

(2003) 01 KAR CK 0042
In the Karnataka High Court
Case No : Writ Petition No. 39448 of 2002

Mrs. Ammayamma

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 22-01-2003

Acts Referred:

Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 — Section 10

Citation : (2002) ILR (Kar) 4106 : (2003) 3 KarLJ 462 : (2003) 1 KCCR 71 SN

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

Bench : Single Bench

Advocate : M.S. Purushothama Rao, for the Appellant; M.E. Prabhu, A.G.A., for the Respondent

Judgement

N.K. Patil, J.—The petitioner assails the validity and legality of the impugned order dated 10-1-1962 passed in No. 29/59-60 on the file of the Special Deputy Commissioner for Inams Abolition, Bangalore Urban District, Bangalore, and consequently, the order dated 17-11-2000 vide Annexure-F passed in Appeal No. 418 of 1999 on the file of the Karnataka Appellate Tribunal.

2. The grievance of the petitioner is that she purchased the suit schedule land in question on 22-6-1959. In view of the amendment to the Inams Abolition Act, Mysore and the Miscellaneous Inams Abolition Act, 1954, she filed application for grant of land. The said application filed by the petitioner had come up before the second respondent on 10-1-1962. The second respondent after considering the material on record has rejected the request of the petitioner on the ground that all the lands are vested in the Government with effect from 1-2-1959 whereas, the petitioner has purchased the lands in question on 22-6-1959. Feeling aggrieved by the order passed by the second respondent dated 10-1-1962, petitioner filed appeal before the Karnataka Appellate Tribunal in Appeal No. 418 of 1999. The Appellate Tribunal after hearing the Counsels for both the parties and after considering the material on records and after scrutinising the entire original records available on file has dismissed the said appeal, as barred by time

by its order dated 17-11-2000. Assailing the correctness of the order passed by the second respondent and the Karnataka Appellate Tribunal, petitioner has presented this writ petition.

3. The learned Counsel for the petitioner submitted that the respondent being a poor illiterate rustic villager, she was not aware about the order passed by the second respondent. She came to know only when the notice was issued by the KIADB on the ground that lands have been notified and acquired for public purpose. Immediately thereafter, she contacted Advocate and enquired about the matter and obtained the certified copy of the order and filed appeal before the KAT. Further, he vehemently submitted that she had no notice, as such issued before, passing the impugned order by the second respondent. The second respondent has proceeded without following the provisions under the Act and this matter is not at all taken into consideration by the KAT. The Tribunal has dismissed the said appeal filed by the petitioner on the ground that there is inordinate delay in filing the appeal and the said delay has not been explained satisfactorily. Learned Counsel for the petitioner submitted that there is no bar on the part of the petitioner for not challenging the order from the date of knowledge. The said order has been challenged before the Appellate Tribunal within a reasonable time. Therefore, the said delay has not been intentional or deliberate but for bona fide reason and that she is an ignorant and rustic villager and she does not have the knowledge of legal implications. Therefore, it is submitted by the learned Counsel that the impugned order passed by the Deputy Commissioner and Tribunal are liable to be set aside.

4. Per contra, learned Additional Government Advocate, appearing for the respondents, inter alia, submitted and justified the impugned order passed by the authorities and the said order is passed strictly in accordance with law. There is inordinate delay of more than three and half decades and the said delay has not been explained satisfactorily and the petitioner was not vigilant enough. Therefore, the Tribunal has rightly considered the material available on record and after going through the original records has dismissed the request of the petitioner affirming the order passed by the Deputy Commissioner. Therefore, the writ petition filed by the petitioner is liable to be dismissed.

5. Heard the learned Counsel for the petitioner and the learned Additional Government Advocate.

6. The order has been passed by the Special Deputy Commissioner, the second respondent herein on the ground that the purchase made by the petitioner is after vesting the lands in the Government. Therefore, the purchase of the lands in question by the petitioner is null and void and the said transaction is contrary to the relevant provisions of law. Therefore, the same should not be recognised and registered after the date of vesting as per Section 10 of the Mysore (Personal and Miscellaneous) Inams Abolition Act, it is the rights that were existing immediately before the date of vesting that should be decided and further the Deputy Commissioner after following the in case of Marappa and Ors.

v. Maddamma and Ors. Order in Appeal No. 993 of 1959(I-A), dated 16-1-1960 the Competent Authority held that such a person is not entitled to seek grant of lands. Therefore, I do not find any gross error of law committed by the second respondent in rejecting the request of the petitioner. Feeling aggrieved by the order passed by the second respondent, petitioner filed appeal before the KAT, Bangalore, in the year 1999. The Tribunal held that there is inordinate delay of 37 years in presenting the appeal before the KAT and the Tribunal rejected the said appeal filed by the petitioner on more than one ground. The petitioner purchased the land from her mother under the sale deed dated 22-6-1959 and enjoyed the land by paying rent. Consequent upon the Inams Abolition the said village vested in Government with effect from 1-2-1959 and as such, the said sale is contrary to Section 10 of the Mysore (Personal and Miscellaneous) Inams Abolition Act. Therefore, it held that the order passed by the Deputy Commissioner is in accordance with law. Further, it reveals from the records that the KIADB has notified the lands in question along with other lands in the year 1999. It reveals from the original records the said land has not at all been cultivated by the petitioner and the land has become vacant. The only ground on which the petitioner approached the Tribunal is when she came to know that the lands have been notified and acquired. Further, it reveals from the relevant records that RTC extract in the year 1998-99 in column (9), the name of the Government has been mentioned and the cultivator's column is blank. Therefore, it shows beyond reasonable doubt that at no point of time petitioner has cultivated the said land. The Tribunal has considered the delay explained by the petitioner in a very elaborate manner in para 12 of the order passed by the Tribunal at page 32 produced along with this petition. Further, the KAT has given a specific finding after going through the original records of the lower Court. I find that there is an endorsement issued in her name. It is found in page 7 it was issued in March 1963. Further, it is held that in her evidence before the respondent her residence is shown as Kodihalli. When she was not in Kodihalli, the said endorsement was served upon her mother. When the order passed by the Deputy Commissioner has been served to her mother in a natural course in all probability, mother naturally rescues the petitioner. The petitioner claims mother alone sold the land to the petitioner/daughter. Therefore, the Tribunal's presumption is right. Further, it is held that there is inordinate delay of more than 37 years. It has held that no prudent or sane man will keep quiet and for such a long time without ascertaining about the application filed. Therefore, the Tribunal has not accepted the explanation given by the petitioner. The Tribunal further has held that petitioner is negligent in taking action against the impugned order. Therefore, in my considered view the Tribunal has considered the delay explained by the petitioner in para 12 of the impugned order at pages 32 and 33 and given a cogent reason for not accepting the delay explained by the petitioner. Further, as rightly pointed out by the learned Counsel appearing for the respondents there is delay of more than 37 years in filing the appeal before the KAT for challenging the order passed by the Deputy Commissioner. Therefore, in my considered view the petitioner has not made out any prima

facie case to interfere in the impugned order passed by both the authorities below. Both the authorities have passed order strictly in accordance with the relevant provisions of the Act and also on the ground of delay and laches, Tribunal has rightly dismissed the appeal confirming the order passed by the Deputy Commissioner. Having regard to the facts and circumstances of the case as stated above, petitioner has not made out any case on merits nor delay has been explained satisfactorily. The reasons assigned by the petitioner for condonation of delay in filing the appeal cannot be accepted and no creditability can be given to the said explanation sought for by the petitioner. Therefore, I do not find any justification to interfere with the impugned order passed by the second respondent and KAT nor the petitioner has made out any good grounds to interfere with the impugned order passed by the second respondent and KAT. For the foregoing reasons, petition is dismissed without cost. Government Advocate is permitted to file his memo of appearance within four weeks from today.