Principal District Judge, Mysore in M.A. No. 86/2003 dismissing the appeal filed by petitioner at Annexure D, has presented the instant writ petition. Further, petitioner has sought for a direction, directing the first respondent to consider the case of petitioner for grant of occupancy rights under the provisions of the Karnataka Village Offices Abolition Act.

2. The case made out by learned Counsel appearing for petitioner is that, one Sri. Deveeraiah was cultivating the schedule land bearing Sy.Nos.94 measuring 28 guntas; 125 measuring 06 acres 18 guntas; 126 measuring 01 acre; 133 measuring 05 acres 38 guntas, in all measuring about 14 acres 04 guntas situate at Mallahalli Village, Periyapatna Taluk, Mysore District as "chakra inam lands". After the death of the said Sri. Deveeraiah, his sons namely Sri. Kariaiah and Sri. Ramaiah have succeeded the said properties and before coming into force of the Karnataka Village Offices Abolition Act (herein after referred to as "KVOA Act"), Sri. Kariaiah and Ramaiah also passed away and respondents 3 to 5 by suppressing the true facts before the first respondent have obtained the order of

re grant under the KVOA Act by his order dated 31st March 1977. It is the case of petitioner that, she came to know of the same only when she received the endorsement dated 7th August 2003 / 27th August 2003 bearing No.HOA.CR.5/2003-04 vide Annexure C stating that, the lands in question have been re-granted in favour of respondents 3 to 7. It is also stated in the said endorsement that, on perusal of the request made by petitioner on 28th June 2003, the lands in question had already been re-granted and that, the said authority has no jurisdiction to review its own order and if she has got any grievance against the said order, she can approach the District and Sessions Judge, Mysore, by filing an appeal. The petitioner, accordingly, assailing the correctness of the endorsement dated 7th August 2003 / 27th August 2003 bearing No.HOA.CR.5/2003-04, vide Annexure C, has filed Misc. Appeal No. 86/2003 on the file of the learned Principal District Judge at Mysore. The appeal filed by petitioner had come up for consideration before the Lower Appellate Court on 5th June 2006 and the Appellate Court, after hearing both sides and after considering the other relevant material available on file, has dismissed the appeal on the ground of delay and also on merits. Being aggrieved by the impugned order passed by the Lower Appellate Court and seeking appropriate reliefs, as stated supra, petitioner has presented the instant writ petition.

3. I have heard learned Counsel appearing for petitioner and learned Counsel appearing for respondents.

4. After careful perusal of the order passed by the Assistant Commissioner, Hunsur Revenue Sub Division, Hunsur dated 31st March 1977 vide Annexure B and the endorsement issued by the said authority dated 7th August, 2003 / 27th August 2003 vide Annexure C including the order passed by the Lower Appellate Court dated 5th June 2006, it is manifest on the face of the said orders and the relevant material available on file that, neither the Assistant Commissioner, Hunsur Revenue Sub Division, Hunsur nor the Lower Appellate Court has committed any error much less material irregularity in passing the impugned orders and I also do not find any illegality or perversity in the orders passed by both the authorities. It is significant to note that, Smt. Dandamma Wife of Deveeri Kariya and Kamma Wife of Deviah of Mallahalli village, Periyapatna taluk have filed the application for re-grant of lands in Sy.Nos. 94, 125, 126, 133 claiming that, the said lands are "chakra inam lands". The said application filed by respondents 3 to 7 has been considered and the lands in respect of Sy.Nos. 94 measuring 28 guntas and 125 measuring 18 guntas have been re-granted in favour of respondents 3 and 4 and lands in respect of Sy. Nos. 126 measuring 01 acre and 133 measuring 05 acres 38 guntas have been re-granted in favour of respondents 6 and 7 all situate at Mallahalli Village, Periyapatna Taluk, Mysore District by the competent authority, by his order dated 31st March 1977 and that, there are no applications as such filed by other persons seeking re-grant of the lands in question. The Assistant Commissioner, Hunsur Revenue Sub Division, Hunsur, after considering the report dated 23rd July 1975 submitted by the Tahsildar, Periyapatna Taluk on making spot inspection and after conducting

enquiry, has re-granted the land in question. Neither the father of the petitioner nor the petitioner herself has chosen to make the claim by way of filing the application for re-grant except claiming that she is entitled to 1/6th share in the lands in question and she is also entitled for grant of the said lands. After lapse of nearly quarter century, petitioner, for the first time, has submitted the representation dated 28th June 2003 and after verification of the records, the Assistant Commissioner, Hunsur Revenue Sub Division, Hunsur has issued the endorsement dated 7th August 2003 / 27th August 2003 vide Annexure C stating that, the lands in question have already been granted in favour of respondents 3 to 7 as early as on 31st March 1977 in proceedings No.H.OAC (P) 70 / 69-70 and therefore, her request cannot be considered nor there is any scope to consider her request. Further, the said authority has observed that, if the petitioner is aggrieved by the said order, she can redress her grievance before the Lower Appellate Court as envisaged under the relevant provisions of the KVOA Act. Further, it is significant to note that, the petitioner instead of challenging the order of re-grant passed by the competent authority, has assailed the endorsement dated 7th August 2003/ 27th August 2003 before the Lower Appellate Court under Sub-section (2) of Section 3 of the Karnataka Village Offices Abolition Act intelligently petitioner has not chosen to assail the correctness of the order passed by the Assistant Commissioner, Hunsur Revenue Sub Division, Hunsur dated 31st March 1977. Along with the appeal, petitioner has also filed the application u/s 5 of the Limitation Act, seeking condonation of delay in filing the appeal. The said appeal had come up for consideration before the Lower Appellate Court on 5th June 2006. The Lower Appellate Court after considering the pleadings of both parties, the submission made by learned Counsel appearing for petitioner as well as on behalf of respondents 3 to 7, having regard to the facts and circumstances of the case, by taking a pragmatic, realistic and sensible approach, and having regard to the ground reality, has considered the case of the petitioner and given its findings both on delay and on merits. In doing so, the Lower Appellate Court has framed two points for its consideration, I] Whether the delay in filing the appeal needs to be condoned?; II] Whether the order under appeal is illegal and needs to be set aside. After perusal of the pleadings of both parties and after going through the affidavit filed by petitioner along with the application for condonation of delay in filing the appeal, the Lower Appellate Court has assigned specific and cogent reasons at paragraphs 9 and 10 of its order holding that, the rights of the parties were settled as early as in the year 1977 and therefore, by condoning the delay in filing the appeal, that settled position will become an unsettled one, which is against the well accepted principles of law. Further it is observed that, there is inordinate delay of nearly twenty five years and the said delay has not been satisfactorily explained nor any reasonable ground is made out to condone the delay. Whenever a party comes to the Court, he or she should necessarily explain the delay in approaching the Court Merely and vaguely stating that till 2002, petitioner was not aware of the order under appeal passed during 1977, itself, is not sufficient or reasonable ground to condone the long delay of twenty five

years and therefore, declined to condone the delay. Accordingly, the Lower Appellate Court answered point No. 1 in the negative. Further, regarding point No. 2, the Lower Appellate Court, on the basis of the original records available on file and after going through the order passed by first respondent, has passed the impugned order answering the second point also in the negative. The Lower Appellate Court observed that, in the order passed by first respondent, it is specifically stated that, as per the Baraward Register, the names of Ramana Kariya and Hurupana Kariyana maga Devaiah were appearing and the present Dundamma and Kariaiah and Chandraiah are wife and sons of said Ramana Kariya and the name of the other registered holder is Hurupana Kariyana maga Deviah and Smt. Kamma and Sri. Shivanna are the wife and son of the said Devaiah. It is further specifically observed by the Lower Appellate Court that, the Tahsildar, Periyapatna during the spot inspection has also found that, the said applicants for re-grant were cultivating the lands in question and after verification of the record of rights, the lands in question were in the name of respondents 3 and 6 and the relationship of petitioner with the said Kariaiah was also in dispute. Further, it revealed from the records that, there is no application as such filed by petitioner for re-grant of the land in question, except the ones which were filed by respondents 3 and 6 viz. Dundamma and Kamma. Taking all these aspects into consideration and other relevant factors, the Lower Appellate Court held that, the first respondent has rightly re-granted the lands in question in favour of respondents 3 to 7 respectively as referred above. The said reasoning given by the Lower Appellate Court, is after careful perusal of the order passed by first respondent and after critical evaluation of the original records available on file Therefore, in view of concurrent finding of fact recorded by both the authorities, after critical evaluation of the relevant material available on file and after affording sufficient opportunity, I am of the considered view that, interference by this Court in the impugned orders is not justifiable in view of the well settled law laid down by the Apex Court in host of judgments nor I find any good grounds to interfere in the well considered orders passed by both the authorities. Therefore, I decline to consider the prayer sought for by petitioner in the instant writ petition. Accordingly, the writ petition filed by petitioner is dismissed. However, it is needless to clarify that, if petitioner redresses her grievance before the competent Civil Court by way of filing a partition suit, the competent Civil Court shall dispose of the same on merits of the case, without being influenced by the observations made by the Lower Appellate Court in its order dated 5th June 2006 and also the observations made by this Court during the course of its order in this petition.